2005 No. 6

AGRICULTURE

The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) Regulations (Northern Ireland) 2005

Made - - - - -	*10th January 2005*
Coming into operation	*10th January 2005*

The Department of Agriculture and Rural Development, being a Department 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 Community and in relation to the promotion of rural development, in exercise of the powers conferred on it by the said section 2(2) and every other power enabling it in that behalf, hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) Regulations (Northern Ireland) 2005, and shall come into operation on 10th January 2005.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**c**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations –

"agri-environment commitment" means a commitment under Council Regulation 2078/92, Articles 22 to 24 of Council Regulation 1257/1999;

"authorised person" means any person authorised by the Department to act in matters relating to these Regulations, the Council Regulation or the Commission Regulation;

"the Commission Regulation" means Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in the Council Regulation(**d**);

"the Council Regulation" 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(**e**);

(**a**) S.I. 2000/2812 to which there are amendments not relevant to the subject matter of these Regulations, and S.I. 2000/3238
(**b**) 1972 c. 68
(**c**) 1954 c. 33 (N.I.)
(**d**) O.J. No. L141, 30.04.2004, p. 18
(**e**) O.J. No. L270, 21.10.2003, p. 1, as last amended by Council Regulation (EC) No. 864/2004 (O.J. No. L161, 30.04.2004, p. 48, as corrected by a corrigendum at O.J. No. L206, 9.6.2004, p. 20)

"Council Regulation 2078/92" means 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**);

"Council Regulation 1257/1999" means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(**b**);

"the Department" means the Department of Agriculture and Rural Development;

"farmer" has the meaning given to it in Article 2(a) of the Council Regulation;

"holding" has the meaning given to it in Article 2(b) of the Council Regulation; and

"permanent pasture" has the meaning given to it in Article 2(2) of the Commission Regulation.

(3) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date these Regulations are made.

(4) Other expressions used in these Regulations shall be construed in accordance with the Council Regulation and the Commission Regulation.

Designation

3. The Department is designated as the competent national authority in Article 3(2) of the Council Regulation.

Standards of good agricultural and environmental condition

4.—(1) The standards of good agricultural and environmental condition in Article 5(1) of the Council Regulation are set out in the Schedule and shall apply to a farmer in relation to any land over which he exercises control.

(2) If, in relation to any land under an agri-environment commitment, a requirement of the agri-environment commitment conflicts with a standard in the Schedule, any breach of the standard which is a necessary and direct consequence of meeting that requirement shall not be treated as a non-compliance.

Permanent pasture

5.—(1) If it is established that the ratio in Article 3(1) of the Commission Regulation is decreasing, the Department shall 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 met, the Department shall oblige a farmer to re-convert land to permanent pasture in accordance with Article 4(2) of the Commission Regulation.

Competent Control Authority

6.—(1) The Department and the Department of the Environment are designated as competent control authorities for the purpose of Article 42(1) of the Commission Regulation.

(2) The Department shall, pursuant to Article 48 of the Commission Regulation, establish the final control report and where the Department is not the Paying Agency send the control report to the Paying Agency.

(**a**) O.J. No. L215, 30.07.1992, p. 85, as last amended by Commission Regulation (EC) No. 2772/95 (O.J. No. L288, 01.12.1995, p. 35). This Council Regulation is no longer in force, but agri-environment commitments entered into under it remain extant

(**b**) O.J. No. L160, 26.06.1999, p. 80, as last amended by Council Regulation (EC) No. 583/2004 (O.J. No. L91, 30.03.2004, p. 1)

Powers of authorised persons

7.—(1) An authorised person may exercise any of the powers specified in this regulation for the purpose of –

(a) providing a control report pursuant to Article 48 of the Commission Regulation;

(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 –

(a) shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours to enter any land, other than a building used only as a dwelling, for the purposes of administering and enforcing these Regulations, the Council Regulation and the Commission Regulation, but

(b) may only do so if the land is a holding occupied by, or in the possession of a farmer, employee, agent, contractor or tenant of a farmer or if he has reasonable cause to believe so.

(3) An authorised person may –

(a) carry out any inquiries, checks, examinations and tests;

(b) take samples;

(c) inspect all or any part of the land, whether it is farmed or is withdrawn from agricultural production, including land set aside pursuant to Articles 54 and 55(b) of the Council Regulation;

(d) inspect any crops growing on that land or kept on it;

(e) mark any animal or other thing for identification purposes;

(f) have access to, inspect and copy any records (in whatever form they are held) kept in relation to activities 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 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 him such assistance as he may reasonably require and, where a record is kept by means of a computer, require the records to be produced in a form in which it can be taken away.

(4) An authorised person entering any premises by virtue of this regulation may take with him –

(a) such other persons as he considers necessary; and

(b) any representative of the European Commission acting for the purposes of the Council Regulation and the Commission Regulation.

(5) If an authorised person enters any unoccupied premises he shall leave them as effectively secured against unauthorised entry as he found them.

(6) Where an authorised person has entered any land, other than a building used only as a dwelling, under a power bestowed on him by other legislation he may exercise any of the powers specified in paragraphs (3) and (4) for the purposes of paragraph (1).

Assistance to authorised persons

8. A farmer or any employee, agent, contractor or tenant of a farmer shall 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 on him by regulation 7.

Offences and penalties

9.—(1) Any person who –

(a) intentionally obstructs an authorised person (or person accompanying him and acting under his instructions) in the exercise of a power conferred by regulation 7; or

(b) without reasonable cause fails to comply with a request made under regulation 8, shall be guilty of an offence.

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

(3) 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.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 10th January 2005.

(L.S.) *R. Jordan*

A senior officer of the Department of Agriculture and Rural Development

SCHEDULE

Regulation 4(1)

STANDARDS OF GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION

Soil management

1.—(1) A farmer shall prevent soil from being poached, except where:

(a) poaching of soil is a necessary consequence of measures taken to ensure animal welfare during periods of extreme weather conditions;

(b) the waterlogged soil is within 5 metres of a gateway or other access point and access is required over the waterlogged soil to land that is not waterlogged;

(c) the waterlogged soil is on an established track to land that is not waterlogged;

(d) poaching of soil is a necessary consequence of harvesting a crop of fresh vegetables or fruit in circumstances where such produce would deteriorate if not harvested as a matter of urgency; or

(e) poaching of soil is a necessary consequence of works that are required to improve the drainage of the waterlogged soil.

(2) A farmer shall ensure that during the period after harvest until the 1st March in the following year one of the following conditions is met in respect of cultivated land:

(a) the stubble of the harvested crop remains in the land;

(b) the land is sown with a temporary crop cover; or

(c) the land is left with a rough surface following ploughing or discing.

Supplementary feeding

2.—(1) A farmer shall ensure that no supplementary feeding site is located on any part of his land that constitutes part of a semi-natural habitat or a historic monument.

(2) A farmer shall ensure that no supplementary feeding site is located within:

(a) 10 metres from a waterway;

(b) 50 metres from a borehole; or

(c) 250 metres from any borehole currently used to provide water intended for human consumption.

(3) Without prejudice to paragraph 1(1)(a), a farmer shall rotate and manage supplementary feeding sites so as to prevent poaching on his land.

(4) A farmer shall not permit sacrifice areas on land except where the land is improved grassland or arable land and where the gradient of the land does not permit liquid runoff.

(5) Where a sacrifice area is permitted, the land on which it is located shall, either:

(a) be ploughed and sown in the following spring; or

(b) be allowed to regenerate naturally the following spring provided that the land has at least 90% grass coverage by the 31st May in that year.

Overgrazing

3. Without prejudice to paragraph 2(4), a farmer shall not permit land to be overgrazed, except where:

(a) the land is located within 5 metres from a gateway or laneway; or

(b) overgrazing is a necessary consequence of measures taken to ensure animal welfare during periods of extreme weather conditions.

Undergrazing

4.—(1) A farmer shall not permit land to be undergrazed.

(2) A farmer shall ensure that land is not degraded to the extent that the land is not capable of returning to agricultural production by the start of the next growing season by the presence of any of the following species of plant: rhododendron, gorse, giant hogweed, Japanese knotweed and any noxious weed within the meaning of Article 3 of the Noxious Weeds (Northern Ireland) Order 1977(**a**).

Field Boundaries

5.—(1) Except with the prior written approval of the Department, a farmer shall not permit:

(a) the removal of any dry stone wall, hedge or earthbank;

(b) the infilling of any open sheugh or ditch; or

(**a**) S.I. 1977/52 (N.I. 1)

(c) the laying of a drainage pipe in any open sheugh or ditch.

(2) Without prejudice to sub-paragraph 1(a), where a tree is growing in a hedge removal of such tree is permitted without obtaining the prior written approval of the Department where:

(a) its removal is necessary for reasons of human health or public safety; or

(b) the tree is used for timber, provided that a sapling replaces the tree in the hedge within a reasonable time.

(3) A requirement to obtain the prior written approval of the Department at sub-paragraph 1(b) or (c) shall not be necessary in the case of a permanently dry sheugh or ditch.

(4) A farmer shall not permit the carrying out of hedge cutting, coppicing, or laying of hedges between the 1st March and 31st August, except where this is necessary for reasons of human health or public safety.

Protection of semi natural habitats and historic monuments

6. A farmer shall ensure that where any of the following features is found on his land, it is retained without impairment:

(a) a semi-natural habitat;

(b) a shelterbelt;

(c) a historic monument.

Compliance With Statutory Provisions

7.—(1) A farmer shall comply with any stop notice served upon him under regulation 22(1) and any reinstatement notice served upon him under regulation 24(1) of the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) Regulations (Northern Ireland) 2001(**a**).

(2) A farmer shall comply with any tree preservation order in force in relation to any tree on his land.

New Works

8. Except with the prior written approval of the Department, a farmer shall not undertake any new drainage works, or carry out any ploughing, clearing, levelling, re-seeding or cultivation, on previously uncultivated land or semi-natural habitats.

Burning of Ground Cover

9. A farmer shall not permit the burning of heather, gorse, or ferns between 15th April and 31st August.

Interpretation

10. In this schedule:

"arable land" means land on which cereal or oil-seed rape crops are grown;

"borehole" means a hole which has been drilled in land in order to provide a water supply whether or not currently in use for this purpose;

"discing" means breaking up the surface of land mechanically by means of a thin flat revolving disc;

"earthbank" means a ridge constructed from soil which forms part of a field boundary;

"historic monument" has the same meaning as in Article 2(2) of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(**b**);

"improved grassland" means grassland on which more than 20% of the sward is comprised of ryegrass, timothy, red fescue or white clover;

"overgrazing" means grazing land with livestock in such numbers as to damage the growth, quality or species composition of vegetation on that land to a significant degree;

"ploughing" means making furrows in land mechanically, by breaking and turning over the soil;

"poaching" means the prolonged trampling of waterlogged soil by animals or humans or the use of machinery or vehicles on waterlogged soil;

"sacrifice area" means a supplementary feeding site which is grazed bare by livestock;

(**a**) S.R. 2001 No. 435

(**b**) S.I. 1995/1625 (N.I. 9) to which there are amendments not relevant to the subject matter of these Regulations

"semi-natural habitat" means an area which is not subject to an intensive farming regime, such as an area of moorland, scrub, heath, wetlands, species rich grassland, broadleaf woodland, a coastal habitat, or waterway. These examples are without prejudice to the generality of the expression;

"shelterbelt" means a row of trees planted on land to provide shelter from prevailing winds;

"supplementary feeding site" means any land under the control of a farmer (other than a farm building or farmyard) where concentrates, fodder or mineral licks are fed to livestock;

"tree preservation order" has the same meaning as in Article 65 of the Planning Order (Northern Ireland) 1991(**a**);

"undergrazing" means permitting the growth, quality or species composition of grazed vegetation to deteriorate significantly through the lack of, or through insufficient, grazing or management;

"waterway" has the same meaning as in Article 2(2) of the Water (Northern Ireland) Order 1999(**b**).

(**a**) S.I. 1991/1220 (N.I. 11); Article 65 has been amended by Article 26(1) of the Planning (Amendment) (Northern Ireland) Order 2003 S.I. 2003/430 (N.I. 8)

(**b**) S.I. 1999/662 (N.I. 6) to which there are amendments not relevant to the subject matter of these Regulations

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision in Northern Ireland for the administration and enforcement of Regulation (EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p. 1) ("the Council Regulation") and Commission Regulation (EC) No. 796/2004 (O.J. No. L141, 30.4.2004, p. 18) ("the Commission Regulation") in relation to cross compliance under the new system of direct support schemes (including the Single Payment Scheme) under the Common Agricultural Policy (CAP) to come into force on 1st January 2005.

"Cross compliance" links the payment of direct aid to farmers under the Common Agricultural Policy to compliance with a range of laws and standards (see Article 6 of the Council Regulation). Annex III to the Council Regulation contains a list of "statutory management requirements" in areas of Community law on the environment, public and animal health and animal welfare. Under Article 5(1) of the Council Regulation, Member States must set out standards of "good agricultural and environmental condition" which will apply to all farmers, within the framework in Annex IV to that Regulation.

The Regulations provide as follows:

Regulation 3 designates the Department of Agriculture and Rural Development as the competent national authority responsible for providing farmers with a list of the statutory management requirements and standards of good agricultural and environmental condition on his land.

Regulation 4, by reference to the Schedule, sets out the standards of good agricultural and environmental condition which will apply in Northern Ireland, as required under Article 5(1) of the Council Regulation. It also provides that farmers with agri-environment commitments which directly and necessarily conflict with the standards will not be penalised for breaching the standards. The standards in the Schedule cover the following areas-

- Soil Management
- Supplementary Feeding
- Overgrazing
- Undergrazing
- Field Boundaries
- Protection of semi natural habitats and historic monuments
- Compliance with Various Statutory Provisions
- New Works
- Burning of Ground Cover

Regulation 5 gives the Department of Agriculture and Rural Development 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 these powers is necessary in order for the United Kingdom to meet the requirements of Article 5(2) of the Council Regulation and Articles 3 and 4 of the Commission Regulation.

Regulation 6 makes the Department and the Department of the Environment responsible for carrying out the controls on the requirements or standards set out in these Regulations and the Council Regulation.

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,

establishing a non-compliance or ascertaining whether an offence under these Regulations has been or is being committed.

Regulations 8 and 9 provide for an authorised person to request assistance and for offences of obstructing an authorised person and failing to provide assistance.

A booklet setting out the standards in the schedule will be sent to all farmers. Further copies are available from the Department of Agriculture and Rural Development, Rural Payments and Inspection Division, Room 558, Dundonald House, Upper Newtownards Road, Belfast, BT4 3SB. Telephone 028 90 525549 or for those with hearing disabilities 028 90 524420. Fax 028 90 524431. E-mail www.dardni.gov.uk.

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