
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 518

AGRICULTURE

**The Common Agricultural Policy Schemes
(Cross-Compliance) (Scotland) Regulations 2004**

Made - - - - 30th November 2004
*Laid before the Scottish
Parliament* - - - - 1st December 2004
Coming into force - - 1st January 2005

The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 and shall come into force on 1st January 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“authorised person” means any person authorised by the Scottish Ministers to act in matters arising under 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⁽²⁾;

“control report” means a control report pursuant to Article 48 of the Commission Regulation, and “provisional control report” shall be a draft control report detailing all the information required in a control report;

“the Council Regulation” means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and

(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) O.J. No. L 141, 30.04.2004, p.18.

establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001⁽³⁾, amended by Council Regulation (EC) No. 21/2004⁽⁴⁾, Council Regulation (EC) No. 583/2004⁽⁵⁾ and Council Regulation (EC) No. 864/2004⁽⁶⁾;

“electronic communication” means an electronic communication as defined in the Electronic Communications Act 2000⁽⁷⁾ which has been recorded and is consequently capable of being reproduced;

“farmer” has the same meaning as in Article 2(a) of the Council Regulation;

“growing season” means the growing season which ends on or before 15th October;

“holding” has the same meaning as in Article 2(b) of the Council Regulation;

“non compliance” has the same meaning as in Article 2(35) of the Commission Regulation;

“overgrazing” means grazing land with livestock or other animals in such numbers as to adversely affect the growth quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree;

“spring” means the period beginning on 1st March and ending on 31st May in any calendar year;

“the Scottish Environment Protection Agency” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995⁽⁸⁾;

“Scottish Natural Heritage” means Scottish Natural Heritage established under section 1 of the Natural Heritage (Scotland) Act 1991⁽⁹⁾;

“site of special scientific interest” means land designated as a site of special scientific interest pursuant to section 28 of the Wildlife and Countryside Act 1981 or section 3(6) of the Nature Conservation (Scotland) Act 2004⁽¹⁰⁾;

“the Uncultivated Land and Semi-Natural Areas Regulations” means the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002⁽¹¹⁾; and

“winter” means the period beginning on the day after harvest and ending on the last day of February in the following calendar year.

(2) Other expressions used in these Regulations have, unless the context otherwise requires, the meaning they bear in the Council Regulation and the Commission Regulation.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered paragraph or sub-paragraph is a reference to the paragraph so numbered in the regulation or Schedule to these Regulations, or to the sub-paragraph so numbered in the paragraph, in which that reference occurs.

(4) Except in relation to a management regime, approval or consent under paragraphs 10(2), 11(4), 12(2)(a), 14, 15(1) or 16(1) of the Schedule to these Regulations, where this paragraph shall

(3) O.J. No. L 270, 21.10.2003, p.1.

(4) O.J. No. L 5, 9.1.04, p. 8.

(5) O.J. No. L 91, 30.3.04, p. 1.

(6) O.J. No. L 206, 9.6.04, p. 20.

(7) 2000 c. 7.

(8) 1995 c. 25.

(9) 1991 c. 28.

(10) Section 28 of the Wildlife and Countryside Act 1981 (c. 69) is revoked by paragraph 4 of schedule 7 to the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#) as a consequence of the coming into force on 29th November 2004 of Part 2 of that Act, subject to transitional arrangements contained in schedule 5 to that Act.

(11) S.S.I. 2002/6.

only apply if the farmer so consents, or has contacted the Scottish Ministers by way of an electronic communication in relation to an approval or consent, any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication.

Designation

3. The Scottish Ministers shall be the competent national authority for the purposes of providing the list of statutory management requirements and good agricultural and environmental condition required by Article 3(2) of the Council Regulation.

Good agricultural and environmental condition

4.—(1) The standards of good agricultural and environmental condition referred to in Article 5 of the Council Regulation are specified in this regulation and the Schedule to these Regulations.

(2) The land must be maintained in a condition that would make it reasonably practicable for an authorised person (and any person who may accompany an authorised person) to exercise any of the powers specified in regulation 6 as necessary to ascertain whether any of the statutory management requirements under Article 3 of the Council Regulation or any requirement of this regulation or the Schedule to these Regulations has been complied with.

Competent Control Authority

5.—(1) The Scottish Ministers are designated as the Competent Control Authority for the purposes of the derogation in Article 42(2) of the Commission Regulation.

(2) The Scottish Ministers may require the relevant authorities to carry out controls for the purposes of Article 9 and Chapters I and III of Title III of the Commission Regulation.

(3) The relevant authorities shall—

- (a) send to the Scottish Ministers a provisional control report; and
- (b) for the purposes of Article 65 of the Commission Regulation where a non-compliance is established as a consequence of any kind of checks, notify the Scottish Ministers of any non-compliance established.

(4) The Scottish Ministers shall pursuant to Article 48 of the Commission Regulation establish the final control report and where the Scottish Ministers are not the Paying Agency, send the control report to the Paying Agency.

(5) In this regulation, “the relevant authorities” means—

- (a) Scottish Natural Heritage; and
- (b) the Scottish Environment Protection Agency.

Powers of authorised persons

6.—(1) In addition to any existing power of entry an authorised person may exercise any of the powers specified in this regulation for the purpose of—

- (a) providing a control report or a provisional control report;
- (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 shall, on producing, if so required, some duly authenticated document showing that person’s authority, have a right at all reasonable hours to enter any land (excluding any building used only as a dwelling) which is or which such person has reasonable cause to believe to

be a holding occupied by, or in the possession of, a farmer or employee, agent, contractor or tenant of the farmer.

- (3) An authorised person may—
- (a) carry out any inquiries, checks, examinations and tests;
 - (b) take any samples;
 - (c) inspect all or any part of the land farmed, laid fallow or withdrawn from agricultural production by a farmer including land set-aside pursuant to Article 54 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 under these Regulations, or remove such records to enable them to be copied; and
 - (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 may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the authorised person such assistance as may reasonably be required and, where a record is kept by means of a computer, may require the records to be produced in a form in which they can be taken away.
- (4) An authorised person entering any premises by virtue of this regulation may be accompanied by—
- (a) such other persons as the authorised person 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 the authorised person shall leave them as effectively secured against unauthorised entry as before those premises were entered.

Assistance to authorised persons

7. 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 by regulation 6.

Offences and penalties

- 8.—(1) Any person who—
- (a) intentionally obstructs an authorised person (or person accompanying an authorised person and acting under the authorised person's instructions) in the exercise of a power conferred by regulation 6; or
 - (b) without reasonable cause fails to comply with a request made under regulation 7,
- 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 that person.

(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.

Offences of bodies corporate

9.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been 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 (or in the case of a partnership, a partner or a person who was purporting to act as such), that officer or person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

St Andrew's House, Edinburgh
30th November 2004

ROSS FINNIE
A member of the Scottish Executive

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 4

GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION

PART I

Protection of soil from erosion

Minimum soil cover

Winter soil cover and final seedbeds

1.—(1) Subject to sub-paragraph (2), where land has been cropped with any crop which has been harvested a farmer must ensure that throughout the winter following that harvest such land—

- (a) is covered by the stubble of the harvested crop, by another crop or by grass; or
- (b) has a surface which is ploughed, or roughly cultivated (by the use of discs or tines or otherwise).

(2) Sub-paragraph (1) does not apply to the extent that the prevailing agronomic or weather conditions and the condition of the composition of the soil of that land—

- (a) after harvest are such that compliance with that sub-paragraph would be detrimental to the use of the land for agricultural production; or
- (b) are such that they would indicate the planting of the following year's crop before the end of winter.

(3) Final seedbeds must only be created as shortly before the next crop is planted as possible to avoid significant evident erosion of the soil, taking account of prevailing weather conditions.

Minimum land management reflecting site-specific conditions

Wind erosion

2. In relation to an area of land prone to wind erosion of the soil, a farmer must reduce the risk of soil loss during the spring by planting and maintaining on or in relation to that field, until a crop is established in that area,—

- (a) crop cover by another crop;
- (b) coarse seedbeds;
- (c) shelter belts; or
- (d) nurse crops to protect other crops grown on the land,

or taking other measures with equivalent effect to the establishment of one of those features.

Capping

3.—(1) In any field which is prone to capping, or where there is capping, a farmer must form a coarse seedbed or ensure that the farmer breaks any cap which forms so as not to cause erosion.

(2) In this paragraph, “capping” means soil particles which run together when wet, and dry so as to form a crust on the surface of the soil; and “cap” shall be construed accordingly.

Watercourses, watering points and feeding areas

4.—(1) A farmer must prevent the erosion of the banks of watercourses, at watering points or feeding areas from overgrazing or heavy poaching by livestock except—

- (a) within 10m of a gateway; or
- (b) within 3m of a farm track necessarily used during wet-periods,

by reducing the livestock numbers on that land so as to cause the land to recover to the extent that the erosion is no longer significant by any time during the growing season in the calendar year following the date when that erosion first occurred.

(2) In this paragraph “heavy poaching” means the cutting up of turf to a significant degree from trampling by livestock.

Field drains

5.—(1) Subject to sub-paragraph (2), a farmer must maintain any functional field drainage systems on the land in a working state (whether by clearing ditches or otherwise).

(2) Sub-paragraph (1) shall not apply where an environmental gain would be achieved by not maintaining the field drainage systems provided the farmer has, prior to that system ceasing to function, declared the environmental gain to be achieved—

- (a) in the farmer’s aid application under Article 22 of the Council Regulation; or
- (b) in any other prior application for a direct payment.

Muirburning

6. A farmer must comply with the requirements of the Muirburn Code(12).

PART II

Practices to maintain soil organic matter levels

Standards for crop rotations where applicable

Arable break crops or the application of organic materials

7.—(1) On arable land cultivated for crop production, a farmer must either—

- (a) use suitable break crops to maintain organic matter in the soil in an arable rotation; or
- (b) optimise the application of organic materials to land by applying rates of application of the material calculated by reference to the requirements of the soil and crops grown.

(2) Where a farmer uses the option specified at sub-paragraph (1)(b), the farmer must make and keep for 5 years a written record of the organic materials, and the quantities of those materials, applied to the land.

(12) Published in 2004 by the Scottish Executive Environment and Rural Affairs Department (“SEERAD”) and available from SEERAD, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TY.

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Arable stubble management

Incorporation of livestock manures

8. Except on an area of land prone to wind erosion of the soil, a farmer must incorporate livestock manures spread on stubble into the soil within a period of 2 weeks after the date of spreading on a particular area of stubble.

PART III

Maintenance of soil structure

Appropriate machinery use

Machinery use for planting or sowing

- 9.—(1) A farmer must not carry out any cultivation using machinery if—
- (a) water is standing on the surface of the land; or
 - (b) the soil is saturated to the point where water is clearly visible when pressure equivalent to a footprint is applied.
- (2) In this paragraph, “cultivation” means cultivation to prepare for planting or sowing.

PART IV

Minimum level of maintenance and prevention of deterioration of habitats

Minimum livestock stocking rates or/and appropriate regimes

Undergrazing

- 10.—(1) A farmer must not allow undergrazing of land.
- (2) Where undergrazing under sub-paragraph (1) is identified by an authorised person, and the Scottish Ministers form the opinion that the land is undergrazed, the farmer must in addition comply with the conditions of any written management regime imposed by the Scottish Ministers in relation to that land; and the Scottish Ministers must pass or send a copy of that management regime to the farmer.
- (3) In establishing a non-compliance for the purposes of sub-paragraph (1), land is not undergrazed unless it is not capable of recovering to the extent that the use of the land or the growth, structure or species composition of grazed vegetation is no longer detrimental to the environmental or agricultural interest of the land by any time during the growing season in the calendar year following the date when the land first became undergrazed.
- (4) In this paragraph, “undergrazing” means not using land fully or scrub or coarse vegetation becoming evident, where the use of the land or the growth, structure or species composition of grazed vegetation is detrimental to the environmental or agricultural interest of the land.

Overgrazing

- 11.—(1) Subject to sub-paragraph (2), a farmer must not allow overgrazing of land.

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(2) Where a farmer can demonstrate to the satisfaction of the Scottish Ministers that appropriate action has been taken, they will be taken to have complied with sub paragraph (1) where the overgrazing was caused by—

- (a) an incursion of geese which could not be predicted;
- (b) an incursion of wild deer which could not be predicted, where in the case of an incursion of significant numbers of such deer the farmer can show that advice has been taken from the Deer Commission for Scotland and that advice has been acted upon; or
- (c) rabbits, where the farmer can show that appropriate control methods have been used.

(3) In establishing a non-compliance for the purposes of sub-paragraph (1), land is not overgrazed unless it is not capable of recovering to the extent that the growth quality or species composition of vegetation is no longer adversely affected to a significant degree by any time during the growing season in the calendar year following the date when the land first became overgrazed.

(4) Where overgrazing under sub-paragraph (1) is identified by an authorised person, and the Scottish Ministers form the opinion that the land is overgrazed, the farmer must in addition comply with the conditions of any written management regime imposed by the Scottish Ministers in relation to that land; and the Scottish Ministers must pass or send a copy of that management regime to the farmer.

Protection of permanent pasture

Pasture land of environmental or archaeological value

12.—(1) A farmer must not plough up pasture land of high environmental or archaeological value (whether species-rich grassland, machair habitat, pastoral woodland, heather moorland or otherwise) without all of the necessary consents or approvals required to permit that ploughing up.

(2) In this paragraph, “necessary consents or approvals” means—

- (a) the prior written consent of—
 - (i) subject to sub-paragraph (3), Scottish Natural Heritage for land within a site of special scientific interest;
 - (ii) the Scottish Ministers for land under an agri environment agreement in connection with support paid under Chapter VI of Title II of Council Regulation (EC) 1257/1999 as amended(13);
- (b) approval under the Uncultivated Land and Semi-Natural Areas Regulations(14);
- (c) any consent or approval by or under any other enactment which would prohibit that ploughing up.

(3) This paragraph shall not apply where the necessary consent or approval would be the consent of Scottish Natural Heritage at a site of special scientific interest so designated by consequence of its status as a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994(15).

(13) O.J. No. L 160, 26.6.1999, p.80, amended by Commission Regulation (EC) No. 1783/2003 (O.J. No. L 270, 21.10.2003, p.70), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (O.J. L 236, 30.09.2003, p.33, Council Regulation (EC) No. 576/2004 (O.J. L 90, 27.3.2004), p. 1 and Council Regulation (EC) No. 583/2004 (O.J. No. L 91, 30.3.2004, p.1).

(14) S.S.I. 2002/6.

(15) S.I.1994/2716, amended by S.S.I. 2004/475.

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Works on rough grazings and other semi-natural areas

13.—(1) A farmer must not undertake new drainage works, plough up, clear, level, re-seed or cultivate rough grazings and other semi-natural areas without approval under the Uncultivated Land and Semi-Natural Areas Regulations.

(2) In this paragraph, “rough grazings and other semi-natural areas” means land containing semi-natural vegetation including heathland, heather moorland, bog, unimproved grassland and rough grassland which is used or suitable for grazing.

Pesticides, lime and fertiliser on rough grazings and other semi-natural areas

14. A farmer must not apply pesticides, lime or fertiliser to rough grazings and other semi-natural areas, except—

- (a) as approved under the Uncultivated Land and Semi-Natural Areas Regulations;
- (b) in the case of lime or fertiliser, where no conservation damage to the diversity of species in those areas will result;
- (c) in the case of herbicides, to control injurious weeds to which the Weeds Act 1959⁽¹⁶⁾ applies;
- (d) to control bracken with Asulam or other herbicides approved within the meaning of the Control of Pesticides Regulations 1986⁽¹⁷⁾ or the Plant Protection Products (Scotland) Regulations 2003⁽¹⁸⁾; or
- (e) to control other plants, with the prior written consent of the Scottish Ministers.

Retention of landscape features

Boundary features

15.—(1) A farmer must not remove, destroy or damage drystone or flagstone dykes, turf and stone-faced banks, walls, hedges and hedgerow trees, boundary trees or watercourses which serve as boundaries to agricultural land without the prior written consent of—

- (a) the Scottish Ministers; or
- (b) by or under any enactment, another authority as shall be notified to the farmer by the Scottish Ministers when the farmer applies to them for consent.

(2) A farmer must not trim a hedge in the period beginning on 1st March and ending on 31st July, except only to the extent necessary for the purposes of road safety.

(3) Written consent under sub-paragraph (1) is not required to widen field entrances to enable access for livestock or farm machinery.

(4) In this paragraph “remove, destroy or damage” does not include—

- (a) trimming a hedge; or
- (b) lopping branches from hedgerow trees.

Landscape features

16.—(1) A farmer must prevent the deterioration of non-productive landscape features on the land, including shelter belts, copses and ponds, except with the prior written consent of—

⁽¹⁶⁾ 1959 c. 54.

⁽¹⁷⁾ S.I. 1986/1510, amended by S.I. 1990/2487, 1994/3142 and 1997/188.

⁽¹⁸⁾ S.S.I. 2003/579, amended by S.S.I. 2004/368.

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- (a) the Scottish Ministers; or
 - (b) by or under any enactment, another authority as shall be notified to the farmer by the Scottish Ministers when the farmer applies to them for consent.
- (2) In this paragraph, “deterioration” means—
- (a) in relation to shelter belts and copses—
 - (i) not maintaining functional stock proof fences around those features; or
 - (ii) severe poaching where feeding or other livestock husbandry practices have occurred within those features because the farmer has not reduced the livestock numbers so as to cause the turf to recover to the extent that there is no longer a predominantly muddy surface by any time during the growing season in the calendar year following the date when that severe poaching first occurred; or
 - (b) not maintaining ponds on the holding by allowing eutrophication or by drainage.
- (3) In this paragraph “severe poaching” means the cutting up of turf to the destruction of the underlying vegetation leading to a predominantly muddy surface from trampling by livestock.

Protected historic environment

17. A farmer must not alter, or cause (whether directly or indirectly) the damage or destruction of the following buildings, gardens and landscapes without the relevant prior consent or permission, where that consent or permission is required to allow that alteration, damage or destruction:—

- (a) a building for the time being included in the Schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁹⁾ without prior scheduled monument consent⁽²⁰⁾ within the meaning of that Act;
- (b) a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997⁽²¹⁾ without prior listed building consent under section 7 of that Act; or
- (c) a historic garden or designed landscape within the meaning of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992⁽²²⁾ in respect of which consultation is required before grant of planning permission under article 15(1)(j)(iv) of that Order.

Avoiding the encroachment of unwanted vegetation on agricultural land

Encroachment of vegetation

18.—(1) Subject to sub-paragraph (2), a farmer must maintain land in a condition where vegetation does not encroach onto the land to the point that the land is not capable of

- (a) being used for the production of agricultural products; or
 - (b) being put in that condition by any time during the growing season in the calendar year following the date when the encroachment occurred.
- (2) The requirement in sub-paragraph (1) does not apply—
- (a) to the encroachment of native species in the case of—
 - (i) the recolonisation of trees across a native woodland boundary;

⁽¹⁹⁾ 1979 c. 46.

⁽²⁰⁾ Certain works (including agricultural, horticultural and forestry works) have scheduled monument consent by virtue of the Ancient Monuments (Class Consents) (Scotland) Order 1996 (S.I. 1996/1507).

⁽²¹⁾ 1997 c. 9.

⁽²²⁾ S.I. 1992/224, to which there are amendments not relevant to these Regulations.

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- (ii) the recolonisation of gorse, birch and juniper sub-species to the extent that it forms an area of mixed habitats; or
 - (iii) the reversion of land to wet grassland or wetland; or
- (b) where there is no degradation of the environmental and agricultural value of the land and the farmer has prior to that encroachment declared any environmental gain to be achieved which is relied on under this paragraph–
- (i) in the farmer’s aid application under Article 22 of the Council Regulation; or
 - (ii) in any other prior application for a direct payment.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in Scotland for the administration and enforcement of Regulation (EC) No. 1782/2003 (O.J. No. L 270, 21.10.2003, p.1; “the Council Regulation”) and Commission Regulation (EC) No. 796/2004 (O.J. No. L 141, 30.4.2004, p.18) in relation to cross-compliance under the new system of direct support subsidy schemes under the Common Agricultural Policy introduced under the Council Regulation. They come into force on 1st January 2005.

The Regulations designate the competent national authority for providing farmers under Article 3(2) of the Council Regulation with a list of the statutory management requirements specified in Annex III of the Council Regulation (“the statutory management requirements”), and the good agricultural and environmental condition that they must respect (regulation 3).

Regulation 4 and the Schedule to these Regulations define the requirements of good agricultural and environmental condition in relation to agricultural land in Scotland under Article 5(1) of the Council Regulation, based on the framework set out in Annex IV to that Regulation. A farmer must also keep land in a condition where an authorised person can gain access to the land to ascertain whether there has been a breach of these requirements.

Regulation 5 exercises a derogation to designate the Scottish Ministers as the Competent Control Authority, which shall bear the responsibility for carrying out the controls on the requirements or standards in question. It enables the Scottish Ministers to require the relevant authorities to carry out controls. The regulation imposes statutory duties on the relevant authorities to send provisional control reports to the Scottish Ministers and to notify them of any non compliance with the requirements of these Regulations or the statutory management requirements established as a consequence of any kind of check.

Regulation 6 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 or establishing whether there has been a non-compliance with the requirements of these Regulations or the statutory management requirements.

Regulation 7 provides for an authorised person to request assistance. Regulation 8 specifies criminal offences and penalties to enforce cross-compliance for obstructing an authorised person and failing to provide assistance. Regulation 9 provides for offences of bodies corporate.

The requirements of good agricultural and environmental condition set out in the Schedule to these Regulations involve following cropping with suitable soil cover over winter and regulating the

creation of final seedbeds; reducing the risk of soil loss due to wind erosion; avoiding capping of the soil; preventing erosion at watercourses, watering points and feeding areas; maintaining functional field drains; and compliance with the Muirburn Code.

Farmers must use suitable break crops or optimise the application of organic material on arable land, keeping records of organic material applied to land, and incorporate livestock manures.

They must avoid the use of machinery for planting or sowing on saturated land.

They must avoid undergrazing and overgrazing; protect pasture land of high agricultural and archaeological value; prevent new drainage works, ploughing up, clearing, levelling, re-seeding or cultivation of rough grazings and other semi-natural areas without approval under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (S.S.I. 2002/6); comply with restrictions on the application of pesticides, lime and fertiliser on rough grazings and other semi-natural areas; not remove, destroy or damage boundary features without the prior written consent of the Scottish Ministers; prevent the deterioration of landscape features without the prior written consent of the Scottish Ministers; not alter, damage or destroy a scheduled ancient monument, listed building or historic garden or designed landscape identified in the Inventory of Gardens and Designed Landscapes in Scotland without the relevant consent or planning permission and ensure that unwanted vegetation does not encroach onto the land.

Paragraph 12(3) of the Schedule excludes European sites of special scientific interest within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994. Those sites are subject to cross-compliance controls directly applicable in Scots law as statutory management requirements under Chapter 1 of Title II of, and Annex III (entries A. 1 and 5) to, the Council Regulation.

The consequences of non-compliance with the requirements of good agricultural and environmental condition as provided for in these Regulations (or the statutory management requirements) are that subsidy penalties will be imposed, principally under Chapter 1 of Title II of the Council Regulation and Chapter II of Title IV of Commission Regulation (EC) 796/2004 (O.J. No. L 141, 30.4.2004, p.18), on the direct payments under the Common Agricultural Policy listed in Annex I to the Council Regulation.

Copies of guidance issued by the Scottish Ministers in relation to the standards of the statutory management requirements and good agricultural and environmental condition may be obtained from Scottish Executive Environment and Rural Affairs Department agricultural area offices.

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. A copy of it can be obtained from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.