
STATUTORY INSTRUMENTS

2004 No. 3196

AGRICULTURE, ENGLAND

The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004

<i>Made</i>	- - - -	<i>5th December 2004</i>
<i>Laid before Parliament</i>		<i>7th December 2004</i>
<i>Coming into force</i>	- -	<i>1st January 2005</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the Common Agricultural Policy of the European Community, in exercise of the powers conferred upon her by that section hereby make the following Regulations:

Title, commencement and application

1. These Regulations may be cited as the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004, shall come into force on 1st January 2005 and shall apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“agri-environment commitment” means a commitment under Council Regulation 2078/92, Articles 22 to 24 of Council Regulation 1257/1999 or the Entry Level Agri-Environment Scheme (Pilot) (England) Regulations 2003⁽³⁾;

“authorised person” means any person authorised by the Secretary of State 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⁽⁴⁾;

(1) S.I.1972/1811.

(2) 1972 c. 68.

(3) S.I. 2003/838.

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

“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⁽⁵⁾;

“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⁽⁶⁾;

“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)⁽⁷⁾;

“English Nature” means English Nature as defined in section 73 of the Countryside and Rights of Way Act 2000⁽⁸⁾;

“Environment Agency” means the Environment Agency as defined in section 1 of the Environment Act 1995⁽⁹⁾;

“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.

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

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

Designation

3. The Secretary of State 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.

(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 Secretary of State must 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 Secretary of State must oblige a farmer to re-convert land to permanent pasture in accordance with Article 4(2) of the Commission Regulation.

(5) O.J. No. L 270, 21.10.2003, p. 1, as last amended by Council Regulation (EC) No 864/2004 (O.J. No. L 161, 30.04.2004, p. 48, as corrected by a corrigendum at O.J. No. L 206, 9.6.2004, p. 20).

(6) O.J. L 215, 30.07.1992, p. 85, as last amended by Commission Regulation (EC) No 2772/95 (O.J. L 288, 01.12.1995, p. 35). This Council Regulation is no longer in force, but agri-environment commitments entered into under it remain extant.

(7) O.J. L 160, 26.06.1999, p. 80, as last amended by Council Regulation (EC) No. 583/2004 (O.J. L 91, 30.03.2004, p. 1).

(8) 2000 c. 37.

(9) 1995 c. 25.

Competent Control Authority

6.—(1) The Rural Payments Agency⁽¹⁰⁾ is designated as the Competent Control Authority for the purposes of the derogation in Article 42(2) of the Commission Regulation.

(2) The Rural Payments Agency may require any of the relevant authorities to carry out controls or checks for the purposes of Article 9 and Chapter I and Chapter III of Title III of the Commission Regulation.

(3) The relevant authorities shall—

- (a) send to the Rural Payments Agency a provisional control report;
- (b) for the purposes of Article 65(4) of the Commission Regulation where a non compliance is established as a consequence of any kind of checks, notify the Rural Payments Agency of the non compliance established.

(4) The functions conferred on English Nature by paragraphs 2 and 4 shall be treated for the purposes of section 132(2), section 133 and paragraphs 19, 20 of Schedule 6 to the Environmental Protection Act 1990⁽¹¹⁾ as though they were conferred on English Nature under section 132 of that Act.

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

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

- (a) English Nature; and
- (b) The Environment Agency.

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 or 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;

⁽¹⁰⁾ The Rural Payments Agency is an Executive Agency of the Department for Environment, Food and Rural Affairs, for the time being accredited as the Paying Agency.

⁽¹¹⁾ 1990 c 43.

- (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.
- (4) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—
- (a) any director, manager, secretary or other similar person of the body corporate, or
 - (b) any person purporting to act in such capacity,
- he, as well as the body corporate, shall be guilty of an offence.
- (5) For the purposes of paragraph (5), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

5th December 2004

Whitty
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

SCHEDULE

Regulation 4(1)

Standards of good agricultural and environmental condition

Retention of guidance on soil management

1.—(1) On and after 1st February 2005 a farmer must retain, and in his farming activities take account of, any guidance on soil management published by the Secretary of State and stating that it relates to cross compliance in accordance with her obligation under sub-paragraph (2).

(2) The Secretary of State must publish—

- (a) the first such guidance before 1st February 2005, and
- (b) a revision of such guidance whenever she considers that it is expedient in the interests of good agricultural and environmental condition to do so,

in such a way as she considers appropriate to bring it to the notice of those likely to be affected by it.

Post-harvest management of land after combinable crops

2.—(1) If land has carried a crop of oil-seeds, grain legumes or cereals (other than maize) which has been harvested using a combine harvester or a mower, a farmer must ensure that, throughout the periods in sub-paragraph (2), at least one of the following conditions is met on that land at any time—

- (a) the stubble of the harvested crop remains in the land;
- (b) the land is left with a rough surface following ploughing, discing, tine cultivation or any other suitable agricultural method;
- (c) the land is prepared as a seedbed for a crop and the crop is sown within a period of 10 days beginning with the day after final seedbed preparation;
- (d) the land is under cultivation sequences used for the purpose of creating a stale seedbed; or
- (e) the land is sown with a temporary cover crop, so long as, if the cover crop becomes grazed out or cultivated out, the condition in paragraph (b) is then met as soon as is practicable without breaching the requirements in paragraph 3, and for the remainder of the period.

(2) The periods in sub-paragraph (1) are—

- (a) in 2005, the period beginning with 1st January and ending with 28th February; and
- (b) in 2005 and in subsequent years, the period beginning with the first day after harvest and ending with the last day of February in the following year.

(3) In this paragraph, “stale seedbed” means an area of land which is subject to shallow cultivation to stimulate weed germination as part of a strategy of weed control.

Waterlogged soil

3.—(1) A farmer must not carry out a mechanical field operation on waterlogged soil unless—

- (a) the soil is within 20 metres of the access point to an area of soil which is not waterlogged;
- (b) the soil forms part of a track to an area of soil which is not waterlogged;
- (c) the mechanical field operation is necessary—
 - (i) to improve the drainage of the soil,
 - (ii) to incorporate gypsum into the soil following an intrusion of saltwater,
 - (iii) for reasons of animal welfare or human safety, or
 - (iv) in order to harvest a crop of fruit or vegetables—

- (aa) in order to meet contractual obligations, or
 - (bb) where the quality of the crop would deteriorate if it was not harvested; or
- (2) The Secretary of State shall vary or suspend any of the requirements in sub-paragraph (1) in relation to an area and for a period of no more than two months, where, in her opinion—
- (a) an area is affected by exceptional weather conditions, and
 - (b) those weather conditions justify the suspension or variation of the requirement in this paragraph, taking into consideration the economic impact of the weather conditions and the environmental effects of any variation or suspension of the requirements.
- (3) Where the Secretary of State has varied or suspended the requirements she must publish directions to the farmers in the area concerned stating, with reasons, the details and duration of the suspension or variation, and the farmers must comply with the requirement as varied in the directions, or in the case of a suspension of the requirement, need not comply with the requirement.
- (4) In this paragraph, “mechanical field operation” includes any harvesting, cultivation or spreading operation (including the spreading of manure or slurry) and all vehicle activity.

Burning of crop residues

4. A farmer must not, on agricultural land, burn any crop residue of a kind specified in Schedule 1 to the Crop Residues (Burning) Regulations 1993⁽¹²⁾ unless the burning is for the purposes of—
- (a) education or research;
 - (b) disease control or the elimination of plant pests where a notice has been served under article 22 of the Plant Health (Great Britain) Order 1993⁽¹³⁾; or
 - (c) the disposal of straw stack remains or broken bales.
5. A farmer must not, on agricultural land, burn—
- (a) any crop residue of a kind specified in Schedule 1 to the Crop Residues (Burning) Regulations 1993 to which an exemption specified in paragraph 4(a) or (b) applies, or
 - (b) any linseed residues,

otherwise than in accordance with the restrictions and requirements set out in Schedule 2 to those Regulations.

Overgrazing and unsuitable supplementary feeding

- 6.—(1) If the Secretary of State has given a farmer written directions concerning the management of land which is in her opinion subject to overgrazing or the use of unsuitable supplementary feeding methods, he must comply with those directions on any area of land specified in them.
- (2) On any other land a farmer must not—
- (a) allow overgrazing; or
 - (b) use unsuitable supplementary feeding methods.
- (3) In this paragraph—
- “overgrazing” means grazing with so many livestock as to adversely affect the growth, quality or diversity of any self-seeded or self-propagated vegetation characteristic of the area in which the land is situated; and

⁽¹²⁾ S.I. 1993/1366.

⁽¹³⁾ S.I. 1993/1320, amended numerous times, most recently by S.I. 2004/2365.

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“unsuitable supplementary feeding methods” means methods that provide supplementary feed for livestock in a way that adversely affects, 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.

Management of land which is not in agricultural production

7.—(1) Except where sub-paragraph (2) applies, and except on land which is set aside pursuant to a set aside obligation under Article 54 of the Council Regulation, on any eligible hectare which is not used for agricultural production a farmer must—

- (a) cut down any scrub and cut down or graze any rank vegetation at least once every 5 years, but—
 - (i) where vegetation has not been cut down or grazed for 3 years, he must only cut down or graze 50% of the area of that vegetation in either of the next two years, and
 - (ii) he must not cut down or graze any vegetation in the period within any year beginning with 1st March and ending with 31st July, unless cutting or grazing are necessary in order for the farmer to comply with paragraph 8;
- (b) on any land which has carried a crop of oil-seeds, grain legumes or cereals (other than maize) which has been harvested using a combine harvester or a mower, establish a green cover (either through sowing or self-seeding) as soon as is practicable on or after 1st March in the first year after the land has ceased to be used for agricultural production, unless he can prove that he intends to bring the land back into agricultural production before 15th May in that year;
- (c) not use the land for non-farm vehicular use;
- (d) not apply any inorganic fertiliser to the land; and
- (e) not apply organic fertilisers to the land.

(2) However—

- (a) the requirement in sub-paragraph (1)(a)(ii) does not apply where it would conflict with the farmer’s obligations under paragraph 8 or 9;
- (b) no requirement in sub-paragraph (1)(a) or (b) applies where it would conflict with the farmer’s obligations under paragraph 24;
- (c) no requirement in sub-paragraph (1)(d) or (e) applies where the land is situated in an area known to be used as a feeding area by geese in winter and is managed as such an area;
- (d) the requirement in sub-paragraph (1)(e) does not apply where organic fertilisers are applied as part of seedbed preparation during a period beginning two months before the day the crop is sown;
- (e) no requirement of sub-paragraph (1) applies where it would conflict with the farmer’s obligations under paragraphs 18 to 21;
- (f) no requirement of sub-paragraph (1) applies where it would, in relation to a particular area of land, conflict with an obligation on the farmer under an agri-environment commitment; and
- (g) no requirement of sub-paragraph (1) applies to the extent that the Secretary of State has, in order to enhance the environment, given the farmer written permission to manage the land in a different way.

(3) In this paragraph, “eligible hectare” has the meaning given to it in Article 44(2) of the Council Regulation;

Control of weeds

8.—(1) If a notice has been served on him under section 1 of the Weeds Act 1959(14), a farmer must not unreasonably fail to comply with the requirements of that notice.

(2) A farmer must take all reasonable steps to prevent the spread of ragwort (*Senecio jacobaea*), spear thistle (*Cirsium vulgare*), creeping or field thistle (*Cirsium arvense*), broad-leaved dock (*Rumex obtusifolius*) and curled dock (*Rumex crispus*) on his land.

(3) If, in any appeal against a determination of the Secretary of State that there has been a non-compliance in relation to this paragraph, a code of practice providing guidance on how to prevent the spread of ragwort (*Senecio jacobaea*) made under section 1A(1) of the Weeds Act 1959 appears to be relevant to any question arising in the appeal it is to be taken into account in determining that question.

9. A farmer must take all reasonable steps to prevent the spread of *Rhododendron ponticum*, Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) and Himalayan balsam (*Impatiens glandulifera*) on his land.

Protection of hedgerows and watercourses

10.—(1) Except where sub-paragraph (2) applies, a farmer must not cultivate, or apply fertilisers or pesticides to—

- (a) land within 2 metres of the centre of a hedgerow; and
- (b) land which is covered by, forms the bank of, or is within 1 metre of the top of the bank of a watercourse or field ditch.

(2) The requirement in sub-paragraph (1) does not apply—

- (a) to land on either side of a hedgerow which was planted on or after 1st January 2005 and which 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) if the only application of pesticides is the spot-application of herbicides to control the spread of any the weeds in paragraph 8 or 9; or
- (d) in 2005, if the farmer is cultivating the land to establish a green cover on it.

(3) The requirement in sub-paragraph (1) applies—

- (a) on land used for crop production, from the first day after the first harvest after 15th July 2005; and
- (b) on any other land, on and after 15th July 2005.

Hedgerows

11. A farmer must not remove a hedgerow in breach of regulation 5(1) or (9) of the Hedgerows Regulations 1997(15).

12.—(1) Except where sub-paragraph (2), (3) or (4) applies, a farmer must not cut or trim any hedgerow during the period within any year beginning with 1st March and ending with 31st July.

(2) A farmer may cut or trim a hedgerow at any time if it is necessary to cut or trim it because—

- (a) it overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians;

(14) 1959 c. 54, s amended by the Ragwort Control Act 2003 (2003 c. 40).

(15) S.I. 1997/1160, amended by S.I. 2003/2155.

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- (b) it obstructs or interferes with the view of drivers of vehicles or the light from a public lamp;
 - (c) it overhangs a highway so as to endanger or obstruct the passage of horse-riders; or
 - (d) it 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) A farmer may carry out hedge-laying and coppicing during the period beginning with 1st March and ending with 30th April.
- (4) A farmer may trim a hedgerow by hand during a period of six months beginning with the first day after the hedgerow was laid.

Meaning of “hedgerow” in paragraphs 10, 11 and 12

13. Subject to sub-paragraph (3), paragraphs 10, 11 and 12 apply to any hedgerow growing in, or adjacent to, any land which forms part of the farmer’s holding, if—

- (a) it has a continuous length of at least 20 metres; or
- (b) it has a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow.

(2) Subject to sub-paragraph (3), a hedgerow is also one to which these Regulations apply if it is a stretch of hedgerow forming part of a hedgerow such as is described in sub-paragraph (1).

(3) Paragraphs 10, 11 and 12 do not apply to any hedgerow within the curtilage of, or marking a boundary of the curtilage of, a dwelling-house.

(4) A hedgerow which meets (whether by intersection or junction) another hedgerow is to be treated as ending at the point of intersection or junction.

(5) For the purposes of ascertaining the length of any hedgerow—

- (a) any gap resulting from a contravention of the Hedgerows Regulations 1997; and
- (b) any gap not of less than 20 metres,

shall be treated as part of the hedgerow.

Stone walls

14.—(1) Except where sub-paragraph (2) applies, a farmer must not remove, or remove stone from, a stone wall.

(2) A farmer may remove, or remove stone from, a stone wall—

- (a) to widen an existing gap in it no more than 10 metres in order to provide access to the land for machinery or livestock, but the ends of the wall created by the widening operation must be finished with a vertical face;
- (b) if he uses the stone to repair another stone wall on his land which is in better condition than the stone wall from which the stone is removed;
- (c) if he uses the stone to improve a public footpath on his land; or
- (d) if the Secretary of State has, in order to enhance the environment or improve public access, given the farmer written permission to do so.

(3) In this paragraph, “stone wall” means a stone wall used as a field boundary with—

- (a) a continuous length of at least 10 metres;
- (b) a continuous length of less than 10 metres which meets (whether by intersection or junction) another field boundary at each end; or
- (c) a continuous length of less than 10 metres which forms an enclosure.

Environmental impact assessment

15.—(1) A farmer must not begin or carry out a project without first obtaining either a decision that the project is not a relevant project or a decision granting consent for the project in accordance with the EIA (Uncultivated Land) Regulations.

(2) A farmer must not breach a stop notice that has been served on him under regulation 22(1) of the EIA (Uncultivated Land) Regulations.

(3) A farmer must not, without reasonable excuse, fail to comply with any requirement of a reinstatement notice served on him under regulation 24(1) of the EIA (Uncultivated Land) Regulations.

(4) In this paragraph—

“consent”, “project” and “relevant project” have the meanings given to them in regulation 2(1) of the EIA (Uncultivated Land) Regulations; and

“the EIA (Uncultivated Land) Regulations” means the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001⁽¹⁶⁾.

16.—(1) A farmer must not carry out, on any land, work or operations relating to a relevant project unless—

(a) consent has been granted for that project by the Commissioners or by the appropriate authority; or

(b) the project is carried out in accordance with the consent (including any conditions to which the consent is subject).

(2) A farmer must not carry out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served in accordance with regulation 20 of the EIA (Forestry) Regulations.

(3) Subject to sub-paragraph (2) a farmer on whom an enforcement notice has been served in accordance with regulation 20 of the EIA (Forestry) Regulations must not fail, within the period specified in the enforcement notice, to carry out any measure required by the enforcement notice.

(4) In this paragraph—

“the appropriate authority” and “the Commissioners” have the meanings given to them in regulation 2(1) of the EIA (Forestry) Regulations, and “relevant project” has the meaning given to it in regulation 3(1) of those Regulations; and

“the EIA (Forestry) Regulations” means the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999⁽¹⁷⁾.

Heather and grass burning

17.—(1) A farmer must not commence burning heather, rough grass, bracken, gorse or vaccinium on any land between sunset and sunrise.

(2) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium unless—

(a) there are, where the burning is taking place, sufficient persons and equipment to control and regulate the burning during the entire period of the operation;

(b) he takes, before commencing burning and during the entire period of the operation, all reasonable precautions to prevent injury or damage to any adjacent land, or to any person or thing whatsoever on that land; and

⁽¹⁶⁾ S.I. 2001/3966.

⁽¹⁷⁾ S.I. 1999/2228.

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- (c) he has, not less than 24 hours and not more than 7 days before commencing burning on any land, given notice in writing of the date or dates, time and place at which, and the extent of the area on which it is his intention to burn—
 - (i) to any person who has an interest in the land either as owner or occupier, and
 - (ii) to any person whom he knows, or could with reasonable diligence have discovered, to be in charge of any land adjacent to that on which the burning is to take place.
- (3) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium—
 - (a) on land which is within a severely disadvantaged area, during the period within any year beginning with 16th April and ending with 30th September, and
 - (b) on all other land, during the period within any year beginning with 1st April and ending with 31st October,

except under, and in accordance with any conditions specified in, a licence issued by the Minister under regulation 7 of the Heather and Grass etc (Burning) Regulations 1986⁽¹⁸⁾.

(4) In sub-paragraph (3), “severely disadvantaged area” means any area of land shaded pink (except land situated in the Isles of Scilly) on the three volumes of maps numbered 1 to 3, each volume being marked “Volume of maps of less favoured farming areas in England”, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food and deposited in the Information Resource Centre, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.

(5) Regulations 8 and 9 of the Heather and Grass etc (Burning) Regulations 1986 apply to the giving of any notices under sub-paragraphs (2) and (3).

Sites of special scientific interest

18.—(1) A farmer who owns or occupies any land included in a site of special scientific interest other than a European Site, must not, while a notification under section 28(1)(b) of the Wildlife and Countryside Act 1981⁽¹⁹⁾ remains in force carry out, or cause or permit to be carried out on that land any operation notified under section 28(4)(b) unless he meets the conditions in section 28E(1) (a) or (b) of that Act, or unless he has a reasonable excuse.

(2) In this paragraph, “reasonable excuse” means a reasonable excuse within the meaning of section 28P(4) of the Wildlife and Countryside Act 1981.

19.—(1) On land which is a site of special scientific interest other than a European site, a farmer must not, without reasonable excuse, knowing that the land concerned is within a site of special scientific interest, intentionally or recklessly destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which that land is of special scientific interest, or intentionally or recklessly disturb any of that fauna.

(2) In this paragraph, “reasonable excuse” means a reasonable excuse within section 28P(7) of the Wildlife and Countryside Act 1981.

20. A farmer must not, without reasonable excuse, fail to comply with a requirement of a management notice served on him under section 28K(1) of the Wildlife and Countryside Act 1981.

21. A farmer must not, without reasonable excuse, fail to comply with a restoration order made under section 31 of the Wildlife and Countryside Act 1981.

22. In paragraphs 18 and 19—

⁽¹⁸⁾ S.I. 1986/428, last amended by S.I. 2003/1615.

⁽¹⁹⁾ 1981 c. 69. The relevant provisions were substituted or inserted by the Countryside and Rights of Way Act 2000 (2000 c. 37), section 75(1) and Schedule 9.

“site of special scientific interest” means an area of land which has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981; and

“European site” has the meaning given to it in regulation 10 of the Conservation (Natural Habitats, etc) Regulations 1994(20).

Tree preservation orders

23. A farmer must not, in breach of a tree preservation order made under section 198(1) of the Town and Country Planning Act 1990(21)—

- (a) cut down, uproot or wilfully destroy a tree; or
- (b) wilfully damage, top or lop a tree in such a manner as to be likely to destroy it.

Scheduled monuments

24.—(1) Subject to sub-paragraph (3), a farmer must not, without consent under section 2(3) of the Ancient Monuments and Archaeological Areas Act 1979(22), execute any of the following works—

- (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
- (b) any works for the purpose of removing or repairing a scheduled monument or any part of it;
- (c) any works for the purpose of making any alteration or addition to a scheduled monument or any part of it; and
- (d) any flooding or tipping operation on land in, on or under which there is a scheduled monument.

(2) Subject to sub-paragraph (3), if a farmer executes any works to which a scheduled monument consent relates, he must comply with all conditions attached to that consent.

(3) If a farmer can show that—

- (a) in relation to works prohibited by sub-paragraph (1)(a), he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument;
- (b) in relation to works prohibited by sub-paragraph (1)(a) or (c), he did not know and had no reason to believe that the monument was within the area affected by the works or, as the case may be, that it was a scheduled monument; and
- (c) in relation to works prohibited by sub-paragraph (1) or (2), the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the Secretary of State for Culture, Media and Sport as soon as reasonably practicable,

the execution of the works in question shall not be treated as a failure to comply with this paragraph.

(4) In this paragraph, “scheduled monument” has the meaning given to it in section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 and “scheduled monument consent” shall be construed in accordance with sections 2(3) and 3(5) of that Act.

(20) S.I. 1994/2716, amended by S.I. 2000/192.

(21) 1990 c. 8.

(22) 1979 c. 46.

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

Felling of trees

25.—(1) Where a felling licence is required under section 9(1) of the Forestry Act 1967(**23**), a farmer must not fell a tree without the authority of a felling licence.

(2) A farmer must not, without reasonable excuse, fail to take any steps required by a notice given to him under section 24 of the Forestry Act 1967 (a notice to comply with conditions, directions or a restocking notice).

Public rights of way

26. A farmer must not—

- (a) without lawful authority or excuse(**24**), disturb the surface of a visible footpath, a visible bridleway, or any other visible highway which consists or comprises a carriageway other than a made-up carriageway, so as to render it inconvenient for the exercise of a public right of way; or
- (b) without lawful authority or excuse, in any way wilfully obstruct the free passage along a visible highway.

27. A farmer must maintain any stile, gate or similar structure, other than a structure to which section 146(5) of the Highways Act 1980(**25**) applies, across a visible footpath or bridleway in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of persons using the footpath or bridleway.

28.—(1) Where a farmer has disturbed the surface of a visible footpath or bridleway (other than a field-edge path) as permitted under section 134 of the Highways Act 1980, he must, within the relevant period under section 134(7) of that Act, or within an extension of that period granted under section 134(8) of that Act—

- (a) so make good the surface of the path or bridleway to not less than its minimum width as to make it reasonably convenient for the exercise of a right of way; and
- (b) so indicate the line of the path or bridleway on the ground to not less than its minimum width that it is apparent to members of the public wishing to use it.

(2) In this paragraph, “minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to the Highways Act 1980.

29. In paragraphs 26, 27 and 28 of this Schedule—

“bridleway”, “carriageway”, “field-edge path”, “footpath” and “made-up carriageway” have the meanings given to them in section 329(1) of the Highways Act 1980;
“highway” has the meaning given to it in section 328 of the Highways Act 1980; and
“visible” means visible as a route to a person with normal eyesight walking or riding along it.

(23) 1967 c. 10, amended by the Forestry Act 1986 (1986 c. 30).

(24) See, in particular, section 134 of the Highways Act 1980 (1980 c. 66).

(25) 1980 c. 66, as amended by the Countryside and Rights of Way Act 2000 (2000 c. 37).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in England for the administration and enforcement of Regulation (EC) No 1782/2003 (OJ No L 270, 21.10.2003, p.1) (“the Council Regulation”) and Commission Regulation (EC) No 796/2004 (OJ No L 141, 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 1 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 Secretary of State 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 England, 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—

- Retention of guidance on soil management (paragraph 1)
- Post-harvest management of land after combinable crops (paragraph 2)
- Waterlogged soil (paragraph 3)
- Burning of crop residues (paragraphs 4 and 5)
- Overgrazing and unsuitable supplementary feeding (paragraph 6)
- Management of land which is not in agricultural production (paragraph 7)
- Control of weeds (paragraphs 8 and 9)
- Protection of hedgerows and watercourses (paragraph 10)
- Hedgerows (paragraphs 11 and 12)
- Stone walls (paragraph 14)
- Environmental impact assessment (paragraphs 15 and 16)
- Heather and grass burning (paragraph 17)
- Sites of special scientific interest (paragraphs 18 to 22)
- Tree preservation orders (paragraph 23)
- Scheduled monuments (paragraph 24)
- Felling of trees (paragraph 25)

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- Public rights of way (paragraphs 26 to 29)

Regulation 5 gives the Secretary of the State 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 powers these 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 exercises a derogation under Article 42 of Commission Regulation 796/2004 to designate the Rural Payment Agency (RPA) as the Competent Control Authority. The Agency shall be responsible for carrying out the controls on the requirements or standards set out in these Regulations and the Council Regulation. It enables the Rural Payment Agency to require the relevant authorities to carry out controls. The regulation imposes statutory duties on English Nature and the Environment Agency to send provisional control reports to the RPA and to notify the RPA on any non-compliance established as a consequence of any kind of check.

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 handbook setting out the standards in the Schedule is available (PB 10222A). This, and further guidance (available early in 2005) on soil management (PB 10222B) and on the management of habitat and landscape features (PB 10222C) will be sent to all farmers. Further copies are available from Defra Publications, Admail 6000, London SW1A 2XX. Telephone 08459 556 000. Fax 020 8957 5012. Email: defra@iforcegroup.com.

A full regulatory impact assessment on the effect that cross compliance will have on the costs of business is available from Defra Information Resource Centre, Lower Ground Floor, Ergon House, c/o Nobel House, 17 Smith Square, London SW1P 3JR, or at www.defra.gov.uk/corporate/consult/capsingle-payment/index.htm.