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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 122**

**AGRICULTURE**

**The Common Agricultural Policy (Miscellaneous Amendments) (Scotland) Regulations 2018**

<i>Made</i>	- - - -	<i>16th April 2018</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>16th April 2018</i>
<i>Coming into force</i>	- -	<i>15th May 2018</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Common Agricultural Policy (Miscellaneous Amendments) (Scotland) Regulations 2018 and come into force on 15th May 2018.

**Amendments to the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015**

2. The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015<sup>(2)</sup> are amended in accordance with regulations 3 to 12.

3. In regulation 2(1) (interpretation), for the definition of “arable land” substitute—  
““arable land” means land mentioned in Article 4(1)(h) of the Direct Payments Regulation and includes parcels of land which prior to 1st January 2018 were lying fallow<sup>(3)</sup> and, subject to regulation 5(2)(c), continue to lie fallow on or after that date;”.

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(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) S.S.I. 2015/58 (“the 2015 Regulations”), as amended by S.S.I. 2015/194, S.S.I. 2015/215, S.S.I. 2016/104, S.S.I. 2016/178, S.S.I. 2017/98 and S.S.I. 2017/317.

(3) Under the second sub-paragraph of Article 4(1) of Regulation (EU) 1307/2013 (OJ L 347, 20.12.13, p. 608) (as amended), where the Scottish Ministers have, prior to 1st January 2018, accepted parcels of land lying fallow as arable land, they may continue to do so after that date. In accordance with that provision, and as outlined in regulation 5(2)(c) of the 2015 Regulations (as substituted by regulation 4 of these Regulations), where such parcels have been so accepted as arable land they must constitute permanent grassland from 2023 where the conditions in Article 4(1)(h) of that Regulation are met.

4. For regulation 5 (definition of permanent grassland) substitute—

**“Definition of permanent grassland**

5.—(1) For the purposes of—

(a) the following provisions of the Direct Payments Regulation—

(i) Article 4(1)(h);

(ii) Article 4(2), second sub-paragraph; and

(iii) Article 4(2), point (a) of the third sub-paragraph; and

(b) Article 7 of the Direct Payments Delegated Regulation,

permanent grassland includes land to which paragraph (2) applies.

(2) This paragraph applies to—

(a) land which can be grazed and forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas;

(b) other than land to which sub-paragraph (c) applies, land which has not been ploughed up for 5 years or more, provided it is used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and has not been included in the crop rotation for five years or more; or

(c) land which, in accordance with the second sentence of the second sub-paragraph of Article 4(1) of the Direct Payments Regulation—

(i) constitutes parcels of land lying fallow prior to 1st January 2018; and

(ii) on or after 1st January 2023 meets the conditions for permanent grassland as set out in Article 4(1)(h) of that Regulation.

(3) In paragraph (2)(a), “established local practices” means the practice of grazing by livestock of non-herbaceous plants (excluding algae).”.

5. For regulation 8 (reductions) substitute—

**“Reductions**

8.—(1) This regulation applies for the purposes of Article 11(1) of the Direct Payments Regulation in respect of direct payments to a farmer pursuant to Chapter 1 of Title III of that Regulation for a given calendar year.

(2) Where the direct payments to be granted exceed EUR 150,000 for a given calendar year, the sum in excess of that amount must be reduced by the Scottish Ministers by 5 per cent.

(3) In addition to the reduction applied in accordance with paragraph (2), where the direct payments to be granted exceed EUR 600,000 for calendar year 2018 or any subsequent calendar year, the sum in excess of that amount must be reduced by the Scottish Ministers by 100 per cent.”.

6. For regulation 9(4) (transfer of payment entitlements) substitute—

“(4) For the purposes of Article 26 of the Direct Payments Delegated Regulation—

(a) in relation to an application in respect of the basic payment scheme in respect of a calendar year prior to 2018, 50 per cent of the annual unit value of each payment entitlement transferred without land reverts to the national reserve; and

- (b) in relation to an application in respect of the basic payment scheme in respect of calendar year 2018 or any subsequent calendar year, 30 per cent of the annual unit value of each payment entitlement transferred without land reverts to the national reserve.”.

7. For regulation 10 (young farmers) substitute—

**“Young farmers**

**10.**—(1) For the purposes of the second sub-paragraph of Article 50(5) of the Direct Payments Regulation, where a young farmer has set up in accordance with Article 50(2)(a) of that Regulation during the relevant period, the five-year payment period referred to in the first sub-paragraph of Article 50(5) of that Regulation is to be reduced by the number of complete calendar years which have elapsed between the date of set up and the first submission of an application for a payment for young farmers.

(2) For the purposes of the payment calculation required by Article 50(6) of the Direct Payments Regulation, the number of entitlements a young farmer has activated in accordance with Article 32(1) of that Regulation must be multiplied by 25 per cent of the average value of the owned or leased-in payment entitlements held by the farmer.

(3) For the purposes of Article 50(9) of the Direct Payments Regulation, a single maximum limit of 90 hectares is applicable to the number of payment entitlements activated by a young farmer.

(4) In paragraph (1) “relevant period” means the period beginning 1st January 2010 and ending 31st December 2013.”.

8. Omit regulation 12 (active farmers).

9. In regulation 18 (ecological focus areas)—

- (a) in paragraph (1), after “(d) (buffer strips),” insert “(e) (hectares of agro-forestry),”;
- (b) in paragraph (2), for “field margins as listed in point (e)” substitute “hedges, wooded strips or trees in line as listed in point (a)”;
- (c) for paragraph (3) substitute—

“(3) For the purposes of the third sub-paragraph of Article 45(5) of the Direct Payments Delegated Regulation, the minimum width of—

- (a) buffer strips, other than buffer strips along watercourses required under GAEC 1, SMR 1 or SMR 10, is 2 metres; and
- (b) field margins is 1 metre.

(3A) For the purposes of the second sub-paragraph of Article 45(10a) of the Direct Payments Delegated Regulation, cutting is permitted on buffer strips and field margins provided the buffer strip or field margin remains distinguishable from adjacent agricultural land.”;

(d) for paragraph (5) substitute—

“(5) For the purposes of the second sub-paragraph of Article 45(9) of the Direct Payments Delegated Regulation—

- (a) areas under catch crops must be established by under-sowing grass in the main crop provided that the grass and the main crop are sown during the period beginning on 15th February and ending on 15th June in any calendar year and not harvested before 31st December of the same calendar year; and
- (b) areas under green cover may be established by sowing a mixture of at least 2 of the crop species listed in Part 1 of schedule 2, provided that the mixture of crop

species is sown before 2nd November in any calendar year and not harvested before 31st December of the same calendar year.”; and

(e) for paragraph (7) substitute—

“(7) For the purposes of the second sub-paragraph of Article 46(2) of the Direct Payments Regulation, the ecological focus areas referred to in points (c) (landscape features) and (d) (buffer strips) of the first sub-paragraph of Article 46(2) of that Regulation may be located adjacent to the arable land of the holding.

(8) For the purposes of Article 46(3) of the Direct Payments Regulation—

(a) the weighting factors set out in Annex X to that Regulation apply to the ecological focus areas mentioned in paragraph (1); and

(b) the conversion factor set out in Annex X to that Regulation applies to the ecological focus area referred to in point (a) (hedges, wooded strips or trees in line) of the first sub-paragraph of Article 45(4) of the Direct Payments Delegated Regulation.”.

**10.** In schedule 1 (agricultural activity: further criteria), in Part 2 (minimum activity for the purposes of Article 4(1)(c)(iii) of the Direct Payments Regulation), in paragraph 2(2)—

(a) omit “or” at the end of head (h); and

(b) after head (h) insert—

“(ha) 2.5 farmed stags aged 27 months and over; or”.

**11.** In schedule 2 (ecological focus areas: further criteria)—

(a) in Part 1 (crop species that may be used in a mixture of crop species for the purposes of Article 45(9) of the Direct Payments Delegated Regulation in relation to areas under green cover)<sup>(4)</sup> for “Clover (*Trifolium*)” substitute—

“Red clover (*Trifolium pratense*)

White clover (*Trifolium repens*)”;

(b) in Part 2 (nitrogen-fixing crops for the purposes of Article 45(10) of the Direct Payments Delegated Regulation) for “Clover (*Trifolium*)” substitute—

“Red clover (*Trifolium pratense*)

White clover (*Trifolium repens*)”;

(c) in Part 3 (additional conditions for the purposes of Article 45(10) of the Direct Payments Delegated Regulation)—

(i) for paragraph 2 substitute—

“**2.** Areas with nitrogen-fixing crops must be surrounded by a buffer strip or field margin, which is an ecological focus area as referred to in point (d) of the first sub-paragraph of Article 46(2) of the Direct Payments Regulation as construed with Article 45(5) of the Direct Payments Delegated Regulation, with a minimum width of 1 metre and a maximum width of 20 metres.”; and

(ii) for paragraph 3(3)<sup>(5)</sup>, substitute—

“(3) In sub-paragraphs (1) and (2), “crop species” includes a mixture of any of the crop species listed in Part 2 of this schedule.

(4) Despite sub-paragraphs (1) and (2), areas with nitrogen fixing crops may also be established by sowing at least 1 of the crop species listed in Part 2 of this schedule

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<sup>(4)</sup> Part 1 of schedule 2 was substituted by S.S.I. 2016/104.

<sup>(5)</sup> Paragraph 3 of Part 3 of schedule 2 was inserted by S.S.I. 2016/104.

with any other crop species, provided that the crop species listed in Part 2 of this schedule is predominant by weight of seed.

(5) In sub-paragraph (4)—

“crop species listed in Part 2 of this schedule” includes a mixture of any of the crop species listed in Part 2 of this schedule; and

“other crop species” includes—

(a) a mixture of any of the crop species listed in Part 2 of this schedule and any other crop species; and

(b) a mixture of any crop species not listed in Part 2 of this schedule.”.

**12.** In schedule 3 (voluntary coupled support)(6), in Part 2 (voluntary coupled support: ovine animals)—

(a) in paragraph 6 (application for a scheme payment)—

(i) in sub-paragraph (1)(7), for “paragraph (1A)”(8) substitute “sub-paragraphs (1A) and (1B)”; and

(ii) after sub-paragraph (1A) insert—

“(1B) In respect of calendar year 2018 and any subsequent calendar year, the final date for submitting an application to the Scottish Ministers for a scheme payment in respect of any eligible ovine animal is 30th November.”; and

(b) in paragraph 7 (eligible ovine animal)—

(i) in sub-paragraph (b) for “17th October” substitute “1st December”; and

(ii) in sub-paragraph (c) for “17th October” substitute “1st December”.

### **Amendments to the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014**

**13.** The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014(9) are amended in accordance with regulation 14.

**14.** In Part 2 of the schedule (standards for good agricultural and environmental condition)—

(a) in paragraph 1 (establishment of buffer strips along water courses)—

(i) in sub-paragraph (2) after “within” insert “, or on any land in a manner which will likely result in organic manure being located within.”; and

(ii) after sub-paragraph (7)(10), insert—

“(8) In this paragraph, “field heap” means a store or stack of organic manure which is a freestanding heap which does not slump or produce free draining liquid from within the stacked material.”;

(b) in paragraph 5(1) (minimum land management reflecting site specific conditions to limit erosion) for “prevent” substitute “limit”; and

(c) in paragraph 7 (retention of landscape features)—

(i) for sub-paragraph (2) substitute—

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(6) Schedule 3 was inserted by [S.S.I. 2015/215](#).

(7) Sub-paragraph (1) was amended by [S.S.I. 2017/317](#).

(8) Sub-paragraph (1A) was inserted by [S.S.I. 2017/317](#).

(9) [S.S.I. 2014/325](#), as amended by [S.S.I. 2015/58](#), [S.S.I. 2015/194](#) and [S.S.I. 2015/215](#).

(10) Sub-paragraph (7) was inserted by [S.S.I. 2015/215](#).

- “(2) A beneficiary must not trim a hedge or cut a tree during the period beginning on 1st March and ending on 31st August in any calendar year (“the prohibited period”), except in accordance with sub-paragraph (3A) or (3B).”;
- (ii) for sub-paragraph (3) substitute—
- “(3) Written consent under sub-paragraph (1) is not required—
- (a) to widen field entrances to enable access for livestock or farm machinery; or
- (b) where the hedge (or part of a hedge) or tree is—
- (i) dead;
- (ii) damaged; or
- (iii) insecurely rooted,
- and because of its condition it poses a risk to human safety.”;
- (iii) after sub-paragraph (3) insert—
- “(3A) Trimming a hedge or cutting a tree is permitted during the prohibited period—
- (a) for the purposes of hedgelaying up to and including 31st March; or
- (b) to the extent necessary for the purposes of road safety.
- (3B) Trimming a hedge or cutting a tree during the month of August in any calendar year is permitted if—
- (a) the hedge or tree is in a field which during that month has been sown with—
- (i) a crop of oilseed rape; or
- (ii) temporary grass; or
- (b) the hedge or tree is in a field which during that month has been sown with any other crop and the Scottish Ministers have given the beneficiary written permission to trim the hedge or cut the tree.”; and
- (iv) in sub-paragraph (7)—
- (aa) omit “and” at the end of head (b)(ii); and
- (bb) for head (c) substitute—
- “(c) “hedgelaying” means a traditional method of cultivating hedges where tall saplings are partly cut through near the base and then bent over so that they lie horizontally and make a thick barrier; and
- (d) “necessary for the purposes of road safety” includes where a tree or hedge—
- (i) overhangs a road, surfaced track or footpath to which the public have access so as to endanger or obstruct the passage of vehicles, pedestrians or horse-riders; or
- (ii) obstructs or interferes with the view of drivers of vehicles or the light from a public lamp.”.

## **Amendments to the Less Favoured Area Support Scheme (Scotland) Regulations 2010**

**15.** The Less Favoured Area Support Scheme (Scotland) Regulations 2010(**11**) are amended in accordance with regulations 16 to 18.

**16.** In regulation 2(1) (interpretation), after the definition of “Scheme 2017 payment”(12) insert—

““Scheme 2018 payment” means the sum to which the applicant is entitled in respect of the period 1st January 2018 to 31st December 2018;”.

**17.** In regulation 10(2) (enterprise mix)(13) for “or the Scheme 2017 payment” substitute “, the Scheme 2017 payment or the Scheme 2018 payment”.

**18.** In schedule 5 (rates of payment for less favoured area support—

- (a) in Part I (more disadvantaged land)(14), in the second column of the table, after “Scheme 2017 payment” insert “, Scheme 2018 payment”; and
- (b) in Part II (less disadvantaged land)(15), in the second column of the table, after “Scheme 2017 payment” insert “, Scheme 2018 payment”.

St Andrew’s House,  
Edinburgh  
16th April 2018

*FERGUS EWING*  
A member of the Scottish Government

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(11) S.S.I. 2010/273, as amended by S.S.I. 2011/73, S.S.I. 2012/24, S.S.I. 2013/9, S.S.I. 2014/7, S.S.I. 2015/185, S.S.I. 2015/194 and S.S.I. 2016/33.

(12) The definition of “Scheme 2017 Payment” was inserted by S.S.I. 2015/185.

(13) Regulation 10(2) was amended by S.S.I. 2014/7 and S.S.I. 2015/185.

(14) Part I of schedule 5 was amended by S.S.I. 2011/73, S.S.I. 2014/7 and S.S.I. 2015/185.

(15) Part II of schedule 5 was amended by S.S.I. 2011/73, S.S.I. 2014/7 and S.S.I. 2015/185.

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the following Regulations—

- the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015;
- the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014; and
- the Less Favoured Area Support Scheme (Scotland) Regulations 2010.

They implement Regulation (EU) No 2017/2393 of the European Parliament and of the Council (OJ L 350, 29.12.2017, p.15) (“the omnibus Regulation”) which amends the following EU Regulations—

- Regulation (EU) No 1305/2013 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p.487) (“the Rural Development Regulation”);
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p.549) (“the Horizontal Regulation”);
- Regulation (EU) No 1307/2013 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p.608) (“the Direct Payments Regulation”); and
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council (OJ L 347 20.12.2013, p.671).

In addition, these Regulations make amendments:

- consequential to amendments made to Commission Delegated Regulation (EU) 639/2014 by Commission Delegated Regulation (EU) 2017/1155 in relation to the “greening” component of direct payments under the Common Agricultural Policy;
- in relation to cross-compliance component of direct payments under the Common Agricultural Policy; and
- to the Less Favoured Area Support Scheme.

Regulations 3 to 12 amend the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 (“the principal 2015 Regulations”), which make provision in Scotland for the administration of the Direct Payments Regulation.

Regulation 3 amends the definition of “arable land” and regulation 4 amends the definition of “permanent grassland”.

Regulation 5 substitutes regulation 8 of the principal 2015 Regulations so that no farmer can receive direct payments totalling an amount in excess of 600,000 Euros. Regulation 6 amends regulation 9 of the principal 2015 Regulations to reduce the amount by which the value of payment entitlements is reduced where they are transferred without land.

Under the Direct Payments Regulation payments to young farmers could be made for a period of up to 5 years, to be reduced by the number of calendar years elapsed since setting up as head of the holding and the date of first submission of an application for payment. Article 3(1) of the omnibus Regulation now requires such payments to be for a full five years, without reduction of elapsed calendar years. Regulation 7 amends the principal 2015 Regulations to exercise a derogation to limit the impact of the omnibus Regulation changes. The effect is that where a young farmer has set up in the period 2010 – 2013, the 5 year payment period will continue to be reduced by the number of calendar years which have elapsed between the date of setting up and the date of first submission of an application for payment.



Regulation 8 omits regulation 12 of the principal 2015 Regulations. Under the Direct Payments Regulation, persons operating airports, railway services, waterworks, real estate services and permanent sports and recreation grounds (the “negative list”) were automatically barred from receiving direct payments unless they could meet certain readmission criteria. The omnibus Regulation permits member States to decide to stop operating the negative list. The effect is that persons operating such businesses are no longer automatically barred and no longer have to satisfy readmission tests.

Regulation 9 amends regulation 18 of the principal 2015 Regulations in respect of the ecological focus areas (EFA) requirements of greening. It includes, for the first time, hectares of agro-forestry and hedges, wooded strips and trees in line as EFAs. It also introduces both conversion and weighting factors in respect of hedges, wooded strips and trees in line as EFAs, and just the weighting factor in respect of hectares of agro-forestry as EFAs. It also allows cutting on buffer strips and field margins provided those features remain distinguishable from adjacent arable land and permits certain EFAs be located adjacent to the arable land of the holding as opposed to on the arable land of the holding. Further, regulation 9 amends the periods for sowing catch crops and green cover, and the date before which the crops cannot be harvested. Regulation 11 makes associated and further changes in relation to EFAs by amending schedule 2 of the principal 2015 Regulations.

Regulation 10 amends the definition of “livestock” unit for the purposes of the minimum activity provisions in Part 2 of schedule 1 of the principal 2015 Regulations.

Regulations 12 amends Part 2 of schedule 3 of the principal 2015 Regulations to make provision in respect of the current and future years for an extended window for applications under voluntary coupled support for ovine animals. The final date for submitting an application, in respect of calendar year 2018 and subsequent calendar years is 30th November. Regulation 12 also amends the retention period applicable to these ovine animals.

Regulations 13 and 14 amend the standards for good agricultural and environmental condition in the schedule of the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (“the principal 2014 Regulations”). The principal 2014 Regulations make provision in Scotland for the administration and enforcement of the Horizontal Regulation in relation to cross-compliance.

Regulation 14 amends Part 2 of the schedule of the principal 2014 Regulations as follows:

- in paragraph 1, to provide clarification on the meaning, and storage, of field heaps;
- in paragraph 5, to provide that a beneficiary must limit the erosion of the banks of watercourses, at watering points or feeding areas from overgrazing or heavy poaching by livestock; and
- in paragraph 7, to provide further exemptions to the trimming of hedges and cutting of trees.

These amendments are to reflect domestic policy decisions which are unrelated to amendments made by the omnibus Regulation to the Horizontal Regulation.

Regulations 15 to 18 amend the Less Favoured Area Support Scheme (Scotland) Regulations 2010 which make provision in Scotland for the administration of the less favoured area support (“LFA”) Scheme under the Rural Development Regulation. They make the amendments necessary to make provision for LFA payments in 2018. Under the Rural Development Regulation, it was intended that the LFA Scheme would be replaced in 2018 by a new scheme for payments in respect of areas facing natural or other specific constraints, however, the omnibus Regulation allows member States to defer that until 2019.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.