

2001 No. 226

AGRICULTURE

**The Agricultural Subsidies (Appeals) (Scotland) Amendment
Regulations 2001**

Made 8th June 2001

Laid before the Scottish Parliament 8th June 2001

Coming into force in accordance with regulation 1(2)

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2001.

(2) For the purposes of regulation 5(4), these Regulations shall come into force on 9th June 2001 and, for all other purposes, shall come into force on 29th June 2001.

(3) In these Regulations—

“agreement” means an agreement within the meaning of the ESA Orders;

“ESA Orders” means—

- (a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992(b);
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992(c);
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993(d);
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993(e);
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993(f);
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993(g);
- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(h);
- (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(i);
- (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Watersay) Designation Order 1993(j);

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown by section 2(2) were transferred, so far as within devolved competence, to the Scottish Ministers by section 53 of the Scotland Act 1998.

(b) S.I. 1992/1919; amended by S.I. 1992/2062, 1994/3067, 1995/3097, 1996/3082 and S.S.I. 2001/34.

(c) S.I. 1992/1920; amended by S.I. 1992/2063, 1994/3067, 1995/3096, 1996/738 and 3082 and S.S.I. 2001/30.

(d) S.I. 1993/996; amended by S.I. 1994/3067, 1996/1969 and 3082 and S.S.I. 2001/32.

(e) S.I. 1993/997; amended by S.I. 1994/3067, 1996/1968 and 3082 and S.S.I. 2001/31.

(f) S.I. 1993/2345; amended by S.I. 1994/3067, 1996/1963 and 3082 and S.S.I. 2001/33.

(g) S.I. 1993/2767; amended by S.I. 1994/3067, 1996/1964 and 3082 and S.S.I. 2001/25.

(h) S.I. 1993/2768; amended by S.I. 1994/3067, 1996/1967 and 3082 and S.S.I. 2001/26.

(i) S.I. 1993/3136; amended by S.I. 1994/3067, 1996/1966 and 3082 and S.S.I. 2001/27.

(j) S.I. 1993/3149; amended by S.I. 1994/3067, 1996/1962 and 3082 and S.S.I. 2001/28.

- (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(a);
- “the principal Regulations” mean the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000(b).

Amendment of the principal Regulations

2.—(1) The principal Regulations shall be amended as follows.

(2) In regulation 2(1) (interpretation)–

- (a) in the definition of “Commission Regulation 3887/92”, for the words “and Commission Regulation (EC) No. 2801/1999” there shall be substituted the words “, Commission Regulation (EC) No. 2801/1999, Commission Regulation (EC) 2721/2000(c) and Commission Regulation (EC) 882/2001(d)”;
- (b) in the definition of “Council Regulation 3508/92”, for the words “and Council Regulation (EC) No. 1593/2000” there shall be substituted the words “, Council Regulation (EC) No. 1593/2000 and Commission Regulation (EC) 495/2001(e)”;
- (c) after the definition of “Council Regulation 3508/92”, shall be inserted–
- ““ESA Orders” means–

- (a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992;
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992;
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993;
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993;
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993;
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993;
- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993;
- (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993;
- (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993;
- (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993;”.

(3) For regulation 3 (application), there shall be substituted–

“Application in relation to IACS matters

3. In relation to decisions of the Scottish Ministers of the kinds referred to in regulation 4(a), (b) and (c)(f) below, these Regulations apply in relation to holdings which are administered by them in accordance with the Integrated Administration and Control System Regulations 1993(g).”.

(4) In regulation 4 (decisions amenable to review and appeal), there shall be added after paragraph (c)–

- “(d) a decision by the Scottish Ministers to postpone, reduce or withhold any payment of grant under, or recover any payment under or terminate participation in, the Farm Woodland Scheme 1988(h), in terms of paragraph 14 of that Scheme;

(a) S.I. 1993/3150; amended by S.I. 1994/3067, 1996/1965 and 3082 and S.S.I. 2001/29.

(b) S.S.I. 2000/347, amended by S.S.I. 2001/50.

(c) O.J. No. L 314, 14.12.00, p.8.

(d) O.J. No. L 123, 4.5.01, p.20.

(e) O.J. No. L 72, 14.3.01, p.6.

(f) Regulation 4(c) was added by S.S.I. 2001/50.

(g) S.I. 1993/1317, amended by S.I. 1994/1134, 1997/1148, 1999/1820 and 2000/2573.

(h) S.I. 1988/1291, as amended by S.I. 1991/1631, 1992/905 and 1997/828.

- (e) a decision by the Scottish Ministers to postpone, reduce or withhold any payment of grant under, or recover any payment under or terminate participation in, the Farm Woodland Premium Scheme 1992(a), in terms of paragraph 14 of that Scheme;
- (f) a decision by the Scottish Ministers to postpone, reduce or withhold any payment of grant under, or recover any payment under or terminate participation in, the Farm Woodland Premium Scheme 1997(b), in terms of paragraph 14 of that Scheme;
- (g) a decision by the Scottish Ministers—
 - (i) made under article 5D of any one of the ESA Orders that there has been a breach of any of the requirements of article 4 or 4A of the ESA Order to which that decision relates; or
 - (ii) to withhold, or require the making of, payment under article 5(a) or under article 5A of one of the ESA Orders(c);
- (h) a decision by the Scottish Ministers to withhold any grant due or recover any grant paid or require payment of a sum imposed by way of penalty under the Organic Aid (Scotland) Regulations 1994(d), in terms of regulation 12 of those Regulations;
- (i) a decision by the Scottish Ministers to withhold any grant due or recover any grant paid or require payment of a sum imposed by way of penalty under the Habitats (Scotland) Regulations 1994(e), in terms of regulation 12 of those Regulations;
- (j) a decision by the Scottish Ministers to withhold any grant due or recover any grant paid or require payment of a sum imposed by way of penalty under the Heather Moorland (Livestock Extensification) (Scotland) Regulations 1995(f), in terms of regulation 13 of those Regulations;
- (k) a decision by the Scottish Ministers to withhold any grant due or recover any grant paid or require payment of a sum under the Countryside Premium Scheme (Scotland) Regulations 1997(g), in terms of regulation 12 of those Regulations.”.

(5) In regulation 5(2)(b) (review of decisions), there shall be inserted after the words “sought and”, the words “, in relation to an IACS scheme,”.

(6) In regulation 7(3) (decision following review), there shall be added at the end the words “and must in such a case advise the applicant of the right of review provided by regulation 8(1) below”.

(7) In regulation 10(2) (notification of decisions), there shall be inserted after the word “appointed”, the words “(along with intimation of the right of appeal under regulation 11(1) below)”.

- (8) In regulation 12 (procedure in the Scottish Land Court)—
 - (a) in paragraph (1), for the word “only”, there shall be substituted the word “not”;
 - (b) in paragraph (2), for the words “members of the Court sitting with a legal assessor”, there shall be substituted the words “member of the Court”; and
 - (c) in paragraph (3), the word “to”, where it first occurs, shall be omitted.

Application of additional appeal rights

3.—(1) In relation to the decisions amenable to review and appeal by virtue of being specified in regulation 4(d) to (k) of the principal Regulations, the decisions of the Scottish Ministers to which the principal Regulations, by virtue of these Regulations, apply shall be—

- (a) such decisions made on or after 29th June 2001; and
- (b) subject to paragraphs (2) and (3) below, such decisions made on or after 1st January 2001 but before 29th June 2001.

(2) In relation to reviews and appeals of decisions made in the period referred to in paragraph (1)(b) above, regulation 5(1) of the principal Regulations shall be amended to substitute for the words “, no later than 60 days following the date of the decision to be reviewed,” the words “before 29th August 2001”.

(3) Paragraph (1)(b) above shall not apply in relation to decisions amenable to review and appeal by virtue of being specified in regulation 4(g) of the principal Regulations.

(a) S.I. 1992/905.

(b) S.I. 1997/829, amended by S.S.I. 2000/290.

(c) Article 5A was inserted into the ESA Orders by S.I. 1996/3082.

(d) S.I. 1994/1701, amended by S.I. 1996/3083 and S.S.I. 1999/107.

(e) S.I. 1994/2710, as amended by S.I. 1996/3035.

(f) S.I. 1995/891, as amended by S.I. 1996/3036.

(g) S.I. 1997/330.

Amendment of the ESA Orders

4.—(1) Each of the ESA Orders shall be amended as follows.

- (2) Article 5(b) shall be omitted.
- (3) There shall be inserted after article 5C—

“5D.—(1) Where the Scottish Ministers consider that there has been a breach of any of the requirements referred to in articles 4 or 4A, they may make a decision to that effect.

- (2) Before making a decision under paragraph (1) above, the Scottish Ministers shall—
 - (a) give the crofter, farmer or common grazing committee (as the case may be) a written explanation of the reasons for considering that there has been a breach of any of the requirements referred to in articles 4 or 4A;
 - (b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit; and
 - (c) consider any such representations.”.

Transitional provisions in relation to the ESA Orders

5.—(1) Subject to paragraphs (2) and (3) below, any provision in an agreement of the nature referred to in article 5(b) of each of the ESA Orders shall, in relation to the agreement within which it is contained, cease to have effect on 29th June 2001.

(2) Subject to paragraph (6) below, paragraph (1) above shall not apply to a provision in an agreement if a question has arisen as to whether there has been a breach of that agreement which has (as at 29th June 2001) been referred to arbitration in accordance with article 5(b) of the ESA Order concerned, but that disapplication shall have effect only for the purpose of that arbitration.

(3) Subject to paragraphs (4) and (6) below, paragraph (1) above shall not apply to a provision in an agreement if a question has arisen as to whether there has been a breach of that agreement which has not (as at 29th June 2001) been referred to arbitration in accordance with article 5(b) of the ESA Order concerned, but that disapplication shall have effect only for the purpose of that referral to arbitration (if it occurs) and any arbitration pursuant thereto.

(4) Where a question arises (between 8th June 2001 and 29th June 2001) as to whether there has been a breach of an agreement of the nature referred to in article 5(b) of each of the ESA Orders—

- (a) that matter shall not be referred to arbitration; and
- (b) the Scottish Ministers may in that period make a decision of the nature referred to in article 5D(1) of the ESA Orders.

(5) Where the Scottish Ministers make a decision in terms of paragraph (4)(b) above, that decision shall be treated for the purposes of regulation 5(1) of the principal Regulations 2000 as if it were made on 29th June 2001.

(6) The disapplications provided in paragraphs (2) and (3) above shall not apply where all the parties to the agreement concerned agree in writing, prior to the date of any order or decision of the arbiter, to that effect and, for the purposes of regulation 5(1) of the principal Regulations, the date of the decision to be reviewed shall be a date as shall be agreed by said parties.

ROSS FINNIE

A member of the Scottish Executive

St Andrew's House,
Edinburgh
8th June 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations principally amend the Agricultural Subsidies (Appeals) (Scotland) Regulations (“the principal Regulations”) to add to the list of decisions amenable to review and appeal set out in regulation 4 of the principal Regulations (regulation 2(4)). This is to add certain decisions made under provisions of the Farm Woodland Scheme 1988, the Farm Woodland Premium Scheme 1992, the Farm Woodland Premium Scheme 1997, the Environmentally Sensitive Area Orders (ESA Orders, as defined), the Organic Aid (Scotland) Regulation 1994, the Habitats (Scotland) Regulations 1994, the Heather Moorland (Livestock Extensification) (Scotland) Regulations 1995 and the Countryside Premium Scheme (Scotland) Regulations 1997. Those schemes are all funded (in whole or in part) from European Community Funds.

By virtue of regulation 3 of these Regulations, the decisions which will now be amenable to review and appeal as above (other than in relation to the ESA Orders) will be decisions made on or after 1st January 2001. A necessary consequential amendment to the 60-day appeal period set out in regulation 5(1) of the principal Regulations is also made (regulation 3(2)). The amendments to regulations 3 and 5(2)(b) of the principal Regulations (regulation 2(3) and (5)) are also consequential on the extension of the appeal right.

In relation to the ESA Orders, particular provision is made to ensure the application of the principal Regulations in future by way of review (rather than proceeding by way of arbitration) in the event of disputes and to ensure that the Scottish Ministers issue a decision where they are of the view that there has been a breach of any of the requirements referred to in articles 4 or 4A of the ESA Orders. Before doing so, the Scottish Ministers are obliged to give an opportunity to an affected person to make representations (regulation 4).

Under regulation 5(1), the arbitration provisions in any existing agreement under the ESA Orders shall cease to have effect. This, read with inserted regulation 4(g) of the principal Regulations, will mean that appeals against decisions relating to breaches of articles 4 or 4A of the ESA Orders in relation to existing agreements will go through the new appeal mechanism rather than through arbitration. Regulation 5(2) to (6) of these Regulations make further provision in that regard of a transitional nature.

These Regulations in addition—

- (a) update references to community legislation (regulation 2(2)(a) and (b));
- (b) require the Scottish Ministers to advise the applicant seeking review of the existence of the right of review provided by regulation 8 of the principal Regulations and similarly require intimation of the existence of an appeal right under regulation 11 of the principal Regulations (regulation 2(6) and (7)); and
- (c) make minor corrective textual amendments in regulation 12 dealing with appeals to the Scottish Land Court (regulation 2(8)).

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