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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 300**

**The Rural Stewardship Scheme (Scotland) Regulations 2001**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Rural Stewardship Scheme (Scotland) Regulations 2001 and shall come into force on 28th September 2001.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“1991 Act” means the Agricultural Holdings (Scotland) Act 1991<sup>(1)</sup>;

“activities” means the activities referred to in regulation 3(3) and “activity” shall be construed accordingly;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding or keeping, the use of land as grazing land, meadowland, osier land, reed beds, market gardens and nursery grounds;

“applicant” means a person who has made an application for aid under these Regulations and in regulations 11 to 14 includes a person whose application for aid has been accepted and a person who takes on an undertaking on a change of occupation as provided in regulation 10;

“application for aid” means an application for aid under these Regulations;

“authorised person” means a person who is authorised by the Scottish Ministers, either generally or specifically, to act in relation to matters arising under these Regulations;

“Commission Regulation” means Commission Regulation (EC) No. 1750/1999<sup>(2)</sup>, (as amended by Commission Regulation (EC) No. 2075/2000<sup>(3)</sup>), laying down detailed rules for the application of the Council Regulation;

“Council Regulation” means Council Regulation (EC) No. 1257/1999<sup>(4)</sup> on support for rural development from the European Agricultural Guidance and Guarantee Fund;

“eligible land” means land which is used for agriculture;

“environmental audit” means a report of a survey of eligible land which identifies the extent and location of features of environmental interest (including flora and fauna, landscape and water features and features of archaeological interest), the opportunities for enhancement of such features and a written statement which outlines proposals (if any) for the management of eligible land, including permanent grassland and waste management;

“grazings committee” means a committee appointed under section 47(1) or (3) of the Crofters (Scotland) Act 1993<sup>(5)</sup> and includes a grazings constable;

“landlord” means—

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(1) 1991 c. 55.

(2) O.J. No. L 214, 13.08.99, p.31.

(3) O.J. No. L 246, 30.09.01, p.46.

(4) O.J. No. L 160, 26.06.99, p.80.

(5) 1993 c. 44.

- (a) in the case of an agricultural holding to which the 1991 Act applies, the landlord within the meaning of section 85 of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the landlord within the meaning of section 61(1) of that Act;
- (c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911<sup>(6)</sup> to which the 1991 Act does not apply, the same as it means in the 1911 Act,

and, where appropriate, includes a head tenant;

“moorland” means land with predominantly semi-natural upland vegetation or comprising predominantly rock outcrops and semi-natural upland vegetation used primarily for rough grazing;

“relevant period” means a period of not less than 5 years;

“tenant” means—

- (a) in the case of an agricultural holding to which the 1991 Act applies, the tenant within the meaning of section 85 of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the crofter within the meaning of section 3(3) of that Act;
- (c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 to which the 1991 Act does not apply, the tenant within the meaning of section 2(2) of the 1911 Act,

and, where appropriate, includes a sub-tenant;

“undertaking” means an undertaking mentioned in regulation 3(2).

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000<sup>(7)</sup> which has been recorded and is consequently capable of being reproduced.

(3) Any reference in these Regulations to a numbered regulation or numbered Schedule, shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

(4) Any reference in these Regulations to a numbered paragraph, shall be construed as a reference to the paragraph so numbered in the regulation in which the reference occurs.

(5) Words and phrases used in Schedules 1 to 4 and not defined in paragraph (1) shall be construed in accordance with Schedule 5.

### **Payments of aid to enhance the environment**

**3.—**(1) Subject to the provisions of these Regulations, the Scottish Ministers may make payments of aid in respect of an undertaking to which these Regulations apply, to an applicant who—

- (a) is the owner or tenant of the eligible land to which such undertaking relates and is in lawful occupation of that land; and
- (b) has made an application for aid which has been accepted by the Scottish Ministers.

(2) These Regulations apply to an undertaking in writing by the applicant, for the relevant period—

- (a) to comply with, in relation to the whole of the eligible land to which the undertaking relates, the general environmental requirements set out in Part I and Part II of Schedule 1; and

<sup>(6)</sup> 1911 c. 49.

<sup>(7)</sup> 2000 c. 7.

- (b) to carry out, or as the case may be, to carry out and maintain, at least one of the activities referred to in paragraph (3).
- (3) The activities mentioned in paragraph (2) are—
  - (a) the management activities set out in column 1 of Schedule 2 to be undertaken on any part of the eligible land to which the undertaking relates in accordance with the requirements specified in column 2 and column 3 of that Schedule in relation to that activity; and
  - (b) the capital activities set out in column 1 of Schedule 3 to be undertaken and maintained on any part of the eligible land to which the undertaking relates in accordance with the requirements specified in column 2 of that Schedule in relation to that activity.
- (4) The Scottish Ministers may contribute towards the cost of preparing an environmental audit and a moorland management plan included in an application for aid where such audit and, as the case may be, such plan have been prepared in accordance with any requirements made by the Scottish Ministers as to the form or content of such audit or plan.

#### **Applications for aid**

4.—(1) An application for aid shall be made in writing at such time and in such form and shall contain such information as the Scottish Ministers may require.

- (2) An application for aid under paragraph (1) shall include—
  - (a) a copy of an environmental audit carried out in relation to the eligible land to which the application relates;
  - (b) a map which shows all of that land and which identifies all flora and fauna, landscape and water features and archaeological features;
  - (c) a map which shows any flora and fauna, landscape and water features and archaeological features relevant to the activities which the applicant proposes to undertake;
  - (d) a description of those activities and the flora and fauna which are expected to benefit;
  - (e) where the environmental audit identifies moorland which would benefit from management and the applicant proposes to undertake any activities to benefit all or any part of the identified moorland, a moorland management plan for the relevant period in relation to all or any part of the identified moorland;
  - (f) an estimate of the aid to be sought for such activities for each year of the proposed undertaking;
  - (g) the proposed date of commencement of the undertaking; and
  - (h) where an application is made by a grazings committee—
    - (i) the written consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing the subject of the application;
    - (ii) evidence that notice has been given in accordance with regulation 5(4); and
    - (iii) confirmation from the Crofters Commission that it has approved the application or, as the case may be, has received no representation under regulation 5(5).
- (3) The Scottish Ministers may at any time suspend the operation of the scheme provided for by these Regulations and, while so suspended, no application under paragraph (1) may be submitted to them.

### **Crofters common grazings**

5.—(1) Subject to paragraph (4), a grazings committee, may with the consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing, make an application for aid in relation to that common grazing.

(2) Where an undertaking is given by a grazings committee, such undertaking shall include an obligation upon the committee to bind their successors in office to the undertaking.

(3) Subject to paragraph (4), payments of aid to a grazings committee shall be made to the clerk of the grazings committee and the clerk shall divide the aid among the eligible crofters in such proportion as determined by the grazings committee.

(4) Prior to making an application, a grazings committee shall give notice of their intention to do so and of their proposed division of the aid under paragraph (3), by serving notice in writing of the proposals on all crofters sharing in that common grazing.

(5) Any such crofter as is mentioned in paragraph (4) may within one month of the date of the notice under that paragraph make representation in respect of the proposals to the Crofters Commission who may approve the proposals with or without modification or reject them.

### **Restrictions on acceptance of applications for aid**

6.—(1) The Scottish Ministers shall not accept an application for aid—

- (a) in relation to any eligible land which is occupied by a tenant unless they are satisfied that the tenant has notified the landlord, and in the case of a sub-tenant, the owner of the eligible land and the mid-landlord, of the intention of that tenant to make an application;
- (b) if they are satisfied that the use of the land in accordance with the proposals contained in the application would frustrate the purposes of any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community;
- (c) if they are satisfied that any payment under these Regulations would duplicate any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community;
- (d) where the applicant is prohibited from giving the undertaking under these Regulations by application of a penalty consequent upon Article 48(2) of the Commission Regulation (which requires Member States to determine a system of penalties for breaches of the obligations entered into and of regulatory provisions applicable to the case);
- (e) where the applicant is excluded from all aid under Chapter VI of Title II of the Council Regulation by virtue of Article 48(3) of the Commission Regulation (which requires a person who, intentionally or by reason of serious negligence, makes a false declaration to be excluded from all rural development measures falling under the relevant chapter of the Council Regulation) and the payment of aid in respect of the proposed undertaking would include such aid.

(2) The Scottish Ministers shall not accept an application for aid without first having agreed with the applicant the date of commencement of the undertaking, which shall in no circumstances be earlier than the date on which the application was accepted.

### **Determination of applications for aid**

7.—(1) The Scottish Ministers may approve (in whole or in part) or may reject an application for aid and in determining whether an application should be so approved or rejected, they shall have regard to—

- (a) the environmental benefits expected to be derived from the carrying out of the activities described in the application;
  - (b) the aid likely to be required and how that value compares with other applications; and
  - (c) the value for money which the undertaking represents having regard to sub paragraphs (a) and (b).
- (2) Approval of an application may be subject to such conditions as the Scottish Ministers think fit.
- (3) The Scottish Ministers may vary an approval of an application for aid as they think fit including any conditions subject to which it was given.
- (4) Before varying an approval or amending conditions attached to an approval in accordance with paragraph (3) above, the Scottish Ministers shall—
- (a) give to the person to whom the application has been granted written notification of the action proposed to be taken;
  - (b) give that person an opportunity to make representations about the action proposed to be taken within such time and in such form as the Scottish Ministers may require; and
  - (c) consider any such representations.

### **Rates of payment**

- 8.—**(1) The amount of aid payable under regulation 3(1) shall, subject to the provisions of this regulation, be calculated with reference to the activity undertaken, and the rate of payment in respect of each activity described in column 1 of Schedule 4 shall be the rate shown opposite the entry for that activity in column 2 of that Schedule.
- (2) Where activities are to take place on areas of in-bye land of 100 hectares or more, areas of rough grazings (including moorland) of 1000 hectares or more or areas of common grazings of 2000 hectares or more, the amount of aid payable under regulation 8(1) shall be reduced to 80% of the amount calculated in accordance with regulation 8(1).
- (3) The amount payable under regulation 3(4) in respect of an environmental audit or a moorland management plan shall be determined by reference to the rates of payment specified in column 2 of Part III of Schedule 4 corresponding to such audit or plan.

### **Claims and payment**

- 9.—**(1) A claim for aid under regulation 3(1) shall be made in writing at such time and in such form and shall contain such information as the Scottish Ministers may require.
- (2) Payment of aid under regulation 3(1) shall be made—
- (a) in the case of a payment relating to an activity included in an undertaking specified in column 1 of Part I of Schedule 4, by annual instalment paid in arrear; and
  - (b) in the case of a payment relating to an activity included in an undertaking specified in column 1 of Part II of Schedule 4, upon completion of the work.
- (3) Payment as provided in paragraph (2) shall be made only where the Scottish Ministers are satisfied that—
- (a) the general environmental requirements set out in Part I and Part II of Schedule 1 have been complied with during the period to the date of payment; and
  - (b) the requirements set out in columns 2 and 3 of Schedule 2 and, as the case may be, the requirements set out in column 2 of Schedule 3, in relation to that activity have been met.

(4) Payment under regulation 3(4) shall be made upon determination of an application for aid in accordance with regulation 7.

(5) The provisions of these Regulations are insofar as the aid claimed includes aid under the Council Regulation, subject to Article 37(3) of the Council Regulation and Article 31 of the Commission Regulation (combination of aids).

### **Change of occupation of land**

**10.**—(1) Where during the period of an undertaking, there is a change of occupation of all or any part of the land to which that undertaking relates, subject to the provisions of this regulation, the Scottish Ministers shall accept an undertaking from the new occupier.

(2) Where such a change of occupation occurs the former occupier (or, if that occupier has died, the occupier's executors) shall within 3 months notify the Scottish Ministers in writing of the change of occupation, and shall supply to the Scottish Ministers such information relating to that change in such form and within such period as the Scottish Ministers may determine.

(3) A new occupier of all or any part of the land who wishes to take on the undertaking shall furnish the Scottish Ministers with such information in such form and within such period following the change of occupation as the Scottish Ministers may determine.

(4) A new occupier of all or any part of the land may take on the undertaking where the Scottish Ministers are satisfied that—

- (a) the former occupier had complied with the undertaking to the date of the change of occupation; and
- (b) the new occupier is the lawful occupier of the land and has since the date of the change of occupation complied with the undertaking.

(5) A new occupier of all or any part of the land or, as the case may be, the former occupier of all or any part of the land may take on the undertaking insofar as it extends to that part of the land which that person occupies, or as the case may be continues to occupy, where the Scottish Ministers are satisfied that—

- (a) such new occupier or, as the case may be, such former occupier of all of the land, is the lawful occupier of the part of the land which that person occupies and has since the date of change of occupation complied or, as the case may be, continued to comply with the undertaking insofar as it extends to the part of the land which that person occupies; and
- (b) it is reasonable for the occupier to do so having regard to the activities included in the undertaking and the part of the land which is occupied by the new occupier or, as the case may be, continues to be occupied by the former occupier of all the land.

(6) Where during the period of an undertaking, an occupier increases the area of their landholding the occupier shall comply with the general environmental requirements set out in Part I and II of Schedule 1 as regards the increased area of landholding and, if the occupier wishes the undertaking to also apply to the increased area of landholding, the occupier shall submit to the Scottish Ministers an application for aid in accordance with regulation 4.

(7) Where occupation of the land is divided, the Scottish Ministers shall determine—

- (a) the extent to which the activities included in the undertaking relate to any part of the land occupied by a new occupier or, as the case may be, the former occupier of all the land; and
- (b) the proportion, if any, of any payments which would be payable under paragraph (8) for the remainder of the period of the undertaking in respect of that part of the land.

(8) Where the Scottish Ministers are satisfied as specified in paragraph (4), they shall, subject to regulation 8, make payments for the remainder of the period of the undertaking to the new occupier of the land who has taken on the undertaking.

(9) Where the Scottish Ministers are satisfied as to the matters specified in paragraph (5), they shall, subject to regulation 8, make payments of such proportion, if any, as they have determined under paragraph (7) are due for the remainder of the period of the undertaking to the new occupier or, as the case may be, former occupier of all the land who has taken on the undertaking.

(10) Where within 3 months from the date of change of occupation the undertaking has not been taken on in accordance with paragraph (4) or, as the case may be, paragraph (5), the Scottish Ministers may—

- (a) withhold the whole or any part of any payment under these Regulations due to the former occupier in respect of the undertaking; and
- (b) recover from the former occupier or make a claim in the former occupier's executry, the whole or any part of any payment awarded under these Regulations already made to that person in respect of the undertaking.

(11) In the application of this regulation to a common grazing "change of occupation" includes the apportionment to a crofter of any land from the common grazing during the period of the undertaking but does not include a change in the membership of the grazings committee.

(12) The provisions of this regulation are, insofar as the aid paid under these Regulations includes aid under the Council Regulation, subject to Article 29 (transfer of holding) and Article 30 (force majeure) of the Commission Regulation, and where by virtue of Article 11 an applicant for aid is required to reimburse the aid paid, in accordance with Article 48 of the Commission Regulation, interest shall be payable thereon at the rate calculated in accordance with that provided in regulation 15.

### **Powers of authorised persons**

**11.—**(1) An authorised person may at all reasonable hours, on producing, if so required, some duly authenticated document showing the authorised person's authority, enter on any land—

- (a) to which an application or undertaking relates; or
  - (b) on which the authorised person has reasonable grounds to believe that documents relating to an application or undertaking are being kept, for any of the purposes mentioned in paragraph (2).
- (2) The purposes referred to in paragraph (1) are—
- (a) inspecting the land to which the application or undertaking relates;
  - (b) verifying the accuracy of any information provided by an applicant or on the applicant's behalf, relating to an application, a claim for aid or an undertaking; and
  - (c) determining whether or not an applicant has complied with an undertaking.
- (3) An authorised person who has entered any land under paragraph (1) may—
- (a) inspect the land and any premises, plant, machinery, equipment, document or record on it which that person reasonably believes relates to an application, a claim for aid or an undertaking;
  - (b) require the applicant, or any employee or agent of such applicant, to produce, or secure the production of, any document or supply any additional information in the applicant's possession or under the applicant's control relating to an application, a claim for aid or an undertaking, as the case may be;
  - (c) where any information referred to in sub-paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require that information to be reproduced in a form in which it may be easily read and can be taken away;

- (d) require copies of or extracts from any such document or other record referred to in subparagraphs (a) or (b) to be produced;
  - (e) retain a copy of any document produced to the authorised person;
  - (f) seize and retain any document or other record which that person reasonably believes may be required as evidence in proceedings under these Regulations; and
  - (g) in so far as may be necessary for the purposes of paragraph (2)(b) or (c), inspect and count livestock on the land and may, for this purpose, require the applicant, or any employee or agent of such applicant, to arrange for the collection, penning and securing of such livestock.
- (4) An applicant or any employee or agent of such applicant shall give an authorised person all reasonable assistance in relation to the matters mentioned in paragraphs (1) and (3) above.
- (5) An authorised person entering any land under paragraph (1) may be accompanied by—
- (a) any official of the European Commission; and
  - (b) such other person as the authorised person considers necessary,
- and paragraphs (3) and (4) shall apply to that person when acting under the instructions of an authorised person as they apply to an authorised person.
- (6) Paragraph (1) above shall apply to any land used for the purposes of a dwellinghouse only where reasonable notice of its intended exercise has been given to all residents of that dwellinghouse.

#### **Breaches of undertakings etc.**

- 12.—(1) Subject to paragraph (2), where—
- (a) any information furnished to the Scottish Ministers by the applicant or on the applicants behalf, is false or misleading in a material respect;
  - (b) the applicant is in breach of any of the terms of an undertaking;
  - (c) the applicant is in breach of any requirement to which the applicant is subject under these Regulations or under the Council Regulation or the Commission Regulation;
  - (d) the whole or any part of any sum paid or payable under an undertaking duplicates assistance provided or to be provided out of monies made available by—
    - (i) the European Community; or
    - (ii) under any statutory provision,
 the Scottish Ministers may exercise any of the powers specified in regulation 14.
- (2) For the purposes of paragraph (1)(d), a sum duplicates such assistance if it is, or would be, paid for any of the same purposes.
- (3) Where—
- (a) there is a change of occupation under regulation 10 and an applicant has transferred all or part of the land to which an undertaking relates to another person (“the successor”);
  - (b) the successor has, within three months of the date of the transfer, given notice to the Scottish Ministers to assume the undertaking in place of the applicant; and
  - (c) the Scottish Ministers have accepted that undertaking,
- the applicant shall be released from their undertaking with effect from the date of the acceptance by the Scottish Ministers of the successor’s undertaking other than in respect of any breach or other matter occurring before the date last mentioned.



### **Other cases in which recovery etc. powers apply**

13. The Scottish Ministers may exercise the powers specified in paragraph (1)(a) and (b) of regulation 14 where they are satisfied that—

- (a) there has been a material change in the nature, scale or timing of the activities in relation to which an undertaking has been made; or
- (b) the activities in relation to which an undertaking has been made are delayed or are unlikely to be completed.

### **Powers of recovery etc. of the Scottish Ministers**

14.—(1) The powers conferred by regulation 12(1) and 13 are—

- (a) to withhold the whole or any part of the aid payable to the applicant; and
- (b) to recover on demand the whole or any part of any aid already paid to an applicant.

(2) Where the powers specified in paragraph (1) are exercised, further to regulation 12(1) and where in the view of the Scottish Ministers, the conduct of the applicant was reckless or was carried out with the intention of breaching of the requirements set out in that paragraph, the Scottish Ministers may also require the applicant to pay to the Scottish Ministers an additional sum equal to no more than 10% of the aid paid or payable to the applicant.

(3) Where the Scottish Ministers take any step specified in paragraph (1), the Scottish Ministers may also suspend or terminate the undertaking, and thereupon any entitlement of the applicant to aid in respect of the unexpired period of the undertaking shall likewise be suspended or terminated, as the case may be.

(4) Where the Scottish Ministers terminate an undertaking under paragraph (3), they may also prohibit the applicant from entering into any new undertaking for such period (not exceeding two years) from the date of the termination as the Scottish Ministers may specify.

(5) The powers conferred on the Scottish Ministers by paragraphs (2), (3) and (4) shall be exercisable by a notice served on the applicant by post at his last known address, and in paragraph (4) “specify” means specify in such notice.

### **Recovery of interest**

15.—(1) Where the Scottish Ministers exercise the power conferred by regulation 14(1)(b) they may also recover on demand interest on the sum to be recovered at a rate of interest one per cent above the sterling three month London interbank offered rate on a day to day basis from the date of payment until the date of recovery.

(2) In any proceedings for recovery under these Regulations, a certificate issued by the Scottish Ministers stating the rate or rates of interest, the amount of such interest recoverable and the period for which such interest is calculated, shall unless the contrary is shown, be conclusive of those matters.

### **Sums payable to the Scottish Ministers to be recoverable as a debt**

16. Where an amount falls to be paid to the Scottish Ministers by virtue of (or by virtue of an action taken under) these Regulations, such amount shall be recoverable as a debt.

### **Offences and penalties**

17.—(1) A person is guilty of an offence if—

- (a) for the purposes of obtaining any financial assistance under these Regulations for themselves or any other person, they knowingly or recklessly make a statement which is false or misleading in any material particular; or
- (b) they intentionally obstruct an authorised person (or a person accompanying that person and acting under that person's instructions) in the exercise of the powers under regulation 11.

(2) 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.

(3) Proceedings for an offence under these Regulations may be commenced within the period of six months from the date on which the offence was committed.

(4) Section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(8)</sup> (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

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

(6) Where the affairs of a body corporate are managed by its members, paragraph (5) above shall apply in relation to the acts and defaults of a member in connection with the members management functions as if the member were a director of the body corporate.

### **Right of appeal and consequential amendment**

**18.**—(1) Where the Scottish Ministers withhold or recover any aid under regulation 14, the applicant may seek a review of the decision by the Scottish Ministers.

(2) The review referred to in paragraph (1) must be applied for in accordance with the provisions of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000<sup>(9)</sup>.

(3) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 shall be amended by inserting after paragraph (k) of regulation 4—

- “(l) a decision by the Scottish Ministers to withhold any aid due or recover any aid paid or require payment of a sum under the Rural Stewardship Scheme (Scotland) Regulations 2001, in terms of those Regulations.”.

Pentland House,  
Edinburgh  
7th September 2001

*ROSS FINNIE*  
A member of the Scottish Executive

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<sup>(8)</sup> 1995 c. 46.

<sup>(9)</sup> S.S.I. 2000/347, as amended by S.S.I. 2001/50 and 226.