

**2001 No. 50**

**AGRICULTURE**

**The Less Favoured Area Support Scheme (Scotland)  
Regulations 2001**

*Made* 23rd February 2001

*Laid before the Scottish Parliament* 26th February 2001

*Coming into force* 19th March 2001

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

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2001 and shall come into force on 19th March 2001.

(2) These Regulations apply to holdings which the Scottish Ministers administer in accordance with the Integrated Administration and Control System Regulations 1993(b).

**Interpretation**

2.—(1) In these Regulations—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the use of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

“applicant” means a person who has made an application for less favoured area support under these Regulations in accordance with regulation 3;

“area aid application” has the same meaning as in Article 6 of Council Regulation 3508/1992;

“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;

“average stocking density” means the average number of livestock units per hectare for the holding class set out in Schedule 3;

“cattle” means suckler cows and heifers which the Scottish Ministers determine are taken into account from time to time for the purposes of calculating additional payments for environmental measures under regulation 9;

“Commission Regulation 3887/1992” means Commission Regulation (EEC) No. 3887/1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(c);

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

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

(c) O.J. No. L 391, 31.12.92, p.36, amended by Commission Regulation (EC) No. 229/95 (O.J. L 27, 4.2.95, p.3), Commission Regulation (EC) No. 1648/95 (O.J. L 156, 7.7.95, p.27) Commission Regulation (EC) No. 2015/95 (O.J.

“Commission Regulation 1750/1999” means Commission Regulation (EC) 1750/1999 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agriculture Guidance Guarantee Fund(a);

“Commission Regulation 2603/1999” means Commission Regulation (EC) No. 2603/1999 laying down transitional rules for rural development support(b);

“common grazing” has the same meaning attributed to it for the purpose of article 11 of Commission Regulation 1750/1999.

“competent authority” has the same meaning as in regulation 2A of the Integrated Administration and Control System Regulations 1993;

“Council Regulation 1254/1999” means Council Regulation (EC) No. 1254/1999 on the common organisation of the market in beef and veal(c);

“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) and amending and repealing certain Regulations(d);

“Council Regulation 3493/90” means Council Regulation (EEC) No. 3493/90 laying down general rules for the granting of premiums to sheepmeat and goatmeat producers(e);

“Council Regulation 3508/1992” means Council Regulation (EEC) No. 3508/1992 establishing as Integrated Administration and Control System for certain Community aid schemes(f);

“cross-border holding” means a holding in the United Kingdom which is situated partly in Scotland;

“designated maps” means the four maps numbered 1 to 4, each such map being marked “Map of less-favoured farming areas in Scotland” and with the number of the map, dated 5th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Executive Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TW;

“eligible agricultural activity” means one or more of the following activities which, in the opinion of the Scottish Ministers are undertaken on a continuous basis–

- (a) maintaining a herd of suckler cows;
- (b) maintaining a flock of sheep comprising eligible ewes as defined by Council Regulation 3493/90;
- (c) maintaining a dairy herd in–
  - (i) the islands of Shetland;
  - (ii) the islands of Orkney;
  - (iii) the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert; or
  - (iv) the islands in the Outer Hebrides and the Inner Hebrides, not already listed;
- (d) maintaining a breeding herd of farmed deer for meat production;
- (e) maintaining a breeding herd of goats for fibre production; or
- (f) maintaining a breeding herd of alpaca for fibre production;

“eligible land” has the meaning as attributed to it in regulation 6;

“farmed deer” means any deer of any species which are managed on a holding enclosed by a deer-proof barrier and are kept on the holding by way of business for the primary purpose of the production of meat;

“forage area” has the same meaning as in Article 12(2)(b) of Council Regulation 1254/1999;

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L 197, 22.8.95, p.2), Commission Regulation (EC) No. 1678/98 (O.J. L 212, 30.7.98, p.23) and Commission Regulation (EC) No. 2801/1999 (O.J. L 340, 31.12.99, p.29).

- (a) O.J. No. L 214, 13.8.99, p.31, as corrected by Corrigendum to Commission Regulation (EC) 1750/99 (O.J. L 337, 30.12.99, p.75) and amended by Commission Regulation (EC) No. 2075/2000 (O.J. No. L 246, 30.9.00, p.46).
- (b) O.J. No. L 316, 10.12.99, p.26 amended by Commission Regulation (EC) No. 1929/2000 (O.J. L 231, 13.9.00, p.5).
- (c) O.J. No. L 160, 26.6.99, p.80.
- (d) O.J. No. L 160, 26.6.99, p.80.
- (e) O.J. L 337, 4.12.90, p.7, as amended by Council Regulation 3797/93 (O.J. L 357, 28.12.91, p.2), Council Regulation 2070/92 (O.J. L 215, 30.7.92, p.63), Council Regulation 233/94 (O.J. L 30, 3.2.94, p.9) and Council Regulation 2825/00 (O.J. L 328, 23.12.00, p.1).
- (f) O.J. No. L 355, 5.12.92, p.1, amended by Council Regulation (EC) No. 165/1994 (O.J. L 24, 29.1.94, p.6), Council Regulation (EC) No. 3233/1994 (O.J. L 338, 28.12.94, p.13), Council Regulation (EC) No. 3235/1994 (O.J. L 338, 28.12.94, p.16), Council Regulation (EC) No. 3072/1995 (O.J. L 329, 30.12.95, p.18), Council Regulation (EC) No. 1577/1996 (O.J. L 206, 16.8.96, p.4), Council Regulation (EC) No. 2466/1996 (O.J. L 335, 24.12.96, p.1), Commission Regulation (EC) No. 613/1997 (O.J. L 94, 9.4.97, p.1), Council Regulation (EC) No. 820/1997 (O.J. L 117, 7.5.97, p.1), Council Regulation (EC) No. 1036/1999 (O.J. L 127, 21.5.99, p.4), and Council Regulation (EC) No. 1593/00 (O.J. L 182, 21.7.00, p.4).

“goat” means any goat of any species which are kept by way of business for the primary purpose of fibre production;

“Highlands and Islands area” means that part of Scotland comprising–

- (a) the area of the Argyll and Bute Council, excluding the Parishes of Arrochar, Cardross, Luss, Rhu, and Roseneath;
- (b) the area of the Highland Council;
- (c) the area of the Orkney Islands Council;
- (d) the area of the Shetland Islands Council;
- (e) the area of the Western Isles Council;
- (f) in the area of the North Ayrshire Council, the islands of Arran, Great Cumbrae and Little Cumbrae; and
- (g) in the area of the Moray Council, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes;

“holding” has the same meaning as in regulation 2 of the Integrated Administration and Control System Regulations 1993;

“less favoured area” means the land shown coloured in blue or in pink on the designated maps–

- (a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive 84/169/EEC concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (United Kingdom)(a); and
- (b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or any combination of, soil, relief, aspect or climate;

“livestock” means suckler cow, dairy cow, beef heifer, dairy heifer, sheep, goat, farmed deer and alpaca;

“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitute one livestock unit:–

- (a) one suckler cow;
- (b) 1.66 heifers over 8 months and up to 24 months;
- (c) 6.66 breeding ewes;
- (d) 6.66 breeding female goats;
- (e) 1.66 breeding female farmed deer;
- (f) 3.33 breeding female alpaca;
- (g) 5730 litres of milk quota;

“minimum stocking density” means the minimum number of livestock units per hectare of a class of holding and which are listed in Schedule 2;

“Moorland” has the meaning as attributed to it by regulation 8;

“Northern Upland” has the meaning as attributed to it by regulation 8;

“retirement pension” mean a category A or category B pension within the meaning of section 20(1)(f) of the Social Security Contributions and Benefits Act 1992(b), a category C or category D pension within the meaning of section 63(f) of that Act, or graduated retirement benefit as referred to in section 62 of that Act;

“SAPS” means the Sheep Annual Premium Regulations 1992(c);

“Scheme Year” means a calendar year commencing on 1st January;

“SCPS” means the Suckler Cow Premium Regulations 1993(d);

“Southern Upland” has the meaning as attributed to it by regulation 8;

“stocking density” has the meaning as attributed to it by Schedule 4;

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(a) O.J. No. L 82, 26.3.84, p.67, as amended by Commission decision 91/25/EEC altering the limits of the less-favoured areas in the United Kingdom within the meaning of Council Directive 75/268/EEC (O.J. No. L 16, 22.1.91, p.25).

(b) 1992 c.4.

(c) S.I. 1992/2677 amended by S.I. 1994/2741, 1995/2779, 1996/49, 1997/2500, 2000/2573 and S.S.I. 2000/418.

(d) S.I. 1993/1441 amended by S.I. 1994/1528, 1995/15, 1995/1446, 1996/1488, 1997/249 and S.S.I. 2000/215.

“suckler cow” means an adult female bovine animal kept in a regular breeding herd which is not maintained primarily for the production of milk;

“the 1996 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1996(a);

“the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(b);

“usual good farming practices” means those practices undertaken on a holding as determined in accordance with Schedule 5.

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

(3) Any reference in these Regulations to a numbered regulation or paragraph or to a Schedule is a reference to the regulation or paragraph of the regulation or the Schedule so numbered in these Regulations.

### **Applications for payment of less favoured area support**

3.—(1) An application for less favoured area support shall be in such form and shall contain such particulars relating to that application as the Scottish Ministers may reasonably require.

(2) An applicant shall submit the application for less favoured area support in respect of the Scheme Year in question to the Scottish Ministers on or after a date each year which the Scottish Ministers will determine from time to time.

(3) If an applicant submits an application for less favoured area support in respect of the relevant scheme year later than the date determined by Scottish Ministers, the Scottish Ministers must reduce, or as the case may be exclude, the applicant from payment of less favoured area support in accordance with Article 8 of Commission Regulation 3887/92.

### **Eligibility for payment of less favoured area support**

4.—(1) Payment of less favoured area support may be made to an applicant only if—

- (a) that applicant has given an undertaking, in such form as the Scottish Ministers may reasonably require, to continue to use eligible land for eligible agricultural activities for a period of five years from the first payment made under these Regulations or under the 1999 Regulations or the 1996 Regulations;
- (b) that applicant applies usual good farming practices on the applicant’s eligible land; and
- (c) that applicant does not use substances referred to in Article 14.2 of the Council Regulation 1257/1999.

(2) Paragraph (1)(a) does not apply to an applicant who is in receipt of a retirement pension at the time when that undertaking requires to be given.

(3) An applicant is released from the undertaking referred to in paragraph (1)(a) if—

- (a) at the moment that such an applicant receives a retirement pension;
- (b) that applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond that person’s control; or
- (c) the applicant ceases farming and at least three hectares of the applicant’s eligible land continues to be used for carrying out an eligible agricultural activity.

(4) For the purposes of paragraph (1)(b), an applicant applies usual good farming practices on the eligible land if the applicant complies in relation to the eligible land—

- (a) with provisions of environmental legislation set out in Part I of Schedule 5; and
- (b) with the verifiable standards set out in Part II of Schedule 5.

### **Payment of less favoured area support**

5. Subject to Commission Regulation 2603/99, the Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land which is not less than 3 hectares.

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(a) S.I. 1996/1500, amended by S.I. 1907/33, 1998/206 and 1999/375.

(b) S.S.I. 1999/187.

## **Eligible land**

6.—(1) Subject to paragraphs (3) and (4), eligible land comprises the number of hectares of forage area in a less favoured area—

- (a) as declared in an area aid application submitted to the Scottish Ministers, on or before 15th May in the Scheme Year for which payment is to be made, by the applicant in accordance with Article 6 of Council Regulation 3508/92, or
- (b) where the applicant has not previously claimed any subsidy dependant upon an area aid application, as declared by the applicant in a form which the Scottish Ministers may specify from time to time.

(2) Eligible land includes land in respect of which the applicant has a right of use pursuant to arrangements such as short term lets, seasonal grazing and common grazing.

(3) If the applicant does not achieve the minimum stocking density appropriate to the holding—

- (a) as at the end of the retention period where eligibility rests on livestock claimed under SAPS;
- (b) as at the end of the retention period where eligibility rests on livestock claimed under SCPS;
- (c) during the Scheme Year where eligibility rests on livestock declared separately in an application for less favoured area support; or
- (d) in the opinion of Scottish Ministers where eligibility must be determined from a combination of livestock described in sub-paragraphs (a) to (c),

on the land determined in accordance with paragraph (1), the area of the eligible land will be reduced to the number of hectares, which are deemed to support the livestock units which the applicant maintains, by way of calculation in accordance with the following formula:

$$L/M=H,$$

where

L = Total number of livestock units;

M = Minimum stocking density; and

H = Hectare to be paid on the class of holding.

(4) Any reduction in the area of eligible land resulting from the application of the calculation in paragraphs (3) will be applied—

- (a) firstly to the number of hectares declared by the applicant as rough grazing; and
- (b) then to the number of hectares declared by the applicant as improved pasture.

(5) If an application is made in accordance with regulation 5 which includes land upon which an activity is carried out which is not an eligible agricultural activity for the purposes of these Regulations, the Scottish Ministers shall determine the percentage of land which is to be attributed to the eligible agricultural activity.

## **Transfer of a holding**

7.—(1) In determining eligible land under regulation 6(1), the decision of the Scottish Ministers shall be in accordance with Article 14a of Commission Regulation 3887/1992.

(2) For the purpose of paragraph 5 of Article 14a of Commission Regulation 3887/1992, the Scottish Ministers will grant less favoured areas support to the transferor of a holding, if the transferor—

- (a) fulfils the conditions laid down by paragraphs 1 to 4 of Article 14a of Commission Regulation 3887/1999; and
- (b) has been in continuous occupation of the holding for a period not less than 183 calendar days in the Scheme Year concerned.

## **Rates of basic payment of less favoured area support**

8.—(1) The basic payment of less favoured area support for eligible land is paid at the rates set out in Schedule 1 per hectare of eligible land for Moorland, Northern Upland and Southern Upland holdings.

- (2) For the purposes of paragraph (1), the Scottish Ministers must classify a holding which has eligible land within one or more of the following three categories—
- (a) Moorland;
  - (b) Northern Upland; or
  - (c) Southern Upland,
- (3) For the purposes of this regulation—
- (a) “Moorland” means a holding with poor grazings, a short grazing season and a low stocking density due to poor or insufficient arable land;
  - (b) “Northern Upland” means a holding situated within the Highlands and Islands area which is not classified as Moorland; and
  - (c) “Southern Upland” means a holding situated outwith the Highlands and Islands area which is not classified as Moorland.

#### **Additional payments for environmental measures**

9.—(1) In addition to the basic payment pursuant to regulation 8, the Scottish Ministers may make additional payments of £2.50 per hectare of area of land as calculated in accordance with paragraph (3), if—

- (a) the applicant maintains 0.65 livestock units per hectare of eligible land or less; and
- (b) 10% or more of the total livestock units which the applicant maintains are cattle.

(2) For holdings classified as Moorland, in addition to the basic payment pursuant to regulation 8 and the additional payment pursuant to paragraph (1), the Scottish Ministers may make further additional payments of £3.00 per hectare of area of land as calculated in accordance with paragraph (3), provided that the conditions of paragraph (1) are fulfilled.

- (3) The area of land for the purposes of paragraphs (1) and (2) are the number of hectares of—
- (a) either the area of land calculated in accordance with regulation 6(1); or
  - (b) the area of land calculated in accordance with the formula set out in Part II of Schedule 3,

whichever is the less.

#### **Transitional payments**

10.—(1) This regulation applies to an applicant under these Regulations who was eligible for and was granted a payment under the 1999 Regulations.

(2) In this regulation “the 1999 Regulation payment” means the payment to which an applicant under these Regulations was entitled to and paid under the 1999 Regulations.

(3) In respect of the Scheme Year 2001, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than 90% of the 1999 Regulation payment.

(4) In respect of the Scheme Year 2000/2, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than 80% of the 1999 Regulation payment.

(5) In respect of the Scheme Year 2003, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than—

- (a) a sum equal to the sum paid in respect of Scheme Year 2002; or
- (b) a sum not less than 50% of the difference between the applicant’s entitlement in respect of Scheme Year 2003 and the 1999 Regulation payment,

whichever is the lower.

(6) In the event that the forage area of the holding is reduced by more than 25% in the course of the Scheme Years 2001 to 2003 when compared with the forage area declared by the applicant in 1999 for the purpose of the 1999 Regulation payment, the Scottish Ministers will, in respect of—

- (a) the Scheme Year that the reduction in forage area first exceeds 25%; and
- (b) in each subsequent Scheme Year,

calculate the transitional payments described in 10(3) to 10(5) above by reducing the 1999 Regulation payment by  $1/75^{\text{th}}$  for each percentage point above 25% that the forage area has been reduced.

### **Powers of authorised persons**

**11.**—(1) An authorised person may at all reasonable hours and on producing, if so required a duly authenticated document showing that person's authority, exercise the powers specified in this regulation for the purposes of—

- (a) verification of accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Article 47 of Commission Regulation 1750/1999; or
- (b) ascertaining whether an offence under these Regulations has been or is being committed.

(2) An authorised person may enter any land or premises (other than dwelling houses not being used in connection with these Regulations) with or without persons assigned to assist the authorised person.

(3) An authorised person who has entered any land or premises by virtue of this regulation may—

- (a) inspect and verify the total area of such land;
- (b) inspect and count livestock on such land and require the applicant to arrange for the animal's collection, penning and securing;
- (c) require production of and examine any records in whatever form, and to take copies of those records;
- (d) remove and retain any document or other record referred to in sub-paragraph (c) above which may be required for use as evidence in proceedings under these Regulations;
- (e) inspect and verify that the applicant has complied with usual good farming practices.

(4) An authorised person may require, where any computer and any associated apparatus or material which is or has been used in connection with any such records mentioned in paragraph (3)(c), where ever situated, records which are kept by means of such computer or associated apparatus or material, those records to be produced in a visible and legible form in which they may be taken away.

### **Assistance to authorised persons**

**12.** An applicant, any employee or agent of an applicant or any person having charge of animals on the land shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable that person to exercise any power conferred by regulation 11.

### **Withholding or recovery of less favour area support**

**13.** The Scottish Ministers may withhold or recover the whole or any part of any payment of less favoured area support payable or paid to an applicant in any of the following circumstances:—

- (a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to regulation 4(1)(a) from which the applicant has not been released under regulation 4(3);
- (b) where an applicant, or an employee or agent of the applicant intentionally obstructed an authorised person in exercise of the powers under regulation 11, or fails without reasonable excuse to comply with a requirement made by an authorised person under regulation 11 or 12;
- (c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with usual good farming practices on or in relation to eligible land.

### **Rate of interest**

**14.** Where the Scottish Ministers intend to recover on demand the whole or any part of a payment of less favoured area support pursuant to regulation 13, unless the sum recovered is paid as a result of their own error, interest shall be charged thereon at the rate of one percentage point above the sterling three month London Interbank Offered Rate on a day-to-day basis for the period from payment to recovery.

### **Cross-border holdings**

**15.** Schedule 6 applies to cross-border holdings.

## **Offences**

**16.—(1)** Any person who, for the purposes of obtaining for the benefit of that or any other person part of whole of the payment of less favoured area support under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, shall be guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person taken with acting under the instructions of that authorised person in accordance with regulation 12) in the exercise of the powers under regulation 11 shall be guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 11 shall be guilty of an offence.

## **Penalties**

**17.—(1)** A person guilty of an offence under regulation 16(1) and (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 16(3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Time limit for prosecutions**

**18.—(1)** Summary proceedings for an offence under regulation 16 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> (date of commencement of proceedings) applies for the purposes of this regulation as it does for the purposes of that section.

## **Offences by bodies corporate**

**19.—(1)** Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity (or, in the case of a partnership, 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 that offence and shall be liable to be proceeded against and punished accordingly.

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

## **Appeals**

**20.—(1)** Where the Scottish Ministers withhold or recover any grant under regulation 13, the applicant may apply for 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>(b)</sup>

(3) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 shall be amended by adding at the end of regulation (4):

“(c) a decision by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment of less favoured area support under regulation 13 of the Less Favoured Area Support Scheme (Scotland) Regulations 2001”.

**21.—(1)** An applicant may apply to the Hill Farming Advisory Committee (“the Committee”) for a review of the decision of the Scottish Ministers of the eligibility of the holding under regulation 6(1).

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(a) 1995 c.46.

(b) S.S.I. 2000/347.



(2) The applicant must apply to the Committee for review within 60 days of the decision of the Scottish Ministers, or in respect of a decision in the Scheme Year 2000, within 60 days of the coming into force of these Regulations, whichever is the later.

(3) The application for review must be in writing and accompanied by such information as the Committee consider necessary.

(4) The Committee shall determine the review of the decision and notify its determination to the Scottish Ministers.

(5) The determination of the Committee shall be binding on the Scottish Ministers.

**22.**—(1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 21(4).

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the determination referred to in regulation 21(4).

(3) The review referred to in paragraph (1) shall be undertaken by a person appointed by the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors.

(4) The person appointed for the purpose of this regulation shall review the said determination and may—

- (a) consider any document or other evidence produced by the applicant or the Scottish Ministers;
- (b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and
- (c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.

(5) The person appointed shall review the said determination and shall make a decision confirming or refusing that determination.

(6) The person appointed shall be entitled to require the reasonable costs of the review to be paid by the unsuccessful party and the person appointed shall determine the amount of such costs.

### **Revocations and savings provisions**

**23.** The Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(a), except to the extent that they relate to any compensatory allowance paid or payable since 31st December 1994, are hereby revoked.

Pentland House,  
Edinburgh  
23rd February 2001

*ROSS FINNIE*  
A member of the Scottish Executive

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(a) S.S.I. 1999/185.

## SCHEDULE 1

## RATES FOR PAYMENT OF LESS FAVOURED AREA SUPPORT

<i>FARM TYPE</i>	<i>RATES PER HECTARE</i>	
	Improved Pasture	Rough Grazing
Moorland Holdings	£30.40	£6.10
South Upland Holdings	£39.40	£7.90
Northern Upland Holdings	£45.00	£9.00

SCHEDULE 2  
MINIMUM STOCKING DENSITY

<i>Moorland holding</i>	0.08	LU/ha
Northern Upland holding	0.27	LU/ha
Southern Upland holding	0.38	LU/ha

## SCHEDULE 3

## PART I

## AVERAGE STOCKING DENSITY

<i>Moorland holding</i>	0.16	<i>LU/ha</i>
Northern Upland holding	0.54	LU/ha
Southern Upland holding	0.76	LU/ha

## PART II

## FORMULA

$$\frac{\textit{Total livestock units}}{\textit{Average stocking density}} = \textit{Hectares to be paid}$$

## SCHEDULE 4

## PART I

## CALCULATION OF LIVESTOCK UNITS ("LU")

*For Small Milk Producers and Non-Dairy Farmers:*

Number of Suckler Cows claimed and eligible  
for SCPS 2000 X 1.0 = A LU

For Dairy farmers (excluding small milk producers eligible for SCPS 2000):

Number of Suckler Cows and heifers over 24 months X 1.0 = B1 LU

Number of heifers over 8 months and  
up to including 24 months X 0.6 = B2 LU

For Ring-fenced dairy farmers:

Litres of Milk Quota / 5730 = C LU

For all claimants

Number of Breeding Ewes claimed and eligible for SAPS for 2000 X 0.15 = D LU

Number of Breeding Female Goats X 0.15 = E LU

Number of Breeding Female Alpaca X 0.3 = F LU

Number of Breeding Female Deer X 0.6 = G LU

## PART II

## CALCULATION OF STOCKING DENSITY

Total LFASS Livestock Units (A+B1+B2+C+D+E+F+G) = H

Total Forage Area (in hectares) = I

Stocking Density (to two decimal places) = H divided by I

**SCHEDULE 5**  
**USUAL GOOD FARM PRACTICES**

**PART I**  
**ENVIRONMENTAL LEGISLATION**

**Water pollution**

1. Control of Pollution Act 1974 (c.40).
2. Control of Pollution (Silage, Slurry and Agricultural Fuel Oil (Scotland) Regulations 1991 (S.I. 1991/346).
3. The Groundwater Regulations 1998 (S.I. 1998/2746 as amended by the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323)).

**Air pollution**

4. Clean Air Act 1993 (c.11).
5. Hill Farming Act 1946 (c.73).

**Fertilisers and Pesticides**

6. The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 1998 (S.I. 1998/2927).
7. Part III of the Food and Environment Protection Act 1985 (c.48) and Control of Pesticides Regulations 1986, (S.I. 1986/1510) as amended by the Food Safety Act 1990 (Consequential Modifications (No 2) (Great Britain) Order 1990 (S.I. 1990/2487)), the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994 (S.I. 1994/3142) and the Control of Pesticides (Amendment) Regulations 1997 (S.I. 1997/199).
8. Plant Protection Products Regulations 1995 (S.I. 1995/887 amended by the Plant Protection Products (Amendment) Regulations 1996 (S.I. 1996/1940), the Plant Protection Products (Amendment) Regulations 1997 (S.I. 1997/7), the Plant Protection Products (Amendment) (No. 2) Regulations 1997 (S.I. 1997/2499) and the Plant Protection Products (Amendment) Regulations 1998 (S.I. 1998/32760) and the Plant Protection Products (Amendment) Regulations 1999 (S.I. 1999/1228).

**Designated sites**

9. Ancient Monuments and Archaeological Areas Act 1979 (c.46).
10. Wildlife and Countryside Act 1981 (c.69).
11. The Conservation (Natural Habitats etc.) Regulations 1994 (S.I. 1994/2716 as amended by S.I. 1997/3055).
12. Ancient Monuments (Class Consents) (Scotland) Order 1996 (S.I. 1996/1507).

**Forestry Management**

13. Forestry Act 1967 (c.10).

PART II  
VERIFIABLE STANDARDS

1. An authorised person is empowered to examine records held as evidence that notification has been given to the Scottish Environment Protection Agency prior to using a new silage or slurry storage facility.
2. An authorised person is empowered to examine records held as evidence that prior approval to the disposal of sheep dip on a holding has been obtained from the Scottish Environment Protection Agency.
3. Trimming of hedgerows must not be carried out between 1st March and 31st July.
4. Removal or destruction of any hedges, stone walls or other boundary features shall not be allowed except with the prior written agreement of the Scottish Ministers.
5. An authorised person is empowered to examine records held as evidence that prior approval to any operations on a holding which are likely to damage Sites of Special Scientific Interests designated pursuant to section 28 of the Wildlife and Countryside Act 1981(a) has been notified to Scottish Natural Heritage.
6. Livestock shall be managed in such a way as to avoid overgrazing. Where the Scottish Ministers form the opinion that land was being overgrazed, a management regime including a maximum) and, where appropriate, a minimum) stocking rate to be observed on that site will be prescribed. Overgrazing is defined as grazing land with livestock in such numbers as to adversely affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree.
7. Unsuitable supplementary feeding methods shall be avoided.
8. Undergrazing shall be avoided. "Undergrazing" has the meaning of not using land fully or scrub or coarse becoming evident, where it is detrimental to the environmental interest of the site.

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(a) 1981 (c.69).

## SCHEDULE 6

## AGENCY AND CROSS-BORDER HOLDINGS

**Agency arrangements**

1. The Scottish Ministers may, with the agreement of any competent authority (as defined for the purposes of the Integrated Administration and Control System Regulations 2000), arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.

2. The Scottish Ministers may also agree to exercise functions on behalf of another competent authority corresponding to those which are exercisable by the Scottish Ministers under these Regulations.

3. Any such arrangement shall be in writing and be signed by or on behalf of the Minister and the competent authority and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

**Set-off**

4. Without prejudice to the amount of any sum payable by the Scottish Ministers to any other competent authority, the amount of any sum payable by the Scottish Ministers, whether as principal or agent, by way of a specified payment may be set-off against the amount of any sum recoverable by the Scottish Ministers, whether as principal or agent.

**Calculation of payments in respect of cross-border holdings**

5. Where any holding in respect of which a claim has been made is a cross-border holding, Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less-favoured area support for carrying out eligible agricultural activity on eligible land, providing the applicant has declared the eligible land in an area aid application which has been treated as a valid application by the competent authority concerned.

6. Whether the eligible agricultural activity undertaken on the eligible land is an integral part of the management of the whole holding or independently managed, Scottish Ministers shall only pay less-favoured area support in respect of the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.

7. Applicants in respect of cross-border holdings are required to supply such information as authorised persons may reasonably require to assess the eligible agricultural activity actually undertaken on eligible land defined as a less-favoured area for the purposes of this instrument.

8. All conditions applying to applicants in respect of holdings lying wholly within the less favoured areas shall apply equally to applicants in respect of cross-border holdings.



## EXPLANATORY NOTE

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

These Regulations make provision for the purposes of implementation of Council Regulation (EC) No.1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund and Commission Regulation (EC) No. 1750/1999 laying down detailed rules for the application of Council Regulation No. 1257/1999.

They apply to holdings which are administered by the Scottish Ministers under the Integrated Administration and Control System Regulations 1993 (regulation 1(2)).

Applications for less favoured area support (“LFAS”) are to be made to the Scottish Ministers on a date which they shall determine each year. Failure to meet the deadline will result in reduction of the payment of support (regulation 3).

Eligibility for payment of LFAS is dependent upon the applicant meeting the criteria set out in regulation 4. It can only be paid to an applicant who carries out an eligible agricultural activity (defined in regulation 2(1)) on eligible land (defined in regulation 6). No payment will be made where the amount of eligible land is less than 3 hectares (regulation 5). There is provision at regulation 7 to determine to whom payment should be made where a holding is transferred during a Scheme Year.

LFAS is paid for eligible hectares on farms in Scottish less-favoured areas at specified rates (regulations 8(1), 9(1), 9(2) and Schedule 1). The number of eligible hectares may be reduced because the applicant does not maintain minimum or average stocking densities, as appropriate (regulations 6(3) and 9(3)). Minimum and average stocking densities are defined in regulation 2(1).

There are transitional arrangements for scheme years 2001 to 2003 (regulation 10). For those years LFAS may be increased if an applicant is due to receive less under these Regulations when compared with any payment paid or due under the 1999 Regulations. This is also provision to reduce the payment to be paid under the transitional provisions where the forage area of the holding is reduced by more than 25% during the course of Scheme Years 2001 to 2003 (regulation 10(6)).

Regulation 11 contains powers of enforcement. Regulation 13 provides for withholding or recovery of compensatory allowances where there is a breach of the rules of the Scheme. Regulations 16 and 17 deal with offences and penalties.

Regulations 20 to 22 deal with an applicants right of appeal against decisions taken by the Scottish Ministers. There is also a consequential amendment to the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000.

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**AGRICULTURE**

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