
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 381

AGRICULTURE

**The Agricultural Subsidies (Appeals)
(Scotland) Regulations 2004**

Made - - - - 8th September 2004
*Laid before the Scottish
Parliament* - - - - 8th September 2004
Coming into force - - 1st October 2004

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 and shall come into force on 1st October 2004.

Interpretation

2.—(1) In these Regulations—

“applicant” means the person to whom a decision referred to in regulation 4 below is directed;

“Commission Regulation 2419/2001” means Commission Regulation (EC) No. 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes⁽²⁾, amended by Commission Regulation (EC) No. 2550/2001⁽³⁾ and Commission Regulation (EC) No. 118/2004⁽⁴⁾;

“Commission Regulation 2237/2003” means Commission Regulation (EC) No. 2237/2003 laying down detailed rules for the application of certain support schemes provided for in Title IV of Council Regulation (EC) 1782/2003 establishing common rules for direct support

(1) 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 virtue of section 53 of the Scotland Act 1998.

(2) O.J. No. L 327, 12.12.2001, p.11.

(3) O.J. No. L 341, 22.12.2001, p.105.

(4) O.J. No. L 17, 24.1.2004, p.7.

schemes under the common agricultural policy and establishing certain support schemes for farmers⁽⁵⁾;

“Council Regulation 3508/1992” means Council Regulation (EEC) No. 3508/1992 establishing an integrated administration and control system for certain Community aid schemes⁽⁶⁾, amended by Council Regulation (EC) No. 165/1994⁽⁷⁾, Council Regulation (EC) No. 3233/1994⁽⁸⁾, Council Regulation (EC) No. 3235/1994⁽⁹⁾, Council Regulation (EC) No. 3072/1995⁽¹⁰⁾, Council Regulation (EC) No. 1577/1996⁽¹¹⁾, Council Regulation (EC) No. 2466/1996⁽¹²⁾, Commission Regulation (EC) No. 613/1997⁽¹³⁾, Council Regulation (EC) No. 820/1997⁽¹⁴⁾, Council Regulation (EC) No. 1036/1999⁽¹⁵⁾, Council Regulation (EC) No. 1593/2000⁽¹⁶⁾ and Commission Regulation (EC) No. 495/2001⁽¹⁷⁾;

“Council Regulation 1782/2003” means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/1993, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/1994, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/1971 and (EC) No. 2529/2001⁽¹⁸⁾, amended by Council Regulation (EC) No. 21/2004⁽¹⁹⁾, Council Regulation (EC) No. 583/2004⁽²⁰⁾, and Council Regulation (EC) No. 864/2004⁽²¹⁾;

“date of notification of the decision” means the date of the letter from the Scottish Ministers to the applicant notifying the applicant of the decision which the applicant is seeking to have reviewed;

“ESA Orders” means—

- (a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992⁽²²⁾;
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992⁽²³⁾;
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993⁽²⁴⁾;
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993⁽²⁵⁾;
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993⁽²⁶⁾;
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993⁽²⁷⁾;

(5) O.J. No. L 339, 24.12.2003, p.52.

(6) O.J. No. L 355, 5.12.1992, p.1.

(7) O.J. No. L 24, 29.1.1994, p.6.

(8) O.J. No. L 338, 28.12.1994, p.13.

(9) O.J. No. L 338, 28.12.1994, p.16.

(10) O.J. No. L 329, 30.12.1995, p.18.

(11) O.J. No. L 206, 16.8.1996, p.4.

(12) O.J. No. L 335, 24.12.1996, p.1.

(13) O.J. No. L 94, 9.4.1997, p.1.

(14) O.J. No. L 117, 7.5.1997, p.1.

(15) O.J. No. L 127, 21.5.1999, p.4.

(16) O.J. No. L 182, 21.7.2000, p.4.

(17) O.J. No. L 72, 14.3.2001, p.6.

(18) O.J. No. L 270, 21.10.2003, p.1.

(19) O.J. No. L 5, 9.1.2004, p.8.

(20) O.J. No. L 091, 30.3.2004, p.1.

(21) O.J. No. L 161, 30.4.2004, p.48.

(22) S.I. 1992/1919; amended by S.I. 1992/2062, 1994/3067, 1995/3097, 1996/3082 and S.S.I. 2001/34 and 226.

(23) S.I. 1992/1920; amended by S.I. 1992/2063, 1994/3067, 1995/3096, 1996/738 and 3082 and S.S.I. 2001/30 and 226.

(24) S.I. 1993/996; amended by S.I. 1994/3067, 1996/1969 and 3082 and S.S.I. 2001/32 and 226.

(25) S.I. 1993/997; amended by S.I. 1994/3067, 1996/1968 and 3082 and S.S.I. 2001/31 and 226.

(26) S.I. 1993/2345; amended by S.I. 1994/3067, 1996/1963 and 3082 and S.S.I. 2001/33 and 226.

(27) S.I. 1993/2767; amended by S.I. 1994/3067, 1996/1964 and 3082 and S.S.I. 2001/25 and 226.

- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(28);
 - (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(29);
 - (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993(30);
 - (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(31);
- “holding” has the same meaning as in Council Regulation No. 1782/2003;

“IACS scheme” means–

- (a) one of the Community schemes set out in Article 1.1 of Council Regulation 3508/1992; and
- (b) one of the Community schemes set out in Chapters 2,4,5 and 7 of Title IV of Council Regulation 1782/2003; and

“IACS year” means a period of 12 months commencing on 16th May.

(2) Any reference in these Regulations to a person to whom a decision is directed, an applicant for review or a person appealing to the Scottish Land Court includes a reference to any successor, executor, trustee in bankruptcy, receiver or liquidator of such a person or applicant.

Application in relation to IACS matters

3. In relation to decisions of the Scottish Ministers of the kinds referred to in regulation 4(a) to (g) below, these Regulations apply in relation to holdings which are administered by them in accordance with the Integrated Administration and Control System Regulations 1993(32).

Decisions amenable to review and appeal

4. The following decisions may be reviewed and appealed in accordance with the following provisions of these Regulations:–

- (a) a decision, under or in accordance with Commission Regulation 2419/2001 (including anything done in accordance with Article 47.2 of that Regulation), by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment under an IACS scheme for any IACS year;
- (b) a decision, under or in accordance with Commission Regulation 2237/2003, by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment under an IACS scheme for any IACS year;
- (c) a decision by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment of compensatory allowance under regulation 12, 17 or 18 of the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(33);
- (d) a decision by the Scottish Ministers under regulations 4, 6, 8 and 12 of the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 2003(34);
- (e) a decision by the Scottish Ministers to withhold 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(35) or under regulation 15 of the Less Favoured Area Support

(28) S.I. 1993/2768; amended by S.I. 1994/3067, 1996/1967 and 3082 and S.S.I. 2001/26 and 226.

(29) S.I. 1993/3136; amended by S.I. 1994/3067, 1996/1966 and 3082 and S.S.I. 2001/27 and 226.

(30) S.I. 1993/3149; amended by S.I. 1994/3067, 1996/1962 and 3082 and S.S.I. 2001/28 and 226.

(31) S.I. 1993/3150; amended by S.I. 1994/3067, 1996/1965 and 3082 and S.S.I. 2001/29 and 226.

(32) S.I. 1993/1317 amended by S.I. 1994/1134, 1997/1148, 1999/1820, 2000/2573 and 2004/189.

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

(34) S.I. 2003/2261.

(35) S.S.I. 2001/50, partially revoked subject to savings by S.S.I. 2002/139.

- Scheme (Scotland) Regulations 2002⁽³⁶⁾ or under regulation 17 of the Less Favoured Area Support Scheme (Scotland) Regulations 2003⁽³⁷⁾ or under regulation 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2004⁽³⁸⁾;
- (f) a decision by the Scottish Ministers under regulation 9(9)(c), (10), (12), 10(4), 11(2) or 13(3) to (6) of the Less Favoured Area Support Scheme (Scotland) Regulations 2003;
- (g) a decision by the Scottish Ministers under regulation 7(2), 9(5) 10(4), 10(6) or 11(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2004;
- (h) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Scheme 1988⁽³⁹⁾, in terms of paragraph 14 of that Scheme;
- (i) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Premium Scheme 1992⁽⁴⁰⁾, in terms of paragraph 14 of that Scheme;
- (j) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Premium Scheme 1997⁽⁴¹⁾, in terms of paragraph 14 of that Scheme;
- (k) 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 (in whole or in part), or require the making of, payment under article 5(a) or under article 5A of one of the ESA Orders⁽⁴²⁾;
- (l) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of penalty under the Organic Aid (Scotland) Regulations 1994⁽⁴³⁾, in terms of regulation 12 of those Regulations;
- (m) a decision by the Scottish Ministers to withhold or recover (in whole or in part) any payment under the Organic Aid (Scotland) Regulations 2004, in terms of regulation 20 of those Regulations⁽⁴⁴⁾;
- (n) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of penalty under the Habitats (Scotland) Regulations 1994⁽⁴⁵⁾, in terms of regulation 12 of those Regulations;
- (o) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of

⁽³⁶⁾ S.S.I. 2002/139, partially revoked subject to savings by S.S.I. 2003/129.

⁽³⁷⁾ S.S.I. 2003/129 partially revoked subject to savings by S.S.I. 2004/70.

⁽³⁸⁾ S.S.I. 2004/70 amended by S.S.I. 2004/128.

⁽³⁹⁾ S.I. 1988/1291, amended by S.I. 1991/1631, 1992/905 and 1997/828.

⁽⁴⁰⁾ S.I. 1992/905, amended by S.I. 1997/829, S.S.I. 2003/209.

⁽⁴¹⁾ S.I. 1997/829, amended by S.S.I. 2000/290 and 2003/209.

⁽⁴²⁾ Article 4A was inserted into the ESA Orders by S.I. 1994/3067, article 5A was inserted by S.I. 1996/3082 and article 5D was inserted by S.S.I. 2001/226.

⁽⁴³⁾ S.I. 1994/1701, amended by S.I. 1996/3083 and S.S.I. 1999/107 and 2004/143.

⁽⁴⁴⁾ S.S.I. 2004/143, amended by S.S.I. 2004/174.

⁽⁴⁵⁾ S.I. 1994/2710, amended by S.I. 1996/3035.

- penalty under the Heather Moorland (Livestock Extensification) (Scotland) Regulations 1995(46), in terms of regulation 13 of those Regulations;
- (p) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum under the Countryside Premium Scheme (Scotland) Regulations 1997(47), in terms of regulation 12 of those Regulations;
 - (q) a decision by the Scottish Ministers to withhold (in whole or in part) any aid due or recover (in whole or in part) any aid paid or require payment of a sum under the Rural Stewardship Scheme (Scotland) Regulations 2001(48), in terms of those Regulations;
 - (r) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the SFGS Farmland Premium Scheme 2003(49), in terms of paragraph 14 of that Scheme.

First stage review of decisions

5.—(1) An application for review may be made no later than 60 days following the date of notification of the decision to be reviewed, to the Scottish Ministers for a review of that decision.

(2) An application for review must be in writing and specify—

- (a) the name and address of the applicant, and where that person is not the person named in the decision referred to in regulation 4 the basis upon which that person is seeking review;
- (b) the subsidy scheme in relation to which the review is sought and, in relation to an IACS scheme, the IACS year to which the decision referred;
- (c) the decision of the Scottish Ministers which is to be reviewed and its date;
- (d) full details of the grounds upon which review is sought; and
- (e) the change sought to the decision.

(3) An application under this regulation is to be treated as made if it is received by the Scottish Ministers at their offices at Pentland House, Robb's Loan, Edinburgh marked "for the attention of the EU Agricultural Subsidies Appeals Secretariat" within the period of time specified in paragraph (1) above.

Procedure at first stage review

6.—(1) Where an application is made under regulation 5 above, the Scottish Ministers shall review the decision which is specified in it.

(2) In reviewing a decision the Scottish Ministers may—

- (a) consider any document or other evidence produced by the applicant (whether or not that document or evidence was available at the time of the decision);
- (b) invite the applicant to provide such further information relevant to the review as they consider appropriate; and
- (c) invite the applicant to give evidence and to make representations in person or through a representative.

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

(47) S.I. 1997/330 amended by S.S.I. 2004/113.

(48) S.S.I. 2001/300 amended by S.S.I. 2003/177 and 303 and 2004/109.

(49) S.S.I. 2003/209.

Decision following first stage review

7.—(1) Following review of a decision in accordance with regulation 6 above, the Scottish Ministers may—

- (a) confirm their decision;
- (b) amend or alter their decision in any respect which they consider appropriate; or
- (c) revoke their decision in its entirety and substitute a new decision.

(2) The Scottish Ministers must give their decision under paragraph (1) above in writing, setting out the facts upon which their decision is based and the reasons for their decision.

(3) The Scottish Ministers must, in the case of a decision which does not provide the remedy specified by the applicant in accordance with regulation 5(2)(e) above, offer the applicant an opportunity to have their decision under this regulation reviewed by persons appointed by the Scottish Ministers as provided by regulation 8(1) below.

Second stage review by persons appointed

8.—(1) An applicant to whom regulation 7(3) above applies may, no later than 60 days following the date of notification of the decision under regulation 7 above, make an application in writing to the Scottish Ministers to have that decision reviewed by persons appointed by the Scottish Ministers.

(2) The applicant may supplement the original application made by the applicant under regulation 5(2) above.

(3) An application under this regulation is to be treated as made if it is received by the Scottish Ministers at their offices at Pentland House, Robb's Loan, Edinburgh marked "for the attention of the EU Agricultural Subsidies Appeals Secretariat" within the period of time specified in paragraph (1) above.

(4) An application under this regulation must be accompanied by a fee of £100.

(5) The fee referred to in paragraph (4) above is payable to Scottish Ministers and is recoverable by them, in the event of default, as a debt.

Power of persons appointed

9.—(1) Where an application is made under regulation 8 above, the Scottish Ministers shall appoint such persons (who may include a member of the staff of the Scottish Ministers) as they consider appropriate to review the decision and the Scottish Ministers shall provide those persons with a copy of—

- (a) the application;
- (b) the decision under regulation 7 above; and
- (c) any document or note of evidence produced or taken in relation to a review under regulation 6 above.

(2) The persons appointed under this regulation shall review the decision and may—

- (a) consider any document or other evidence produced by the applicant or the Scottish Ministers (whether or not that document or evidence was available at the time of taking the decision under regulation 7 above);
- (b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the persons appointed consider appropriate; and
- (c) at the applicant's request, invite the applicant and the Scottish Ministers to give evidence and to make representations to the persons appointed under this regulation in person or through a representative.

- (3) Following their review of the matter the persons appointed shall report—
- (a) their findings in fact and law on the matter; and
 - (b) their recommendations as to the determination of the application,
- to the Scottish Ministers.
- (4) Having considered the matters reported to them under paragraph (3) above, the Scottish Ministers may—
- (a) confirm their decision;
 - (b) amend or alter their decision in any respect which they consider appropriate; or
 - (c) revoke their decision in its entirety and substitute a new decision.
- (5) In coming to their decision in accordance with paragraph (4) above, the Scottish Ministers must have regard to the findings and recommendations reported to them by the persons appointed under this regulation but are not bound to follow all or any part of such findings or recommendations.
- (6) The Scottish Ministers must give their decision under this regulation in writing and where they do not adopt the findings and recommendations reported to them shall set out—
- (a) the relevant facts upon which their decision is based;
 - (b) the reasons for their decision;
 - (c) their reasons for not following in whole or in part the findings or recommendations of the persons appointed; and
 - (d) the effect of their decision on the payment or non payment of subsidy.
- (7) Where the Scottish Ministers decide in accordance with paragraph (4)(b) or (c) above, the fee referred to in regulation 8(4) above must be refunded to the applicant.
- (8) The Scottish Ministers may make such payment, by way of fee or reimbursement of expenses, to any of such persons appointed under paragraph (1) above, as appears to them to be appropriate.

Notification of decisions

- 10.**—(1) A decision under regulations 7 and 9 above must be notified to the applicant as soon as practicable after it is made by recorded delivery post to the address shown on the application for review.
- (2) In the case of a decision under regulation 9, the findings and recommendations of the persons appointed (along with intimation of the right of appeal under regulation 11(1) below) shall be notified along with the decision.

Appeal to the Scottish Land Court

- 11.**—(1) Where an applicant is dissatisfied by a decision under regulation 9 above, that applicant may make an appeal against that decision on any issue of fact or law to the Scottish Land Court, in accordance with the following provisions of this regulation.
- (2) An appeal may be made no later than 60 days following the date of notification of the decision under regulation 9 above.
- (3) An appeal shall be in such form as may be prescribed from time to time by the Rules of the Scottish Land Court.
- (4) An appeal shall specify—
- (a) what finding of fact, if any, is sought in substitution for any of the findings set out in the decision;
 - (b) what, if any, additional finding of fact is sought;

- (c) the documents or witnesses to be relied on in relation to the matters set out in sub paragraphs (a) and (b) above;
- (d) the findings or propositions of law contained in the decision which are to be challenged;
- (e) the propositions of law relied on in support of the appeal; and
- (f) the legislative provisions and judicial authorities to be referred to in relation to the appeal.

Procedure in the Scottish Land Court

12.—(1) The Scottish Land Court may hear evidence or submissions on matters of fact or law not specified in accordance with regulation 11 above on such terms and conditions as to expenses or otherwise as it considers appropriate but shall not do so in respect of any matter referred to in regulation 11(4)(a) to (c) above unless it is satisfied that there are special circumstances to justify doing so.

(2) The Chairman of the Scottish Land Court may make such arrangements as he considers appropriate for the hearing of appeals under these Regulations and in particular may delegate to himself, or to any member of the Court, power to determine the whole or any part of an appeal.

(3) In determining an appeal, the Scottish Land Court may—

- (a) confirm the decision of the Scottish Ministers under regulation 9 above;
- (b) amend or alter that decision in any respect which it considers appropriate; or
- (c) substitute for that decision any decision which it considers appropriate,

and any such determination of the Scottish Land Court is, subject to any case stated in accordance with section 1(7) of the Scottish Land Court Act 1993(50), binding upon the Scottish Ministers and the applicant.

Reimbursement of fee following successful appeal

13. In the event that, as a result of an appeal under regulation 11 above, the Scottish Land Court determine in accordance with regulation 12(3)(b) or (c) above, the Scottish Ministers must reimburse the fee paid in accordance with regulation 8(4) above.

Consequential amendments and revocations

14.—(1) In each of—

- (a) regulation 20(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2001;
- (b) regulation 18(2) of the Rural Stewardship Scheme (Scotland) Regulations 2001;
- (c) regulation 22(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2002;
- (d) regulation 24(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2003;
- (e) regulation 23(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2004; and
- (f) regulation 25(3) of the Organic Aid (Scotland) Regulations 2004,

for “Agricultural Subsidies (Appeals) (Scotland) Regulations 2000”, substitute “Agricultural Subsidies (Appeals) (Scotland) Regulations 2004”.

(2) The Regulations specified in column 1 of the Schedule to these Regulations are revoked to the extent set out in the corresponding entry in column 3 of that Schedule.

St Andrew's House, Edinburgh
8th September 2004

ROSS FINNIE
A member of the Scottish Executive

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

SCHEDULE

Regulation 14(2)

REVOCATIONS

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000	S.S.I. 2000/347, amended by S.S.I. 2001/50, 226 and 300, S.S.I. 2002/228 and 139, S.S.I. 2003/129 and 302 and S.S.I. 2004/70	The whole Regulations
The Less Favoured Area Support Scheme Regulations 2001	2S.S.I. 001/50, partially revoked subject to savings by S.S.I. 2002/139	Regulation 20(3)
The Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2001	S.S.I. 2001/226	Regulations 1(3), 2, 3 and 5
The Rural Stewardship Scheme (Scotland) Regulations 2001	S.S.I. 2001/300 as amended by S.S.I. 2003/177 and 303	Regulation 18(3)
The Less Favoured Area Support Scheme Regulations 2002	S.S.I. 2002/139 partially revoked subject to savings by S.S.I. 2003/129	Regulation 25
The Dairy Produce Quotas (Scotland) Amendment Regulations 2002	S.S.I. 2002/228	Regulation 3
The Less Favoured Area Support Scheme Regulations 2003	S.S.I. 2003/129, partially revoked subject to savings by S.S.I. 2004/70	Regulation 27
The Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2003	S.S.I. 2003/302	The whole Regulations
The Less Favoured Area Support Scheme Regulations 2004	S.S.I. 2004/70 as amended by S.S.I. 2004/128	Regulation 26

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with minor amendments, the existing Regulations which provide for a review of certain decisions of the Scottish Ministers in relation to payment of certain agricultural subsidies and other matters and for a right of appeal of such decisions after review to the Scottish

Land Court. They have effect in Scots Law in relation to holdings (whether wholly situated in Scotland or partly in Scotland and partly elsewhere in the United Kingdom), which are administered by the Scottish Ministers under the Integrated Administration and Control System Regulations 1993. Regulation 4 specifies the decisions that may be reviewed and appealed under these Regulations. Regulation 4 has been amended to add:-

- (a) decisions, under or in accordance with Commission Regulation 2237/2003 (O.J. No. L 339, 24.12.2003, p.52);
- (b) decisions by the Scottish Ministers under regulations 4, 6, 8 and 12 of the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 2003 (S.I.2003/2261);
- (c) decisions by the Scottish Ministers to withhold or recover (in whole or in part) payment of less favoured area support under regulation 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2004 (S.S.I. 2004/70 amended by S.S.I. 2004/128);
- (d) decisions by the Scottish Ministers under regulation 7(2), 9(5) 10(4), 10(6) or 11(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2004; and
- (e) decisions by the Scottish Ministers to withhold or recover (in whole or in part) any payment under the Organic Aid (Scotland) Regulations 2004 in terms of regulation 20 of those Regulations (S.S.I. 2004/143 amended by S.S.I. 2004/174).

Decisions under the Dairy Produce Quotas (Scotland) Regulations 2002 (S.S.I. 2002/110, amended by S.S.I. 2002/228 and S.S.I. 2004/118) have been removed as these are now catered for under the Common Agricultural Policy Non IACS Support Schemes (Appeals) (Scotland) Regulations 2004 (S.S.I. 2004/278.)

The procedure for review is by application made no later than 60 days following the date of the decision to be reviewed (regulation 5).

The review in first instance is a completely internal review and will be conducted by officials on behalf of the Scottish Ministers. Certain powers are given to the Scottish Ministers in relation to such reviews (regulation 6(2)).

Scottish Ministers must, following a review, give their decision in a form specified by regulation 7.

Where an applicant is dissatisfied by such a decision insofar that it does not completely comply with the remedy which is sought in the application, the applicant may apply to the Scottish Ministers to have their decision reviewed by persons appointed by them (regulation 8(1)) and a fee of £100 is payable in respect of such an application (regulation 8(4)).

The Scottish Ministers may appoint such persons as they consider appropriate to conduct this stage of review, including a member of their staff for this purpose (regulation 9(1)).

Persons appointed under regulation 9 must review the decision of the Scottish Ministers and have certain powers to consider additional information and to invite representations from the applicant and the Scottish Ministers (regulation 9(2)).

Following their review of the decision the persons appointed by the Scottish Ministers must report their findings in fact and law and any recommendations which they wish to make to the Scottish Ministers (regulation 9(3)).

The Scottish Ministers then require to make a decision having regard to the findings and recommendations reported to them by the persons appointed (regulation 9(4) and (5)).

The Scottish Ministers require to give their decision in writing and to give full details of the facts and reasons for their decision (regulation 9(6)).

Where the Scottish Ministers decide that an applicant has been successful in whole or in part in the review they must refund the fee of £100 (regulation 9(7)).

The Scottish Ministers may make payments to persons appointed by them under regulation 9 (regulation 9(8)).

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

Decisions and the existence of the right of appeal must be notified in accordance with regulation 10. Where an applicant is dissatisfied with a decision following review under regulation 9 that person may appeal against that decision on any issue of fact or law to the Scottish Land Court in accordance with the terms of regulation 11.

Regulation 12 sets out certain aspects of the internal procedures of the Scottish Land Court. Regulation 12(3) sets out the orders which may be made by the Scottish Land Court following consideration of the appeal. It may confirm the decision of the Scottish Ministers or amend or alter the decision which has been appealed or substitute that decision with one of its own. Regulation 13 requires reimbursement of the fee required by regulation 8(4) in the event that the appeal to the Scottish Land Court is successful.

Regulation 14 and the Schedule make minor consequential amendments and revoke the provisions consolidated within these Regulations.