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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 70**

**The Less Favoured Area Support  
Scheme (Scotland) Regulations 2004**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2004 and shall come into force on 18th March 2004.

(2) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Integrated Administration and Control System Regulations 1993(1).

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“agricultural” includes the use of land—

- (a) for the purposes of horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping;
- (b) as grazing land, meadow land, osier land, market gardens and nursery grounds; and
- (c) for woodlands, where that use is ancillary to the use of land for other agricultural purposes;

“agri-environment scheme” means an arrangement which is—

- (a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter into an agreement in relation to the use or management of land; and
- (b) approved by the Commission of the European Communities under either—
  - (i) Article 44 of Council Regulation 1257/1999 as part of a rural development plan drawn up pursuant to Article 41 of that Regulation and containing measures pursuant to Articles 22 to 24 of that Regulation; or
  - (ii) Article 7 of Council Regulation (EEC) No. 2078/1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside(2);

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

“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;

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

(2) O.J. No. L 215, 30.7.92, p. 85, as amended by Commission Regulation (EC) No. 2772/95 (O.J. No. L 288, 1.12.95, p.35), and repealed by Council Regulation 1257/1999.

“cattle” for the purposes of regulation 11 (enterprise mix), means—

- (a) suckler cows and heifers; and
- (b) for those applicants maintaining a dairy herd in the islands of Shetland, the islands of Orkney, the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert, any other islands in the Outer Hebrides and the Inner Hebrides, or part of the Cowal peninsula as defined in Schedule 9, a livestock unit for each 5730 litres of milk quota held,

which the Scottish Ministers determine are to be taken into account from time to time;

“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(3);

“Commission Regulation 445/2002” means Commission Regulation (EC) No. 445/2002 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(4);

“common grazing” has the same meaning as it has for the purpose of Article 11 of Commission Regulation 445/2002;

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

“Council Regulation 1254/1999” means Council Regulation (EC) No. 1254/1999 on the common organisation of the market in beef and veal(7);

“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(8);

“Council Regulation 2529/2001” means Council Regulation (EC) 2529/2001 on the common organisation of the market in sheep meat and goat meat(9);

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

(3) O.J. No. L 327, 12.12.01, p.11, as corrected by Corrigendum to Commission Regulation (EC) 2419/2001 (O.J. No. L 7, 11.1.02, p.48) and amended by Commission Regulation (EC) No. 2550/2001 (O.J. No. L 341, 22.12.01, p.105).

(4) O.J. No. L 74, 15.3.02, p.1.

(5) Regulation 2A was inserted by S.I. 2000/2573.

(6) O.J. No. L 355, 5.12.92, p.1, amended by Council Regulation (EC) No. 165/1994 (O.J. No. L 24, 29.1.94, p.6), Council Regulation (EC) No. 3233/1994 (O.J. No. L 338, 28.12.94, p.13), Council Regulation (EC) No. 3235/1994 (O.J. No. L 338, 28.12.94, p.16), Council Regulation (EC) No. 3072/1995 (O.J. No. L 329, 30.12.95, p.18), Council Regulation (EC) No. 1577/1996 (O.J. No. L 206, 16.8.96, p.4), Council Regulation (EC) No. 2466/1996 (O.J. No. L 335, 24.12.96, p.1), Commission Regulation (EC) No. 613/1997 (O.J. No. L 94, 9.4.97, p.1), Council Regulation (EC) No. 820/1997 (O.J. No. L 117, 7.5.97, p.1), Council Regulation (EC) No. 1036/1999 (O.J. No. L 127, 21.5.99, p.4), Council Regulation (EC) No. 1593/00 (O.J. No. L 182, 21.7.00, p.4), Council Regulation (EC) No. 495/2001 (O.J. No. L 072, 14.3.01, p.6) and Council Regulation (EC) No. 1782/2003 (O.J. No. L 270, 21.10.03, p.1). Council Regulation (EEC) No. 3508/92 was repealed by Article 153(1) of Council Regulation (EC) No. 1782/2003, but continues to apply to applications for direct payments in respect of the calendar years preceding 2005.

(7) O.J. No. L 160, 26.6.99, p.21, corrected by Corrigendum to Council Regulation (EC) No. 1254/1999 (O.J. No. L 263, 18.10.00, p.34) and amended by Council Regulation (EC) No. 1455/2001 (O.J. No. L 198, 21.7.01, p.58), Commission Regulation (EC) No. 1512/2001 (O.J. No. L 201, 26.7.01, p.1), Commission Regulation (EC) No. 2345/2001 (O.J. No. L 315, 1.12.01, p.29) and Council Regulation (EC) No. 1782/2003 (O.J. No. L 270, 21.10.03, p.1).

(8) O.J. No. L 160, 26.6.99, p.80.

(9) O.J. No. L 341, 22.12.01, p.3.

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

“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 2529/2001;
- (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;
  - (iv) any other islands in the Outer Hebrides and the Inner Hebrides; or
  - (v) part of the Cowal peninsula as defined in Schedule 9;
- (d) maintaining a breeding herd of farmed deer for meat production;
- (e) maintaining a breeding herd of goats for fibre production;
- (f) maintaining a breeding herd of alpaca for fibre production; or
- (g) maintaining a breeding herd of llamas for fibre production;

“eligible land” has the same meaning as in regulation 6;

“eligible livestock unit” means a livestock unit determined in accordance with regulation 10(4) and Part I of Schedule 1;

“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;

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

“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)(**10**); 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, alpaca and llama;

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(10) 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).

“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 8 months and over;
- (c) 6.66 breeding ewes;
- (d) 6.66 breeding female goats;
- (e) 3.33 breeding female farmed deer 27 months and over;
- (f) 5 breeding female farmed deer over 6 months but less than 27 months;
- (g) 3.33 breeding female alpaca;
- (h) 5730 litres of milk quota;
- (i) 3.33 breeding female llamas;

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

“maximum stocking density” means 1.40 livestock units per hectare;

“minimum stocking density” means 0.12 livestock units per hectare;

“Payable Area” means the adjusted area of land on which less favoured area support is to be paid, calculated in accordance with regulation 9 and, where appropriate, regulation 11;

“retirement pension” means a category A or category B pension within the meaning of section 20(1)(f) of the Social Security Contributions and Benefits Act 1992<sup>(11)</sup>, 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;

“rough grazings and other semi-natural areas” means land containing semi-natural vegetation including heathland, heather moorland, bog, unimproved grassland and rough grassland which is used or suitable for grazing;

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

“Scheme 2004 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2003 to 31st December 2003;

“shared grazing” means land used for grazing within a field used by two or more producers;

“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<sup>(12)</sup>;

“the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999<sup>(13)</sup>;

“the 2001 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2001<sup>(14)</sup>;

“the 2002 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2002<sup>(15)</sup>;

(11) 1992 c. 4; section 20(1)(f) was amended by the Tax Credits Act 2002 (c. 21), Schedule 6; section 62 was amended by the Pensions Act 1995 (c. 26), section 131 and Schedule 4, paragraph 7; and section 63 was amended by the Tax Credits Act 2002 (c. 21), Schedule 6.

(12) S.I. 1996/1500, amended by S.I. 1997/33, 1998/206 and 1999/375, and revoked by S.S.I. 1999/187, regulation 23.

(13) S.S.I. 1999/187; revoked by S.S.I. 2001/50, regulation 23.

(14) S.S.I. 2001/50; revoked by S.S.I. 2002/139, regulation 26.

(15) S.S.I. 2002/139.

“the 2003 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2003<sup>(16)</sup>;

“usual good farming practices” means those practices undertaken on a holding in compliance with—

- (a) the provisions of environmental legislation set out in Part I of Schedule 2; and
- (b) the verifiable standards set out in Part II of Schedule 2.

(2) Unless the context otherwise requires, 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.

(3) Any 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>(17)</sup>, which has been recorded and is consequently capable of being reproduced.

### **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 before a date each year which the Scottish Ministers shall determine from time to time.

(3) Subject to paragraph (4), if an applicant submits an application for less favoured area support in respect of the relevant Scheme Year later than the date determined by the 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 13 of Commission Regulation 2419/2001.

(4) Paragraph (3) shall not apply to an applicant who has not previously claimed any subsidy dependent upon an area aid application, who submits a claim form in accordance with regulation 6(1) (b).

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

**4.**—(1) Payment of less favoured area support may be made to an applicant in respect of a Scheme Year only if—

- (a) subject to paragraphs (2) and (3), 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 not less than five years from the first payment made under—
  - (i) these Regulations;
  - (ii) the 2003 Regulations;
  - (iii) the 2002 Regulations;
  - (iv) the 2001 Regulations;
  - (v) the 1999 Regulations; or
  - (vi) the 1996 Regulations;
- (b) that applicant applies usual good farming practices on the eligible land of the applicant;
- (c) that applicant does not use on the eligible land any of the substances referred to in Article 14.2 of Council Regulation 1257/1999; and

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<sup>(16)</sup> S.S.I. 2003/129.

<sup>(17)</sup> 2000 c. 7.

- (d) that applicant complies with the environmental controls set out in Schedule 3 in respect of the eligible land.
- (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 (or was required) to be given.
- (3) An applicant is released from the undertaking referred to in paragraph (1)(a)–
  - (a) at the moment that such an applicant receives a retirement pension;
  - (b) if that applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person; or
  - (c) if the applicant ceases farming and at least three hectares of the eligible land of the applicant continues to be used for carrying out an eligible agricultural activity.

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

5. 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.

#### **Eligible land**

- 6.—(1) 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 3508/1992; or
  - (b) where the applicant has not previously claimed any subsidy dependent upon an area aid application, as declared by the applicant in a form which the Scottish Ministers shall from time to time specify.
- (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 an application made in accordance with regulation 3 relates in part to 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 area 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 50 of Commission Regulation 2419/2001 as appropriate.
- (2) For the purpose of paragraph 6 of Article 50 of Commission Regulation 2419/2001, the Scottish Ministers shall grant less favoured area support to the transferor of a holding, if the transferor–
  - (a) fulfils the conditions laid down by paragraphs 2 to 5 of Article 50 of Commission Regulation 2419/2001; and
  - (b) has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned.

#### **Amount of less favoured area support**

8.—(1) Subject to paragraph (2) and regulation 13 (minimum payment), the amount of less favoured area support shall be calculated in accordance with the following formula:–

$$LFAS = P \times R$$

Where

LFAS is the amount of less favoured area support payable;

P is the payable area calculated in accordance with regulation 9 and, where appropriate, adjusted in accordance with regulation 11; and

R is the rate of payment determined in accordance with regulation 12.

(2) Where an applicant has eligible land in more than one grazing category (as determined for the purposes of regulation 9) then—

(a) the calculation in paragraph (1) shall be applied in respect of the total area of eligible land in each grazing category and, for the purposes of each calculation—

(i) P is the payable area of land in each grazing category calculated in accordance with regulation 9 and, where appropriate, adjusted in accordance with regulation 11; and

(ii) R is the rate of payment for each type of grazing category determined in accordance with regulation 12; and

(b) the total amount of less favoured area support payable shall be the sum of each of those calculations.

### **Determination of Payable Area**

9.—(1) Subject to regulation 10, the payable area shall be the total of the areas of eligible land of the applicant in each grazing category, adjusted in accordance with the following formula:—

$$P = E \times V$$

Where

P is the Payable Area;

E is the area of eligible land in each field or shared grazing in calendar year 2003; and

V is the hectare value for each field or shared grazing determined in accordance with paragraph (2).

(2) For the purpose of paragraph (1) the hectare value shall be the entry in the third column of Schedule 4 corresponding to the grazing category in the second column of that Schedule.

(3) For the purposes of this regulation the grazing category of each field or shared grazing of the applicant shall be the entry in the second column of Schedule 4 corresponding to the entry in the first column of that Schedule relating to the stocking density of the applicant who declared the field or shared grazing in an area aid application on or before 15 May 2001.

(4) Subject to paragraph (5), for the purposes of paragraph (3), the stocking density for each field or shared grazing shall be the stocking density that was determined for that field or shared grazing by regulation 9 of the 2003 Regulations following upon an application for less favoured area support under those Regulations.

(5) Where no stocking density was determined under regulation 9 of the 2003 Regulations for a field or shared grazing then, for the purposes of paragraph (3), the Scottish Ministers shall determine a stocking density figure for that part of the land of the applicant.

### **Stocking density outwith maximum and minimum parameters**

10.—(1) The following provisions of this regulation shall apply for the purposes of the Scheme 2004 payment where the stocking density calculated in accordance with paragraph (4) and Parts I

and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2003 is either less than the minimum stocking density or greater than the maximum stocking density:–

- (a) at the start of the retention period where eligibility rests on livestock claimed under the Sheep Annual Premium Scheme;
- (b) at the start of the retention period where eligibility rests on livestock claimed under the Suckler Cow Premium Scheme;
- (c) during calendar year 2003 where eligibility rests on livestock declared separately in an application for less favoured area support; or
- (d) in the opinion of the Scottish Ministers where eligibility must be determined from a combination of livestock described in sub-paragraphs (a) to (c) above.

(2) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2003 is less than the minimum stocking density, the eligible land for the purposes of the calculation at regulation 9(1) shall be the number of hectares calculated in accordance with the following formula:–

$$E_1 = K \div M$$

Where

$E_1$  is the area of eligible land adjusted in accordance with this regulation;

$K$  is, subject to paragraph (6), the number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2003; and

$M$  is the minimum stocking density.

(3) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2003 is greater than the maximum stocking density, the eligible land for the purposes of the calculation at regulation 9(1) shall be the number of hectares calculated in accordance with the following formula:–

$$E_2 = (F \times Q) \div (J \div F)$$

Where

$E_2$  is the area of eligible land adjusted in accordance with this regulation;

$F$  is the area of eligible land determined in accordance with regulation 9(1);

$Q$  is the maximum stocking density; and

$J$  is the number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2003.

(4) For the purposes of paragraphs (1), (2) and (3), the number of eligible livestock units shall be calculated using–

- (a) where eligibility rests solely on livestock claimed under the Sheep Annual Premium Scheme, the greater of–
  - (i) the number of ewes and gimmers declared as the flock composition as part of a claim for Sheep Annual Premium; or
  - (ii) the lesser of the number of livestock claimed and the number of livestock quota units held;
- (b) where eligibility rests solely on livestock claimed under the Suckler Cow Premium Scheme, the greater of–
  - (i) the number of cows declared as the herd composition as part of a claim for Suckler Cow Premium; or



- (ii) the lesser of the number of livestock claimed and the number of livestock quota units held;
- (c) where neither sub-paragraph (a) nor (b) applies, the number of livestock units determined by a decision of the Scottish Ministers using any, or a combination of any, of the following:–
  - (i) livestock described in sub-paragraph (a) above;
  - (ii) livestock described in sub-paragraph (b) above;
  - (iii) livestock units calculated from numbers of deer, goats, alpacas or llamas held throughout the relevant calendar year;
  - (iv) where the applicant has not claimed any subsidy under the Sheep Annual Premium Scheme, ewes, gimmers and hogs declared separately as being held throughout the Scheme Year;
  - (v) where the applicant has not claimed any subsidy under the Suckler Cow Premium Scheme, suckler cows declared separately as being held throughout the Scheme Year.
- (5) Where–
  - (a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 9); and
  - (b) where eligible land, for the purpose of the calculation in regulation 9(1), for that applicant has been reduced under paragraph (2) or (3),

the Scottish Ministers shall apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 9(1).

(6) Where an applicant fails to achieve the minimum stocking density as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981(18) or in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983(19), the Scottish Ministers may, by a decision, determine the total number of livestock units to be used for the purpose of the calculation at paragraph (2).

### **Enterprise mix**

11.—(1) Where the applicant maintains at least 10% of the total eligible livestock units of the applicant based on eligible agricultural activity undertaken in 2003 as cattle, the payable area calculated in accordance with regulation 9 shall be adjusted in accordance with this regulation according to the following formula:–

$$P_1 = P_2 \times Z$$

Where

$P_1$  is the payable area adjusted in accordance with this regulation;

$P_2$  is the payable area calculated in accordance with regulation 9; and

$Z$  is the multiplier contained in the second column of Schedule 5 corresponding to the appropriate proportion of eligible livestock units maintained as cattle set out in the first column of that Schedule.

(2) Where an applicant fails to achieve the necessary cattle livestock units for the purposes of this regulation as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981 in consequence of the service of a notice or an order being in place under

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(18) 1981 c. 22.

(19) S.I. 1983/1950, as amended by S.I. 1993/3119 and S.I. 1995/2922 and, as regards Scotland, by S.S.I. 2001/52, 55, 101 and 390.

the Foot-and-Mouth Disease Order 1983, the Scottish Ministers may, by a decision, determine the total number of cattle livestock units to be used for the purposes of this regulation.

### **Rate of Payment of Less Favoured Area Support**

**12.**—(1) For the purposes of regulation 8, the rate of payment of less favoured area support shall be determined in accordance with this regulation.

(2) Where, for the purposes of regulation 9, the grazing category of land is A or B, the rate of payment shall be the rate per hectare of the Payable Area set out in the entry in the second column in Part 1 (More Disadvantaged Land) of Schedule 6 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (4).

(3) Where, for the purposes of regulation 9, the grazing category of land is C or D, the rate of payment shall be the rate per hectare of the Payable Area set out in the entry in the second column in Part 2 (Less Disadvantaged Land) of Schedule 6 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (4).

(4) For the purposes of paragraphs (2) and (3), the fragility category applicable to the applicant shall be determined according to the fragility category of the parish in which the main farm of the applicant lies as set out in Schedule 7 to these Regulations.

(5) For the purpose of paragraph (4), the main farm of the applicant shall be the farm identified as the main farm in the application for less favoured area support submitted by the applicant in accordance with regulation 3.

### **Minimum Payment**

**13.** In respect of the Scheme 2004 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than £350.

### **Powers of authorised persons**

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

(a) verification of the accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Articles 59 to 61 of Commission Regulation 445/2002; or

(b) ascertaining whether an offence under these Regulations has been or is being committed, and in doing so may be accompanied by a person assigned to assist the authorised person, for those purposes.

(2) An authorised person may enter any land or premises (other than dwelling houses not being used in connection with these Regulations).

(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 collection of animals, penning and securing;

(c) require production of and examine any records in whatever form, and 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; and

(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), wherever situated, records which are kept by means of such computer or associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

#### **Assistance to authorised persons**

15. 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 14.

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

16. 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 the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 14, or fails without reasonable excuse to comply with a requirement or request made by an authorised person under regulation 14 or 15;
- (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;
- (d) where, in the opinion of the Scottish Ministers, the applicant has failed to comply with the environmental controls set out in Schedule 3 on or in relation to eligible land.

#### **Rate of interest**

17. For the purpose of Article 49 of Commission Regulation 2419/2001, 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 specified in that Article.

#### **Cross-border holdings**

18. Schedule 8 applies to cross-border holdings.

#### **Offences**

19.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person part of, or the whole of, a 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 assisting that authorised person in accordance with regulation 15) in the exercise of the powers conferred by regulation 14 shall be guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 14 or request under regulation 15 shall be guilty of an offence.

#### **Penalties**

20.—(1) A person guilty of an offence under regulation 19(1) or (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 19(3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Time limit for prosecutions**

**21.**—(1) Summary proceedings for an offence under regulation 19 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>(20)</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**

**22.**—(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, 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 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.

### **Appeal against decision to withhold or recover payment of less favoured area support**

**23.**—(1) Where the Scottish Ministers withhold or recover the whole or any part of any grant under regulation 16, 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>(21)</sup>.

### **Appeal against decision as to eligibility of holding**

**24.**—(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).

(2) The applicant must apply to the Committee for review within 60 days of the date of the intimation of the Scottish Ministers.

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

(4) The Committee shall determine the review of the decision and notify its determination to the Scottish Ministers and the applicant within 10 days of reaching that determination.

(5) Subject to regulation 25, the determination of the Committee shall be binding on the Scottish Ministers.

### **Review**

**25.**—(1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 24(4).

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<sup>(20)</sup> 1995 c. 46.

<sup>(21)</sup> S.S.I. 2000/347, amended by S.S.I. 2001/50, 226 and 300, 2002/139 and 228, and 2003/302.

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the date of the determination referred to in regulation 24(4).

(3) On an application for a review under this regulation, the Scottish Ministers shall refer the matter to 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, and shall intimate that decision to the Scottish Ministers and the applicant in writing.

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

#### **Amendment of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000**

**26.**—(1) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 shall be amended in accordance with this regulation.

(2) In regulation 3 (application)(**22**), for “and (cc)” substitute “, (cc), (cd) and (ce)”.

(3) In regulation 4 (decisions amenable to review and appeal), insert after paragraph (cc)—

“(cd) a decision 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;

(ce) 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;”.

#### **Revocation and savings provisions**

**27.** Other than for the purposes of regulations 15 to 26 of the Less Favoured Area Support Scheme (Scotland) Regulations 2003 in relation to payments made or due to be made thereunder, those Regulations, except regulations 27 and 28, are hereby revoked.

Pentland House, Edinburgh  
25th February 2004

*ALLAN WILSON*  
Authorised to sign by the Scottish Ministers