
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 159

The Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 and come into force on 15th May 2008.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“1911 Act” means the Small Landholders (Scotland) Act 1911⁽¹⁾;

“1991 Act” means the Agricultural Holdings (Scotland) Act 1991⁽²⁾;

“1993 Act” means the Crofters (Scotland) Act 1993⁽³⁾;

“2003 Act” means the Agricultural Holdings (Scotland) Act 2003⁽⁴⁾;

“activities” means the activities referred to in regulation 10(1) and columns 2 of Schedule 2 and “activity” is to be construed accordingly;

“applicant” means a person who has made an application for aid in accordance with regulation 3 and in regulations 13 to 17 includes a person who has given an undertaking and a person who takes on an undertaking on a change of occupation as provided in regulation 12;

“application for aid” means an application for aid under these Regulations and “application” is to be construed accordingly;

“area related options” means those land managers options numbered 9 to 19 in Schedule 2;

“authorised person” means a person who is authorised by the Scottish Ministers under regulation 13 either generally or specifically, to act in relation to matters arising under these Regulations;

“Commission Regulation 796/2004” means Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross compliance, modulation and the integrated administration and control system provided for in 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⁽⁵⁾;

“Commission Regulation 1974/2006” means Commission Regulation (EC) No. 1974/2006 as amended by Commission Regulations (EC) No. 434/2007⁽⁶⁾ and (EC) No. 1236/2007⁽⁷⁾

(1) 1911 c. 49.

(2) 1991 c. 55.

(3) 1993 c. 44.

(4) 2003 asp 11.

(5) O.J. No. L 141, 30.4.2004, p.18 as last relevantly amended by Commission Regulation (EC) No. 1550/2007 (O.J. No. L 337, 21.12.2007, p.79).

(6) O.J. No. L 104, 21.4.2007, p.8.

(7) O.J. No. L 280, 24.10.2007, p.3.

laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(8);

“Commission Regulation 1975/2006” means Commission Regulation (EC) No. 1975/2006 as corrected by Commission Regulation (EC) No. 1396/2007(9) laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005, as regards the implementation of control procedures as well as cross compliance in respect of rural development support measures(10);

“compliance requirements” means the compliance requirements specified in regulation 10(5);

“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(11);

“Council Regulation 1698/2005” means Council Regulation (EC) No. 1698/2005 as amended by Council Regulations (EC) No. 1944/2006(12), (EC) No. 2012/2006(13) and (EC) No. 146/2008(14) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(15);

“Crofters Commission” means the Crofters Commission established under section 1 of the Crofters (Scotland) Act 1955(16);

“eligible land” means land which is eligible in accordance with regulation 8 as read with any relevant specific eligibility requirements under particular land managers options;

“grazings committee” means a committee appointed under section 47(1) or (3) of the 1993 Act and includes a grazings constable;

“holding” means all the production units managed by a farmer that are situated within Scotland;

“IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005(17);

“IACS year” has the meaning given to it in regulation 2(1) of the IACS Regulations;

“land managers options” means the options set out in Schedule 2;

“landlord” means–

- (a) in the case of an agricultural lease constituting a 1991 Act tenancy within the meaning of the 2003 Act, the landlord within the meaning of section 85 of the 1991 Act;
- (b) in the case of a lease constituting a limited duration tenancy or short limited duration tenancy under the 2003 Act, the landlord within the meaning of section 93 of that Act;
- (c) in the case of a croft within the meaning of the 1993 Act, the landlord within the meaning of section 61(1) of that Act; and
- (d) in the case of a holding within the meaning of the 1911 Act to which the 1991 Act does not apply, the same as it means in the 1911 Act,

and, where appropriate, includes a head tenant;

(8) O.J. No. L 368, 23.12.2006, p.15.

(9) O.J. No. L 311, 29.11.2007, p.3.

(10) O.J. No. L 368, 23.12.2006, p.74.

(11) O.J. No. L 270, 21.10.2003, p.1 as last amended by Council Regulation (EC) No. 146/2008 (O.J. No. L 46, 21.02.2008, p.1).

(12) O.J. No. L 367, 22.12.2006, p.23.

(13) O.J. No. L 384, 29.12.2006, p.8.

(14) O.J. No. L 46, 21.02.2008, p.1.

(15) O.J. No. L 277, 21.10.2005, p.1.

(16) 1955 c. 21 repealed by the Crofters (Scotland) Act 1993 (c. 4) which continued in existence the Crofters Commission.

(17) S.I. 2005/218.

“relevant competent authority” has the meaning given to it in regulation 5 of the IACS Regulations;

“relevant period” means the period of the undertaking as determined under regulation 10 and the relevant period may be different in relation to different activities or for each different undertaking;

“scheme guidance” means the guidance published by the Scottish Ministers from time to time under regulation 20(18);

“scheme year” means the year commencing on the last date for submission of the single application under regulation 6 of the IACS Regulations as read with Article 20 of Commission Regulation 796/2004 and having the same period as the IACS year;

“single application” has the meaning given to it in Article 2(11) of Commission Regulation 796/2004;

“tenant” means—

- (a) in the case of an agricultural lease constituting a 1991 Act tenancy within the meaning of the 2003 Act, the tenant within the meaning of section 85 of the 1991 Act;
- (b) in the case of a lease constituting a limited duration tenancy or short limited duration tenancy under the 2003 Act, the tenant within the meaning of section 93 of that Act;
- (c) in the case of a croft within the meaning of the 1993 Act, the crofter within the meaning of section 3(3) of that Act;
- (d) in the case of a holding within the meaning of the 1911 Act to which the 1991 Act does not apply, the landholder within the meaning of section 2(2) of the 1911 Act,

and, where appropriate, includes a sub tenant; and

“undertaking” means an undertaking or undertakings in writing given by an applicant in accordance with regulation 10.

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000(19) which has been recorded and is consequently capable of being reproduced.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or numbered Schedule, shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

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

(5) Words and phrases used in Schedules 2 and 3 and not defined in paragraph (1) shall be construed in accordance with Schedule 1.

Applications for aid

3.—(1) Subject to paragraph (4), an application for aid must be submitted in writing to such authority, at such time and in such form and manner as the Scottish Ministers may reasonably require.

(2) An application for aid made by a grazings committee must include—

- (a) the written consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing the subject of the application;
- (b) evidence that notice has been given in accordance with regulation 6(4); and

(18) The scheme guidance is available online at www.scotland.gov.uk or from the Scottish Government Rural Directorate, Pentland House, Robb’s Loan, Edinburgh, EH14 1TY.

(19) 2000 c. 7 as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

- (c) confirmation from the Crofters Commission that it has approved the application or, as the case may be, has received no representation under regulation 6(5).
- (3) The Scottish Ministers may at any time suspend the operation of the scheme provided for by these Regulations and, while so suspended, no application under paragraph (1) may be submitted to them.
- (4) The application for aid must include an undertaking.
- (5) Where such undertaking specifies activities under area related options, the applicant must be either—
 - (a) the owner of the eligible land and—
 - (i) in lawful actual occupation of that land; or
 - (ii) has undertaken jointly with any tenant to assume the obligations under their activities or an undertaking (regulation 12 applying in the case where the tenant’s tenancy has ended); or
 - (b) the tenant of the eligible land who is in lawful actual occupation of that land—
 - (i) under a lease which will run until the end of the relevant period of the undertaking;
 - (ii) under a lease with security of tenure by virtue of any statutory provision until the end of that period; or
 - (iii) in the case where neither head (i) nor (ii) applies where the tenant has jointly with the landlord given the undertaking until the end of that period (in which case regulation 12 applies).
- (6) An applicant must also submit a single application to a relevant competent authority in accordance with the IACS Regulations for the IACS year which begins in the calendar year in which the undertaking begins.
- (7) Where there is more than one relevant period in relation to an undertaking or undertakings the longer of the relevant periods is deemed to be the relevant period for the purposes of paragraph (5).
- (8) An applicant must provide any information and evidence the Scottish Ministers reasonably require in order to consider the application.

Payment of aid

- 4.—(1) Subject to the provisions of these Regulations, the Scottish Ministers may make payment of aid to an applicant who has given an undertaking.
- (2) Where such undertaking includes activities under area related options, the Scottish Ministers may make payment of aid to an applicant who is the owner or tenant of the eligible land to which the undertaking relates and is in lawful occupation of that land or, in the case of an owner, has jointly with the tenant, given such an undertaking.
- (3) Payment of aid shall be made subject to the condition that the applicant complies with the undertaking.

Maximum amount of aid payable

5. The maximum amount of aid payable to an applicant under these Regulations in respect of a scheme year is calculable as the sum of the allowance allocated to each individual whole hectare of land in Scotland comprised in the agricultural parcels declared in the single application submitted to the relevant competent authority by the applicant in accordance with Article 22 of Council Regulation 1782/2003 and Article 12(1)(d) of Commission Regulation 796/2004 as set out in the following table:

<i>Hectare of land</i>	<i>Allowance per hectare (£)</i>
Hectare 1 to hectare 10	75
Hectares over 10 to hectare 100	30
Hectares over 100 to hectare 1000	1
Hectares over 1000	0.1

Crofters common grazings

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

(2) Such undertaking must include an obligation upon the grazings committee to bind their successors in office to the undertaking.

(3) Subject to paragraph (4), payments of aid to a grazings committee must be made to the clerk of the grazings committee and the clerk shall—

- (a) divide the aid among the eligible crofters in such proportion as determined by the grazings committee; or
- (b) reimburse the aid accordingly.

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

(5) Any such crofter as is mentioned in paragraph (4) may within one month of the date of the notice under that paragraph make representations in respect of the proposed application and the proposed division of aid or reimbursement to the Crofters Commission who may approve the proposed application and the proposed division of aid or reimbursement with or without modification, or reject them.

(6) Where the Crofters Commission receives representations under paragraph (5) in respect of a proposed application the grazings committee will only be entitled to submit the proposed application, incorporating any modification made by the Crofters Commission, approved by the Crofters Commission under paragraph (5).

(7) The actings in relation to the relevant common grazing or part of the common grazing of any crofter with a share in that common grazing or part who has received or will receive aid in accordance with paragraph (3)(a) and (b), and any breach of the undertaking by such a crofter, will be deemed to be the actings of, or a breach by, the grazings committee for the purposes of these Regulations.

Restrictions on acceptance of applications and payment of aid

7.—(1) The Scottish Ministers must reject an application for aid—

- (a) which is received by them after any closing date for applications as provided for in regulation 3(1); or
- (b) in relation to any eligible land which is occupied by a tenant unless they are satisfied that the tenant has notified the landlord, and in the case of a sub tenant, the owner of the eligible land and the head tenant, of the intention of that tenant to submit an application for aid.

(2) The Scottish Ministers must not pay aid—

- (a) if they are satisfied that the use of the land in accordance with the proposals contained in the application would frustrate the purposes of any assistance previously given or to

be given out of money provided by or under any statutory provision or by the European Community;

- (b) if they are satisfied that any payment under these Regulations would duplicate any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community; or
- (c) where the applicant is excluded from support under Council Regulation (EC) No. 1257/1999⁽²⁰⁾ or Council Regulation 1698/2005 by application of a penalty consequent upon Articles 18, 23 or 31 of Commission Regulation 1975/2006.

(3) For the purposes of paragraph (2)(b), a sum duplicates such assistance if it is, or would be, paid for any of the same purposes.

Eligible land

8.—(1) Where an undertaking includes activities under area related options, land is eligible to have such activities carried out on it if it is land in Scotland declared in the application for aid and the land is—

- (a) comprised in an agricultural parcel declared in the single application submitted to the relevant competent authority by the applicant in accordance with Article 22 of Council Regulation 1782/2003 and Article 12(1)(d) of Commission Regulation 796/2004; or
- (b) approved for that purpose and given an unique identification number compatible with the identification system for agricultural parcels referred to in Article 20 of Council Regulation 1782/2003 by the Scottish Ministers.

(2) The land must also be compliant with any particular eligibility or site requirements specified in column 2 of Schedule 2 in relation to the particular activity under the relevant area related option.

(3) In declaring the land in the application for aid under paragraph (1), the applicant must use the unique identification number for each reference parcel of land under or compatible with the identification system for agricultural parcels referred to in Article 20 of Council Regulation 1782/2003 and Article 6 of Commission Regulation 796/2004 where that number exists at the date of the application.

Rates of payment for activities undertaken

9. The amount of aid payable under regulation 4 will, subject to the maximum amount of aid per hectare calculated under regulation 5 be calculated with reference to the activity or activities undertaken, and the rate of payment in respect of each activity described in column 2 of Schedule 2 shall be the rate shown opposite the entry for that activity in column 3 of that Schedule.

Undertakings

10.—(1) An applicant must give the Scottish Ministers an undertaking to carry out, or as the case may be, to carry out and maintain at least one of the activities set out in column 2 of Schedule 2 in accordance with the eligibility conditions and requirements set out in the paragraph which begins that Schedule and that column and, as the case may be, column 3 of that Schedule in relation to that activity.

(2) Each undertaking given must be for a period determined by the Scottish Ministers (“the relevant period”) and in the case of an undertaking to carry out activities under area related options the relevant period must be not less than 5 years.

⁽²⁰⁾ O.J. No. L 160, 26.06.1999, p.80 as last amended by Council Regulation (EC) No. 1698/2005 (O.J. No. L 277, 21.10.2005, p.1).

(3) More than one relevant period may apply in relation to different undertakings or activities to be carried out or carried out and maintained in terms of an undertaking.

(4) The date of commencement of each undertaking and such activity shall be determined by the Scottish Ministers.

(5) Where an undertaking given under paragraph (1) specifies an activity or activities under any of the land managers options numbered 9 to 17 the applicant must also undertake, in relation to the whole of the applicant's holding, to comply with the following compliance requirements—

- (a) the statutory management requirements established by Article 4 of, and Annex III to, Council Regulation 1782/2003 as amended from time to time;
- (b) the good agricultural and environmental conditions specified in regulation 4 of, and the Schedule to, the Common Agricultural Policy Schemes (Cross Compliance) (Scotland) Regulations 2004(21);
- (c) the historic environment condition specified in Part 1 of Schedule 3; and
- (d) the requirements applicable under the enactments specified in Part 2 of Schedule 3.

(6) Where an undertaking given under paragraph (1) specifies an activity or activities under either or both land managers options numbered 18 and 19 and no activity or activities under any of the land managers options numbered 9 to 17 are specified in such undertaking the applicant must also undertake, in relation to the whole of the applicant's holding to comply with the compliance requirements in paragraph (5)(a) and (b).

(7) An applicant must give the Scottish Ministers any other undertaking as the Scottish Ministers consider appropriate for the purposes of these Regulations.

Claims and payment

11.—(1) A claim for payment of aid under regulation 4 must be made by an applicant in writing at such time and in such form and manner as the Scottish Ministers may require.

(2) An applicant must provide all particulars, information and copies of such documents and records relating to such claim as the Scottish Ministers may reasonably require.

(3) Payment of aid in respect of a scheme year shall be paid annually in arrears, after the applicant has carried out, or as the case may be, carried out and maintained, at least one of the activities set out in Schedule 2.

(4) In the case of a payment of aid relating to actual costs incurred in relation to activities included in an undertaking, payment must only be made following production of evidence that the amount of eligible expenditure for which aid is claimed has been defrayed, including details of any discount thereon received.

(5) Payment of aid shall be made only where the Scottish Ministers are satisfied that—

- (a) the eligibility conditions and requirements set out in the paragraph which begins Schedule 2 and in column 2 of that Schedule and, as the case may be, column 3 of that Schedule, in relation to that activity have been met; and
- (b) where an undertaking specifies an activity or activities under an area related option the relevant compliance requirements as undertaken in terms of regulation 10(5) have been complied with.

(6) The provisions of these Regulations are, insofar as the aid claimed includes aid under Council Regulation 1698/2005, subject to Article 5 of Council Regulation 1698/2005 and Article 2 and paragraphs 5 and 6 of Article 27 of Commission Regulation 1974/2006.

Change of occupation of land

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

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

(3) A new occupier of all or any part of the land who wishes to take on the undertaking, or a landlord who has undertaken jointly with the tenant, to assume any undertaking and who becomes a new occupier when the tenancy ends, must furnish the Scottish Ministers with such information in such form and within such period following the change of occupation as the Scottish Ministers may determine.

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

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

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

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

(6) Where an undertaking specifies activities under area related options and where, during the period of an undertaking, an occupier increases the area of their landholding the occupier must comply with the relevant compliance requirements as regards the increased area of landholding and, if the occupier wishes the undertaking to also apply to the increased area of landholding, the occupier must submit to the Scottish Ministers an application for aid in accordance with regulation 3.

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

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

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

(9) Where the Scottish Ministers are satisfied as to the matters specified in paragraph (5), they shall, subject to regulation 4, make payments of such proportion, if any, as they have determined under paragraph (7) are due for the remainder of the period of the undertaking to the new occupier or, as the case may be, former occupier of all the land who has taken on the undertaking.

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

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

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

(12) The provisions of this regulation are, insofar as the aid paid under these Regulations includes aid under Council Regulation 1698/2005, subject to Articles 44 and 45 (transfer of holding) and Article 47 (force majeure or exceptional circumstances) of Commission Regulation 1974/2006, and where an applicant is required to reimburse the aid paid, interest shall be payable thereon at the rate calculated in accordance with that provided in regulation 18.

Powers of authorised persons

13.—(1) The Scottish Ministers may authorise a person, either generally or specifically, to act in relation to matters arising under these Regulations, and an authorised person may at all reasonable hours, on producing, if so required, some duly authenticated document showing the authorised person's authority, enter on any land or premises—

- (a) to which an application for aid or undertaking relates; or
- (b) on which the authorised person has reasonable grounds to believe that documents relating to an application for aid or undertaking are being kept, for any of the purposes mentioned in paragraph (2).

(2) The purposes referred to in paragraph (1) are—

- (a) inspecting the land to which the application or undertaking relates;
- (b) verifying the accuracy of any information provided by an applicant or on the applicant's behalf, relating to an application, a claim for aid or an undertaking;
- (c) determining whether or not an applicant has complied with an undertaking; or
- (d) providing a control report in accordance with Article 13 or 19(2) of Commission Regulation 1975/2006.

(3) An authorised person who has entered any land or premises under paragraph (1) may—

- (a) inspect the land and any premises, plant, machinery, equipment, document or record on it which that person reasonably believes relates to an application, a claim for payment of aid or an undertaking;
- (b) require the applicant, or any employee or agent of such applicant, to produce, or secure the production of, any document or supply any additional information in the applicant's possession or under the applicant's control relating to an application, a claim for payment of aid or an undertaking, as the case may be;
- (c) where any information referred to in sub paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require that information to be reproduced in a form in which it may be easily read and can be taken away;
- (d) require copies of or extracts from any such document or other record referred to in sub paragraphs (a) or (b) to be produced;

- (e) retain a copy of any document produced to the authorised person;
- (f) seize and retain any document or other record which that person reasonably believes may be required as evidence in proceedings under these Regulations; and
- (g) in so far as may be necessary for the purposes of paragraph (2)(b) or (c), inspect and count livestock on the land or premises and may, for this purpose, require the applicant, or any employee or agent of such applicant, to arrange for the collection, penning and securing of such livestock.

(4) An authorised person who enters any land or premises under paragraph (1) for the purposes referred to in paragraph (2)(c) or (d) may exercise, in addition to the powers specified in paragraph (3), any of the powers specified in regulation 6(3) of the Common Agricultural Policy Schemes (Cross Compliance) (Scotland) Regulations 2004⁽²²⁾.

(5) An applicant or any employee or agent of such applicant must give an authorised person all reasonable assistance in relation to the matters mentioned in paragraphs (1) and (3) above.

(6) An authorised person entering any land under paragraph (1) may be accompanied by—

- (a) any official of the European Commission; and
- (b) such other person as the authorised person considers necessary,

and paragraphs (3) and (4) apply to that person when acting under the instructions of an authorised person as they apply to an authorised person.

(7) An authorised person will not be liable in any proceedings for anything done in exercise of the powers conferred on an authorised person by these Regulations if a court, hearing such proceedings, is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

(8) Paragraph (1) above applies to any land used for the purposes of a dwellinghouse only where reasonable notice of its intended exercise has been given to all residents of that dwellinghouse.

Breaches of undertakings etc.

14.—(1) Where—

- (a) any information furnished to the Scottish Ministers by the applicant or on the applicant's behalf, is false or misleading in a material respect;
- (b) the applicant is in breach of any of the terms of an undertaking or any condition subject to which payment of aid was made;
- (c) the applicant is in breach of any requirement to which the applicant is subject under these Regulations or under Council Regulation 1698/2005, Commission Regulation 1974/2006 or Commission Regulation 1975/2006; or
- (d) the whole or any part of any sum paid or payable under an undertaking duplicates assistance provided or to be provided out of monies made available by—
 - (i) the European Community; or
 - (ii) under any statutory provision,

the Scottish Ministers may exercise any of the powers specified in regulation 16.

(2) For the purposes of paragraph (1)(d), a sum duplicates such assistance if it is, or would be, paid for any of the same purposes.

(22) S.S.I. 2004/518 as amended by S.S.I. 2005/143 and 2007/99.

(3) Where—

- (a) there is a change of occupation under regulation 12 and the applicant has transferred all or part of the land to which an undertaking relates to another person (“the successor”);
- (b) the successor has, within 3 months of the date of the transfer, given notice to the Scottish Ministers to assume the undertaking in place of the applicant; and
- (c) the Scottish Ministers have accepted that undertaking,

the applicant shall be released from their undertaking with effect from the date of the acceptance by the Scottish Ministers of the successor’s undertaking other than in respect of any breach or other matter occurring before that date.

Other cases in which recovery etc. powers apply

15. The Scottish Ministers may exercise the powers specified in regulation 16(1)(a), (b) and (c) where they are satisfied that—

- (a) there has been a material change in the nature, scale or timing of the activities or capital items in relation to which an undertaking has been made;
- (b) the activities or capital items in relation to which an undertaking has been made are delayed or are unlikely to be completed;
- (c) the applicant has intentionally obstructed an authorised person (or a person accompanying that person and acting under that person’s instructions) in the exercise of the powers under regulation 13 or failed to comply with a requirement imposed under regulation 13(3)(b) to (g);
- (d) sums paid are otherwise not due under these Regulations; or
- (e) the European Commission has decided that the aid paid, or to be paid, does not comply with Council Regulation 1698/2005, Commission Regulation 1974/2006 or Commission Regulation 1975/2006.

Powers of recovery etc. of the Scottish Ministers

16.—(1) The powers conferred by regulations 14 and 15 are—

- (a) to apply a reduction to any payment of aid made, or to be made to the applicant under these Regulations;
- (b) to withhold the whole or any part of the aid payable to the applicant; and
- (c) to recover on demand the whole or any part of any aid already paid to an applicant.

(2) Where the powers specified in paragraph (1) are exercised and the Scottish Ministers also think that the applicant acted recklessly, the Scottish Ministers may also require the applicant to pay to the Scottish Ministers an additional sum equal to no more than 10% of the aid paid or payable to the applicant.

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

(4) A reduction under paragraph (1)(a) must be applied in accordance with Council Regulation 1975/2006.

(5) The powers conferred upon the Scottish Ministers by paragraphs (2) and (3) shall be exercisable by a notice in writing.

Information and records

17.—(1) An applicant must—

- (a) retain all invoices, accounts and other relevant documents in relation to the application for aid or undertaking and produce them for inspection if required to do so by the Scottish Ministers; and
- (b) provide such additional information in relation to the application for aid, undertaking or aid paid in pursuance of the application for aid or undertaking as the Scottish Ministers may require.

(2) The duties in paragraph (1) apply for a period of 6 years following the last payment of aid under these Regulations.

(3) If the applicant transfers the original of any such document to another person in the normal course of business, the applicant must keep a copy of that document for that period.

(4) Paragraph (1) does not apply where the document has been removed by any person lawfully authorised to remove it.

Recovery of interest

18.—(1) Where the Scottish Ministers exercise the power conferred by regulation 16(1)(c) they may also recover on demand interest on the sum to be recovered at a rate of interest one per cent above the sterling 3 month London interbank offered rate on a day to day basis from the date of demand of repayment until the date of recovery.

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

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

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

Guidance

20.—(1) The Scottish Ministers may publish guidance from time to time on—

- (a) the circumstances in which they will normally apply a reduction under regulation 16(1)(a), and the amount such a reduction will normally be; and
- (b) generally, how they intend to perform their functions under these Regulations.

(2) The Scottish Ministers must have regard to any guidance published under paragraph (1) when performing their functions under these Regulations.

Offences

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

- (a) for the purposes of obtaining any financial assistance under these Regulations for themselves or any other person, they knowingly or recklessly make a statement which is false or misleading in any material particular; or
- (b) they intentionally obstruct an authorised person (or a person accompanying that person and acting under that person's instructions) in the exercise of the powers under regulation 13.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Proceedings for an offence under these Regulations may be commenced within the period of 12 months from the date on which the offence was committed.

(4) Section 136(3) of the Criminal Procedure (Scotland) Act 1995⁽²³⁾ (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

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

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

Right of appeal

22. The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004⁽²⁴⁾ are amended by inserting after regulation 4(v)–

“(w) a decision by the Scottish Ministers to apply a reduction to any payment of aid or to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum under the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008⁽²⁵⁾, in terms of those Regulations.”.

St Andrew's House,
Edinburgh
17th April 2008

RICHARD LOCHHEAD
A member of the Scottish Executive

⁽²³⁾ 1995 c. 46.

⁽²⁴⁾ S.S.I. 2004/381 as amended by S.S.I. 2005/117, 225 and 569, 2007/439 and 2008/100.

⁽²⁵⁾ S.S.I. 2008/159.