

2008 No. 159

AGRICULTURE

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

<i>Made</i> - - - -	<i>17th April 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>21st April 2008</i>
<i>Coming into force</i> - -	<i>15th May 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

The Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for the reference to Article 4 and Annex III to 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(b) to be construed as a reference to that Article and Annex, as amended from time to time.

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(c);

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

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

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

“activities” means the activities referred to in regulation 10(1) and columns 2 and 3 of Schedule 2 and “activity” is to be construed accordingly;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(b) 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).

(c) 1911 c.49.

(d) 1991 c.55.

(e) 1993 c.44.

(f) 2003 asp 11.

“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(a);

“Commission Regulation 1974/2006” means Commission Regulation (EC) No. 1974/2006 as amended by Commission Regulations (EC) No. 434/2007(b) and (EC) No. 1236/2007(c) 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)(d);

“Commission Regulation 1975/2006” means Commission Regulation (EC) No. 1975/2006 as corrected by Commission Regulation (EC) No. 1396/2007(e) 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(f);

“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(g);

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

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

“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;

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- (a) 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).
- (b) O.J. No. L 104, 21.4.2007, p.8.
- (c) O.J. No. L 280, 24.10.2007, p.3.
- (d) O.J. No. L 368, 23.12.2006, p.15.
- (e) O.J. No. L 311, 29.11.2007, p.3.
- (f) O.J. No. L 368, 23.12.2006, p.74.
- (g) 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).
- (h) O.J. No. L 367, 22.12.2006, p.23.
- (i) O.J. No. L 384, 29.12.2006, p.8.
- (j) O.J. No. L 46, 21.02.2008, p.1.
- (k) O.J. No. L 277, 21.10.2005, p.1.
- (l) 1955 c.21 repealed by the Crofters (Scotland) Act 1993 (c.4) which continued in existence the Crofters Commission.

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

“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;

“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(b);

“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(c) 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.

(a) S.I. 2005/218.

(b) 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.

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

(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
- (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(a) 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.

(a) 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).

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.

(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(a);
- (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.

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

- (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 1975/2996.

(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(a).

(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.

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

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

(3) Where—

- (a) there is a change of occupation under regulation 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(a) (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(b) 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(c), in terms of those Regulations.”.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew's House,
Edinburgh
17th April 2008

(a) 1995 c.46.

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

(c) S.S.I. 2008/159.

INTERPRETATION OF SCHEDULES

In Schedules 2 and 3 and in this Schedule–

“the 1994 Regulations” means the Organic Aid (Scotland) Regulations 1994(a);

“the 2004 Regulations” means the Organic Aid (Scotland) Regulations 2004(b);

“the 2008 Regulations” means the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(c);

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

“arable crops” means cereals, linseeds, oilseed, root crops, fruit crops or protein crops, including vining peas;

“arable land” means land which was in an arable crop (or under set aside or lying fallow as part of a normal crop rotation) in one or more years during the five years prior to the 15th May in the year of submission of the application for aid;

“beetlebank” means a grass strip between 1.5 metres and 6 metres created in the margin of or through an arable field in order to allow beneficial insects to over-winter;

“ditches” means a man-made channel or adapted watercourse on in-bye land, which has a bed width of not less than 0.3 metres the purpose of which is to generally carry water away from surrounding land or field drainage systems throughout the year;

“European site” has the meaning given in regulation 10 of the Conservation (Natural Habitats, & c.) Regulations 1994(d);

“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;

“grass margin” means a grass strip between 1.5 metres and 6 metres created in the margin of or through an arable field in order to allow beneficial insects to over-winter;

“hedge” means a line of shrubs or trees which delineate field boundaries;

“IACS business” means a business registered on the Integrated Administration and Control System run by the Scottish Government Rural Payments and Inspections Directorate and given a unique business reference number;

“improved grassland” means either land used for grazing (other than arable land) where over one third of the sward comprises, singly or in mixture, ryegrass, cocksfoot or timothy, or land that has been improved by management practices such as liming and top dressing, where there is not a significant presence of sensitive plant species indicative of native unimproved grassland;

“in-bye land” means that part of a farm not comprising the hill and rough grazings, the bulk of which is used for arable and grassland production;

“injurious weeds” means spear thistle, creeping or field thistle, curled dock, broadleaved dock, and common ragwort;

“Lantra” means the Sector Skills Council for the Environmental and Land-based Sector;

“livestock” means bovine, ovine, caprine, alpaca and farmed deer;

(a) S.I. 1994/1701 as amended by S.I. 1996/3083 and 1999/107.

(b) S.S.I. 2004/143 as amended by S.S.I. 2004/174 and 2005/619.

(c) S.S.I. 2008/100.

(d) S.I. 1994/2716. Regulation 10 was relevantly amended by S.S.I. 2004/475.

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

“native woodland” means self-seeded woodland of native species or woodland derived from an originally naturally occurring woodland;

“Nitrates Action Programme” means the action programme set out in the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003(a);

“nitrate vulnerable zone” means any area designated as a nitrate vulnerable zone by regulation 3 of the Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002(b) and regulation 3 of the Designation of Nitrate Vulnerable Zones (Scotland) (No. 2) Regulations 2002(c);

“non-native invasive weeds” means the following–

- Allium paradoxum – Few flowered leek
- Allium triquetrum - Three cornered garlic
- Buddleja davidii - Butterfly bush
- Claytonia sibirica - Pink purslane
- Cotoneaster bullatus - Hollyberry cotoneaster
- Cotoneaster horizontalis - Wall cotoneaster
- Cotoneaster integrifolius - Small leaved cotoneaster
- Cotoneaster simonsii - Himalayan cotoneaster
- Crococsmia x crocosmiiflora – Monbretia
- Fallopia japonica – Japanese knotweed
- Fallopia sachaliensis - Giant knotweed
- Gaultheria shallon - Shallon
- Heracleum mantegazzianum – Giant Hogweed
- Impatiens glandulifera - Himalayan balsam
- Impatiens parviflora - Small balsam
- Lysichiton americanum - American skunk cabbage
- Pentaglottis sempervirens - Green alkanet
- Persicaria wallichii - Himalayan knotweed
- Rhododendron ponticum - Rhododendron ponticum
- Rosa rugosa - Japanese rose
- Symphoricarpos albus - Snowberry

“poaching” means the trampling or treading of the ground surface by livestock resulting in permanent damage to the vegetation;

“rough grazings” means land containing semi-natural vegetation including heathland, heather moorland, bog and rough grassland used or suitable for use as grazing;

“rush pasture” means permanent pasture on poorly drained in-bye land that is periodically saturated with water where extensive areas are dominated by soft rush and/or compact rush;

“SSSI site” means a site of special scientific interest within the meaning of section 3(6) or of Schedule 5 to the Nature Conservation (Scotland) Act 2004(d);

(a) S.S.I. 2003/51 as amended by S.S.I. 2003/169.

(b) S.S.I. 2002/276 as amended by S.S.I. 2005/305.

(c) S.S.I. 2002/546.

(d) 2004 asp 6.

“scrub” means low growing woody vegetation of small trees and shrubs including linear scrub along field margins and includes all stages from scattered bushes to closed canopy vegetation dominated by locally native shrubs or tree saplings wholly less than 5 metres tall occasionally with a few scattered trees; carr, scrub in the uplands and lowlands (including wood edge habitats), montane scrub and coastal scrub are included;

“the UK Forestry Standard” means the UK Forestry Standard: the government’s approach to sustainable forestry published by the Forestry Commission^(a);

“unenclosed or hill land” means rough grazings; and

“unimproved grassland” means in-bye land used for grazing or mowing which is not normally treated with mineral fertiliser or lime and does not constitute either improved grassland or rough grazings.

(a) The latest edition of this publication is the 2nd Edition published 2004, ISBN 0855386266 and copies are available online at www.forestry.gov.uk or from Forestry Commission Publications, PO Box 25, Wetherby, West Yorkshire, LS23 7EW.

SCHEDULE 2

Regulation 9, 10(1) and 11

LAND MANAGERS OPTIONS

OPTION, ACTIVITIES AND ELIGIBILITY CONDITIONS AND RATES OF PAYMENT

It is an additional eligibility condition of the activities specified in the land managers options that they must not be carried out, or must not be carried out and maintained, on land set aside in accordance with Articles 54 or 107 of Council Regulation 1782/2003.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
1. Skills development	<p>An applicant is eligible for payment under this option if the applicant, the applicant's immediate family and/or employee over 16 years, attends a training course, by a trainer recognised by Lantra, to improve business, marketing, management or technical skills or enabling them to diversify into other activities but which–</p> <ul style="list-style-type: none"> (a) does not form part of normal programmes or systems of agricultural or forestry education at secondary or higher levels; (b) is not required for or leads to a certificate, licence, diploma or other qualification required by law to permit persons to carry out their basic work activities; or (c) is not funded, in whole or in part, by other public funds. 	75% of the course fees, up to a maximum of £500 per scheme year.
2. Business audit	<p>(1) An applicant is eligible for payment under this option if the applicant–</p> <ul style="list-style-type: none"> (a) undertakes an online or paper based environmental or business audit of their IACS business; and (b) provides– <ul style="list-style-type: none"> (i) evidence that the audit has been completed and provides details of the audit undertaken; and 	50% of actual costs up to a maximum of £150 based on invoices or record of labour hours.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(ii) for beneficiaries who undertake their own audit, a record of labour hours (in the form of a time sheet). The skilled labour rate applies.</p> <p>(2) An applicant will not be eligible to receive payment under this option if they breach the compliance requirements specified in regulation 10(5)(a) and (b).</p>	
<p>3. Nutrient management plan</p>	<p>(1) An applicant is eligible for payment under this option if the applicant–</p> <ul style="list-style-type: none"> (a) completes a nutrient management plan (NMP) and implements nutrient planning and management on arable land and improved grassland; (b) calculates nutrient requirements of crops in selected fields taking account of the soil analysis results, nutrients available from previous inputs and cropping history; (c) follows Scottish Agricultural College recommendations for nitrogen, phosphorus and potassium; (d) keeps records of the quantities of mineral fertiliser, farmyard manure and slurry applied to the field and when these were applied; (e) keeps records of no-spread zones; (f) applies fertiliser at a time which will promote maximum nutrient uptake by the crop; and (g) where there is a watercourse (including ditches), spring or borehole in the field on which the option is to be undertaken, uses suitable protective measures, the details and maps of these must be prepared and retained; 	<p>£150 if the applicant completes a NMP.</p> <p>40% of actual costs up to £300 if an advisor completes a NMP.</p>

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(2) Where an advisor completes the NMP, a receipted invoice with details of the activities carried out, the suppliers details and total cost must be provided to the Scottish Ministers.</p> <p>(3) Land in a nitrate vulnerable zone is not eligible.</p>	
<p>4. Modernisation through electronic data management</p>	<p>(1) An applicant is eligible for payment under this option if the applicant invests in electronic hardware and software to improve the performance of agricultural businesses under either or both of the following options–</p> <p>(a) option A - Electronic recording equipment for livestock production in which case one or more than one of the following are eligible–</p> <p>(i) electronic ear tag readers from which information can be gathered and downloaded for management purposes;</p> <p>(ii) electronic weigh cells and recording equipment from which information can be gathered and downloaded for management purposes; or</p> <p>(iii) compatible software which can utilise the downloaded data from (i) and (ii) (or both) or any other source; or</p> <p>(b) option B - Precision farming equipment in which case one or more than one of the following items are eligible–</p> <p>(i) precision farming equipment from which information can be gathered and downloaded for management purposes;</p>	<p>40% of eligible costs up to a maximum amount of £1,000 per option A or B. Where purchases have been made in collaboration with others the 40% of eligible costs applies only to the applicant's share of eligible costs. An applicant may make only one claim for payment under each option A or B in any 5 years. A one-off payment will be made, paid in arrears.</p>

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> (ii) precision farming equipment which controls inputs based on data from (i) or any other source; or (iii) compatible software which can utilise the downloaded data from (i) or (ii) (or both). <p>(2) Each option, option A or option B above, can only be undertaken once in any 5 years. Items purchased must be retained for 5 years unless evidence can be provided that the items have been replaced with like items of an equivalent or higher specification.</p> <p>(3) The purchase of personal computers or laptops are ineligible costs.</p>	
<p>5. Management of genetically appropriate tree stocks for seed production</p>	<p>(1) An applicant is eligible for payment under this option if the applicant is an owner or occupier of forest land and the applicant–</p> <ul style="list-style-type: none"> (a) has a forest holding greater than 1 hectare; and (b) prepares and implements a plan for the management of registered seed stands to promote seed production and facilitate seed collection including– <ul style="list-style-type: none"> (i) preparatory work and documentation gathering towards the registration of seed stands for quality timber production and/or locally native sources for native woodland planting; (ii) removal of trees of poor form; (iii) tree crown release for seed production; and (vi) brashing and clearance of access routes for seed collection. 	<p>50% of actual costs for preparatory work and documentation gathering towards registration of seed stand based on invoices and registration documentation.</p> <p>50% of actual costs up to a maximum of £300 per hectare for registered seed stand management.</p>

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	(2) Land on which this option has been undertaken within the previous 3 years is ineligible.	
6. Modernisation through electronic management – forestry	<p>(1) An applicant is eligible for payment under this option if the applicant is a rural business engaged in the management of forests and woodlands and if the applicant invests in electronic hardware and software to improve the competitiveness of forestry businesses in which case one or more than one of the following items are eligible–</p> <ul style="list-style-type: none"> (a) Geographical Positioning System site mapping hardware and software; (b) electronic callipers for timber volume measurement; (c) compatible software which can utilise and download data from (i) or (ii) (or both) or any other source; (d) Geographical Information System software for the purposes of the production and management of long-term forest plans; or (e) Ruggedised notebook personal computers designed for electronic data capture in “outdoor, all weather” working conditions. <p>(2) Items purchased must be retained for 5 years unless evidence can be provided that the items have been replaced with like items of an equivalent or higher specification.</p> <p>(3) The purchase of personal computers or laptops and recurrent annual licensing costs associated with software purchase or use are ineligible.</p>	40% of eligible costs up to a maximum of £1,000. Where purchases have been made in collaboration with others the 40% of eligible costs applies only to the applicant’s share of eligible costs. An applicant may make only one claim for payment under this option in any 5 years. A one-off payment will be made, paid in arrears.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
7. Access creation for sustainable forest management	<p>(1) An applicant is eligible for payment under this option if the applicant is an owner or occupier of forest land and–</p> <ul style="list-style-type: none"> (a) has a forest holding of greater than 1 hectare that requires the construction of external or internal (or both) access routes to extract timber from isolated stands that will benefit from silvicultural thinning; (b) builds roads to a standard capable of taking heavy goods vehicles and conforms to the requirements of the UK Forestry Standard; and (c) maintains the roads as part of the forest road network and fully restores after harvesting activity. <p>(2) Only the following costs are eligible costs–</p> <ul style="list-style-type: none"> (a) the construction of external or internal (or both) access routes; (b) the construction of lay-bys, turning areas, loading bays or bell mouth junctions; and (c) gates, security barriers or obstacles and cattle grids. 	50% of actual costs.
8. Membership of quality assurance and organic schemes	<p>An applicant is eligible for payment under this option if the applicant participates in one or more of the following quality assurance or organic schemes(certified to EN45011 standard):–</p> <p>Lions Quality Code of Practice for Eggs Linking Environment and Farming (LEAF) marque Freedom Foods Scottish Organic Producers and Certification Scheme Soil Association Assurance Scheme Organic Farmers and Growers – Organic Assurance Scheme Biodynamic Agricultural Association Organic Food Federation Scottish Quality Wild Venison Assurance Scheme</p>	50% of the joining fee and ongoing membership costs, up to a maximum of £150 per scheme year for each quality assurance or organic scheme. The maximum amount of aid for participation in food quality schemes is £2,055.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
9. Wild bird seed mixture/unharvested crop	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant, either–</p> <ul style="list-style-type: none"> (a) spring sows a mixture of annual crops, including at least one cereal which will provide seed for the targeted species and does not plough down until after 15th March the following year; or (b) spring sows a mixture of at least 2 crops, one of which must seed in the first year and one in the second year and ploughs in after 15th March following last seeding year. <p>(3) For both options (a) and (b) above–</p> <ul style="list-style-type: none"> (a) plots must be on arable land or improved grassland and a maximum of 2 hectares in size; and (b) pesticides may be applied where necessary to aid establishment of the crop; otherwise, no application of pesticides is permitted. <p>(4) In Corn Bunting areas (East Scotland, Uists and Borders) either one year cereal-based mixes must be established or where 2 year mixes are sown, at least 2 plots must be established in alternate years.</p>	£391.26 per hectare per scheme year.
10. Improvement of rush pasture for wildlife	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant–</p> <ul style="list-style-type: none"> (a) manages areas of dense rushes (that is, areas of rush pasture which are over 50% rushes) by annual grazing or cutting (or both); and 	£100 per hectare of the areas of dense rushes per scheme year.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(b) between 1st August and 31st March inclusive either–</p> <p>(i) cuts a minimum of one third but no more than two-thirds of the rushes in random patterns to leave an open variable mix of rushes and grass pasture; cutting must be undertaken close to the ground and at a minimum under half stem height; or</p> <p>(ii) grazes to remove and thin rushes by a minimum of one third but no more than two-thirds; and</p> <p>(c) does not permit heavy poaching.</p>	
11. Summer cattle grazing	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant–</p> <p>(a) turns cattle out onto unenclosed or hill land on or before 1st June and keeps them there for at least 3 months;</p> <p>(b) ensures that grazing is evenly distributed and does not damage the land and that there are adequate sheltered areas where the ground is firm and free-draining;</p> <p>(c) ensures that there is at least one bovine per 25 hectares; and</p> <p>(d) ensures that the cattle are–</p> <p>(i) at least 6 months of age at the start of the grazing period; and</p> <p>(ii) owned or leased under a written lease.</p>	£1.30 per hectare of land on which the cattle are maintained, per scheme year.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
12. Management of moorland grazing	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option on moorland if the applicant–</p> <ul style="list-style-type: none"> (a) prepares and implements a moorland grazing plan; which must be in place by the commencement of the undertaking and which takes account of the combined impacts of livestock and other grazing animals on the land; (b) includes in the plan a report on the current condition and management of the moorland and the proposed changes in shepherding, managing livestock and feeding practices that will benefit the environment and wildlife which the applicant will carry out; and (c) uses the moorland for agricultural livestock production. 	£1.30 per hectare of the moorland grazing per scheme year.
13. Management of linear features: hedgerows and hedgerow trees and dykes	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant–</p> <ul style="list-style-type: none"> (a) carries out at least one of the options A or B below with the corresponding rates of payment as set out in column 3; (b) prepares a sketch map showing the location of the linear features proposed to be managed under this option; and (c) where the linear feature is also a property boundary, has gained the written consent of the owner or tenant of the neighbouring property for the application for aid under this option. 	

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(3) An applicant is eligible for payment under this option if the applicant–</p> <ul style="list-style-type: none"> (a) manages a strip between 1.5 metres to 6 metres in width in an arable field with a minimum width of 6 metres or more where the management is to benefit Hen Harriers, Corn Buntings, Barn Owl or Kestrel; (b) ensures that where the entire field is not sown to an arable crop, the minimum width of the arable area adjacent to the strip is 30 metres; (c) establishes the strip by sowing a suitable mix of grass seed, to include at least one species of nectar feeding plant, into a sterile seedbed; (d) does not apply fertiliser, slurry or farmyard manure to strips, spot treatment of injurious weeds or non-native invasive weeds is permitted; (e) does not carry out scrub control except with the prior written agreement of the Scottish Ministers; (f) if grazing or topping the grass margin or beetlebank after harvest, ensures the average height of vegetation in the strip is not taken below 100 millimetres; (g) creates a sterile strip up to 0.5 metres in width which is then maintained by rotovation and herbicide along the inner edge of the grass margin; (h) retains any area adjacent to the strip in an arable crop for the duration of the undertaking; and (i) does not apply pesticides to the site. 	

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(4) In a mixed arable situation where an area will be put into grass or a non-eligible crop after 3 years, the beetlebank or grass margin may be transferred to another eligible field for the remaining 2 years of the undertaking. In this situation, a beetlebank or grass margin may only be transferred once during the relevant period of the undertaking. On organic farms where the normal rotation is a 2 year cycle, the beetlebank or grass margin may be moved twice during the 5 year period of the undertaking to ensure that the area is in an eligible crop. Details of the beetlebank or grass margin to be “rotated” in this way including field identifiers and area measurements must be submitted with the application for aid.</p> <p>(5) Beneficiaries are not eligible for additional payment to control scrub or injurious weeds or non-native invasive weeds.</p>	
<p>15. Biodiversity cropping on in-bye land</p>	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant–</p> <ul style="list-style-type: none"> (a) sows plots of spring cereals, fodder root crops or fodder rape, each up to 2 hectares; their total area must not exceed 4 hectares; (b) only undertakes cultivation and the spreading of fertilisers between 1st March and 15th May inclusive each year. Exceptionally, for fodder rape or root crops, cultivations may be carried out after 15th May, any nests located must be marked and avoided; (c) does not apply herbicides or insecticides without the prior written consent of the Scottish Ministers; (d) does not apply pesticides to the site; 	<p>£70.94 per hectare of the sown plots per scheme year.</p> <p>Where cereal crop is harvested by binder and the stooks gathered into stacks £470.94 per hectare per scheme year.</p>

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(e) after cropping does not plough or cultivate the area before 1st March of the following year; and</p> <p>(f) maintains the same area of cropped land in each year of the undertaking.</p> <p>(3) Any cropping rotation and crop within that rotation which is traditional in the area is eligible. Arable silage is not an eligible crop.</p> <p>(4) Land which is in conversion to organic production under an undertaking under either the 2008 Regulations, the 2004 Regulations or the 1994 Regulations is not eligible.</p>	
16. Management of conservation headlands	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant–</p> <p>(a) manages conservation headlands with a minimum width of 6 metres in arable fields on which cereals, linseed, oilseed or protein crops are being grown; conservation headlands can adjoin both autumn and spring sown crops; conservation headlands adjoining fields where the cereal is to be harvested for arable silage before the grain is ripe are not eligible; and</p> <p>(b) does not apply broadleaf herbicides and insecticides to the headland without the prior written consent of Scottish Ministers.</p> <p>(3) A premium rate of payment is available when the applicant does not apply nitrogenous fertiliser to the conservation headland.</p> <p>(4) A supplement is available when the applicant retains conservation headland stubbles until at least the end of February.</p>	<p>£70 per hectare.</p> <p>Premium rate £135.14 per hectare.</p> <p>Supplement rate £21 per hectare.</p>

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(5) In all cases–</p> <p>(a) where this option is carried out in a field which is in nitrate vulnerable zone the margin or buffer must start after the 2 metre margin or buffer on which no fertiliser may be applied in accordance with the Nitrates Action Programme; and</p> <p>(b) the location of the areas managed for the purpose of this option may change each year but the number of hectares applied for in any year must be maintained for 5 years.</p>	
17. Retention of winter stubbles	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant–</p> <p>(a) retains stubbles from the harvest of spring or winter cereals, protein or oilseed crops and does not plough or cultivate the area until the end of the following February; and</p> <p>(b) from crop emergence up to and including the last day of February each year does not apply herbicides and insecticides without the prior written consent of the Scottish Ministers.</p> <p>(3) Arable silage is not eligible under this option.</p> <p>(4) The location of the areas managed for the purposes of this option may change from year to year but the number of hectares applied for in any year must be maintained for 5 years.</p>	£96 per hectare of the winter stubbles retained per scheme year.
18. Small-scale woodlands creation	<p>(1) An applicant is eligible for payment under this option if the applicant–</p> <p>(a) plants a new woodland between 0.1 and 1.0 hectare with native species only;</p>	£2,500 per hectare.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> (b) follows the guidance entitled “The creation of small woodlands on farms” published by the Forestry Commission Scotland^(a); (c) establishes conifers at a density of 2,500 trees per hectare and broadleaves at a density of 1,100 trees per hectare and maintains as such for 10 years; (d) protects trees from damage from livestock, rabbits and deer; (e) follows sound silvicultural practice for planting and maintenance and resolves any site problems; and (f) prior to planting, consults Scottish Natural Heritage on any woodland that could affect a SSSI site or a European site and consults Historic Scotland on any woodland that could affect any site designated as a scheduled monument under the Ancient Monuments and Archaeological Areas Act 1979^(b) and obtains any necessary consents. 	
19. Management of small woodlands	<ul style="list-style-type: none"> (1) This is a 5 year commitment. (2) An applicant is eligible for payment under this option if the applicant has a woodland holding of 30 hectares or less managed in accordance with the UK Forestry Standard and carries out the following– <ul style="list-style-type: none"> (a) carries out an assessment on the condition of all the woodland and identifies and records in a plan, work that is required during the 5 years of the undertaking; 	<p>£28 per hectare per year for woodland managed in accordance with the plan.</p> <p>A supplement of £41 per hectare per year for the removal of domestic livestock.</p>

(a) “The creation of small woodlands on farms” was published in 2006, ISBN Number 085538 691 6 and is available on line at www.forestry.gov.uk or by contracting Forestry Commission Scotland, Silvan House, 231 Corstorphine Road, Edinburgh, EH12 7AT.

(b) 1979 c.46.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> (b) protects all woodland from damage by domestic and wild animals; (c) does not allow the presence of non-native vegetation, in the canopy or shrub layers of native woodland, to threaten the condition of the native woodland; (d) does not allow any operations in and around the woodland to have a significant adverse impact on habitats and species of national or regional importance or on features of cultural importance; (e) carries out management and operations to ensure that the overall character of the site is maintained; and (f) keeps woodland free of inappropriate materials and waste, which is within their control. 	
20. Improving access	<ul style="list-style-type: none"> (1) This is a 5 year commitment. (2) An applicant is eligible for payment under this option if the applicant– <ul style="list-style-type: none"> (a) upgrades and marks existing paths or routes and enables paths that were previously only footpaths to be made accessible to all types of user; the path or route must meet at least one of the following criteria, it must– <ul style="list-style-type: none"> (i) link to local networks; (ii) give access to points of attraction; 	75% of actual costs per item paid in arrears.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(iii) meet the local needs of all types of user including access to core paths as defined in accordance with section 17 of the Land Reform (Scotland) Act 2003(a); and</p> <p>(b) provides a boardwalk, bridge or culvert where such item is directly associated with (2)(a) above. Different items can be claimed but each item can be claimed only once.</p> <p>(3) In all cases, the applicant must–</p> <p>(a) submit a 1:10,000 scale map with their application for aid, which identifies the location of the path or route and the location and type of eligible item being claimed;</p> <p>(b) submit a copy of the map to the local authority within the meaning of section 32 of the Land Reform (Scotland) Act 2003; and</p> <p>(c) ensure the path/route and boardwalks, bridges and culverts meet the requirements as set out in the scheme guidance.</p> <p>(4) Tarmac/bitumen surfaced motor-vehicle tracks are ineligible for upgrading under this option.</p>	<p>75% of the capital cost of boardwalks, bridges and culverts, up to a maximum of £150 per item. This is a one-off payment per item paid in arrears.</p>

(a) 2003 asp 2.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(5) The bridge capital item available under this option is only eligible where the bridge is of a type which is not designed for motorised vehicle use, other than one which has been constructed or adapted for use by a person who has a disability. The bridge must be for members of the public exercising their rights under Part 1 of the Land Reform (Scotland) Act 2003 and must link 2 paths or routes together and cannot be used for vehicle infrastructure purposes.</p> <p>(6) Paths already being enhanced, managed or maintained by another organisation or individual are ineligible under this option.</p>	
<p>21. Active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes</p>	<p>(1) An applicant is eligible for payment if the applicant is a rural land manager with eligible buildings or sites and if the applicant undertakes either or both of the following options–</p> <p style="padding-left: 40px;">option A carries out management works to improve the condition of specified archaeological or historic sites or historic landscapes; or</p> <p style="padding-left: 40px;">option B carries out, in accordance with the scheme guidance, active management and repair of specified pre-1940 rural buildings of traditional character for the area that are structurally sound but in need of small-scale repairs, excluding buildings designated as scheduled monuments under the Ancient Monuments and Archaeological Areas Act 1979(a).</p>	<p>For option A, annual payment in arrears, at 100% of actual costs incurred during the claim year.</p> <p>For option B, annual payment in arrears, at 75% of actual costs incurred during the claim year.</p>

(a) 1979 c.46.

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(2) Where an applicant undertakes option A above the following applies–</p> <p>(a) the applicant must–</p> <p>(i) keep a photographic record of each site managed before management commences, during year 3 of the undertaking and during year 5 of the undertaking; and</p> <p>(ii) consult Historic Scotland before carrying out any work on a site designated as a scheduled monument under the Ancient Monuments and Archaeological Areas Act 1979 and comply with that Act;</p> <p>(b) an applicant is eligible for payment if they undertake any of the following works–</p> <p>(i) control of vegetation through methods which do not cause ground disturbance. Vegetation controlled must have a trunk diameter of less than 10 cm;</p> <p>(ii) grazing control to retain adequate grass or heather cover and prevent the establishment of scrub, woody plants, and trees using methods that do not require the addition of any new or temporary fencing. If grazing ceases manual methods must be introduced;</p> <p>(iii) establishment of a 10 metre unploughed buffer zone around visible archaeological or historic sites; or</p>	

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(iv) taking a crop mark site out of cultivation and sowing to grass. When establishing the sward, ploughing depth must not exceed 100 millimetres; and</p> <p>(c) an applicant must submit a record of labour hours and costs incurred on materials and machinery use (in the form of receipts where possible) in support of a claim for payment. If an applicant undertakes the work themselves, the skilled labour hourly rate will apply. If an applicant employs a contractor to undertake the work on their behalf, receipted invoices must be provided in support of a claim for payment.</p> <p>(3) Where an applicant undertakes option B above the following applies–</p> <p>(a) an applicant must–</p> <p>(i) keep a photographic record of each building to be managed before management commences, during year 3 of the undertaking and during year 5 of the undertaking; and</p> <p>(ii) undertake a precautionary survey to assess for the presence of protected species prior to works commencing;</p> <p>(b) an applicant is eligible for payment if the applicant submits a record of labour hours and costs incurred on materials and machinery use (in the form of receipts where possible) in support of a claim for payment. If an applicant undertakes the work themselves, the skilled labour hourly rate will apply. If an applicant employs a contractor</p>	

<i>Column 1 Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>to undertake the work on their behalf, receipted invoices must be provided in support of a claim for payment; and</p> <p>(c) an applicant is not eligible for payment–</p> <p>(i) if the building managed is used for human habitation or occupation, either permanent, temporary or seasonal;</p> <p>(ii) if the works proposed to the building require either planning permission within the meaning of the Town and Country Planning (Scotland) Act 1997(a), listed building consent within the meaning of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(b) or a building warrant within the meaning of section 8 of the Building (Scotland) Act 2003(c); or</p> <p>(iii) if the applicant is already receiving payment under the 2008 Regulations or under another land managers option for non-productive investments as defined in Article 36(b)(vii), Article 41 and Article 49 of Council Regulation 1698/2005 on the same building.</p>	

(a) 1997 c.8.
(b) 1997 c.9.
(c) 2003 asp 8.

PART 1

Historic Environment Condition

The damage or destruction of any feature or areas of historic or archaeological interest must be avoided and guidance approved by the Scottish Ministers must be followed for the protection of such features or areas(a).

PART 2

Primary Legislation

The Ancient Monuments and Archaeological Areas Act 1979 (c.46).

The Wildlife and Countryside Act 1981 (c.69).

The Clean Air Act 1993 (c.11).

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

The Water Environment and Water Services (Scotland) Act 2003 (asp 11).

The Nature Conservation (Scotland) Act 2004 (asp 6).

Secondary Legislation

The Control of Pesticides Regulations 1986(b).

The Sludge (Use in Agriculture) Regulations 1989(c).

The Waste Management Licensing Regulations 1994(d).

The Conservation (Natural Habitats etc.) Regulations 1994(e).

The Ancient Monuments (Class Consents) (Scotland) Order 1996(f).

The Pollution Prevention and Control (Scotland) Regulations 2000(g).

The Contaminated Land (Scotland) Regulations 2000(h).

The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003(i).

The Animal By-Products (Scotland) Regulations 2003(j).

(a) The guidance to be followed is outlined in the scheme guidance.

(b) S.I. 1986/1510 as amended by S.I. 1994/3142, 1997/188 and 2001/880.

(c) S.I. 1989/1263 as relevantly amended by S.I. 1996/593 and S.S.I. 2000/62.

(d) S.I. 1994/1056 as relevantly amended by S.I. 1994/1137, 1995/288 and 1950, 1996/593, 634, 916, 972, 973 and 1279, 1997/2203, 1998/606 and 2746, and S.S.I. 2000/323 and 235, 2003/170, 171 and 593, 2004/275, 2005/22, 2006/128 and 541, 2007/172 and 251.

(e) S.I. 1994/2716 as relevantly amended by S.I. 2007/1843, S.S.I. 2004/475, 2006/270, 2007/80, 349, 485 and 517 and 2008/17.

(f) S.I. 1996/1507.

(g) S.S.I. 2000/323 as amended by 2004 asp 8, Schedule 2, paragraph 7, S.S.I. 2002/493, S.S.I. 2003/146, 170, 221, 235 and 411, 2004/26, 110, 112 and 512, 2005/101, 340 and 510, 2006/127 and S.I. 2007/2325.

(h) S.S.I. 2000/178 as amended by S.S.I. 2000/323, 2005/658 and 2007/179.

(i) S.S.I. 2003/51 as amended by S.S.I. 2003/169.

(j) S.S.I. 2003/411 as amended by S.S.I. 2006/530 and 2007/1.

The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003**(a)**.

The Plant Protection Products (Scotland) Regulations 2005**(b)**.

The Water Environment (Controlled Activities) (Scotland) Regulations 2005**(c)**.

The EC Fertilisers (Scotland) Regulations 2006**(d)**.

The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006**(e)**.

(a) S.S.I. 2003/531 as amended by S.S.I. 2006/133 and 2008/54.

(b) S.S.I. 2005/331 as amended by S.S.I. 2006/241, 449 and 576 and 2007/119 and 410.

(c) S.S.I. 2005/348 as amended by S.S.I. 2006/553, 2007/219 and 2008/54.

(d) S.S.I. 2006/543.

(e) S.S.I. 2006/582 as amended by 2006/614.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce measures to supplement Council Regulation (EC) No. 1698/2005 (“the Council Regulation”) which lays down general rules governing Community support for rural development (financed by the European Agricultural Fund for Rural Development established by Council Regulation (EC) No. 1290/2005 (O.J. No. L 209, 11.8.2005, p.1.)) and Commission Regulations (EC) Nos. 1974/2006 and 1975/2006 laying down detailed rules for the application of the Council Regulation.

They also implement Article 74(1) of the Council Regulation and Article 9(1) of Council Regulation (EC) No. 1290/2005 which require Member States to adopt legislative and administrative provisions to ensure that the Community’s financial interests in relation to expenditure on rural development are effectively protected.

The Regulations provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007-13 to any person who enters into an undertaking with the Scottish Ministers to carry out, or as the case may be carry out and maintain the activities relevant to at least one of the land managers options set out in Schedule 2.

The Regulations also provide that where a person enters into an undertaking which includes an activity under certain land managers options the person must also comply with the requirements established by Article 4 of and Annex III to Council Regulation (EC) No. 1782/2003, 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 and the condition and requirements specified in Parts 1 and 2 of Schedule 3 to these Regulations.

The amount of aid payable in respect of an undertaking is calculated with reference to the activity to be undertaken (regulation 9). The rate of payment corresponding to each activity is specified in Schedule 2 to the Regulations.

The Regulations also—

- (a) make provision as to the form and content of the applications for aid (regulation 3);
- (b) impose restrictions on the acceptance of applications and payment of aid (regulation 7);
- (c) define land which is eligible for aid (regulation 8);
- (d) make provision in respect of undertakings (regulation 10);
- (e) make provision in respect of claims and payments (regulation 11);
- (f) make provision in relation to a change of occupation of the land to which an undertaking relates (regulation 12);
- (g) confer powers of entry and inspection on authorised persons (regulation 13);
- (h) make provision in relation to breaches of undertakings (regulation 14);
- (i) make provision in relation to the withholding and recovery of aid (regulations 15 and 16);
- (j) make provision for the supply of information and record keeping (regulation 17);
- (k) make provision as to the recovery of interest (regulation 18);
- (l) provide that sums payable to Scottish Ministers shall be recoverable as a debt (regulation 19);
- (m) make provision for the publication of guidance (regulation 20);
- (n) make provision for offences (regulation 21); and
- (o) make provision in respect of appeals (regulation 22).

The effect of the Regulations is to permit financial assistance to businesses, collaborations and individuals involved in providing economic and environmental benefits. Since there will be no increase in the costs to the Scottish Government, local government or business no Regulatory Impact Assessment has been prepared in respect of these Regulations.

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AGRICULTURE

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(Scotland) Regulations 2008**

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