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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 376**

**The Rural Payments (Appeals) (Scotland) Regulations 2009**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Rural Payments (Appeals) (Scotland) Regulations 2009 and shall come into force on 20th November 2009.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations except where the context otherwise requires—

“applicant” means the person to whom a relevant decision is directed;

“Commission Regulation 2419/2001”(1) means Commission Regulation (EC) No. 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain community aid schemes, amended by Commission Regulation (EC) No. 2550/2001 and Commission Regulation (EC) No. 118/2004;

“Commission Regulation 2237/2003”(2) means [Commission Regulation \(EC\) No. 2237/2003](#) laying down detailed rules for the application of certain support schemes provided for in Title IV of Council Regulation (EC) 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers;

“Commission Regulation 795/2004”(3) means [Commission Regulation \(EC\) No. 795/2004](#) laying down detailed rules for the implementation of the single payment scheme 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, as amended by Commission Regulations (EC) Nos. 1974/2004, 394/2005, 606/2005, 1085/2005, 1701/2005, 2183/2005, 658/2006, 1134/2006, 1291/2006, 2002/2006, 373/2007, 411/2007, 608/2007, 1522/2007, 319/2008 and 1124/2008;

“Commission Regulation 796/2004”(4) 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 Regulations (EC) No. 1782/2003, 479/2008 and 73/2009 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as amended by Commission Regulations (EC) No. 239/2005, 436/2005, 1954/2005, 2184/2005, 263/2006, 489/2006, 659/2006, 2025/2006, 381/2007, 972/2007, 1550/2007, 319/2008, 145/2008, 1124/2008, 1266/2008 and 380/2009;

“Council Regulation 3508/92”(5) means [Council Regulation \(EEC\) No. 3508/92](#) establishing an integrated administration and control system for certain Community aid schemes, amended

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(1) O.J. No. L 327, 12.12.2001, p.11, corrected by a corrigendum at O.J. No. L 7, 11.1.2002, p.48.

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

(3) O.J. No. L 141, 30.4.2004, p.1, corrected by a corrigendum at O.J. No. L 291, 14.9.2004, p.18 and O.J. No. L 385, 29.12.2004, p.87.

(4) O.J. No. L 141, 30.4.2004, p.18 corrected by a corrigendum, O.J. No. L 37, 10.2.2005, p.22.

(5) O.J. No. L 355, 5.12.1992, p.1 corrected by corrigendum O.J. No. L 71, 13.3.1997, p.46 and O.J. L 216, 14.8.1999, p.24.

by Council Regulation (EC) No. 165/1994, Council Regulation (EC) No. 3233/1994, Council Regulation (EC) No. 3235/1994, Council Regulation (EC) No. 3072/1995, Council Regulation (EC) No. 1577/96, Council Regulation (EC) No. 2466/96, Commission Regulation (EC) No. 613/97, Council Regulation (EC) No. 820/1997, Council Regulation (EC) No. 1036/1999, Council Regulation (EC) No. 1593/2000 and Commission Regulation (EC) No. 495/2001;

“Council Regulation 1782/2003”(6) means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/1993, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/1994, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001, amended by Commission Regulations (EC) Nos. 118/2005, 2183/2005, 1156/2006, 552/2007, 1276/2007, 293/2008 and 674/2008 and Council Regulations (EC) Nos. 21/2004, 583/2004, 864/2004, 2217/2004, 247/2006, 319/2006, 953/2006, 1405/2006, 2011/2006, 2012/2006, 2013/2006, 1182/2007, 146/2008, 470/2008, 479/2008, 615/2008, 637/2008 and 674/2008;

“Council Regulation 73/2009”(7) means Council Regulation (EC) No. 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003;

“decision letter” means the letter from the Scottish Ministers to the applicant notifying the applicant of the relevant decision;

“ESA Orders” means—

- (a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992(8);
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992(9);
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993(10);
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993(11);
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993(12);
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993(13);
- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(14);
- (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(15);
- (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993(16); or
- (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(17);

“holding” has the same meaning as in Council Regulation No. 1782/2003 or Council Regulation No. 73/2009;

(6) O.J. No. L 270, 21.10.2003, p.1 corrected by corrigendum O.J. No. L 94, 31.3.2004, p.70.

(7) O.J. No. L 30, 31.1.2009, p.16

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

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

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

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

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

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

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

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

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

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

“IACS scheme” means—

- (a) one of the Community schemes set out in Article 1.1 of Council Regulation 3508/92<sup>(18)</sup>;
- (b) one of the Community schemes specified in Article 17 of Council Regulation 1782/2003;  
or
- (c) one of the Community schemes specified in Article 14 of Council Regulation 73/2009;

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

“Land Court” means the Scottish Land Court;

“the 2004 Regulations” means the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004<sup>(19)</sup>; and

“relevant decision” means a decision specified in any of the paragraphs of the Schedule.

(2) Any reference in these Regulations to an applicant or applicant appealing to the Land Court includes a reference to any successor, executor, trustee in sequestration, receiver or liquidator of such an applicant.

### **Application in relation to IACS matters**

3. Decisions of the Scottish Ministers of the kinds referred to in paragraphs 1 to 13 of the Schedule apply in relation to holdings which are administered by them in accordance with the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005<sup>(20)</sup>.

### **Decisions amenable to review**

4. An applicant may apply to the Scottish Ministers for a review of a relevant decision in accordance with regulation 5.

### **Application for Review**

5.—(1) An application for a review of a relevant decision may be made no later than 30 days following the date of the decision letter.

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

- (a) the name and address of the applicant and, where relevant, the details of the applicant’s representative;
- (b) the scheme in relation to which the review is sought and, in relation to an IACS Scheme, the IACS year to which the relevant decision referred;
- (c) the relevant decision and its date;
- (d) the change sought to the relevant decision; and
- (e) the reasons for seeking the change to the relevant decision.

### **Procedure at Review**

6.—(1) Where an application is made under regulation 5, the Scottish Ministers must review the relevant decision.

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<sup>(18)</sup> Council Regulation (EC) No. 3508/92 was repealed by Article 153(1) of Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes for farmers and amending certain Regulations, but by virtue of Article 153(1) it continues to apply to applications for direct payments in respect of calendar years preceding 2005.

<sup>(19)</sup> S.S.I. 2004/381 as amended by S.S.I 2005/117, 225 and 569, 2007/439, 2008/58, 66, 100, 159, 184 and 294.

<sup>(20)</sup> S.S.I. 2005/218 as amended by S.S.I. 2008/184.

(2) The Scottish Ministers must provide the applicant with an opportunity of being heard at a review meeting within 60 days of receipt of the application on any matter relevant to the application.

(3) The Scottish Ministers must intimate the date of the review meeting to the applicant in writing.

(4) Representations made under paragraph (2) may be made by the applicant or by a representative of the applicant.

(5) For the purposes of this regulation a review meeting may be conducted in person or by use of telephone or video conference facilities.

### **Decision and Report**

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

- (a) confirm their decision;
- (b) amend or alter their decision; or
- (c) revoke their decision in its entirety and substitute a new decision.

(2) The Scottish Ministers must issue their decision under paragraph (1) in a written report.

(3) A written report must set out the following—

- (a) the decision of the Scottish Ministers following the review;
- (b) the requirements of the scheme in respect of which the claim was made;
- (c) where appropriate, the facts relied upon by the Scottish Ministers as showing that the requirements were not met;
- (d) where appropriate, the matters (in fact or law) which are understood to remain in dispute.

(4) A written report must be sent by recorded delivery post to the applicant before the expiry of the period of 60 days beginning on the date intimated to the applicant under regulation 6(3).

### **Appeal to the Scottish Land Court**

8.—(1) The applicant may appeal against a decision under regulation 7(1) above on any issue of fact or law to the Land Court.

(2) An appeal under paragraph (1) must be made within 30 days of receipt of the written report.

(3) Where Scottish Ministers have not sent a written report within the period of 60 days referred to in regulation 7(4), the applicant may instead appeal against the relevant decision on any issue of fact or law to the Land Court.

(4) An appeal under paragraph (3) must be made within 30 days of the date on which the period of 60 days referred to in regulation 7(4) expired.

(5) An appeal shall be in such form as may be prescribed from time to time by the Land Court.

(6) An appeal shall, so far as possible, specify—

- (a) the grounds of appeal;
- (b) what finding of the Scottish Ministers is challenged;
- (c) any facts the applicant seeks to rely on;
- (d) the arguments to be advanced in support of the appeal; and
- (e) brief details of the legislative provisions or judicial authorities to be referred to in relation to the appeal.

(7) An appeal under paragraph (1) must be accompanied by the decision letter, the application for review and the written report.

(8) An appeal under paragraph (3) must be accompanied by the decision letter, the application for review and evidence of the date of the review meeting intimated to the applicant under regulation 6(3).

### **Procedure in the Scottish Land Court**

**9.**—(1) Without prejudice to the power of the Land Court to determine its own procedure, it may—

- (a) where a written report has not been sent in accordance with regulation 7(4), require Scottish Ministers to submit a written report;
- (b) grant leave to the Scottish Ministers to amend the written report;
- (c) relieve the appellant of any of the obligations set out in regulation 8(6);
- (d) require such additional information or submissions to be submitted by the parties to the appeal as it thinks fit.

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

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

and any such determination of the Land Court is binding upon the Scottish Ministers and the appellant.

(3) Where an appeal is made under regulation 8(3), paragraph (2) shall apply in relation to the relevant decision as it applies in relation to a decision under regulation 7(1).

(4) Any party to a matter determined by the Land Court by virtue of these Regulations may appeal to the Court of Session against the determination on a question of law.

### **Expenses**

**10.** Without prejudice to paragraph 15 of Schedule 1 to the Scottish Land Court Act 1993<sup>(21)</sup>, the Land Court may in considering an award of expenses against any party to an appeal have regard to the conduct of that party during the review process as a whole.

### **Application, consequential amendments, savings and revocations**

**11.**—(1) Nothing in these Regulations has effect in relation to any relevant decision in respect of which the date of the decision letter is before 20th November 2009.

(2) In each of—

- (a) regulation 20(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2001<sup>(22)</sup>;
- (b) regulation 18(2) of the Rural Stewardship Scheme (Scotland) Regulations 2001<sup>(23)</sup>;
- (c) regulation 22(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2002<sup>(24)</sup>;
- (d) regulation 24(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2003<sup>(25)</sup>; and

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(21) 1993 (c.45); as amended by the [Crofting Reform etc. Act 2007 \(asp 7\)](#).

(22) S.S.I. 2001/50 revoked by S.S.I. 2002/139 subject to savings specified in regulation 26.

(23) S.S.I. 2001/300 as amended by S.S.I. 2003/177, 2004, 381 and 2005/620.

(24) S.S.I. 2002/139 revoked by S.S.I. 2003/129 subject to savings specified in regulation 28.

(25) S.S.I. 2003/129 revoked by S.S.I. 2004/70 subject to savings specified in regulation 27.

(e) regulation 25(2) of the Organic Aid (Scotland) Regulations 2004<sup>(26)</sup>, for “Agricultural Subsidies (Appeals) (Scotland) Regulations 2004”, substitute “the Rural Payments (Appeals) (Scotland) Regulations 2009”.

(3) The 2004 Regulations, as in force immediately before 20th November 2009, continue to apply and have effect in relation to any review or appeal that may be made in relation to—

- (a) a decision specified in regulation 4 of those Regulations; or
- (b) a decision issued following such a review,

where the relevant decision specified in regulation 4 was contained in a letter dated before the 20th November 2009.

(4) Subject to paragraph (3), the 2004 Regulations and the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005<sup>(27)</sup> are hereby revoked.

St Andrew’s House,  
Edinburgh  
28th October 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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<sup>(26)</sup> S.S.I. 2004/143 as amended by S.S.I. 2004/174, 381 and 2005/619.

<sup>(27)</sup> S.S.I. 2005/117.