

2009 No. 376

AGRICULTURE

The Rural Payments (Appeals) (Scotland) Regulations 2009

Made - - - - *28th October 2009*

Laid before the Scottish Parliament *29th October 2009*

Coming into force - - *20th November 2009*

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

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”(b) 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”(c) 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”(d) 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,

(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown by section 2(2) were transferred, so far as within devolved competence, to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 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.

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

(d) 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.

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”(a) 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”(b) means Council Regulation (EEC) No. 3508/92 establishing an integrated administration and control system for certain Community aid schemes, amended 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”(c) 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”(d) 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(e);
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992(f);
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993(g);
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993(h);
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993(i);
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993(j);

(a) O.J. No. L 141, 30.4.2004, p.18 corrected by a corrigendum, O.J. No. L 37, 10.2.2005, p.22.
(b) 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.
(c) O.J. No. L 270, 21.10.2003, p.1 corrected by corrigendum O.J. No. L 94, 31.3.2004, p.70.
(d) O.J. No. L 30, 31.1.2009, p.16
(e) S.I. 1992/1919 amended by S.I. 1992/2062, 1994/3067, 1995/3097, 1996/3082 and S.S.I. 2001/34 and 226.
(f) 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.
(g) S.I. 1993/996 amended by S.I. 1994/3067, 1996/1969 and 3082 and S.S.I. 2001/32 and 226.
(h) S.I. 1993/997 amended by S.I. 1994/3067, 1996/1968 and 3082 and S.S.I. 2001/31 and 226.
(i) S.I. 1993/2345 amended by S.I. 1994/3067, 1996/1963 and 3082 and S.S.I. 2001/33 and 226.
(j) S.I. 1993/2767 amended by S.I. 1994/3067, 1996/1964 and 3082 and S.S.I. 2001/25 and 226.

- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(a);
- (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(b);
- (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Watersay) Designation Order 1993(c); or
- (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(d);

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

“IACS scheme” means—

- (a) one of the Community schemes set out in Article 1.1 of Council Regulation 3508/92(e);
- (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(f); 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(g).

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;

(a) S.I. 1993/2768 amended by S.I. 1994/3067, 1996/1967 and 3082 and S.S.I. 2001/26 and 226.
 (b) S.I. 1993/3136 amended by S.I. 1994/3067, 1996/1966 and 3082 and S.S.I. 2001/27 and 226.
 (c) S.I. 1993/3149 amended by S.I. 1994/3067, 1996/1962 and 3082 and S.S.I. 2001/28 and 226.
 (d) S.I. 1993/3150 amended by S.I. 1994/3067, 1996/1965 and 3082 and S.S.I. 2001/29 and 226.
 (e) 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.
 (f) 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.
 (g) S.S.I. 2005/218 as amended by S.S.I. 2008/184.

- (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.

(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(a), 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(b);

(a) 1993 (c.45); as amended by the Crofting Reform etc. Act 2007 (asp 7).

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

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

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(e) are hereby revoked.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
28th October 2009

(a) S.S.I. 2001/300 as amended by S.S.I. 2003/177, 2004, 381 and 2005/620.
(b) S.S.I. 2002/139 revoked by S.S.I. 2003/129 subject to savings specified in regulation 28.
(c) S.S.I. 2003/129 revoked by S.S.I. 2004/70 subject to savings specified in regulation 27.
(d) S.S.I. 2004/143 as amended by S.S.I. 2004/174, 381 and 2005/619.
(e) S.S.I. 2005/117.

SCHEDULE

Regulation 2(1) and 3

Relevant Decisions

1. A decision by the Scottish Ministers under or in accordance with Commission Regulation 2419/2001 (including anything done in accordance with Article 47(2) of that Regulation) to refuse, reduce or recover (in whole or in part) payment under an IACS Scheme for any IACS year.

2. A decision by the Scottish Ministers under or in accordance with Commission Regulation 2237/2003 to postpone, refuse, reduce or recover (in whole or in part) payment under an IACS Scheme for any IACS year.

3. A decision by the Scottish Ministers under or in accordance with Council Regulation 1782/2003, Council Regulation 73/2009 of Commission Regulation 795/2004 or Commission Regulation 796/2004 to refuse, reduce or recover (in whole or in part) any payment under an IACS scheme for any IACS year insofar as the grounds of appeal have not already formed part of grounds of appeal under any of paragraphs (4) to (10) below.

4. A decision by the Scottish Ministers under Article 12 of Commission Regulation 795/2004 in accordance with Title III of Council Regulation 1782/2003 to refuse, reduce or withdraw (in whole or in part) any payment entitlement (including any set-aside or special entitlement).

5. A decision by the Scottish Ministers under Article 40 of Council Regulation 1782/2003 to refuse (in whole or in part) a request to have an applicant's reference amount calculated on the basis that the applicant's production was adversely affected by force majeure or exceptional circumstances or agri-environment commitments.

6. A decision by the Scottish Ministers under or in accordance with Article 42 of Council Regulation 1782/2003 to refuse or withdraw entirely any national reserve entitlement in relation to an application.

7. A decision by the Scottish Ministers under or in accordance with Council Regulation 1782/2003, Commission Regulation 795/2004, Commission Regulation 796/2004 or Council Regulation 73/2009 to refuse, reduce or withdraw (in whole or in part) any other payment entitlement.

8. A decision by the Scottish Ministers under or in accordance with Council Regulation 1782/2003, Commission Regulation 795/2004 or Council Regulation 73/2009 to refuse the transfer (in whole or in part) of any payment entitlement.

9. A decision by the Scottish Ministers under or in accordance with the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 in relation to a holding(a).

10. Any decision by the Scottish Ministers under or in accordance with Council Regulation 1782/2003, Commission Regulation 795/2004, Commission Regulation 796/2004, Commission Regulation 2237/2003 or Council Regulation 73/2009 in respect of part of a holding outwith Scotland or legislation implementing any of those instruments in any other part of the United Kingdom.

11. A decision by the Scottish Ministers under regulation 13 of the Less Favoured Area Support Scheme (Scotland) Regulations 2001(b) or under regulation 15 of the Less Favoured Area Support Scheme (Scotland) Regulations 2002(c) or under regulation 17 of the Less Favoured Area Support Scheme (Scotland) Regulations 2003(d) or under regulation 16 of the Less Favoured Area Support

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

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

(c) S.S.I. 2002/139 partially revoked subject to savings by S.S.I. 2003/129 and S.S.I. 2004/381.

(d) S.S.I. 2003/129 partially revoked subject to savings by S.S.I. 2004/70 and 381.

Scheme (Scotland) Regulations 2004(a) or under regulation 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2005(b) to withhold or recover (in whole or in part) payment of less favoured area support.

12. A decision by the Scottish Ministers under regulations 9(9)(c), (10) or (12), 10(4), 11(2) or 13(3) to (6) of the Less Favoured Area Support Scheme (Scotland) Regulations 2003(c).

13. A decision by the Scottish Ministers under regulations 4(1)(b), 5, 7(1), 9(4)(b), 10(7), 11(4), 16 or 16A of the Less Favoured Area Support Scheme (Scotland) Regulations 2007(d).

14. A decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Scheme 1988(e), in terms of paragraph 14 of that Scheme.

15. A decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Premium Scheme 1992(f), in terms of paragraph 14 of that Scheme.

16. A decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Premium Scheme 1997(g), in terms of paragraph 14 of that Scheme.

17. A decision by the Scottish Ministers made under article 5D of any one of the ESA Orders that there has been a breach of any of the requirements of article 4 or 4A of the ESA Order to which that decision relates(h).

18. A decision by the Scottish Ministers to withhold (in whole or in part), or require the making of, payment under article 5(a) or under article 5A of one of the ESA Orders(i).

19. A decision by the Scottish Ministers under the Organic Aid (Scotland) Regulations 1994(j), in terms of regulation 12 of those Regulations to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of penalty.

20. A decision by the Scottish Ministers under the Organic Aid (Scotland) Regulations 2004(k) to withhold or recover (in whole or in part) any payment in terms of regulation 20 of those Regulations.

21. A decision by the Scottish Ministers under the Habitats (Scotland) Regulations 1994(l) to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of penalty in terms of regulation 12 of those Regulations.

22. A decision by the Scottish Ministers under the Countryside Premium Scheme (Scotland) Regulations 1997(m) to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum in terms of regulation 12 of those Regulations.

(a) S.S.I. 2004/70 partially revoked subject to savings by S.S.I. 2005/569 and remaining provisions amended by S.S.I. 2005/64 and 2004/128, 381.

(b) S.S.I. 2005/569 partially revoked subject to savings by S.S.I. 2007/439.

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

(d) S.S.I. 2007/439 as amended by S.S.I. 2008/294.

(e) S.S.I. 1988/129 amended by S.I. 1991/1631, 1992/905 and 1997/828.

(f) S.I. 1992/905 amended by S.I. 1997/829, S.S.I. 2003/209, S.I. 2005/4743 and S.S.I. 2007/146.

(g) S.I. 1997/828 amended by S.S.I. 2000/290, 2003/209 and 2007/146 and S.I. 2005/4743.

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

(i) Article 5A was inserted into each of the ESA Orders by S.S.I. 1996/3082.

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

(k) S.S.I. 2004/143, amended by S.S.I. 2004/174 and 381, 2005/117 and 619.

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

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

23. A decision by the Scottish Ministers under the Rural Stewardship Scheme (Scotland) Regulations 2001(a), to withhold (in whole or in part) any aid due or recover (in whole or in part) any aid paid or require payment of a sum in terms of those Regulations.

24. A decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the SFGS Farmland Premium Scheme 2003(b), in terms of paragraph 14 of that Scheme.

25. A decision by the Scottish Ministers under the Land Management Contracts (Menu Scheme) Regulations 2005(c), to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum in terms of those Regulations.

26. A decision by the Scottish Ministers under paragraph 8(2) or 12B of the Crofting Counties Agricultural Grants (Scotland) Scheme 1988(d) to withhold any grant payable, or to recover any grant paid, made on or after 17th March 2008 in relation to an application being administered on that date under that Scheme.

27. A decision by the Scottish Ministers under paragraph 6(4) or (5), 11A(7) or 13(1) of the Crofting Counties Agricultural Grants (Scotland) Scheme 2006 not to pay a grant, to withhold any grant payable or to recover any grant paid (in whole or in part), or require payment of any sum, made on or after 17th March 2008 in connection with any application made under that Scheme.

28. A decision by the Scottish Ministers under the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(e), to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum in terms of those Regulations.

29. A decision by the Scottish Ministers under the Leader Grants (Scotland) Regulations 2008(f) to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum in terms of those Regulations.

30. A decision by the Scottish Ministers under the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008(g), 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 in terms of those Regulations.

31. A decision by the Scottish Ministers under the Land Managers Skills Development Grants (Scotland) Regulations 2008(h), to apply a reduction to any payment of grant or to withhold any grant due (in whole or in part) or recover any grant paid (in whole or in part) or require payment of any sum in terms of those Regulations.

32. A decision by the Scottish Ministers under the Forestry Challenge Funds (Scotland) Regulations 2008(i), to apply a reduction to any payment of grant or to withhold any grant due (in whole or in part) or recover any grant paid (in whole or in part) or require payment of any sum in terms of those Regulations.

33. A decision by the Scottish Ministers under the Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008(j), to apply a reduction to any payment of grant

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

(b) S.S.I. 2003/209 as amended by S.S.I. 2007/146.

(c) S.S.I. 2005/225 amended by 2006/213.

(d) The 1988 Scheme was amended by the Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 1992 and the Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 1994. Those Schemes were revoked by paragraph 14 of the Crofting Counties Agricultural Grants (Scotland) Scheme 2006 ("the 2006 Scheme"), but the 1988 Scheme, as amended, continues in force, by virtue of paragraph 15 of the 2006 Scheme, for the purpose of administering applications made under the 1988 Scheme before 1st April 2006.

(e) S.S.I. 2008/100 amended by S.S.I. 2008/233, 2009/1, 233 and 335.

(f) S.S.I. 2008/66.

(g) S.S.I. 2008/159 amended by S.S.I. 2009/155.

(h) S.S.I. 2008/162.

(i) S.S.I. 2008/135.

(j) S.S.I. 2008/64.

or to withhold any grant due (in whole or in part) or recover any payment of grant or require payment of any sum in terms of those Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a review of certain decisions of the Scottish Ministers in relation to payment of certain agricultural subsidies and other rural payments. After review a right of appeal of such decisions is provided for to the Scottish Land Court. Decisions by the Scottish Ministers contained within paragraphs 1 to 13 of the Schedule apply in relation to holdings administered under the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005. They have effect in Scots Law in relation to holdings (whether wholly situated in Scotland or partly in Scotland and partly elsewhere in the United Kingdom), which are administered in accordance with the IACS scheme.

The Schedule specifies that relevant decisions of Scottish Ministers may be subject to a review under these Regulations. Where dissatisfied with the decision on review an applicant may appeal that decision to the Scottish Land Court.

The procedure for review is by application made no later than 30 days following the date of the decision letter containing the decision (regulation 5).

The review must include an opportunity for the applicant to be heard on any matter relevant to the application at a review meeting (regulation 6(2)). The review meeting must be held within 60 days of receipt of the application (regulation 6(2)) and Scottish Ministers must intimate the date of the review meeting to the applicant in writing (regulation 6(3)). Representations made at a review meeting may be made by the applicant or his representative (regulation 6(4)). The review meeting can also be held by means of telephone or video conference (regulation 6(5)).

Scottish Ministers must, following a review, give their decision in the form of a written report (regulation 7(2)). The written report must be sent by recorded delivery post within the time period outlined in regulation 7(4).

If the applicant chooses to appeal a decision this must be lodged within 30 days of the applicant receiving the written report (regulation 8(2)). Such an appeal to the Scottish Land Court must be accompanied by the decision letter, application for review and the written report (regulation 8(7)).

Where Scottish Ministers have not sent a written report within the prescribed time period the applicant may appeal against the relevant decision (regulation 8(3)). Such an appeal must be accompanied by the decision letter, the application for review and evidence of the date of the review meeting (regulation 8(8)).

Regulation 9 sets out the types of orders which the Scottish Land Court may make during an appeal and following consideration of an appeal. A determination on a question of law may be appealed to the Court of Session (regulation 9(4)).

Regulation 10 provides that the Scottish Land Court may have regard to the conduct of a party during the review process as a whole when considering an award of expenses.

Regulation 11 provides for the application of the Regulations, necessary saving and consequential amendments and revokes the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 and the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005.

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