

**2009 No. 391**

**AGRICULTURE**

**The Common Agricultural Policy (Single Farm Payment and  
Support Schemes and Cross-Compliance) (Scotland)  
Amendment Regulations 2009**

*Made* - - - - *9th November 2009*

*Laid before the Scottish Parliament* *11th November 2009*

*Coming into force in accordance with regulation 1(2)*

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

**PART 1**  
**GENERAL**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009.

(2) These Regulations shall come into force on 1st December 2009, except for regulation 18 which comes into force on 1st January 2010.

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(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. For the purposes of implementing 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 (O.J. No. L 30. 31.01.2009) that competence was modified by the Scotland Act 1998 (Modification of Functions) Order 2004 (S.I. 2004/2980) and the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004 (S.I. 2004/3324).

## PART 2

### AMENDMENTS TO THE COMMON AGRICULTURAL POLICY SINGLE FARM PAYMENT AND SUPPORT SCHEMES (SCOTLAND) REGULATIONS 2005

#### **Amendments to the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005**

2. The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005(a) are amended in accordance with regulations 3 to 14.

#### **Amendment to regulation 2**

3. In regulation 2(1) (interpretation)—

- (a) for the definition of “the Cattle Tracing Regulations” in paragraph 2(1) of Schedule 5, substitute the following definition:
  - “the Cattle Tracing Regulations” means the Cattle Identification (Scotland) Regulations 2007(b);”;
- (b) in the definition of “Commission Regulation (EC) No. 795/2004” omit the words “and 319/2008,” and substitute “, 319/2008(c) and 1124/2008(d)”;
- (c) in the definition of “Commission Regulation (EC) No 796/2004” omit the words “and 319/2008;” and substitute “, 319/2008, 1124/2008(e); 1266/2008(f) and 380/2009(g)”;
- (d) in the definition of “Council Regulation (EC) No 1782/2003” omit the words “and 146/2008;” and substitute “Council Regulation (EC) Nos. 146/2008(h), 470/2008(i), 479/2008(j), 615/2008(k), 637/2008(l), 1009/2008(m) and Commission Regulations (EC) Nos. 293/2008(n) and 674/2008(o)”;
- (e) in the definition of “direct payment” for “Article 2(d) of Council Regulation 1782/2003” substitute “Article 2(d) of Council Regulation 73/2009”;
- (f) omit the following definitions:—
  - (i) “land set aside for non-food purposes”;
  - (ii) “land set aside from production”;
  - (iii) “set-aside period”;
- (g) insert the following definitions in the appropriate place—
  - “Council Regulation 73/2009” 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

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(a) S.S.I. 2005/143 as amended by S.S.I. 2005/257, S.S.I. 2007/414 and S.S.I. 2008/184.

(b) S.S.I. 2007/174 as amended by S.S.I. 2007/312.

(c) O.J. No. L 95, 8.04.2008, p.63.

(d) O.J. No. L 303, 14.11.2008, p7.

(e) O.J. No. L 303, 14.11.2008, p.7.

(f) O.J. No. L 338, 17.12.2008, p.34.

(g) O.J. No. L 116, 9.05.2009, p.9.

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

(i) O.J. No. L 140, 30.05.2008, p.1.

(j) O.J. No. L 148, 6.06.2008, p.1.

(k) O.J. No. L 168, 28.06.2008, p.1.

(l) O.J. No. L 178, 5.07.2008, p.1.

(m) O.J. No. L 276, 17.10.2008, p.1.

(n) O.J. No. L 90, 2.04.2008, p.5.

(o) O.J. No. L 189, 17.07.2008, p.5.

Regulations (EC) Nos. 1290/2005(a), 247/2006(b), 378/2007(c) and repealing Council Regulation (EC) No. 1782/2003(d);”;

““Commission Regulation 1655/2004” means Commission Regulation (EC) No 1655/2004 of 22 September 2004 laying down rules for the transition from the optional modulation system established by Article 4 of Council Regulation (EC) No 1259/1999 to the mandatory modulation system established by Council Regulation (EC) No. 1782/2003;”.

““Eligible hectare” has the meaning given to it in Article 34 of Council Regulation 73/2009;”.

**4.**—(1) In regulation 2(2) for “Article 2(b) of Council Regulation 1782/2003” substitute “Article 2(b) of Council Regulation 73/2009”.

(2) In regulation 2(3)—

(a) for “Council Regulation 1782/2003” substitute “ Council Regulation 73/2009”; and

(b) omit “collector has the meaning given by Article 144(b) of Commission Regulation 1973/2004,”.

### **Amendment to regulation 3**

**5.** In regulation 3 (regional application) for “Article 58 of Council Regulation 1782/2003” substitute “Article 46(2) of Council Regulation 73/2009”.

### **Amendment to regulation 5**

**6.** For regulation 5 (minimum size of holding) substitute—

#### **““Minimum requirements for receiving direct payments**

**5.**—(1) For the purposes of Article 12(6) of Commission Regulation 795/2004, the minimum size of a holding for which the establishment of payment entitlements may be requested shall be 0.3 hectare.

(2) For the purposes of Article 28(1) of Council Regulation 73/2009, the Scottish Ministers shall not grant direct payments arising from activated standard payment entitlements where the eligible area of the holding concerned is, before the application of any reductions arising from non compliance by reason of Articles 21 and 23 of Council Regulation 73/2009, less than 3 hectares.”.

### **Amendment to regulation 9**

**7.** In regulation 9 (transfers), for “Article 44(3) of Council Regulation 1782/2003” substitute “Article 35(1) of Council Regulation 73/2009”.

### **Amendment to regulation 10**

**8.**—(1) In regulation 10(2) (additional modulation), in the definition of “the relevant amount,” for “Article 10(1) of Council Regulation 1782/2003” substitute “Article 7 of Council Regulation 73/2009”.

(2) In regulation 10(2), in the definition of “the specified proportion”—

(a) at the end of paragraph (d) substitute “;” for “and”

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(a) O.J. No. L 209, 11.08.2005, p.1.

(b) O.J. No. L 42, 14.02.2006, p.1.

(c) O.J. No. L 95, 5.04.2007, p.1.

(d) O.J. No. L 270, 21.10.2003, p.1.

- (b) for “paragraphs (e ) to (h)” substitute “(e) in respect of the years 2009 to 2012 inclusive, the percentages detailed in Schedule 6.”

#### **Amendment to regulation 19**

9. In regulation 19 (interpretation of Part 6)—

- (a) in the definition of “IACS holding,” for “Article 2(b) of Council Regulation 1782/2003 substitute “Article 2(b) of Council Regulation 73/2009”;
- (b) for the definition of “Scheme payment” substitute “Scheme payment” means an annual additional payment under Article 68(1)(a)(i) and (4)(a) of Council Regulation 73/2009”.

#### **Amendment to regulation 20**

10. In regulation 20(2) (application for Scheme payments), for “Article 69(2) of Council Regulation 1782/2003,” substitute “Article 68(4)(a) of Council Regulation 73/2009”.

#### **Amendment to regulation 22**

11.—(1) In regulation 22(1) (payments) for “pursuant to Article 69(1) of Council Regulation 1782/2003,” substitute “pursuant to Article 68(1)(a)(i) of Council Regulation 73/2009”.

(2) After regulation 22(1) insert—

“(1A) For the purposes of Article 72(3) of Council Regulation 73/2009, the total support under Article 68(1)(a)(i) of that Regulation is limited to the ceiling fixed for Scotland by virtue of Article 69 of Council Regulation 1782/2003.”.

#### **Amendment to Schedule 4**

12.—(1) Schedule 4 (Scottish Beef Calf Scheme administration and enforcement) is amended in accordance with the following paragraphs.

(2) For the definition of “specified record” in paragraph 2(1) of Schedule 5 substitute the following definition:—

““specified record” means any record which a keeper is required (or has been required) to retain by virtue of paragraph 1 of Schedule 4 to the Cattle Identification (Scotland) Regulations 2007(a).”.

(3) In paragraph 2 (powers of authorised persons) at sub-paragraph (4)(g) omit “, including land set aside pursuant to Articles 54 and 55(b) of Council Regulation 1782/2003”.

(4) In paragraph 2(5)(b) for “Article 27 of Council Regulation 1782/2003” substitute “Article 27 of Council Regulation 73/2009”.

#### **Revocations and savings**

13.—(1) Regulations 4(2) and (3), 6, 7, 8, 11, 12, 13, 14, 15, 16, 17 and 18 and Schedules 1 and 2 are revoked subject to the savings referred to in paragraph (2).

(2) The provisions referred to in paragraph (1) continue to apply, notwithstanding their revocation by paragraph (1), on or after 1st December 2009 for the purposes of—

- (a) processing an application for payment submitted prior to 1st January 2009;
- (b) determining the outcome of any ongoing disputes in respect of hardship claims and payment entitlements for the calendar years preceding 1st January 2009; and
- (c) investigating or determining any ongoing or outstanding disputes in respect of breach of Cross-Compliance Regulations alleged to have occurred prior to 1st January 2009.

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(a) S.S.I. 2007/174 as amended by S.S.I. 2007/312.

## Insertion of new Schedule 6

14. After Schedule 5 (revocation) insert the following Schedule:—

### “SCHEDULE 6 ADDITIONAL MODULATION

Regulation 10(2)

YEAR	AMOUNT OF DIRECT PAYMENTS		
	€00.01 to €5,000	€5,000.01 to €300,000	€300,000 and above
2009	8.5%	6.5%	2.5%
2010	9%	6%	2%
2011	9%	5%	1%
2012	9%	4%	0%

\*Percentages are applied according to the threshold reached for total direct payments.\*

## PART 3

### AMENDMENTS TO THE COMMON AGRICULTURAL POLICY SCHEMES (CROSS COMPLIANCE) (SCOTLAND) REGULATIONS 2004

#### **Amendment to the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004**

15. The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004(a) are amended in accordance with regulations 16 to 18.

#### **Amendment to regulation 2**

16. In regulation 2(1) (interpretation)—

- (a) in the definition “the Commission Regulation”, for “and 319/2008(b);” and substitute “Commission Regulation (EC) Nos. 319/2008, 1124/2008(c), 1266/2008(d), and 380/2009(e);”
- (b) in the definition “the Council Regulation,” for “and 146/2008(f)” substitute “Council Regulation (EC) Nos. 146/2008(g), 470/2008(h), 479/2008(i), 615/2008(j), 637/2008(k), 1009/2008(l) and Commission Regulations (EC) Nos. 293/2008(m) and 674/2008(n);”
- (c) insert the following definitions in the appropriate place—

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(a) S.S.I. 2004/518 amended by S.S.I. 2005/143 and 225, 2007/99, 2008/100 and 184.

(b) Inserted by S.S.I. 2008/184.

(c) O.J. No. L 303, 14.11.2008, p.7.

(d) O.J. No. L 338, 17.12.2008, p.34.

(e) O.J. No. L 116, 9.05.2009, p.9.

(f) Inserted by S.S.I. 2008/184.

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

(h) O.J. No. L 140, 30.05.2008, p.1.

(i) O.J. No. L 148, 6.06.2008, p.1.

(j) O.J. No. L 168, 28.06.2008, p.1.

(k) O.J. No. L 178, 5.07.2008, p.1.

(l) O.J. No. L 276, 17.10.2008, p.1.

(m) O.J. No. L 90, 2.04.2008, p.5.

(n) O.J. No. L 189, 17.07.2008, p.5.

““Council Regulation 73/2009” means Commission 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, and amending Council Regulations (EC) Nos. 1290/2005(a), 247/2006(b), 378/2007(c) and repealing Council Regulation (EC) No. 1782/2003;”;

““Abstraction” has the meaning given to it in section 20(6) of the Water Environment and Water Services (Scotland) Act 2003(d) as amended by the Water Environment (Controlled Activities) (Scotland) Regulations 2005(e);”.

#### **Amendment to the Schedule**

17. In the Schedule (good agricultural and environment condition), in Part IV (minimum level of maintenance and prevention of deterioration of habitats, minimum livestock stocking rates and/or appropriate regimes) in paragraph 18(2) after “apply” insert—

“to land managed under an agri-environmental scheme funded under the Scotland Rural Development Programme 2007 to 2013”.

#### **Insertion of new paragraph 19**

18. After paragraph 18 insert—

### **“PART V**

#### **Protection and Management of Water: Protect water against pollution and run-off, and manage the use of water**

19. For the purposes of Article 6 and Annex III of Council Regulation 73/2009, with effect from 1st January 2010, a farmer abstracting water for irrigation must comply with the authorisation procedures set out in Part II of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.”.

*RICHARD LOCHHEAD*

A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
9th November 2009

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(a) O.J. No. L 209, 11.08.2005, p.1.  
(b) O.J. No. L 42, 14.02.2006, p.1.  
(c) O.J. No. L 95, 5.04.2007, p.1.  
(d) 2003 asp 3.  
(e) S.S.I. 2005/348.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005 (“the 2005 Regulations”) and the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (“the 2004 Regulations”), together, “the principal Regulations.”

They implement Council Regulation (EC) No. 73/2009 which repeals Council Regulation (EC) No. 1782/2003 and establishes common rules for direct support schemes for farmers and establishes certain support schemes for farmers.

The regulations also update references to Community instruments in the principal Regulations.

Regulation 3(e) updates the definition of “direct payment” to cover any payment granted under any Scheme listed in Annex I. It also updates the definition of “eligible hectare.”

Regulation 6 prescribes the minimum size of a holding in respect of which direct payments may be claimed.

Regulation 7 confirms the relevant date upon which eligible land must be at the farmer’s disposal for the purposes of claiming direct payments to be 15th May.

Regulation 8 amends regulation 10(2) of the 2005 Regulations and makes provision for the rates of Member State Modulation to be applied. In particular, it specifies the proportion of the sums that may be deducted by Scottish Ministers for the years 2009 to 2012. The effect of the amendment is that modulation is now applied at a variable rate on the total figure for direct payments received, irrespective of Scheme. The percentage rate to be applied is determined according to a direct payment threshold.

Regulation 9 updates the definition of “Scheme payment”.

Regulation 11 exercises the derogation contained in Article 72(3) of Council Regulation 73/2009 to allow payment in accordance with the measures applicable under Article 69 of Council Regulation 1782/2003.

Regulation 13 contains revocation and savings provisions.

Regulation 16 specifies that the term “abstraction” is to be defined in terms of existing domestic legislation.

Regulation 17 exempts land managed under certain agri-environmental schemes from GAEC measures regarding encroachment of vegetation in certain circumstances.

Regulation 18 amends the 2004 Regulations by inserting a new compulsory GAEC standard regarding the abstraction of water for irrigation which will come into effect on 1st January 2010.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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