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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 273**

**AGRICULTURE**

**The Less Favoured Area Support  
Scheme (Scotland) Regulations 2010**

<i>Made</i>	- - - -	<i>1st July 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>1st July 2010</i>
<i>Coming into force</i>	- -	<i>2nd July 2010</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<sup>(1)</sup> and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references to Article 5 and Annex II of Council Regulation (EC) No. 73/2009 to be construed as references to those provisions as amended from time to time.

**PART I**  
**GENERAL**

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2010 and come into force on 2nd July 2010.

(2) These Regulations extend to Scotland only.

(3) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009<sup>(2)</sup>.

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(1) (c.68); section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3); the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1); and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by the 2006 Act, section 28. 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.

(2) S.I. 2009/3263.

## Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“actively farm” means to undertake a continuous activity which is, in the opinion of the Scottish Ministers, an agricultural activity and which is undertaken for a period or periods totalling not less than 183 days in the Scheme Year for which payment is to be made and “active farming” shall be construed accordingly;

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

“applicant” means a person who has made an application for less favoured area support;

“area aid application” has the same meaning as in Article 6 of Council Regulation (EEC) 3508/92 establishing an integrated administration and control system for certain Community aid schemes<sup>(3)</sup>;

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

“beef cow” means a female bovine animal which, in the opinion of the Scottish Ministers, is a breeding cow used primarily to produce calves for the purpose of beef production and aged 20 months or over;

“Council Regulation 1698/2005” means Council Regulation (EC) No. 1698/2005 on support for rural development from the European Agricultural Fund for Rural Development (EAFRD)<sup>(4)</sup>;

“Commission Regulation 1975/2006” means Commission Regulation (EC) No. 1975/2006 laying down detailed rules for the implementation of Council Regulation No. 1698/2005<sup>(5)</sup>;

“Commission Regulation 1122/2009” means Commission Regulation (EC) No. 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No. 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No. 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector<sup>(6)</sup>;

“common grazing” means any right in pasture or grazing land held or to be held by the applicant, whether alone or in common with others;

“competent authority” has the same meaning as in regulation 3 of the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009;

“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 Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003<sup>(7)</sup>;

“cross border holding” means a holding in the United Kingdom which is situated partly in Scotland;

“cross compliance” has the same meaning as it has for the purposes of Article 5 and Annex II as amended from time to time and Article 6 and Annex III of Council Regulation 73/2009;

“dairy activity” means maintaining a dairy herd;

(3) O.J. L 355, 5.12.1992, p.1.

(4) O.J. No. L 277, 21.10.2005, p.1 as last amended by Council Regulation (EC) No. 473/2009, O.J. No. L 144, 9.6.2009, p.3.

(5) O.J. No. L 368, 23.12.2006, p.74 as amended by Commission Regulation (EC) No. 1396/2007, O.J. L 311, 29.11.2007, p.3 and Commission Regulation (EC) No. 484/2009, O.J. L 145, 10.6.2009, p.25.

(6) O.J. No. L 316, 2.12.2009, p.65 as amended by Commission Regulation (EU) No. 146/2010, O.J. L 47, 24.2.2010, p.1.

(7) O.J. No. L 30, 31.1.2009, p.16 as last amended by Commission Regulation (EU) No. 360/2010, O.J. No. L 106, 28.4.2010, p.1.

“dairy cow” means a female bovine animal which, in the opinion of the Scottish Ministers, is a breeding cow maintained primarily for the purpose of milk production and aged over 20 months;

“dairy ring fence area” has the meaning given in Schedule 1;

“designated maps” means the four maps numbered 1 to 4, each such map being marked “Map of less-favoured farming areas in Scotland”, dated 5th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Government Rural Payments and Inspections Directorate, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD;

“eligible land” shall be construed in accordance with regulation 5;

“farmed deer” means any deer of any species which is kept on eligible land enclosed by a deer proof barrier and kept by way of business for the primary purpose of meat production;

“forage area” means the area of the holding available to the applicant throughout the Scheme Year for rearing livestock including areas in shared use and areas subject to mixed cultivation but not including buildings, woods, ponds and paths;

“goat” means any goat (of any breed) which is kept by way of business for the primary purpose of fibre production;

“holding” has the same meaning as it has for the purpose of Article 2(b) of Council Regulation 73/2009;

“key dates” for sheep means 1st January and for other livestock means 1st January and 30th June;

“less favoured area” means the land shown coloured in blue or in pink on the designated maps—

- (a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive [84/169/EEC](#) concerning the Community list of less-favoured farming areas within the meaning of Directive [75/268/EEC](#) (United Kingdom)(8); and
- (b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or by any combination of, soil, relief, aspect or climate;

“livestock” means a beef cow, a dairy cow, a sheep, a goat, a farmed deer, an alpaca or a llama;

“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitute one livestock unit—

- (a) one beef cow over 24 months of age;
- (b) 1.66 beef cows over 20 months and up to and including 24 months of age;
- (c) within the dairy ring fence area, one dairy cow over 24 months of age;
- (d) within the dairy ring fence area, 1.66 dairy cows over 20 months and up to and including 24 months of age;
- (e) 6.66 breeding ewes or gimmers;
- (f) 6.66 breeding female goats kept as part of a regular breeding herd for fibre production;

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(8) O.J. L 82, 26.3.1984, p.67 as amended by Commission Decision [91/25/EEC](#), O.J. L 16, 22.1.1991, p.25. Council Regulation (EC) No. [1257/1999](#) on support for rural development from European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (O.J. No. L 160, 26.6.1999, p.80) provides in Article 55(4) that Directives adopting lists of less-favoured areas or amending such lists in accordance with Article 21 of Council Regulation (EC) No. [950/97](#) (O.J. No. L 142, 2.6.1997, p.1) shall remain in force. Council Regulation [950/97](#) repealed and replaced Directive [75/268/EEC](#) (United Kingdom), O.J. No. L 128, 19.5.1975, p.1. Article 55(4) was preserved by Article 93 of Council Regulation (EC) [1698/2005](#).

- (g) 3.33 breeding female farmed deer aged 27 months and over;
- (h) 5 breeding female farmed deer aged over 6 months but less than 27 months of age;
- (i) 3.33 breeding female alpaca kept as part of a regular breeding herd;
- (j) 3.33 breeding female llamas kept as part of a regular breeding herd;
- “llama” means any llama of any breed which is kept by way of business for the primary purpose of fibre production;
- “maximum stocking density” means 1.40 livestock units per hectare;
- “minimum stocking density” means 0.12 livestock units per hectare;
- “payable area” means the area of land on which less favoured area support is to be paid, calculated in accordance with regulation 8 and, adjusted where appropriate, in accordance with regulation 10;
- “Scheme Year” means a calendar year commencing on 1st January;
- “Scheme 2005 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2004 to 31st December 2004 under the 2005 Regulations;
- “Scheme 2006 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2005 to 31st December 2005 under the 2005 Regulations;
- “Scheme 2007 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2007 to 31st December 2007 under the 2007 Regulations;
- “Scheme 2008 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2008 to 31st December 2008 under the 2007 Regulations;
- “Scheme 2009 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2009 to 31st December 2009 under the 2007 Regulations and “Scheme Year 2009” shall be construed accordingly;
- “Scheme 2010 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2010 to 31st December 2010;
- “Scheme 2011 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2011 to 31st December 2011;
- “Scheme 2012 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2012 to 31st December 2012;
- “Scheme 2013 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2013 to 31st December 2013;
- “shared grazing” means land used for grazing within a field used by two or more producers;
- “sheep” means breeding ewes or gimmers, kept by way of business for the primary purpose of meat production;
- “single application” has the meaning given in Article 2(11) of Commission Regulation 1122/2009<sup>(9)</sup>;
- “the 2003 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2003<sup>(10)</sup>;

(9) Article 8 of Commission Regulation 1975/2006 applies the deadline for the single application in Article 11 of Commission Regulation (EC) 796/2004 (O.J. L 141, 30.4.2004, p.18) to “area-related measures” within the meaning of Title I of Commission Regulation 1975/2006. “Area-related measures” within the meaning of Title I of Commission Regulation 1975/2006 include less favoured area support. Commission Regulation 796/2004 was repealed and replaced by Commission Regulation 1122/2009.

(10) S.S.I. 2003/129, revoked by regulation 27 of S.S.I. 2004/70, subject to the savings provision contained in that regulation.

“the 2005 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2005<sup>(11)</sup>; and

“the 2007 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2007<sup>(12)</sup>.

(2) Any 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<sup>(13)</sup> (general interpretation), which has been recorded and is consequently capable of being reproduced.

## PART II

### ELIGIBILITY

#### Eligibility for payment of less favoured area support

3.—(1) Payment of less favoured area support may be made to an applicant in respect of a Scheme Year only if—

- (a) subject to paragraphs (2) and (3), that applicant has given an undertaking to continue to use eligible land for a period of not less than five years from the first payment made under—
    - (i) these Regulations;
    - (ii) the 2007 Regulations; or
    - (iii) the 2005 Regulations; and
  - (b) that applicant has, in the opinion of the Scottish Ministers, met the requirements of cross compliance on the applicant’s holding throughout the Scheme Year.
- (2) An applicant may be released from the undertaking referred to in paragraph (1)(a)—
- (a) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to another person and that person agrees to take over the undertaking;
  - (b) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to an organisation, which in the opinion of the Scottish Ministers, has the main objective of nature conservation and where the transfer is for the principle purpose of securing a permanent change of land use into nature conservation with an associated benefit to the environment; or
  - (c) if, in the opinion of Scottish Ministers, the applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person.

(3) In the event that the applicant has ceased farming and the person to whom all or part of the holding has been transferred does not agree to be bound by the undertaking referred to in paragraph (1)(a), the Scottish Ministers may, if satisfied that the applicant has, at the time of the cessation of farming, honoured a significant proportion of the undertaking, release the applicant from that undertaking.

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<sup>(11)</sup> S.S.I. 2005/569 as amended by S.S.I. 2005/64, S.S.I. 2005/624 and S.S.I. 2006/601, revoked by regulation 26 of S.S.I. 2007/439 subject to the savings provision contained in that regulation.

<sup>(12)</sup> S.S.I. 2007/439 as amended by S.S.I. 2008/294 and S.S.I. 2009/412.

<sup>(13)</sup> 2000 (c.7); section 15 was amended by the Communications Act 2003 c.21 section 406 and Schedule 17 paragraph 158.

**Payment of less favoured area support**

4. The Scottish Ministers may, on such occasions as they consider fit, in respect of the Scheme Year in question pay less favoured area support to an applicant who actively farms eligible land which is not less than 3 hectares.

**Eligible land**

5.—(1) Eligible land comprises the number of hectares of forage area in a less favoured area with—

- (a) a less favoured area support grazing category attributed to it by the Scottish Ministers prior to 1st January 2007; and
- (b) one of the land use codes specified in column 2 of Schedule 2 corresponding to the entry in column 1 of Schedule 2 relating to the use of the land,

as declared by the applicant in a single application in respect of the Scheme Year to which payment relates.

(2) Eligible land includes land in respect of which the applicant has a right of use pursuant to a short term let, seasonal grazing or common grazing or other such arrangement.

(3) If an application for less favoured area support relates to land situated outwith the dairy ring fence area and all or part of that land was used for dairy activity in the Scheme Year 2009 or in the first year of application, where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the Scottish Ministers shall determine the area of ineligible land attributable to dairy activity.

(4) The ineligible area referred to in paragraph (3) shall be deducted from the eligible area identified in accordance with paragraph (1).

**Transfer of a holding**

6.—(1) A decision by the Scottish Ministers to make a payment under regulation 4 must be in accordance with Article 82 of Commission Regulation 1122/2009.

(2) For the purposes of paragraph 6 of Article 82 of Commission Regulation 1122/2009, the Scottish Ministers must grant less favoured area support to the transferor of a holding if—

- (a) the transferor has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned; and
- (b) the requirements of paragraphs 2 to 5 of Article 82 of Commission Regulation 1122/2009 have, in the opinion of the Scottish Ministers, been fulfilled.

**PART III****CALCULATION OF LESS FAVOURED AREA SUPPORT****Amount of less favoured area support**

7.—(1) Subject to paragraph (2) and regulation 12, the amount of less favoured area support is calculated in accordance with the following formula:—

$$LFAS = P \times R$$

Where—

*LFAS* is the amount of less favoured area support payable;

$P$  is the payable area; and

$R$  is the rate of payment determined in accordance with regulation 11.

(2) Where an applicant has eligible land in more than one grazing category (as determined for the purposes of regulation 8) then—

(a) the calculation in paragraph (1) is applied in respect of the total area of eligible land in each grazing category and, for the purposes of each calculation—

(i)  $P$  is the payable area of land in each grazing category; and

(ii)  $R$  is the rate of payment for each type of grazing category determined in accordance with regulation 11; and

(b) the total amount of less favoured area support payable is the sum of the calculations in respect of each grazing category.

### **Determination of Unadjusted Payable Area**

8.—(1) The unadjusted payable area is the total of the areas of eligible land of the applicant in each grazing category, calculated in accordance with the following formula—

$$P = E \times V$$

Where—

$P$  is the unadjusted payable area;

Subject to regulation 9(2) and (3),  $E$  is the area of eligible land in each field or shared grazing in the Scheme Year for which payment is to be made; and

$V$  is the hectare value for each field or shared grazing determined in accordance with paragraph (2).

(2) For the purpose of paragraph (1), the hectare value is the entry in the third column of Schedule 3 corresponding to the grazing category in the second column of that Schedule.

(3) For the purposes of this regulation, the grazing category of each field or shared grazing of the applicant is the entry in the second column of Schedule 3 corresponding to the entry in the first column of that Schedule relating to the base year stocking density of each field or shared grazing.

(4) For the purposes of paragraph (3), the “base year stocking density” for each field or shared grazing is either—

(a) the stocking density that was determined for that field or shared grazing by paragraphs (4) to (12) of regulation 9 of the 2003 Regulations following upon an application for less favoured area support under those Regulations; or

(b) where no stocking density was determined under regulation 9 of the 2003 Regulations for a field or shared grazing, the stocking density figure determined by the Scottish Ministers under regulation 9(5) of the 2005 Regulations for that part of the land of the applicant on or before 31st December 2006.

### **Stocking density outwith the minimum and maximum stocking density parameters**

9.—(1) The provisions of this regulation apply where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is either less than the minimum stocking density or greater than the maximum stocking density.

(2) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is less than the minimum stocking density, the eligible land for the purposes of the calculation in regulation 8(1) is the number of hectares calculated in accordance with the following formula—

$$E1 = (F \times S) \div M$$

Where—

*E1* is the area of eligible land adjusted in accordance with this regulation;

*F* is the total area of eligible land of the applicant;

*S* is the stocking density calculated for the applicant in accordance with paragraph (4) and Parts I and II of Schedule 4; and

*M* is the minimum stocking density.

(3) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is greater than the maximum stocking density, the eligible land for the purposes of the calculation in regulation 8(1) is the number of hectares calculated in accordance with the following formula—

$$E2 = (F \times M) \div S$$

Where—

*E2* is the area of eligible land adjusted in accordance with this regulation;

*F* is the total area of eligible land of the applicant;

*M* is the maximum stocking density; and

*S* is the stocking density calculated for the applicant in accordance with paragraph (4) and Parts I and II of Schedule 4.

(4) For the purpose of paragraphs (1), (2) and (3), the stocking density is to be calculated in accordance with Parts I and II of Schedule 4, using—

(a) livestock units based on the number of livestock which the Scottish Ministers determine were maintained by the applicant—

(i) in 2009, where the applicant maintained livestock on eligible land declared in a single application in 2009; or

(ii) in the first year of application for less favoured area support where the applicant did not submit a single application or claim less favoured area support in or prior to 2009; and

(b) the historic land area.

(5) In determining the number of livestock for the purposes of paragraph (4)(a), the Scottish Ministers must have regard to the livestock numbers declared by the applicant as being maintained by the applicant on eligible land on key dates in 2009 or the first year of application for less favoured area support, where the applicant did not submit a single application or claim less favoured area support in or prior to 2009.

(6) Where—

(a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 8); and

(b) eligible land, for the purpose of the calculation in regulation 8(1), for that applicant has been reduced under paragraph (2) or (3),

the Scottish Ministers must apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 8(1).

(7) Where the stocking density calculated in accordance with paragraph (4) was less than the minimum stocking density due to the culling of the stock on the land in question in the context of the control of an outbreak of an epizootic disease—

(a) during 2009; or



- (b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers determine the stocking density to be used for the purposes of the formula at paragraph (2).

(8) For the purposes of this regulation and Part II of Schedule 4, “historic land area” means the area of eligible land declared by the applicant in a single application in 2009 or in the first year of application where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, prior to deduction of either or both of—

- (a) any penalty area calculated in accordance with Commission Regulation 1975/2006; and
- (b) any area deducted in accordance with regulation 6(5) of the 2007 Regulations(14).

### **Enterprise mix**

**10.**—(1) Subject to paragraphs (2) and (3), where at least 10% of the livestock units of the applicant, calculated in accordance with regulation 9(4) and Part I of Schedule 4, are cattle, the unadjusted payable area calculated in accordance with regulation 8 is to be adjusted in accordance with this regulation and the following formula—

$$P1 = P2 \times Z$$

Where—

*P1* is the payable area;

*P2* is the unadjusted payable area calculated in accordance with regulation 8; and

*Z* is the hectare multiplier contained in the second column of Schedule 8 corresponding to the proportion of livestock units (calculated in accordance with regulation 9(4) and Part I of Schedule 4) which are cattle contained in the first column of Schedule 8.

(2) Where the number of sheep used to calculate livestock units for the purposes of regulation 9(4) and Part I of Schedule 4 is lower than—

- (a) the number of sheep used to calculate livestock units for the purposes of the Scheme 2006 payment; or
- (b) where an applicant did not receive a Scheme 2006 payment, the number of sheep used to calculate livestock units for the purposes of the Scheme 2005 payment,

and the hectare multiplier contained in the second column of Schedule 8, corresponding to the proportion of livestock units (calculated in accordance with regulation 9(4) and Part I of Schedule 4) which are cattle contained in the first column of Schedule 8, is higher than the hectare multiplier established for the purposes of the Scheme 2006 payment or, the Scheme 2005 payment as appropriate, then that hectare multiplier can only apply for the purposes of the Scheme 2010 payment, the Scheme 2011 payment, the Scheme 2012 payment or the Scheme 2013 payment if the number of cattle used to calculate livestock units for the purposes of regulation 9(4) and Part I of Schedule 4 is greater than the number of cattle used to calculate livestock units for the purposes of the Scheme 2006 payment or the Scheme 2005 payment as appropriate.

(3) Where the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1) is unrepresentative of the usual enterprise mix of the applicant, due to the culling of stock on the land in question in the context of the control of an outbreak of an epizootic disease—

- (a) during 2009; or

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(14) S.S.I. 2007/439 as amended by S.S.I. 2008/294 and S.S.I. 2009/412.

- (b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers determine the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1).

### **Rate of payment of less favoured area support**

**11.**—(1) Where for the purposes of regulation 8, the grazing category of land, as specified in Schedule 3, is A or B, the rate of payment of less favoured area support for the purposes of regulation 7 is the rate per hectare of the unadjusted payable area set out in the entry in the second column in Part I (More Disadvantaged Land) of Schedule 5 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (3).

(2) Where, for the purposes of regulation 8, the grazing category of land, as specified in Schedule 3, is C or D, the rate of payment of less favoured area support for the purposes of regulation 7 is the rate per hectare of the unadjusted payable area set out in the entry in the second column in Part II (Less Disadvantaged Land) of Schedule 5 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (3).

(3) For the purposes of paragraphs (1) and (2), the fragility category applicable to the applicant is determined by the code of the parish in which the main farm of the applicant is situated as set out in Schedule 6.

(4) For the purpose of paragraph (3), the code of the parish in which the main farm is situated is the first digit or the first two or three digits as appropriate of the applicant's main farm code.

(5) For the purposes of this regulation, "main farm code" means the code attributed by the Scottish Ministers to the farm which the applicant considers is the applicant's main farm for the purposes of the applicant's single application.

### **Minimum payment**

**12.** The minimum amount of less favoured area support payable by the Scottish Ministers under these Regulations (prior to the deduction of any penalty under Commission Regulation 1975/2006) is £385 in respect of—

- (a) a Scheme 2010 payment;
- (b) a Scheme 2011 payment;
- (c) a Scheme 2012 payment; or
- (d) a Scheme 2013 payment.

## **PART IV ENFORCEMENT**

### **Powers of authorised persons**

**13.**—(1) An authorised person may, at all reasonable hours and on producing if so required a duly authenticated document showing the authority of that person, exercise the powers specified in this regulation for the purposes of—

- (a) verification of the accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Articles 11, 12 and 20 of Commission Regulation 1975/2006; or

- (b) ascertaining whether an offence under these Regulations has been or is being committed, and in doing so may be accompanied by a person assigned to assist the authorised person for those purposes.
- (2) An authorised person may enter any land or premises (other than dwellinghouses not being used for a purpose relevant to these Regulations).
- (3) An authorised person who has entered any land or premises by virtue of this regulation may—
  - (a) inspect and verify the total area of such land;
  - (b) inspect and count livestock on such land and require the applicant to arrange for the collection of animals, penning and securing;
  - (c) require production of and examine any records in whatever form, and take copies of those records;
  - (d) remove and retain any document or other record referred to in sub-paragraph (c) which may be required for use as evidence in proceedings under these Regulations; and
  - (e) inspect and verify that the applicant has complied with the requirements of cross compliance.
- (4) An authorised person may require any records mentioned in paragraph (3)(c) which are kept by means of a computer or any associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

#### **Assistance to authorised persons**

**14.** An applicant, employee or agent of an applicant or any person having, or appearing to have, charge of animals on the land must give to an authorised person such assistance as the authorised person may reasonably request so as to enable that person to exercise any power conferred by regulation 13.

#### **Withholding or recovery of less favoured area support**

- 15.** The Scottish Ministers may withhold or recover the whole or any part of any payment of less favoured area support payable or paid to an applicant in any of the following circumstances—
- (a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to regulation 3(1)(a) from which the applicant has not been released under regulation 3(2) or (3);
  - (b) where the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 13, or fails without reasonable excuse to comply with a requirement or request made by an authorised person under regulation 13 or 14;
  - (c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with cross compliance on or in relation to the holding; or
  - (d) where, in the opinion of the Scottish Ministers, the applicant has failed to comply with the requirement in regulation 4 to actively farm eligible land.

#### **Guidance**

- 16.—(1)** The Scottish Ministers may publish guidance from time to time on—
- (a) the circumstances in which they will normally withhold or recover any sums under regulation 15, and the amount which any sums withheld 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.

### **Rate of interest**

17. For the purpose of Article 80 of Commission Regulation 1122/2009, interest shall be charged at the rate of one percentage point above the sterling three month London Interbank Offered Rate on a day-to-day basis for the period specified in that Article.

### **Cross border holdings**

18. Schedule 7 applies to agency arrangements and to cross border holdings.

### **Offences**

19.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person part of, or the whole of, a payment of less favoured area support under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, is guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 14) in the exercise of the powers conferred by regulation 13 is guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 13 or request under regulation 14 is guilty of an offence.

### **Penalties**

20.—(1) A person guilty of an offence under regulation 19(1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 19(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Time limit for prosecutions**

21.—(1) Summary proceedings for an offence under regulation 19 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date of commencement of proceedings)(15) applies for the purposes of this regulation as it applies for the purposes of that section.

### **Offences by bodies corporate**

22.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

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(15) 1995 (c.46).

the individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) In paragraph (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body;
    - (ii) where the affairs of the body are managed by its members, the members;
  - (b) in relation to a Scottish partnership, a partner;
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

## PART V

### MISCELLANEOUS

#### **Appeal against decision as to eligibility of holding**

**23.**—(1) An applicant may, no later than 60 days following the date of intimation of the Scottish Ministers’ decision as to the eligibility of the holding under regulation 5, make an application in writing to the Scottish Ministers to have that decision reviewed by persons appointed by the Scottish Ministers for that purpose.

(2) An application under this regulation is to be treated as made if it is received by the Scottish Ministers.

(3) The application must be accompanied by such information as the persons appointed consider necessary.

(4) Such persons appointed under paragraph (1) must review the decision and notify their determination to the Scottish Ministers, and by recorded delivery mail to the applicant, within 10 days of reaching that determination.

(5) Subject to regulation 24, the determination of such persons appointed is binding on the Scottish Ministers.

(6) The Scottish Ministers may make such payment, by way of fee or reimbursement of expenses, to any such persons appointed under paragraph (1), as appears to them to be appropriate.

#### **Review**

**24.**—(1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 23(4).

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the notification of the determination to the applicant in accordance with regulation 23(4).

(3) On an application for a review under this regulation, the Scottish Ministers must refer the matter to a person appointed by the Chair of the Scottish Branch of the Royal Institution of Chartered Surveyors to carry out the functions in paragraph (4).

(4) The person appointed under paragraph (3) must review the determination referred to in regulation 23(4) and may—

- (a) consider any document or other evidence produced by the applicant or the Scottish Ministers (whether or not that document or other evidence was available at the time of the determination);

- (b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and
  - (c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.
- (5) The person appointed to review the determination must make a decision confirming or revoking that determination, and notify that decision to the Scottish Ministers and to the applicant in writing.
- (6) The person appointed is entitled to require the reasonable costs of the review to be paid by such party as that person may direct, and the person appointed must determine the amount of such costs.

### **Amendment of the Rural Payments (Appeals) (Scotland) Regulations 2009**

**25.**—(1) The Rural Payments (Appeals) (Scotland) Regulations 2009<sup>(16)</sup> are amended in accordance with this regulation.

(2) In the Schedule (relevant decisions)—

(a) for paragraph 13 substitute—

“**13.** A decision of the Scottish Ministers under regulation 4(1)(b), 5, 7(1), 9(4)(b), 10(7), 11(4) or 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2007<sup>(17)</sup>.”; and

(b) after paragraph 13 insert—

“**13A.** A decision by the Scottish Ministers under regulation 3(1)(b), 3(2), 3(3), 4, 5(3), 9(4)(a), 9(7), 10(3) or 15 of the Less Favoured Area Support Scheme (Scotland) Regulations 2010.”.

### **Revocation and savings provisions**

**26.**—(1) Subject to the savings referred to in paragraph (2), the 2007 Regulations (except regulation 26(2)), the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008<sup>(18)</sup> and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009<sup>(19)</sup> are revoked.

(2) In respect of a Scheme 2007 payment, a Scheme 2008 payment or a Scheme 2009 payment within the meaning of the 2007 Regulations, the 2007 Regulations, the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008 and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 shall continue to have effect as if those Regulations had not been revoked.

St Andrew’s House,  
Edinburgh  
1st July 2010

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

<sup>(16)</sup> S.S.I. 2009/376.

<sup>(17)</sup> S.S.I. 2007/439 as amended by S.S.I. 2008/294 and S.S.I. 2009/412.

<sup>(18)</sup> S.S.I. 2008/294.

<sup>(19)</sup> S.S.I. 2009/412.

SCHEDULE 1

Regulations 2(1) and 5(3)

MEANING OF DAIRY RING FENCE AREA

“Dairy ring fence area” means—

- (a) the islands of Shetland;
- (b) the islands of Orkney;
- (c) the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert;
- (d) the islands of the Outer Hebrides and the Inner Hebrides; and
- (e) the areas of land within Argyll and Bute Council comprising those parts of the parishes of Dunoon and Kilmun and Inverchaolain bounded as follows—

Starting in the North on the shore of Loch Striven at point national grid reference NS/095708; then in an easterly direction along the Ministry of Defence boundary to point national grid reference NS/098708; then in a northerly direction along the Ministry of Defence boundary to point national grid reference NS/097711; then in a north-easterly direction along the Ministry of Defence boundary to point national grid reference NS/098711; then in a northerly direction along the Ministry of Defence boundary to point national grid reference NS/098712; then in a north north-easterly direction along the Ministry of Defence boundary to point national grid reference NS/099713; then in a north-easterly direction to point national grid reference NS/103714; then in a south-easterly direction to point national grid reference NS/107712; then in an easterly direction along the forestry fence to point national grid reference NS/111712; then in a southerly direction along the forestry fence to point national grid reference NS/110708; then in a south-easterly direction along the forestry fence to point national grid reference NS/112707; then in a south south-easterly direction along the forestry fence to point national grid reference NS/113704; then in a south-easterly direction to point national grid reference NS/114704; then in a southerly direction along the forestry fence to point national grid reference NS/114699; then in a south-westerly direction along the forestry fence to point national grid reference NS/112699; then in a south south-westerly direction along the forestry fence to point national grid reference NS/11163 where the forestry fence meets the A815; then in a southerly direction along the A815 to point national grid reference NS/112689; then in a north-easterly direction along the forestry fence to point national grid reference NS/114690; then in an east south-easterly direction along the forestry fence to point national grid reference NS/117688; then in a southerly direction along the forestry fence to point national grid reference NS/116685; then in a westerly direction to point national grid reference NS/114685 where the forestry fence meets a track; then in a southerly direction down the track to point national grid reference NS/114683; then in a westerly direction down a burn to point national grid reference NS/112682 where the burn meets the A815; then in a southerly direction down the A815 to point national grid reference NS/111679; then in a westerly direction to point national grid reference NS/110679 at the high water mark; then in a westerly direction for approximately 1200 metres which then turns in a northerly direction all along the shore back to the starting point of national grid reference NS/095708.

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## SCHEDULE 2

Regulation 5(1)

## LAND USE CODES ELIGIBLE FOR LESS FAVOURED AREA SUPPORT SCHEME

<b><i>LAND USE</i></b>	<b><i>LAND USE CODE</i></b>
Other crops for stock feed (excluding kale, cabbages and fodder beet)	OCS
Fodder beet	OCS-B
Kale and cabbage for stock feed	OCS-K
Grass over 5 years	PGRS
Rape for stock feed	RAST
Rough Grazing	RGR
Grass under 5 years	TGRS
Turnips, swedes for stock feed	TSWS
Open woodland (grazed)	WDG
Agri-environment areas	AGRI

## SCHEDULE 3

Regulations 8(2), 8(3), 11(2) and 11(3)

## GRAZING CATEGORY: HECTARE VALUES

<b><i>BASE YEAR STOCKING DENSITY (Livestock units ("LU")/hectare)</i></b>	<b><i>GRAZING CATEGORY</i></b>	<b><i>HECTARE VALUE</i></b>
Up to and including 0.19 LU/ha	A	0.167
0.2 to 0.39 LU/ha	B	0.333
0.4 to 0.59 LU/ha	C	0.667
0.6 or more LU/ha	D	0.8

## SCHEDULE 4

Regulations 9(1), 9(2), 9(3),9(4), 9(8), 10(1) and 10(2)

## LIVESTOCK UNITS AND STOCKING DENSITY

## PART I

## CALCULATION OF LIVESTOCK UNITS

For the purposes of part II of this Schedule, the total LFASS Livestock Units is calculated in accordance with the formula—

$$K = A + B + C + D + E + F + G + H + I + J$$



Where—

K is the total LFASS Livestock Units;

A is the number of beef cows over 24 months of age multiplied by a factor of 1.0;

B is the number of beef cows over 20 months up to and including 24 months of age multiplied by a factor of 0.6;

C is the number of breeding ewes and gimmers multiplied by a factor of 0.15;

D is the number of breeding female goats multiplied by a factor of 0.15;

E is the number of breeding female alpaca multiplied by a factor of 0.3;

F is the number of breeding female farmed deer (hinds aged 27 months and over) multiplied by a factor of 0.3;

G is the number of breeding female farmed deer (over 6 months but less than 27 months of age) multiplied by a factor of 0.2;

H is the number of breeding female llamas multiplied by a factor of 0.3;

I is, in the case of an applicant who maintains a dairy herd in the dairy ring fence area, the number of dairy cows over 24 months of age multiplied by a factor of 1.0;

J is, in the case of an applicant who maintains a dairy herd in the dairy ring fence area, the number of dairy cows over 20 months and up to and including 24 months of age multiplied by a factor of 0.6.

## PART II

### CALCULATION OF STOCKING DENSITY

The stocking density is calculated in accordance with the formula—

$$S = \frac{K}{L}$$

Where—

S is the stocking density (to two decimal places);

K is the total LFASS Livestock Units calculated in accordance with part I of this Schedule;

L is the total number of hectares comprising the historic land area.

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SCHEDULE 5

Regulations 11(2) and 11(3)

RATES OF PAYMENT FOR LESS FAVOURED AREA SUPPORT

PART I

MORE DISADVANTAGED LAND

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
	<i>Scheme 2010 payment, Scheme 2011 payment, Scheme 2012 payment, Scheme 2013 payment</i>
Very Fragile (Islands)	£71.35
Fragile (Mainland)	£62.10
Standard	£37.80

PART II

LESS DISADVANTAGED LAND

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
	<i>Scheme 2010 payment, Scheme 2011 payment, Scheme 2012 payment, Scheme 2013 payment</i>
Very Fragile (Islands)	£63.00
Fragile (Mainland)	£54.51
Standard	£32.50

SCHEDULE 6

Regulation 11(3)

FRAGILITY CATEGORIES

PARISH CODE NUMBERS

Fragility category - Standard

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
22	23	24	28	30	31	32	35	36	38	39	40	41	42	43	44	45	46	47	48	49
50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91
92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112
113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133
134	135	136	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193

194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214
215	216	217	218	219	220	221	242	243	244	245	246	247	248	249	250	251	252	253	254	255
256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	290	291	292
293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313
314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334
335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355
356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376
377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397
398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418
419	420	421	422	423	424	425	426	427	428	429	430	431	432	445	449	451	466	467	468	469
470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490
491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511
512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532
533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553
554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574
575	576	577	578	579	580	581	582	583	584	585	598	600	601	606	609	635	636	637	638	639
640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660
661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681
682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702
703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723
724	725	726	727	728	729	730	731	732	733	734	735	769	770	771	772	773	774	775	776	777
778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798
799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819
820	821	822	823	824	825	826	827	841	842	843	844	845	846	847	848	849	850	851	853	854
855	856	859	860	861	863	864	865	866	868											

Fragility category - Fragile

25	26	27	29	33	34	37	137	138	139	140	141	142	143	144	145	146	152	154	155	156
157	158	159	160	161	162	163	169	170	171	172	173	174	175	222	223	224	225	226	227	228
229	230	231	232	233	234	235	236	237	238	239	240	241	280	281	282	283	284	285	286	287
288	289	433	434	435	436	437	438	439	440	441	442	446	447	448	450	452	453	454	455	586
587	588	589	590	591	592	593	594	595	596	597	599	602	603	604	605	607	608	736	737	738
739	740	741	742	743	744	745	746	747	748	749	750	751	752	757	758	759	760	761	762	763
764	765	766	767	768	828	829	830	831	832	833	834	835	836	837	838	839	840	852	857	858

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862	867																				
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Fragility category - Very Fragile

147	148	149	150	151	153	164	165	166	167	168	274	275	276	277	278	279	443	444	456	457	
458	459	460	461	462	463	464	465	610	611	612	613	614	615	616	617	618	619	620	621	622	
623	624	625	626	627	628	629	630	631	632	633	634	753	754	755	756	869	870	871	872	873	
874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891				

SCHEDULE 7

Regulation 18

AGENCY ARRANGEMENTS AND CROSS BORDER HOLDINGS

*Agency arrangements*

1. The Scottish Ministers may, with the agreement of any competent authority, arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.
2. The Scottish Ministers may also agree to exercise functions on behalf of another competent authority corresponding to those which are exercisable by the Scottish Ministers under these Regulations.
3. Any such arrangement shall be in writing and be signed by or on behalf of the Scottish Ministers and the competent authority and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

*Set off*

4. Without prejudice to the amount of any sum payable by the Scottish Ministers to any other competent authority, the amount of any sum payable by the Scottish Ministers, whether as principal or agent, by way of a specified payment may be set off against the amount of any sum recoverable by the Scottish Ministers, whether as principal or agent.

*Calculation of payments in respect of cross border holdings*

5. Where any holding in respect of which a claim has been made is a cross border holding, the Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for actively farming eligible land, providing the applicant has declared the eligible land in a single application which has been treated as a valid application by the competent authority concerned.
6. Whether the active farming undertaken on the eligible land is an integral part of the management of the whole holding or independently managed, the Scottish Ministers will only pay less favoured area support in respect of the active farming actually undertaken on eligible land defined as a less favoured area for the purposes of these Regulations.
7. For cross border holdings where the applicant has submitted a declaration of eligible land to another competent authority, the Scottish Ministers will apply the standard rate of payment.

8. Applicants in respect of cross border holdings are required to supply such information as authorised persons may reasonably require to assess the active farming actually undertaken on eligible land defined as a less favoured area for the purposes of these Regulations.

9. All conditions applying to applicants in respect of holdings lying wholly within the less favoured areas apply equally to applicants in respect of cross border holdings.

## SCHEDULE 8

Regulations 10(1), 10(2) and 10(3)

## ENTERPRISE MIX

<i>Enterprise mix</i>	<i>Hectare multiplier</i>
If 50% or more of livestock units are cattle	1.70
If 10% or more, but less than 50% of livestock units are made of cattle	1.35

**EXPLANATORY NOTE**

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

These Regulations, which replace the Less Favoured Area Support Scheme (Scotland) Regulations 2007 (“the 2007 Regulations”), make provision for the purposes of the implementation of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (O.J. No. L 277, 21.10.2005, p.1), Commission Regulation (EC) Nos. 1974/2006 (O.J. No. L 368, 23.12.2006, p.15) and Commission Regulation (EC) 1975/2006 (O.J. No L 368, 23.12.2006, p.74) both laying down detailed rules for the application of Council Regulation 1698/2005. These Regulations provide for less favoured area support (“LFAS”) payments for the period 2010-2013.

These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority under the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (S.I. 2009/3263) (regulation 1(3)).

Eligibility for payment of LFAS is dependent upon the applicant giving an undertaking and meeting the criteria set out in regulation 3(1). It can only be paid to an applicant who actively farms eligible land (“actively farms” is defined in regulation 2(1) and “eligible land” is defined in regulation 5). No payment will be made where the amount of land is less than 3 hectares (regulation 4). There is provision at regulation 6 to determine to whom payment should be made where a holding is transferred during a Scheme Year.

LFAS is paid for eligible hectares on farms in Scottish less favoured areas at specified rates (regulations 7 and 11). The rate is fixed according to the grazing category (regulation 8 and Schedule 3) and the fragility category of the parish in which the main farm of the applicant lies (regulation 11(3) and Schedule 6).

The area of land on which LFAS is paid is normally the area of eligible land calculated in accordance with the formula set out in regulation 8(1) (the “unadjusted payable area”). The manner

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in which the area of unadjusted payable area is calculated will depend on the grazing category of that land (regulation 8(2)). The grazing category is allocated according to the historical stocking density of the applicant's land known as the "base year stocking density" (regulation 8(3) and (4)).

Where the applicant has a stocking density which is above the maximum stocking density or below the minimum stocking density, the area of eligible land used to calculate the "unadjusted payable area" in regulation 8(1) is modified in accordance with regulation 9(2) and (3). The maximum and minimum stocking densities are defined in regulation 2(1). Stocking density for the purposes of regulation 9 will be based on the applicant's 2009 livestock figures (regulation 9(4) and (5)). Regulation 9(7) makes provision to allow the Scottish Ministers to determine the stocking density where an applicant has not been able to achieve the minimum stocking because of slaughter in consequence of an epizootic disease.

Where more than 10% of the livestock maintained by the applicant (based on 2009 figures) was made up of cattle, the area of land on which LFAS will be paid will be increased in accordance with the adjustment set out in regulation 10 and Schedule 8.

Regulation 12 fixes a minimum payment of £385 for Scheme 2010-2013 payments (prior to the deduction of any penalties under Commission Regulation 1975/2006). Regulation 13 contains powers of enforcement. Regulation 15 provides for withholding or recovery of LFAS where there is a breach of the rules of the LFAS Scheme. Regulation 16 makes provision as to the publication of guidance. Regulations 19 to 22 deal with offences and penalties.

Regulations 23 and 24 deal with an applicant's right of appeal against decisions taken by the Scottish Ministers as regards eligibility of the holding.

Regulation 25 amends the Rural Payments (Appeals) (Scotland) Regulations 2009 to make a correction to paragraph 13 of the Schedule to those Regulations and inserts a new paragraph 13A to provide for an applicant's right of appeal against decisions taken by the Scottish Ministers under these Regulations.

Regulation 26(1) revokes the 2007 Regulations and amending instruments with the exception of regulation 26(2) of the 2007 Regulations. Regulation 26(2) of these Regulations makes a savings provision to ensure that Scheme 2007, Scheme 2008 and Scheme 2009 payments within the meaning of the 2007 Regulations as amended continue to have effect as if those Regulations had not been revoked.