
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 416

**The Common Agricultural Policy Single Farm Payment
and Support Schemes (Scotland) Regulations 2011**

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2011 and come into force on 1st January 2012.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“Commission Regulation 1120/2009” means [Commission Regulation \(EC\) No 1120/2009](#) laying down detailed rules for the implementation of the single payment scheme provided for in Title III of 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⁽¹⁾, as amended from time to time;

“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⁽²⁾, as amended from time to time;

“Council Regulation 1698/2005” means Council Regulation [\(EC\) No 1698/2005](#) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁽³⁾, as amended from time to time;

“Council Regulation 378/2007” means Council Regulation [\(EC\) No 378/2007](#) laying down rules for voluntary modulation of direct payments provided for in 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 Regulation [\(EC\) No 1290/2005](#)⁽⁴⁾, as amended from time to time;

“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](#),

(1) OJ L 316, 2.12.2009, p.1, as last amended by Commission Regulation (EU) No 331/2011 (OJ L 93, 7.4.2011, p.16).

(2) OJ L 316, 2.12.2009, p.65, as last amended by Commission Regulation (EU) No 173/2011 (OJ L 49, 24.2.2011, p.16).

(3) OJ L 277, 21.10.2005, p.1, as last amended by Council Regulation [\(EC\) No 473/2009](#) (OJ L 144, 9.6.2009, p.3).

(4) OJ L 95, 5.4.2007, p.1, as amended by Council Regulation [\(EC\) No 73/2009](#) (OJ L 30, 31.1.2009, p.16).

(EC) No 247/2006 and (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(5), as amended from time to time;

“direct payment” has the same meaning as in Article 2(d) of Council Regulation 73/2009;

“farmer” has the same meaning as in Article 2(a) of Council Regulation 73/2009;

“IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(6);

“Regulation 1760/2000” means Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97(7), as amended from time to time;

“relevant competent authority” means the competent authority which determines the single application as specified in regulation 3 of the IACS Regulations; and

“single application” has the same meaning as in Article 2(11) of Commission Regulation 1122/2009.

(2) Except in Part 4 of, and Schedule 2 to, these Regulations, in these Regulations “holding” has the meaning given to it in Article 2(b) of Council Regulation 73/2009.

(3) Other expressions used in these Regulations have, unless the context otherwise requires, the meaning they bear in Council Regulation 73/2009, Commission Regulation 1120/2009 and Commission Regulation 1122/2009.

(4) A reference to anything done “in writing” or produced “in written form” includes a reference to an electronic communication, as defined in section 15 (general interpretation) of the Electronic Communications Act 2000(8), which has been recorded in written form and is capable of being reproduced in that form.

PART 2

Single Farm Payment Scheme

Regional application

3. Scotland is a region for the purposes of Article 46(2) of Council Regulation 73/2009.

Minimum requirements for receiving direct payments

4. For the purposes of Article 28(1)(b) of Council Regulation 73/2009, the Scottish Ministers must 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 or exclusions arising from non-compliance by reason of Articles 21 and 23 of Council Regulation 73/2009, less than 3 hectares.

(5) OJ L 30, 31.1.2009, p.16, as last amended by Commission Implementing Regulation (EU) No 785/2011 (OJ L 203, 6.8.2011, p10).

(6) S.I. 2009/3263.

(7) OJ L 204, 11.8.2000, p.1, as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p.1).

(8) 2000 c.7, relevantly amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

Transfers

5. For the purposes of Article 12(3) of Commission Regulation 1120/2009, a transferor of a payment entitlement must communicate the transfer to the relevant competent authority at least 6 weeks before—

- (a) the transfer is to take place; and
- (b) the last day for submission of the single application.

PART 3**Voluntary Modulation****Voluntary modulation**

6.—(1) For the purposes of calculating the total amount of direct payments to be paid to a farmer for any year, the Scottish Ministers must, in application of Articles 1 and 3(1) of Council Regulation 378/2007, deduct a sum equal to the specified proportion of the relevant amount.

(2) In accordance with Article 1(2) of Council Regulation 378/2007, the Scottish Ministers must apply the sum deducted under paragraph (1) for one or more of the relevant purposes.

(3) In this regulation—

“the relevant amount” means the amount which would have been granted to the farmer in respect of the year concerned before the application of Article 7 of Council Regulation 73/2009;

“the relevant purposes” means support for the measures under the following provisions of Council Regulation 1698/2005(9)—

- (a) Articles 20 to 33 (measures improving the competitiveness of the agricultural and forestry sector);
- (b) Articles 36 to 49 (measures improving the environment and the countryside);
- (c) Articles 52 to 59 (measures as regards the quality of life in rural areas and diversification of the rural economy); or
- (d) Articles 61 to 65 (Leader); and

“the specified proportion” means, in relation to the year 2012, the percentages given in the following table:—

<i>Amount of Direct Payment (€ Euros)</i>	<i>Specified Proportion</i>
€00.01 to 5,000	9%
€5,000.01 to 300,000	4%
€300,000 and above	0%

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

(9) As funded in Scotland under the Scotland Rural Development Programme 2007-2013.

PART 4

The Scottish Beef Scheme

Interpretation of Part 4

7. In this Part of, and Schedule 2 to, these Regulations—

“animal” means, in respect of a particular Scheme year, a bovine animal in respect of which an application for a Scheme payment has been or will be made;

“applicant” means a farmer producing beef or veal at the time of lodging an application for a Scheme payment under regulation 8 whose IACS holding is wholly or partly in Scotland;

“the Cattle Identification Regulations” means the Cattle Identification (Scotland) Regulations 2007⁽¹⁰⁾;

“cattle passport” has the same meaning as in the Cattle Identification Regulations;

“eartag identification code” means the unique identification code for the purposes of Article 4(1) of Regulation 1760/2000 and regulation 5 of, and Schedule 1 (ear tags) to, the Cattle Identification Regulations;

“eligible animal” has the meaning given in regulation 9;

“keeper’s holding” means a holding as defined in Article 2 of Regulation 1760/2000;

“IACS holding” means a holding as defined in Article 2(b) of Council Regulation 73/2009;

“identification document” has the same meaning as in the Cattle Identification Regulations;

“keeper” means any person responsible for an animal in respect of which an application for a Scheme payment is made or will be made, whether on a permanent or a temporary basis, including during transportation or at a market;

“the Scheme” means the Scottish Beef Scheme established by this Part of, and Schedule 2 to, these Regulations;

“Scheme payment” means an annual additional payment under Article 68(1)(b) and (4)(b) of Council Regulation 73/2009; and

“Scheme year” means the calendar year in which a particular application under regulation 8 for a Scheme payment is made.

Application for a Scheme payment

8.—(1) An applicant is entitled, during a calendar year, to submit an application to the Scottish Ministers for a Scheme payment in respect of any eligible animal.

(2) A Scheme payment for a particular Scheme year is to be made in respect of an application for Scheme payment made during that Scheme year.

(3) An application must include the following information for any animal in respect of which the application is made—

(a) the eartag identification code;

(b) details concerning the identification document which has been issued in respect of that animal; and

(c) such other information as the Scottish Ministers may reasonably require.

(4) An application for a Scheme payment must be in writing in such a form and containing such particulars as may be specified by the Scottish Ministers.

⁽¹⁰⁾ S.S.I. 2007/174, amended by S.S.I. 2007/312, S.I. 2011/1043 and S.S.I. 2011/.

(5) An application for a Scheme payment may be withdrawn in writing in respect of any animal included in that application unless the applicant or keeper has been notified by the Scottish Ministers of—

- (a) an inspection under—
 - (i) the Common Agricultural Policy Single Payment and Support Schemes (Cross-Compliance) (Scotland) Regulations 2011⁽¹¹⁾;
 - (ii) the Cattle Identification Regulations; or
 - (iii) these Regulations; or
- (b) any errors in the application.

(6) For the purposes of Article 11(1) of Commission Regulation 1122/2009, an applicant must have submitted a single application in accordance with the IACS Regulations in the same year of application for a Scheme payment.

Eligible animal

9. For the purpose of this Part and Schedule 2, an eligible animal means an animal—
- (a) which genetically is at least 75% of a breed of cattle other than a breed listed in Schedule 1;
 - (b) which was born on the applicant's IACS holding on or after 2nd December 2009 and was kept on that holding from birth for a continuous period of at least 30 days;
 - (c) in respect of which the requirements of regulation 7 of, and Schedule 3 (cattle passports etc) to, the Cattle Identification Regulations have been met;
 - (d) in respect of which information has been accurately recorded in the register of cattle kept on the keeper's holding in accordance with regulation 8 of, and Schedule 4 (records) to, the Cattle Identification Regulations;
 - (e) in respect of which the keeper has notified the Scottish Ministers about the animal's movements in accordance with regulation 6 of, and paragraph 2 of Schedule 2 (notification) to, the Cattle Identification Regulations; and
 - (f) in respect of which no payment has previously been made following an application made under regulation 20 (the Scottish Beef Calf Scheme) of the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005⁽¹²⁾.

Scheme Payments

10.—(1) Subject to regulation 11, the Scheme payment to be made in respect of each eligible animal must be determined by the Scottish Ministers and funded from any retention in accordance with Article 69 of Council Regulation 73/2009.

(2) A higher payment may be determined by the Scottish Ministers in respect of the first 10 eligible animals claimed by each applicant than the remainder of the eligible animals claimed.

Scheme penalties

11.—(1) Subject to regulation 12, where in respect of an application for a Scheme payment, a difference is found between the number of animals claimed as eligible by the applicant and the number of eligible animals, the total amount of the Scheme payment to which the applicant is entitled in respect of the Scheme year concerned must be reduced in accordance with this regulation.

⁽¹¹⁾ S.S.I. 2011/.

⁽¹²⁾ S.S.I. 2005/143, amended by S.S.I. 2005/257, S.S.I. 2007/414, S.S.I. 2008/184 and S.S.I. 2009/391 and revoked by these Regulations.

(2) Where 3 or fewer animals are not eligible, the total amount of the Scheme payment is reduced by the percentage (in this regulation “the relevant percentage”) calculated in accordance with the following formula—

$$RP\% = I \div E \times 100$$

Where—

RP % is the relevant percentage reduction;

I is the number of ineligible animals; and

E is the number of eligible animals.

(3) Where more than 3 animals are not eligible, the total amount of the Scheme payment is reduced by—

- (a) the relevant percentage, if the relevant percentage is not more than 10%;
- (b) twice the relevant percentage, if the relevant percentage is more than 10% but not more than 20%; or
- (c) 100%, if the relevant percentage is more than 20%.

(4) Where the relevant percentage is more than 50%, an amount equal to the amount by which a Scheme payment is reduced in application of paragraph (3)(c) must also be applied to reduce any other Scheme payment to which the applicant would otherwise be entitled; provided that amount is offset against any such payment made within the following three Scheme years.

(5) Where an applicant knowingly makes a statement or supplies to the Scottish Ministers any information in respect of an application which is false or misleading—

- (a) a Scheme payment to which the applicant would otherwise be entitled must be reduced by 100%; and
- (b) an amount equal to the amount by which a Scheme payment is reduced in application of sub-paragraph (a) must also be applied to reduce any other Scheme payment to which the applicant would otherwise be entitled; provided that amount is offset against any such payment made within the following three Scheme years.

Exceptions from scheme penalties

12.—(1) Subject to paragraph (2), the penalties in regulation 11 do not apply—

- (a) where the applicant submitted factually accurate information or can otherwise show that he or she is not at fault;
- (b) to those parts of an application for a Scheme payment in relation to which—
 - (i) the applicant has informed the Scottish Ministers in writing that the application is incorrect or has become incorrect since it was submitted; or
 - (ii) the keeper has notified the Scottish Ministers about an animal’s movements in accordance with regulation 6 of, and paragraph 2 of Schedule 2 (notification) to, the Cattle Identification Regulations; or
 - (iii) the applicant or the keeper has supplied information in writing to the Scottish Ministers about the animals or the IACS holding or keeper’s holding which are the subject of that application which would have the effect described in head (i).

(2) Paragraph (1)(b) does not apply if the Scottish Ministers have already informed the applicant that—

- (a) they intend to inspect the applicant’s animals or IACS holding or keeper’s holding; or
- (b) an animal or the application is not eligible.

(3) Where an applicant has informed the Scottish Ministers or supplied them with information under paragraph (1)(b), the application is deemed to be adjusted so as to incorporate that information.

Administration and enforcement of the Scottish Beef Scheme

13. Schedule 2 (the Scottish Beef Scheme administration and enforcement) has effect.

PART 5

Revocations and Savings

Revocations and Savings

14.—(1) Subject to paragraph (2), the Regulations specified in column 1 of Schedule 3 to these Regulations are revoked to the extent specified in column 3 of that Schedule.

(2) Those Regulations continue to apply to a relevant application made before 1st January 2012.

(3) In this regulation, “relevant application” means—

(a) a single application; or

(b) an application made under regulation 20 (the Scottish Beef Calf Scheme) of the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005.

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