

## SCHEDULE 2

Regulations 7 and 13

### The Scottish Beef Scheme administration and enforcement

#### **Interpretation**

**1. In this Schedule—**

“additional information” includes any information (other than as contained in a specified record) which may be relevant to an application for a Scheme payment;

“authorised person” means a person (whether or not an officer of the Scottish Ministers) who is authorised by the Scottish Ministers, either generally or specifically, to act in matters arising under Part 4 of, and Schedule 2 to, these Regulations;

“LIBOR” means the sterling three month London interbank offered rate;

“specified control measure” means any check which a member State is required to carry out in relation to a claim under the Scheme, or by Council Regulation 73/2009 or Commission Regulation 1122/2009; and

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

#### **Powers of authorised persons**

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

- (a) carrying out any specified control measure; or
- (b) ascertaining whether an offence under paragraph 7 has been or is being committed.

(2) An authorised person may enter any land, other than premises used only as a dwelling, which is, or which such person has reasonable cause to believe to be, an IACS holding or keeper’s holding occupied by, or in the possession of, an applicant or keeper, or any employee, agent, contractor or tenant of an applicant or keeper.

(3) If a sheriff or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any premises by an authorised person under this paragraph and either that—

- (a) entry has been refused or a refusal is reasonably expected, and that person has given notice to the occupier of his or her intention to apply for an entry warrant; or
- (b) a request for entry, or the giving of such a notice, would defeat the object of entry, or entry is urgently required, or the premises are unoccupied, or the occupier is temporarily absent, and it would defeat the object of entry to await the occupier’s return,

the sheriff or justice may by signed warrant, valid for a period of no more than one month, authorise that person, together with any person who may accompany him or her by virtue of sub-paragraph (6), to enter the premises, if need be by reasonable force.

(4) An authorised person who has entered any land by virtue of this paragraph may—

- (a) inspect and verify the total area of land farmed by an applicant or used by a keeper;
- (b) inspect and count any cattle on that land; and
- (c) carry out any other activity which is a specified control measure.

(5) An authorised person may—

*Status: This is the original version (as it was originally made).*

- (a) require an applicant or keeper, or any employee, agent, contractor or tenant of an applicant or keeper, to produce any specified record or supply such additional information in the possession or under the control of that person as the authorised person may reasonably require;
  - (b) inspect any specified record or additional information required under head (a) and, where any such record or information is kept by means of a computer, have access to and check the data on, and operation of, any computer and any associated apparatus or material that is or has been used in connection with that record or information; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance (including the provision of passwords) as may reasonably be required and, where these items are kept by means of a computer may require them to be produced in a visible and legible form in which they may be taken away;
  - (c) require that copies of, or extracts from, any specified record or additional information be produced;
  - (d) seize and retain any specified record or additional information which that authorised person has reason to believe may be required as evidence in any court or other proceedings under these Regulations and, where any such record or information is kept by means of a computer, require it to be produced in a form in which it may be taken away;
  - (e) carry out any inquiries, checks, examinations and tests;
  - (f) take samples;
  - (g) inspect all or any part of the land whether it is farmed or is withdrawn from agricultural production; and
  - (h) mark any animal or other thing for identification purposes.
- (6) An authorised person entering any premises by virtue of this paragraph may be accompanied by—
- (a) such other persons as that person considers necessary to exercise the powers specified in this paragraph; and
  - (b) any representative of the European Commission acting for the purpose of Article 27 of Council Regulation 73/2009.
- (7) An authorised person who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as before those premises were entered.

### **Assistance to authorised persons**

**3.** An applicant or keeper, or any employee, agent, contractor or tenant of an applicant or keeper must give an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred by paragraph 2 and in particular, in relation to any cattle, must arrange for the collection, penning and securing of such cattle in a safe and secure manner, if so requested.

### **Withholding and recovery of payments**

**4.—(1)** The Scottish Ministers are entitled to recover as a debt the whole of any Scheme payment made to an applicant where the applicant or keeper, or any employee, agent, contractor or tenant of the applicant or keeper—

- (a) obstructs an authorised person (or a person accompanying an authorised person and acting under the instructions of the authorised person), from exercising a power under paragraph 2; or

- (b) fails without reasonable excuse to comply with a request made by an authorised person—
  - (i) under paragraph 3; or
  - (ii) when that person is carrying out a specified control measure.

(2) Where an applicant is liable to repay all or part of a Scheme payment in accordance with Article 80 of Commission Regulation 1122/2009, the amount of the repayment, together with the interest on that amount as calculated in accordance with paragraph 6, is recoverable as a debt.

(3) In any legal proceedings brought pursuant to sub-paragraph (2), a certificate of the relevant competent authority which—

- (a) sets out the LIBOR applicable during a specified period; and
- (b) includes a statement that the Bank of England or the coordinating body notified the Scottish Ministers of that rate for that period,

is evidence of the rate applicable during that period.

(4) In sub-paragraph (3), “the coordinating body” means the coordinating body referred to in Article 6(3) of Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy<sup>(1)</sup>.

### **Set off**

5. The Scottish Ministers may set off a debt due in accordance with paragraph 4, against any specified payment to be made by them to the farmer under Titles III or IV of Council Regulation 73/2009.

### **Rate of interest**

6.—(1) Interest is to be charged in respect of each day of the period referred to in Article 80(2) of Commission Regulation 1122/2009.

(2) For the purposes of Article 80(2) of Commission Regulation 1122/2009, the rate of interest applicable on any day is to be one percentage point above the LIBOR on that day.

### **Offences**

7. A person commits an offence if he or she—
- (a) obstructs an authorised person (or a person accompanying an authorised person and acting under the authorised person’s instructions) in the exercise of a power conferred by paragraph 2;
  - (b) fails, without reasonable excuse, to comply with a request made under paragraph 3; or
  - (c) supplies information to an authorised person (or a person accompanying an authorised person and acting under the authorised person’s instructions), knowing it to be false or misleading.

### **Penalties**

8.—(1) A person who commits an offence under paragraph 7(a) or (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who commits an offence under paragraph 7(c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(1) OJ L 209, 11.8.2005, p.1, as last amended by Council Regulation (EC) No 473/2009 of 25 May 2009 (OJ L 144, 9.6.2009, p.3).

### **Time limit for prosecutions**

**9.**—(1) Proceedings for an offence under paragraph 7 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup> (date of commencement of proceedings) applies for the purposes of this paragraph as it applies for the purposes of that section.

### **Offences by bodies corporate**

**10.**—(1) Where—

- (a) an offence under these Regulations is 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,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits 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, a member;
- (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.

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(2) 1995 c.46.