
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 194

The Rural Payments (Appeals) (Scotland) Regulations 2015

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Rural Payments (Appeals) (Scotland) Regulations 2015 and come into force on 12th June 2015.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“applicable IACS Regulations” means—

- (a) the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009⁽¹⁾; or
- (b) regulations 2 and 3 of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014⁽²⁾;

“beneficiary” means the person to whom a relevant decision is directed;

“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⁽³⁾;

“Commission Regulation 1121/2009” means [Commission Regulation \(EC\) No 1121/2009](#) laying down detailed rules for the application of Council Regulation [\(EC\) No 73/2009](#) as regards the support schemes for farmers provided for in Titles IV and V thereof⁽⁴⁾;

“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⁽⁵⁾;

“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

(1) [S.I. 2009/3263](#), as amended by [S.I. 2012/66](#) and revoked subject to saving by [S.I. 2014/3263](#).

(2) [S.I. 2014/3263](#), as amended by [S.I. 2015/1325](#).

(3) OJ L 316, 2.12.2009, p.1, as last amended by Commission Regulation (EU) No 426/2013 (OJ L 127, 9.5.2013, p.17), and repealed subject to savings by Article 78 of Commission Delegated Regulation (EU) No 639/2014 (OJ L 181, 20.6.2014, p.1).

(4) OJ L 316, 2.12.2009, p.27, as last amended by Commission Implementing Regulation (EU) No 1147/2013 (OJ L 305, 15.11.2013, p.3) and repealed subject to savings by Article 78 of Commission Delegated Regulation (EU) No 639/2014 (OJ L 181, 20.6.2014, p. 1).

(5) OJ L 316, 2.12.2009, p.65, as last amended by Commission Regulation (EU) No 426/2013 (OJ L 127, 9.5.2013, p. 17) and repealed subject to savings by Article 43 of the Horizontal Delegated Regulation.

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(6);

“decision letter” means the letter from the Scottish Ministers to the beneficiary notifying the beneficiary of the relevant decision;

“Direct Payments Regulation” means Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, as amended from time to time(7);

“ESA Orders” means—

- (a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992(8);
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992(9);
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993(10);
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993(11);
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993(12);
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993(13);
- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(14);
- (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(15);
- (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993(16); or
- (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(17);

“Horizontal Delegated Regulation” means Commission Delegated Regulation (EU) No 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance(18), as amended from time to time;

“Horizontal Implementing Regulation” means Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance(19), as amended from time to time;

(6) OJ L 30, 31.1.2009, p.16, as last amended by Commission Delegated Regulation (EU) 994/2014 (OJ L 280, 24.9.2014, p.1) and repealed, subject to savings by Article 72(2) of the Direct Payments Regulation.

(7) OJ L 347, 20.12.2013, p.608, as last amended by Commission Delegated Regulation (EU) No 1378/2014 (OJ L 367, 23.12.2014, p.16).

(8) S.I. 1992/1919, as amended by S.I. 1994/3067, S.I. 1995/3097, S.I. 1996/3082, S.S.I. 2001/34 and S.S.I. 2001/226.

(9) S.I. 1992/1920, as amended by S.I. 1994/3067, S.I. 1995/3096, S.I. 1996/3082, S.S.I. 2001/30 and S.S.I. 2001/226.

(10) S.I. 1993/996, as amended by S.I. 1994/3067, S.I. 1996/1969, S.I. 1996/3082, S.S.I. 2001/32 and S.S.I. 2001/226.

(11) S.I. 1993/997, as amended by S.I. 1994/3067, S.I. 1996/1968, S.I. 1996/3082, S.S.I. 2001/31 and S.S.I. 2001/226.

(12) S.I. 1993/2345, as amended by S.I. 1994/3067, S.I. 1996/1963, S.I. 1996/3082, S.S.I. 2001/33 and S.S.I. 2001/226.

(13) S.I. 1993/2767, as amended by S.I. 1994/3067, S.I. 1996/1964, S.I. 1996/3082, S.S.I. 2001/25 and S.S.I. 2001/226.

(14) S.I. 1993/2768, as amended by S.I. 1994/3067, S.I. 1996/1967, S.I. 1996/3082, S.S.I. 2001/26 and S.S.I. 2001/226.

(15) S.I. 1993/3136, as amended by S.I. 1994/3067, S.I. 1996/1966, S.I. 1996/3082, S.S.I. 2001/27 and S.S.I. 2001/226.

(16) S.I. 1993/3149, as amended by S.I. 1994/3067, S.I. 1996/1962, S.I. 1996/3082, S.S.I. 2001/28 and S.S.I. 2001/226.

(17) S.I. 1993/3150, as amended by S.I. 1994/3067, S.I. 1996/1965, S.I. 1996/3082, S.S.I. 2001/29 and S.S.I. 2001/226.

(18) OJ L 181, 20.6.2014, p.48.

(19) OJ L 227, 31.7.2014, p.69.

“Horizontal Regulation” means Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008⁽²⁰⁾, as amended from time to time;

“IACS scheme” means one of the EU support schemes specified in Article 14 of Council Regulation 73/2009” or Article 67(2) of the Horizontal Regulation;

“Land Court” means the Scottish Land Court;

“relevant decision” means a decision specified in any of the paragraphs of the Schedule; and

“the 2009 Regulations” means the Rural Payments (Appeals) (Scotland) Regulations 2009⁽²¹⁾.

(2) Any reference in these regulations to a beneficiary appealing to the Land Court includes a reference to any successor, executor, trustee in sequestration, receiver or liquidator of such a beneficiary.

Application in relation to IACS matters

3.—(1) A decision specified in paragraphs 1 to 8 of the Schedule includes a decision of the Scottish Ministers in relation to a holding administered by them in accordance with the applicable IACS Regulations.

(2) In paragraph (1) “holding” has the same meaning as it has for the purposes of the applicable IACS Regulations.

Decisions amenable to review

4. A beneficiary may apply to the Scottish Ministers for a review of a relevant decision in accordance with regulation 5.

Application for review

5.—(1) An application for review of a relevant decision is to be made no later than 60 days following the date of the decision letter.

(2) An application for review must be in writing and specify—

- (a) the name and address of the beneficiary and, where relevant, the details of the beneficiary’s representative;
- (b) the scheme in relation to which the review is sought and, in relation to an IACS scheme, the calendar year to which the relevant decision referred;
- (c) the relevant decision and its date;
- (d) the change sought to the relevant decision; and
- (e) the reasons for seeking the change to the relevant decision.

Procedure at review

6.—(1) Where an application is made in accordance with regulation 5, the Scottish Ministers must review the relevant decision.

⁽²⁰⁾ OJ L 347, 20.12.2013, p.549, as amended by Regulation (EU) No 1310/2013 (OJ L 347, 20.12.2013, p.865).

⁽²¹⁾ S.S.I. 2009/376, amended by S.S.I. 2010/273, S.S.I. 2011/415, S.S.I. 2012/143, S.S.I. 2014/7, S.S.I. 2014/325 and S.S.I. 2015/58. The 2009 Regulations are revoked subject to savings by regulation 11.

(2) The Scottish Ministers must provide the beneficiary with an opportunity of being heard at a review meeting to be held within 60 days of receipt of the application on any matter relevant to the application.

(3) The Scottish Ministers must intimate the date of the review meeting to the beneficiary in writing.

(4) Representations made under paragraph (2) may be made by the beneficiary or by a representative of the beneficiary.

(5) For the purposes of this regulation, a review meeting may be conducted in person or, with the agreement of the beneficiary, by use of telephone or video conference facilities or such other arrangements by which the beneficiary is able to participate in the meeting.

Decision and report

7.—(1) Following the review of a relevant decision in accordance with regulation 6, the Scottish Ministers may in respect of that decision—

- (a) confirm it;
- (b) amend it; or
- (c) revoke it in its entirety and substitute a new decision.

(2) The Scottish Ministers must issue their decision under paragraph (1) in a written report.

(3) A written report must set out the following—

- (a) the decision of the Scottish Ministers following the review;
- (b) the requirements of the scheme in respect of which the claim was made;
- (c) where appropriate, the facts relied upon by the Scottish Ministers as showing that the requirements were not met; and
- (d) where appropriate, the matters (in fact or in law) which are understood to remain in dispute.

(4) A written report must be sent by recorded delivery post to the beneficiary before the expiry of the period of 60 days beginning on the date intimated to the beneficiary under regulation 6(3).

Appeal to the Land Court

8.—(1) The beneficiary may appeal against a decision under regulation 7(1) on any issue of fact or law to the Land Court.

(2) An appeal under paragraph (1) must be made within 60 days of receipt of the written report.

(3) Where the Scottish Ministers have not sent a written report within the period of 60 days referred to in regulation 7(4), the beneficiary may instead appeal against the relevant decision on any issue of fact or law to the Land Court.

(4) An appeal made under paragraph (3) must be made within the period of 60 days beginning on the date on which the period referred to in regulation 7(4) expired.

(5) An appeal is to be in such form as may be prescribed from time to time by the Land Court.

(6) An appeal must, so far as possible, specify—

- (a) the grounds of appeal;
- (b) what finding of the Scottish Ministers is challenged;
- (c) any facts the beneficiary seeks to rely on;
- (d) the arguments to be advanced in support of the appeal; and

(e) brief details of the legislative provisions or judicial authorities to be referred to in relation to the appeal.

(7) An appeal under paragraph (1) must be accompanied by the decision letter, the application for review and the written report.

(8) An appeal under paragraph (3) must be accompanied by the decision letter, the application for review and evidence of the date of the review meeting intimated to the beneficiary under regulation 6(3).

Procedure in the Land Court

9.—(1) Without prejudice to the power of the Land Court to determine its own procedure, the court may—

- (a) where a written report has not been sent in accordance with regulation 7(4), require the Scottish Ministers to submit a written report;
- (b) grant leave to the Scottish Ministers to amend the written report;
- (c) relieve the appellant of any of the obligations set out in regulation 8(6); or
- (d) require such additional information or submissions to be submitted by the parties to the appeal as it thinks fit.

(2) In determining an appeal, the Land Court may—

- (a) confirm the decision of the Scottish Ministers;
- (b) amend or alter that decision in any respect which it considers appropriate;
- (c) substitute for that decision any decision which it considers appropriate; or
- (d) refer the matter back to the Scottish Ministers to decide the matter of new,

and any such determination of the Land Court is binding upon the Scottish Ministers and the appellant.

(3) Where an appeal is made under regulation 8(3), paragraph (2) shall apply in relation to the relevant decision as it applies in relation to a decision under regulation 7(1).

(4) Any party to a matter determined by the Land Court by virtue of these Regulations may appeal to the Court of Session against the determination on a question of law.

Expenses

10. Without prejudice to paragraph 15 of Schedule 1 to the Scottish Land Court Act 1993⁽²²⁾ or rules 88 to 95 (expenses) of the Rules of the Scottish Land Court Order 2014⁽²³⁾, the Land Court may in considering an award of expenses against any party to an appeal have regard to the conduct of that party during the review process as a whole.

Savings and revocations

11.—(1) Subject to paragraphs (2) and (3),—

- (a) the following instruments are revoked—
 - (i) the 2009 Regulations; and
 - (ii) the Rural Payments (Appeals) (Scotland) Amendment Regulations 2012⁽²⁴⁾; and
- (b) the following provisions are revoked—

⁽²²⁾ 1993 c.45.

⁽²³⁾ S.S.I. 2014/229.

⁽²⁴⁾ S.S.I. 2012/143.

- (i) regulation 25 of the Less Favoured Area Support Scheme (Scotland) Regulations 2010⁽²⁵⁾;
- (ii) regulation 7 of the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2014⁽²⁶⁾;
- (iii) regulation 9 of the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014⁽²⁷⁾; and
- (iv) regulation 26 of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015⁽²⁸⁾.

(2) Nothing in these Regulations has effect in relation to any relevant decision (within the meaning of the 2009 Regulations) in respect of which the date of the decision letter is before 12th June 2015.

(3) The 2009 Regulations, as in force immediately before 12th June 2015, continue to apply and have effect in relation to any review or appeal that may be made in respect of a decision specified in regulation 4 or 7, or an appeal under regulation 9(4), of those Regulations.

St Andrew's House,
Edinburgh
12th May 2015

RICHARD LOCHHEAD
A member of the Scottish Government

⁽²⁵⁾ S.S.I. 2010/273, to which there are no relevant amendments.

⁽²⁶⁾ S.S.I. 2014/7.

⁽²⁷⁾ S.S.I. 2014/325, as amended by S.S.I. 2015/58.

⁽²⁸⁾ S.S.I. 2015/58.