

1972 No. 1659 (S.127)

AGRICULTURE

HILL LANDS

The Hill and Upland Sheep (Scotland) Scheme 1972

Made	- - -	3rd November 1972
Laid before Parliament		10th November 1972
Coming into Operation		1st December 1972

In exercise of the powers conferred upon me by sections 13, 14 and 15 of the Hill Farming Act 1946(a), as extended by section 43 of the Agriculture Act 1967(b), and of all other powers enabling me in that behalf, and with the approval of the Treasury, I hereby make the following scheme:—

Citation and commencement

1. This scheme may be cited as the Hill and Upland Sheep (Scotland) Scheme 1972 and shall come into operation on 1st December 1972.

Interpretation

2.—(1) In this scheme, unless the context otherwise requires—

“agricultural unit”, except as provided by paragraph 4(3) of this scheme, means land which is occupied as a unit for agricultural purposes, together with any other land, including land held in common, used in connection with such land for the purpose of grazing;

“applicant” means a person who makes application for a subsidy payment;

“crofter” means a crofter within the meaning of the Crofters (Scotland) Acts 1955 and 1961(c);

“eligible occupier” means a person who is for the time being an eligible occupier within the meaning of the Crofting Counties Agricultural Grants (Scotland) Scheme 1961(d), the Crofting Counties Agricultural Grants (Scotland) Scheme 1963(e), the Crofting Counties Agricultural Grants (Scotland) Scheme 1965(f) or the Crofting Counties Agricultural Grants (Scotland) Scheme 1972(g) and, except in the case of a person who is a subtenant as is mentioned in section 14(1)(c) of the Crofters (Scotland) Act 1961, who has been offered a grant under any of the said schemes;

“flying flock” has the meaning assigned to it by paragraph 9(1) of this scheme;

“gimmer” includes “shearling ewe” and means a female sheep the age of which on the relevant day exceeds one year, but does not exceed two years;

(a) 1946 c. 73.

(c) 1955 c. 21; 1961 c. 58.

(d) S.I. 1961/2266 (1961 III, p. 3973).

(f) S.I. 1965/1519 (1965 II, p. 4399).

(b) 1967 c. 22.

(e) S.I. 1963/1294 (1963 II, p. 2240).

(g) S.I. 1972/407 (1972 I, p. 1499).

“hill sheep flock” has the meaning assigned to it by paragraph 9(1) of this scheme;

“pack sheep” means a breeding ewe or gimmer belonging to a shepherd, or other employee, of the person maintaining the flock of sheep, being a flock of sheep to which this scheme applies, with which that ewe or gimmer grazes;

“relevant day” means in relation to any of the relevant years, the 4th day of December in that year;

“relevant period” means in relation to any relevant day, the period from 1st October next preceding that day to 30th September next succeeding it or, in any case where the Secretary of State thinks fit in relation to a particular flock, to such date occurring before the said 30th September as the Secretary of State may decide;

“relevant years” means the year 1972 and the four next succeeding years;

“subsidy payment” means any payment falling to be made in accordance with the provisions of this scheme in respect of a breeding ewe or gimmer;

“upland flock” has the meaning assigned to it by paragraph 9(1) of this scheme.

(2) In this scheme:—

“hill land” means, subject to the following provisions of this subparagraph, land which is livestock rearing land as defined in section 1(3) of the Livestock Rearing Act 1951^(a), that is to say, land situated in an area consisting predominantly of mountains, hills or heath, being land which is, or by improvement could be made, suitable for use for the breeding, rearing and maintenance of sheep or cattle but not for the carrying on, to any material extent, of dairy farming, the production, to any material extent, of fat sheep or fat cattle, or the production of crops in quantity materially greater than that necessary to feed the number of sheep or cattle capable of being maintained on the land:

Provided that in any case where an agricultural unit consists in part only of such land, such land shall be deemed not to be hill land unless, in the opinion of the Secretary of State, it comprises an area suitable to be dealt with as a unit and is capable, taking into account the numbers of any other livestock normally grazed thereon, of carrying a flying flock or an upland flock.

“hill sheep land” means, subject to the following provisions of this subparagraph, so much of hill land as is mountain, hill or heath used for grazing and suitable for use for the maintenance of sheep of a hardy kind but not of sheep of other kinds:

Provided that in any case where an agricultural unit consists in part only of such land, such land shall be deemed not to be hill sheep land unless, in the opinion of the Secretary of State, it comprises an area suitable to be dealt with as a unit and is capable, taking into account the numbers of any other livestock normally grazed thereon, of carrying a hill sheep flock.

(3) Where at any time after 21st December 1967 land is hill land or hill sheep land as defined in subparagraph (2) of this paragraph, the effect of any subsequent improvement to that land shall be disregarded in determining for the purposes of this scheme whether it is hill land or, as the case may be, hill sheep land.

(a) 1951 c. 18.

(4) Any reference in this scheme to any other scheme shall be construed as a reference to such scheme as amended by any subsequent scheme, and if any scheme referred to in this scheme is replaced by any subsequent scheme, the reference shall be construed as a reference to such subsequent scheme.

(5) The Interpretation Act 1889(a) shall apply for the interpretation of this scheme as it applies for the interpretation of an Act of Parliament.

Subsidy payment

3. Subject to the provisions of this scheme, the Secretary of State may make a subsidy payment in respect of any breeding ewe or gimmer to which this scheme applies and which is comprised in a flock of sheep to which this scheme applies, or which is a pack sheep, on the relevant day in any of the relevant years.

Amount of subsidy payment and reduction in certain circumstances

4.—(1) Subject to the provisions of subparagraph (2) of this paragraph, a subsidy payment in respect of any breeding ewe or gimmer to which this scheme applies shall be of such amount as may be prescribed by order made by the Secretary of State under section 14(3) of the Hill Farming Act 1946.

(2) The amount of a subsidy payment as so prescribed which may be paid in relation to the relevant day in any relevant year shall, in the case of any breeding ewe or gimmer which is comprised in any flock of sheep of a description specified in column 1 of the Schedule to this scheme and maintained on such land as is specified in relation to that flock in column 2 of the said Schedule, be reduced by the amount specified in respect of that flock in column 3 of the said Schedule.

(3) In the Schedule to this scheme “agricultural unit” means land, other than any land occupied by any person as a crofter or as an eligible occupier, which is occupied as a unit for agricultural purposes, together with any other land, including land held in common, used in connection with such land for the purpose of grazing.

(4) For the purposes of subparagraph (2) of this paragraph, the reference in the Schedule to this scheme to hill sheep land or, as the case may be, hill land occupied by any person as a crofter or as an eligible occupier shall, in relation to a flock maintained by any such person, be deemed to include a reference to any pasture or grazing land (being hill sheep land or, as the case may be, hill land) in which that person has any right, whether alone or in common with others, being a right which is deemed to form part of, or is held along with, the croft or holding of which he is the occupier.

Person to whom subsidy payment is to be made

5.—(1) Subject to the following provisions of this paragraph, a subsidy payment to be made in respect of any breeding ewe or gimmer comprised on the relevant day in any of the relevant years in a flock of sheep to which this scheme applies shall be payable to the person who, at the commencement of that day, is maintaining that flock.

(2) For the purposes of this scheme the person maintaining a flock of sheep is the person who owns the flock or takes it on rent and, in either case, is responsible for its maintenance and for taking the commercial risks connected with the flock.

(3) Notwithstanding the foregoing provisions of this paragraph, where an application for a subsidy payment in respect of any breeding ewe or gimmer owned by a landholder within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931(a) or a crofter is made in accordance with the provisions of paragraph 6(2) of this scheme by the Clerk to the Committee appointed for the management of the common grazings or common pasture on which is maintained the flock of sheep in which the breeding ewe or gimmer is comprised, or by such other person as is mentioned in said paragraph 6(2), the payment shall be made to the Clerk, or as the case may be, to that other person who shall forthwith make payment thereof to the owner of the breeding ewe or gimmer.

(4) A subsidy payment in respect of any breeding ewe or gimmer comprised in a flock of sheep maintained by a Sheep Stock Club shall be paid to the person who makes an application therefor in accordance with the provisions of paragraph 6(3) of this scheme.

(5) A subsidy payment in respect of a pack sheep shall be made to the person owning the sheep in accordance with the provisions of paragraph 7 of this scheme.

Application for subsidy payment

6.—(1) Subject to the following provision of this paragraph, a subsidy payment in respect of any breeding ewe or gimmer shall not be made unless an application for that payment, in such manner and at such time as the Secretary of State may require, has been made by the person maintaining the flock of sheep in which the breeding ewe or gimmer is comprised:

Provided that the Secretary of State may, in the case of any such application as is not received at the time required but in regard to which it appears to him that the circumstances are exceptional and that the application should be entertained, treat the application as having been received at that time.

(2) An application for subsidy payment in respect of a breeding ewe or gimmer comprised in a flock of sheep maintained on a common grazings or common pasture to which the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 or the Crofters (Scotland) Acts 1955 and 1961 apply may, if not made by the person maintaining the ewe or gimmer, be made—

(a) where a Committee has been appointed for the management of the common grazings or common pasture and there is in office a Clerk to that Committee, by the Clerk; and

(b) in any other case by a person who has been duly authorised by the person maintaining the ewe or gimmer, in any manner satisfactory to the Secretary of State, to make the application.

(3) An application for subsidy payment in respect of a breeding ewe or gimmer maintained by a Sheep Stock Club may be made by the Secretary of the Club or by such other person as may be prescribed for that purpose in the rules thereof.

Special provisions as to pack sheep

7.—(1) An application for subsidy payment in respect of a pack sheep may be made by the person who is maintaining the flock of sheep with which the pack sheep grazes, but payment of the subsidy shall be made to the person to whom that sheep belongs.

(a) 1886 c. 29; 1887 c. 24; 1891 c. 41; 1908 c. 50; 1911 c. 49; 1919 c. 97; 1931 c. 44.

(2) In making application in respect of a pack sheep the applicant shall specify that it is such a sheep, and also the name and address of the person to whom it belongs.

Breeding ewes and gimmers to which the scheme applies

8. This scheme shall apply—

- (a) in relation to a hill sheep flock, to breeding ewes and gimmers of the Blackface, Cheviot, Shetland and Soay breeds or of such other breeds of sheep of a hardy kind as the Secretary of State may approve, and to any cross-bred breeding ewe or gimmer being a cross derived from a ewe of any of the breeds aforesaid and a ram of any other of those breeds or of the Border-Leicester breed; and
- (b) in relation to a flying flock or an upland flock, to breeding ewes and gimmers of any breed and to any cross-bred breeding ewe or gimmer:

Provided that the Secretary of State may disregard for the purposes of this scheme any breeding ewe or gimmer which in his opinion is not sufficiently hardy to be capable of living on the land on which is maintained the flock of sheep in which such ewe or gimmer is comprised or is so aged as to be incapable of breeding or rearing lambs on that land.

Flocks of sheep to which and manner in which the scheme applies

9.—(1) Subject to the provisions of this paragraph, this scheme applies to a flock of sheep which in relation to the relevant day in any relevant year falls within any of the following descriptions:—

- (a) a hill sheep flock, that is to say, a flock of sheep which in the opinion of the Secretary of State satisfies the following conditions throughout the relevant year—
 - (i) it was kept for the breeding and rearing of lambs,
 - (ii) it was maintained on hill sheep land under natural conditions in accordance with the recognised practices of hill sheep farming in the district, and
 - (iii) it was composed of stocks of breeding ewes and gimmers in regular ages so that there are at least three successive age groups, the youngest group being composed of gimmers; or
- (b) an upland flock, that is to say, a flock of sheep, not being a hill sheep flock, which in the opinion of the Secretary of State satisfies the following conditions throughout the relevant year—
 - (i) it was kept for the breeding and rearing of lambs,
 - (ii) it was maintained on hill land under natural conditions in accordance with sound sheep farming practice, and
 - (iii) it was composed of stocks of breeding ewes, or breeding ewes and gimmers, in regular ages; or
- (c) a flying flock, that is to say, a flock of sheep, not being a hill sheep flock or an upland flock, which in the opinion of the Secretary of State satisfies the following conditions throughout the relevant period in which the relevant day falls—
 - (i) it was kept for the breeding and rearing of lambs, and
 - (ii) it was maintained on hill land under natural conditions in accordance with sound sheep farming practice.

(2) Where the Secretary of State is of the opinion that a flock of sheep to

which this scheme would otherwise apply does not satisfy any condition (a) or, as the case may be, (b) or (c) of subparagraph (1) of this paragraph because the flock was not in existence during any part of the relevant year or, as the case may be, relevant period, or because of the small number of sheep comprised in the flock, unavoidable and abnormal stock losses in the flock, or other exceptional circumstances of any kind, the Secretary of State may, notwithstanding that condition, treat the flock, or treat such number of sheep in the flock as he may determine, as a flock which falls within the description specified in the said subparagraph (a) or, as the case may be, (b) or (c).

(3) In any case where a flock of sheep is maintained partly on hill sheep land and partly on hill land other than hill sheep land or partly on either or both of such types of land and partly on other land, or maintained and managed partly in one manner and partly in another, the Secretary of State may for the purposes of this scheme treat any sheep comprised in the flock as a separate flock, and as maintained on the land, or any part of the land, on which the flock is maintained.

Exceptions for experimental purposes

10. A requirement set out in paragraph 8 or 9(1) of this scheme shall not apply to a flock of sheep where the Secretary of State has approved, for experimental purposes, a variation from a recognised hill sheep farming practice or, as the case may be, sound sheep farming practice which conflicts with that requirement, and the flock has been managed in accordance with the terms of that approval.

Computation of number of subsidy payments

11.—(1) Subject to the provisions of this and the two next following paragraphs, the number of subsidy payments to be made in respect of the sheep comprised on the relevant day in any of the relevant years in any flock of sheep to which this scheme applies shall be the number of breeding ewes and gimmers comprised in the flock on that day or, where the Secretary of State is satisfied that that number is not representative of the number of breeding ewes and gimmers which appears to him to have constituted the flock over the greater part of the relevant year, such number of breeding ewes and gimmers as the Secretary of State, having regard to all the circumstances, deems to be the number of breeding ewes and gimmers in respect of which subsidy payments are to be computed.

(2) Where a breeding ewe is introduced into a hill sheep flock in any of the relevant years, such ewe shall for the purposes of this scheme be deemed not to be comprised in that flock during that year unless the Secretary of State is satisfied that its introduction was exceptional and necessary for the proper management of the flock.

Reduction of number of sheep in respect of which subsidy payments may be made

12.—(1) The Secretary of State may reduce to such extent as he may determine the number of breeding ewes and gimmers in respect of which subsidy payments would otherwise fall to be made as being comprised on the relevant day in any relevant year in a flock of sheep to which this scheme applies where he is of the opinion

(a) that that number is greater than the number of breeding ewes and

gimmers which the land on which the flock is maintained is capable of maintaining, taking into account the numbers of any other livestock normally grazed on that land, or

- (b) that the number of lambs produced by the flock during the relevant year, in the case of a hill sheep or upland flock, or during the relevant period, in the case of a flying flock, was unusually low in relation to the number of breeding ewes and gimmers comprised in the flock.

(2) Where it appears to the Secretary of State, in consequence of a count and inspection of a flock of sheep to which this scheme applies carried out by a person authorised by the Secretary of State in that behalf, that the number of breeding ewes and gimmers being maintained on any land in accordance with the provisions of this scheme is smaller than the number arrived at in accordance with the foregoing provisions of this and the preceding paragraph, he may reduce the latter number to such extent as he may determine.

Recovery of subsidy payments

13. Where in the opinion of the Secretary of State, any subsidy payment made to any person in respect of a breeding ewe or gimmer should not have been made because the provisions of this scheme had not been complied with by that person either before or after the receipt by him of such payment, the Secretary of State may recover the subsidy payment so made and without prejudice to any other mode of recovery available to him, may recover that payment by withholding payment of any subsequent subsidy payment which would otherwise fall to be made to that person.

Count and inspection

14. A person authorised by the Secretary of State in that behalf may require an applicant to gather or cause to be gathered the flock of sheep in which there are comprised the breeding ewes and gimmers to which the application for subsidy payments relates for the purpose of counting or inspection on behalf of the Secretary of State of the sheep in the flock, and to give all reasonable assistance and information for the purposes of any such authority as aforesaid, and failure by the applicant to gather the flock or to cause it to be gathered or to give such assistance or information shall be a ground upon which the Secretary of State may withhold all or any of the subsidy payments which would otherwise be payable to the applicant.

Prohibition against assignation of subsidy payments

15. Any subsidy payments in respect of breeding ewes or gimmers comprised on the relevant day in any of the relevant years in a flock of sheep to which this scheme applies may be made to a person, who, if any such payment had been a debt which, at the beginning of that day, accrued due to the person who then maintained the flock, would have been entitled to claim the payment otherwise than by virtue of an assignation.

Gordon Campbell,
One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
2nd November 1972.

We approve.

Tim Fortescue,
P. L. Hawkins,
Two of the Lords Commissioners
of Her Majesty's Treasury.

3rd November 1972.

SCHEDULE Paragraph 4(2), (3) and (4)
REDUCTION OF SUBSIDY PAYMENT

Column 1	Column 2	Column 3
Flock of Sheep	Land on which maintained	Amount by which subsidy payment is to be reduced
Hill sheep flock	Hill sheep land which comprises or forms part of an agricultural unit in which is comprised any land in respect of which (i) an application for grant for the year commencing with 1st January of the relevant year has been submitted under Winter Keep (Scotland) Scheme 1969(a), and (ii) grant for that year has been paid, or in the opinion of the Secretary of State is payable, under that scheme, or would, but for the provisions of paragraph 4 or 7 thereof, have been payable thereunder.	12½p
Flying flock or upland flock	Hill land which comprises or forms part of such an agricultural unit as is described in the immediately preceding entry in this column.	80p
Hill sheep flock	Hill sheep land occupied by any person as a crofter or as an eligible occupier.	25p
Flying flock or upland flock	Hill land occupied by any person as a crofter or as an eligible occupier.	80p
Flying flock or upland flock	Any hill land other than as specified in the second and fourth entries in this column.	55p

(a) S.I. 1969/1845 (1969 III, p. 5769).

EXPLANATORY NOTE

(This Note is not part of the Scheme.)

This Scheme succeeds the Hill and Upland Sheep (Scotland) Scheme 1967 (S.I. 1967/1862), as amended in 1971 (S.I. 1971/1818). It enables the Secretary of State to make subsidy payments on breeding ewes and gimmers of specified breeds comprised in flocks of sheep kept on hill sheep land and in respect of breeding ewes and gimmers of any breed comprised in flocks of sheep kept on hill land on the relevant day in each of the years 1972-76. There are no material changes from the previous schemes.

The Scheme does not fix the amount of subsidy payment as the Hill Farming Act 1946 requires the Secretary of State to prescribe this in a separate Order; the Order for this purpose is the Hill and Upland Sheep Subsidy Payment (Scotland) Order 1972 (S.I. 1972/1660).

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