
STATUTORY INSTRUMENTS

1997 No. 330 (S.23)

AGRICULTURE

The Countryside Premium Scheme (Scotland) Regulations 1997

Made - - - - *11th February 1997*
Laid before Parliament *17th February 1997*
Coming into force - - *10th March 1997*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Community, in exercise of the powers contained in that section insofar as these Regulations could not have been made under the powers hereinafter mentioned and otherwise in exercise of the powers conferred on him by section 98(1) and (2) of the Environment Act 1995⁽³⁾ and of all other powers enabling him in that behalf, with the consent of the Treasury, hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Countryside Premium Scheme (Scotland) Regulations 1997 and shall come into force on 10th March 1997.

(2) These Regulations extend to Scotland only.

Interpretation

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

“activities” means the activities referred to in regulation 3(3) and “activity” shall be construed accordingly;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding or keeping, the use of land as grazing land, meadowland, osier land, reed beds, market gardens and nursery grounds;

“application for grant” means an application under these Regulations and includes an application made under regulation 7(1);

(1) S.I.1972/1811.

(2) 1972 c. 68.

(3) 1995 c. 25; section 95(5)(c) provides that “the appropriate Minister” as respects Scotland means the Secretary of State.

“applicant” means an applicant under these regulations and in regulations 8, 11, 12 and 13 includes a person whose application for grant has been accepted and a person who takes on an undertaking on a change of occupation as provided in regulation 10;

“Commission Regulation” means Commission Regulation (EC) No.746/96(4) laying down detailed rules for the application of the Council Regulation;

“conservation audit” means a report of a survey of eligible land which identifies the extent and location of features of conservation interest (including flora and fauna, geological and physiological features and features of archaeological interest) and the opportunities for enhancement of such features;

“Council Regulation” means Council Regulation (EEC) No.2078/92(5) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside as last amended by Commission Regulation (EC) No. 2772/95(6);

“environmentally sensitive area” means an area designated as an environmentally sensitive area under section 18 of the Agriculture Act 1986(7);

“eligible land” means land which does not lie within an environmentally sensitive area and which is used for agriculture, is set-aside land or is a habitat site as defined in regulation 2(1) of the Habitats (Scotland) Regulations 1994(8);

“grazings committee” means a committee appointed under section 47(1) or (3) of the Crofters (Scotland) Act 1993(9) and includes a grazings constable;

“IACS” means the integrated administration and control system established by Council Regulation (EEC) No.3508/92(10)

“landlord” means–

- (a) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1991(11) (the “1991 Act”) applies, the landlord within the meaning of section 85 of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993 the landlord within the meaning of section 61(1) of that Act;
- (c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911(12) to which the 1991 Act does not apply, the same as it means in the 1911 Act;

and, where appropriate, includes a head tenant;

“moorland” means land with predominantly semi-natural upland vegetation or comprising predominantly rock outcrops and semi-natural vegetation used primarily for rough grazing;

“relevant period” means a period of not less than 5 years or, in the case of an undertaking under these Regulations which is in substitution for an undertaking given under any of the Regulations mentioned in regulation 7(1) of these Regulations, a period which together with the expired period of the undertaking under those Regulations forms a continuous period of not less than 5 years;

(4) OJ No.L102, 25.4.96, p.19.

(5) OJ No.L215, 30.7.92, p.85.

(6) OJ No. L288, 1.12.95, p.35.

(7) 1986 c. 49.

(8) S.I. 1994/2710 as amended by S.I. 1996/3035.

(9) 1993 c. 44.

(10) OJ No.L355 5.12.92, p.1.

(11) 1991 c. 55.

(12) 1911 c. 49.

“set-aside land” means set aside land as defined in the Arable Area Payments Regulations 1996(13);

“tenant” means—

- (a) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1991 (the “1991 Act”) applies, the tenant within the meaning of section 85 of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the crofter within the meaning of section 3(3) of that Act;
- (c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 to which the 1991 Act does not apply, the tenant within the meaning of section 2(2) of the 1911 Act;

and, where appropriate, includes a sub-tenant.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

(3) Words and phrases used in Schedules 1 to 4 and not defined in paragraph (1) shall be construed in accordance with Schedule 5.

Grants for purposes conducive to conservation

3.—(1) The Secretary of State may make payment of a grant in respect of an undertaking to which these Regulations apply to an applicant who—

- (a) is the lawful occupier of the eligible land to which such undertaking relates; and
- (b) has made an application for grant which has been accepted by the Secretary of State.

(2) These regulations apply to an undertaking by the applicant, for the relevant period—

- (a) to follow, in relation to the whole of the eligible land to which the undertaking relates, the general environmental conditions set out in Schedule 1; and
- (b) to carry out or, as the case may be, to carry out and maintain at least one of the activities referred to in paragraph (3).

(3) The activities mentioned in paragraph (2) are—

- (a) the management activities set out in column 1 of Schedule 2 to be undertaken on a site which forms part of the eligible land to which the undertaking relates and which meets the criteria specified in column 2 of that Schedule in relation to that activity; and
- (b) the capital activities set out in column 1 of Schedule 3 to be undertaken and maintained on any part of the eligible land to which the undertaking relates.

(4) The Secretary of State may make payment of a grant towards the cost of a conservation audit and a moorland management plan prepared in relation to an application for grant where such audit and, as the case may be, such plan have been prepared in accordance with any requirements made by the Secretary of State as to the form or content of such audit or plan.

Applications for grant

4.—(1) An application for grant shall be made in writing at such time and in such form and shall contain such information as the Secretary of State may require.

(2) An application for grant under regulation 3(1) shall include—

- (a) a copy of a conservation audit carried out in relation to the eligible land to which the application relates;

- (b) a map which shows all of that land and which identifies the habitats and features thereof relevant to the activities which the applicant proposes to undertake;
- (c) a statement of such activities;
- (d) where the conservation audit identifies moorland which would benefit from management and the applicant proposes to undertake any of the activities set out in Schedule 2 or 3 to benefit all or on any part of the identified moorland, a moorland management plan for the relevant period in relation to all or such part of the identified moorland;
- (e) where the applicant proposes to undertake any of the capital activities set out in Schedule 3, an estimate of the payments for such activities sought for each year of the proposed undertaking;
- (f) the proposed date of commencement of the undertaking; and
- (g) where an application is made by a grazings committee—
 - (i) the written consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing to the application;
 - (ii) evidence that notice has been given in accordance with regulation 5(4); and
 - (iii) confirmation from the Crofters Commission that the Commission has approved the application or, as the case may be, has received no representation under regulation 5(5).

Crofters common grazings

5.—(1) Subject to paragraph (4), a grazings committee may make an application for grant in relation to a common grazing with the consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing.

(2) Where an undertaking is given by a grazings committee such undertaking shall include an obligation upon the committee to bind their successors in office to the undertaking.

(3) Subject to paragraph (4), where an undertaking is given by a grazings committee payments by way of grant in respect of that undertaking shall be made to the clerk of the committee who shall divide such payment among the crofters who share in the common grazing in such proportion as may be determined by the grazings committee.

(4) Where a grazings committee propose to apply under paragraph (1) they shall prior to making the application give notice of their intention to do so and of their proposed division, under paragraph (3), of grant, by advertisement or otherwise to the crofters ordinarily resident in the township and sharing in the common grazing.

(5) Any such crofter as is mentioned in paragraph (4) may within one month of the date of the notice under that paragraph make representation in respect of the proposals to the Crofters Commission who may approve them with or without modification or reject them.

Restrictions on acceptance of application

6.—(1) The Secretary of State shall not accept an application for grant in relation to any eligible land which is occupied by a tenant unless he is satisfied that the tenant has notified the landlord of his intention to make the application.

(2) The Secretary of State shall refuse to accept an application for grant in relation to any eligible land where—

- (a) he is satisfied that the use of the land in accordance with the proposals contained in the application would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or the European Community;

- (b) he is satisfied that the payment of grant under these Regulations would duplicate any assistance previously given out of money provided by Parliament or by the European Community;
- (c) the applicant is prohibited from giving the undertaking under these regulations by application of a penalty pursuant to Article 20(2) of the Commission Regulation (reimbursement of aid and penalties); or
- (d) the applicant is excluded from all aid under the Council Regulation by virtue of article 20(3) of the Commission Regulation and the grant in respect of the proposed undertaking would include such aid.

(3) The Secretary of State shall not accept an application for grant without first having agreed with the applicant the date of commencement of the undertaking which shall in no circumstances be earlier than the date of submission of the application.

Transformation of undertakings

7.—(1) A beneficiary under the Habitats (Scotland) Regulations 1994, the Set-Aside Access (Scotland) Regulations 1994(14) or the Heather Moorland (Livestock Extensification) (Scotland) Regulations 1995(15) may apply to substitute for the unexpired period of an undertaking under any of those Regulations an undertaking to which these Regulations apply.

(2) The Secretary of State may accept an application under paragraph (1) only where he is satisfied that the conditions set out in article 13 (transformation of undertakings) of the Commission Regulation are met.

(3) The acceptance by the Secretary of State of an application under paragraph (1) shall not give rise to any right or liability under these Regulations for anything done prior to the date of commencement of the undertaking to which these Regulations apply except to the extent that payment is provided under these Regulations for any period which commenced on or after that date in respect of stock disposal prior to that date.

Amount of grant

8.—(1) Subject to the provisions of this regulation, the grant payable under regulation 3(1) shall be calculated with reference to the activities to be undertaken and in relation to each such activity shall be at a rate not exceeding the maximum payment rate specified in column 2 of Schedule 4 corresponding to that activity.

(2) The grant payable under regulation 3(1) in respect of an undertaking, excluding any amount payable in respect of stock disposal, shall not exceed the sum of £30,000 over the relevant period or, in the case of an undertaking relating to common grazing, £60,000 over such period or, in either case, such lower sum as may be determined in accordance with the provisions of this regulation.

(3) Where an undertaking is at the date of its commencement a subsequent undertaking, the sum specified in paragraph (2) in relation to that undertaking shall be reduced to the extent that the amount mentioned in paragraph (4) relates to the same period as the subsequent undertaking.

(4) The amount referred to in paragraph (3) is the amount of grant payable, including any amount already paid, under these Regulations to the applicant, or to any person who together with the applicant is a farmer for the purposes of IACS, in respect of any prior undertaking.

(5) For the purposes of this regulation an undertaking is a subsequent undertaking—

- (a) if it is given by an applicant who has given a prior undertaking; or

(14) S.I. 1994/3085.

(15) S.I. 1995/891.

(b) if any person mentioned in paragraph (4) has given a prior undertaking and both undertakings relate to eligible land on the holding for the purposes of IACS of the farmer.

(6) For the purposes of this regulation an undertaking is a prior undertaking if it is an undertaking under these Regulations the agreed date of commencement of which is earlier than the date of commencement of another undertaking under these regulations given by the same applicant or by a person mentioned in paragraph (4).

(7) Where the agreed date of commencement of an undertaking is the same as the date of commencement of another undertaking given by the same applicant or by a person mentioned in paragraph (4), the Secretary of State shall determine the order in which such undertakings commenced and for the purposes of this regulation an undertaking shall be deemed to have a date of commencement earlier than another where the Secretary of State determines under this paragraph that it commenced before another undertaking.

(8) Where this paragraph applies, the Secretary of State shall review the sum specified in paragraph (2), or such lower sum as is determined after application of the provisions of this regulation, including the prior application of this paragraph, in relation to an undertaking and shall reduce such sum to the extent that payment of it would result in the applicant or any person mentioned in paragraph (4) receiving grant under these Regulations which he would not have received had the applicant been the applicant at the date of commencement of the undertaking or been established as being a person who together with others was a farmer for the purposes of IACS at that date.

(9) Paragraph (8) applies—

- (a) where a new occupier of all or any part of the land to which an undertaking relates takes on the undertaking in accordance with regulation 10; and
- (b) where after the date of commencement of the undertaking the applicant becomes or is established as having been a person who together with others is or was a farmer for the purpose of IACS.

(10) The provisions of paragraphs (2) to (9) shall not apply to an undertaking which is in substitution for the unexpired period of an undertaking under any of the Regulations mentioned in regulation 7(1).

(11) The grant payable under regulation 3(4) in respect of a conservation audit or a moorland management plan shall not exceed the maximum payment rate specified in column 2 of Schedule 4 in relation to such audit or plan.

Claims and payment

9.—(1) A claim for grant under regulation 3(1) shall be made at such time and in such form and shall be accompanied by such information as the Secretary of State may require.

(2) Payment of grant under regulation 3(1) shall be made—

- (a) in the case of a payment in relation to a management activity included in an undertaking, by annual instalment paid in arrear; and
- (b) in the case of a payment in relation to a capital activity included in an undertaking, upon completion of the work.

(3) Payment of grant as provided in paragraph (2) shall be made only where the Secretary of State is satisfied that—

- (a) the general environmental conditions set out in Schedule 1 have been followed during the period to the date of payment; and
- (b) the management requirements set out in column 3 of Schedule 2 or, as the case may be, the specification set out in column 2 of Schedule 3 in relation to the activity have been met.

(4) Payment of grant under regulation 3(4) shall be made upon submission of an application for grant in accordance with regulation 4.

(5) The provisions of this regulation are, insofar as the grant claimed includes aid under the Council Regulation subject to Article 10 (combination of aids) and Article 14(2) and (3) (rules governing undertakings and payment procedures) of the Commission Regulation.

Change of occupation

10.—(1) Where during the period of an undertaking, there is a change of occupation of all or any part of the land to which that undertaking relates the former occupier (or, if he has died, his executors) shall within 3 months notify the Secretary of State in writing of the change of occupation, and shall supply to the Secretary of State such information relating to that change in such form and within such period as the Secretary of State may determine.

(2) A new occupier of all or any part of the land who wishes to take on the undertaking shall furnish the Secretary of State with such information in such form and within such period following the change of occupation as the Secretary of State may determine.

(3) A new occupier of the land may take on the undertaking where the Secretary of State is satisfied that—

- (a) the former occupier had complied with the undertaking to the date of the change of occupation; and
- (b) the new occupier is the lawful occupier of the land and has since the date of change of occupation complied with the undertaking.

(4) A new occupier of any part of the land or, as the case may be, the former occupier of all the land may take on the undertaking insofar as it extends to that part of the land which he occupies or as the case may be continues to occupy where the Secretary of State is satisfied that—

- (a) such new occupier or, as the case may be, such former occupier of all the land, is the lawful occupier of the part of the land which he occupies and has since the date of change of occupation complied or, as the case may be, continued to comply with the undertaking insofar as it extends to the part of the land which he occupies; and
- (b) it is reasonable for the occupier to do so having regard to the activities included in the undertaking and the part of the land which is occupied by the new occupier or, as the case may be, continues to be occupied by the former occupier of all the land.

(5) Where occupation of the land is divided the Secretary of State shall determine—

- (a) the extent to which the activities included in the undertaking relate to any part of the land occupied by a new occupier or, as the case may be, the former occupier of all the land; and
- (b) the proportion, if any, of the grant which would be payable under paragraph (7) for the remainder of the period of the undertaking in respect of that part of the land.

(6) Where the Secretary of State is satisfied as specified in paragraph (3), he shall, subject to regulation 8, make payments of the grant for the remainder of the period of the undertaking to the new occupier of the land who has taken on the undertaking.

(7) Where the Secretary of State is satisfied as specified in paragraph (4) he shall, subject to regulation 8, make payments of such proportion of the grant, if any, as he has determined under paragraph (5) are due for the remainder of the period of the undertaking to the new occupier or, as the case may be, former occupier of all the land who has taken on the undertaking.

(8) Where within 3 months from the date of change of occupation the undertaking has not been taken on in accordance with paragraph (3) or, as the case may be, paragraph (4), the Secretary of State may—

- (a) withhold the whole or any part of any payment of grant under these Regulations due to the former occupier in respect of the undertaking; and
- (b) recover from the former occupier or his executors the whole or any part of any payment of grant under these Regulations already made to him in respect of the undertaking.

(9) In the application of this regulation to a common grazing “change of occupation” includes the apportionment to a crofter of any land from the common grazing during the period of the undertaking but does not include a change in the membership of the grazings committee.

(10) The provisions of this regulation are, insofar as the grant paid under these Regulations includes aid under the Council Regulation, subject to Article 11 (transfer of holding) and Article 12 (force majeure) of the Commission Regulation and where by virtue of Article 11 an applicant for grant is required to reimburse, in accordance with Article 20(1) of the Commission Regulation, the aid paid, the rate of interest shall be that provided in regulation 13(1).

Obligation to permit entry and inspection

11.—(1) An applicant shall permit any person duly authorised by the Secretary of State, accompanied by such persons acting under his instructions as appear to that authorised person to be necessary for the purpose, at all reasonable hours and on production on demand of some duly authenticated document showing his authority, if so required, to enter upon the land to which an undertaking or, as the case may be, a proposed undertaking relates for the purpose of—

- (a) carrying out any inspection of such land or any document or record in the possession or under the control of the applicant relating to, or which the authorised person may reasonably suspect relates to, the application with a view to verifying the accuracy of any particulars given in the application, in a claim under regulation 9(1) or under regulation 10(1); and
- (b) ascertaining whether the undertaking given or taken on or, as the case may be, proposed to be given or taken on by him under these Regulations has been duly complied with.

(2) An applicant shall render all reasonable assistance to the authorised person in relation to the matters mentioned in paragraph (1), and in particular shall—

- (a) produce any document or record which may be required by the authorised person for inspection;
- (b) permit the authorised person to take copies or extracts from any such document or record;
- (c) where any such document or record is kept by means of a computer, produce it in a form in which it may easily be read and taken away; and
- (d) at the request of the authorised person, accompany him in making the inspection of any land and identify any area of land which relates to the application or to any change of occupation notified under regulation 10.

Withholding and recovery of grant

12.—(1) Where an applicant—

- (a) in making the application, or in furnishing any information in connection with the application for grant or under regulation 9(1) or 10(2), has made a statement which was false or misleading in a material respect;
- (b) has failed to do something which he undertook to do if the grant was made; or
- (c) is in breach of any condition subject to which the grant was made,

the Secretary of State may withhold the whole or any part of any grant payable to that applicant, and may recover the whole or any part of any such grant already paid to him.

(2) Before withholding or recovering any grant under paragraph (1) or under regulation 10(8), the Secretary of State shall—

- (a) give to the applicant for grant a written explanation of the reasons for the proposed withholding or recovery;
- (b) afford the applicant for grant an opportunity of appearing before and being heard by a person appointed for that purpose by the Secretary of State; and
- (c) consider the report by the person so appointed and supply a copy of the report to the applicant for grant.

(3) Insofar as the grant paid under these Regulations includes aid under the Council Regulation—

- (a) the words “in a material respect” in paragraph 1 shall be of no effect; and
- (b) the Secretary of State may insofar as permitted by Article 20(2) of the Commission Regulation, withhold from or, as the case may be, require an applicant to whom paragraph (1) applies to pay an amount not exceeding 10% of the aid payable, including any amount already paid, in respect of the undertaking in addition to recovering or withholding the aid under that paragraph.

Rate of interest

13.—(1) Where an applicant is by virtue of Article 20(1) (reimbursement of aid and penalties) of the Commission Regulation required to reimburse the amount of a wrongful payment with interest for the period between payment and the reimbursement, the rate of interest shall be one percentage point above the sterling three month London interbank offered rate applicable during that period.

(2) In any proceedings for recovery of interest calculated at the rate provided in paragraph (1), a certificate of the Secretary of State stating such rate applicable during a period specified in the certificate shall be conclusive evidence of that rate if the certificate also states that the Bank of England notified the Secretary of State of that rate.

Recovery of payments

14. Where an amount falls to be paid to the Secretary of State by virtue of (or by virtue of an action taken under) these Regulations or the Commission Regulation, such amount shall be recoverable as a debt.

St Andrew’s House,
Edinburgh
10th February 1997

Lindsay
Parliamentary Under Secretary of State, Scottish
Office

We consent,

11th February 1997

Roger M Knapman
Bowen Wells
Two of the Lords Commissioners of Her
Majesty’s Treasury

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SCHEDULE 1

Regulation 3(2)(a)

GENERAL ENVIRONMENTAL CONDITIONS

1. On rough grazings, unimproved grassland, reverted improved grassland, machair and dune grassland, wetlands, water margins, native, amenity or semi-natural woodlands and scrub—
 - (a) the conservation interest shall not be damaged by new drainage works, ploughing, clearing, levelling, re-seeding or cultivating;
 - (b) livestock shall be managed to avoid poaching or overgrazing;
 - (c) pesticides shall not be used except with the consent of the Secretary of State; and
 - (d) lime or fertiliser, including farmyard manure and slurry, shall not be used except with the consent of the Secretary of State.
2. Any muirburn shall be carried out in accordance with the guidance approved by the Secretary of State.
3. Hedges, native, amenity or semi-natural woodland and scrub shall not be removed or cleared.
4. Designed landscapes, parkland policy grassland, drystone or flagstone dykes or walls, individual trees or hedgerow trees and parkland railing fencing shall not be removed or destroyed without the consent of the Secretary of State.
5. Any features or areas of historic or archaeological interest shall not be damaged or destroyed and guidance approved by the Secretary of State for the protection of such features or areas shall be followed.
6. Guidance approved by the Secretary of State for the avoidance of pollution shall be followed.

SCHEDULE 2

Regulations 3(3)(a) and 9(2)(a)

MANAGEMENT ACTIVITIES

| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|--------------------------------------|--|---|
| 1. Management of grassland for birds | A field used for growing hay or silage | (a) (a) The field must not be rolled, harrowed or grazed after 15th May; (b) Mowing or the reintroduction of grazing must not take place before 15th July or, where corncrakes (crex crex) are likely to be present, 1st August; (c) Hay and silage must be cut only in such manner as minimises the risk of damage to young birds; |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|---|--------------------------------------|---|
| | | (d) Fertiliser, slurry or farmyard manure must not be applied to the field after 31st May; and |
| | | (e) Pesticides may be used only with the consent of the Secretary of State. |
| 2. Management of species-rich grassland | Species-rich grassland on inbye land | (a) (a) Livestock must be excluded from the site for a period of not less than 3 months between 15th April and 15th August; |
| | | (b) After that period, the grass must be grazed down or cut; and |
| | | (c) The site must not be used for supplementary feeding of stock; |
| | | (d) Fertiliser, slurry or manure must not be applied to the land; and |
| | | (e) Pesticides may be applied only with the consent of the Secretary of State. |
| 3. Creation of species-rich grassland | Arable land or improved grassland | (a) (a) Any existing grassland cover must be destroyed; |
| | | (b) The site must be sown with a low productivity grass and herb mix to create a new sward; |
| | | (c) The site must not be mown or grazed between 15th April and 15th August; |
| | | (d) For the remainder of the year grazing must not exceed an annual average of 1.4 |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|----------------------------|-----------------------|---|
| | | livestock units per hectare; (e) The site must not be used as a site for supplementary feeding of stock; (f) Fertiliser, slurry or manure must not be applied to the land; and (g) Pesticides may be applied only with the consent of the Secretary of State. |
| 4. Management of wetland | Wetland on inbye land | (a) (a) Livestock must be– (i) excluded for a period of not less than 4 months between 1st April and 31st August; or (ii) excluded for a period of 3 months from 1st April provided that grazing in the following period of 3 months from 1st July does not exceed 0.3 livestock units per hectare; or (b) Grazing must not exceed 0.15 livestock units per hectare for 6 months from 1st April; (c) Fertiliser, slurry or manure must not be applied to the land; and (d) Pesticides may be applied only with |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|-------------------------------|--|---|
| | | the consent of the Secretary of State. |
| 5. Creation of wetland | Existing arable land or improved grassland where the raised water levels resulting from creation of wetland would not adversely affect other agricultural land or cause the erosion of river banks. | <p>(a) (a) The site must be managed to ensure that it is normally saturated with water for a significant proportion of the year;</p> <p>(b) The site must not be mown or grazed for a period of not less than 3 months between 15th April and 15th August;</p> <p>(c) Outwith such period, grazing must not exceed an annual average of 1.4 livestock units per hectare;</p> <p>(d) Fertiliser, slurry or manure must not be applied to the land; and</p> <p>(e) Pesticides may be applied only with the consent of the Secretary of State.</p> |
| 6. Management of water margin | <p>Inbye land which borders a watercourse having a bed width of not less than 0.6 metres or still water and which—</p> <p>a. in the case of a site bordering a watercourse having a bed width of less than 1.2 metres, has a minimum width of 5 times the bed width of the watercourse;</p> <p>b. in the case of a site bordering a watercourse, has a minimum width of 6 metres; and</p> <p>c. in the case of a site bordering still water, has a minimum width of 12 metres.</p> | <p>(a) (a) Livestock must be excluded except for the period from 1st August to 30th September when grazing at a stocking density of no more than 0.15 livestock units per hectare may take place;</p> <p>(b) The site must be maintained by the control of statutory weeds, hogweed and japanese knotweed and, as the case may be, by clearing the watercourse of any obstacle;</p> |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|---------------------------------|---|---|
| | | (c) Fertiliser, slurry or manure must not be applied to the land; and (d) Pesticides may be applied only with the consent of the Secretary of State. |
| 7. Management of flood plain | A site which forms all or part of a flood plain where— a. all or part of the flood plain is included in the undertaking as the site of another management activity; and b. the flooding of the site would not adversely affect other agricultural land. | The natural flooding of the land must not be hindered. |
| 8. Management of coastal health | Land bordering the sea containing moorland or species rich grassland affected by salt spray and exposure. | (a) (a) Livestock must be excluded between 1st April and 31st August; (b) The site must be grazed between 1st September and 30th November; (c) Between 1st December and 31st March, any grazing should not exceed 0.08 livestock units per hectare; (d) The land must not be used as a site for supplementary feeding of stock; (e) Fertiliser, slurry or manure must not be applied to the land; and (f) Pesticides may be applied only with the consent of the Secretary of State. |
| 9. Stock disposal | Moorland which is of conservation interest and has a stocking density which does | (a) (a) The requirements of the moorland |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|--|---|---|
| | not exceed an annual average of 4.5 livestock units per hectare. | management plan must be followed; and (b) Ewe numbers on the holding for the purposes of IACS of which the site forms part must be reduced by at least the number of ewes removed from the site in accordance with the plan and must not be increased for the relevant period. |
| 10. Muirburn | Moorland identified in a moorland management plan as appropriate for muirburn. | All muirburn must be undertaken in accordance with guidance approved by the Secretary of State. |
| 11. The creation of grass margin or beetlebank | Land forming a strip between 1.5 metres and 6 metres in width around or across arable fields. | (a) (a) The strip must be established by sowing a suitable mix of grass seed; (b) The strip must not be grazed; (c) Fertiliser, slurry or manure must not be applied to the strips; and (d) Pesticides may be applied only with the consent of the Secretary of State. |
| 12. Creation of conservation headland | Headland with a minimum width of 6 metres around arable fields. | Insecticides and herbicides may be applied to the headlands only with the consent of the Secretary of State. |
| 13. Introduction or retention of extensive cropping | A site comprising arable land or improved grassland in the Less Favoured Area which does not exceed 4 hectares and subject to a maximum area per undertaking of 8 hectares. | (a) (a) A minimum 3 year rotation of crops must be agreed with the Secretary of State. (b) Application of fertiliser must not exceed 50kg N: 25kg P ₂ O ₅ : 25kg K ₂ O per hectare; |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|-----------------------------------|--|---|
| | | <ul style="list-style-type: none"> (c) Ploughing, cultivations and the spreading of fertiliser may only take place between 28th February and 15th May; and (d) Insecticides and herbicides may be applied only with the consent of the Secretary of State. |
| 14. Management of cropped machair | Cropped machair | <ul style="list-style-type: none"> (a) (a) The site must be in a rotation of one or more years of arable cultivation with at least as many years of fallow; (b) Ploughing and cultivation may only take place between 28th February and 15th May; (c) The site must be left to revert to natural grass after the crop harvest; (d) Pesticides may be applied only with the consent of the Secretary of State; (e) No artificial fertiliser may be applied to the land; and (f) Seaweed and manure may be applied in accordance with traditional practice. |
| 15. Creation of extended hedge | A strip of arable or improved grassland situated alongside an existing or newly created hedge. | <ul style="list-style-type: none"> (a) (a) All livestock must be excluded and no arable cultivations may be carried out within 3 metres of the centre line of the hedge; (b) Where the hedge is trimmed in January or February it must |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|------------------------------------|--|--|
| | | not be trimmed again for two years or, where it is trimmed in any other month, for three years; |
| | | (c) The grass in the strip must not be cut, unless with the consent of the Secretary of State; |
| | | (d) Fertiliser, slurry or manure must not be applied to the land; and |
| | | (e) Pesticides may be applied only with the consent of the Secretary of State. |
| 16. Management of scrub | Grazed land with suppressed scrub. | (a) (a) Stock must be excluded from the land; |
| | | (b) Fertiliser, slurry or manure must not be applied to the land; and |
| | | (c) Pesticides may be applied only with the consent of the Secretary of State. |
| 17. The provision of access | A site on inbye land, comprising a 10 metre wide strip or, subject to a maximum of 4 hectares, all or part of a field, which, in the opinion of the Secretary of State, provides a new or significantly enhanced access opportunity. | (a) (a) The site must be available for public access at no charge; |
| | | (b) Unobstructed passage must be maintained over the site; |
| | | (c) The site and any field crossed by the site must be kept free of refuse; |
| | | (d) With the exception of bulls under 10 months of age, bulls must be excluded from the site or any field crossed by the site; |

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|----------------------------|----------------------|--|
| | | <ul style="list-style-type: none"> (e) Adequate means of entry must be provided and maintained; (f) Signboards and waymarking arrows must be installed at appropriate positions and maintained; (g) Any erosion caused to the site must be repaired; (h) Consent must be given to details of the access opportunity being made public by the Secretary of State; (i) The site may be closed to the public for a specified number of days with the consent of the Secretary of State, providing a sign giving notice of the intended closure is posted at each entry point to the site at least 2 weeks in advance of the date of closure; and (j) Public liability insurance cover in respect of at least one claim of up to £1 million in any year shall be maintained. |

18. Management of a site of archaeological or historic interest | Land containing a site of archaeological or historic interest.

The management of the site must be agreed in advance with the Secretary of State and may include, as appropriate, controls over grazing, the cutting and removal of trees, scrub and woody plants, the repair of erosion damage, the establishment of unploughed buffer zones and the realignment of fences,

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| <i>Management activity</i> | <i>Site criteria</i> | <i>Management requirements</i> |
|----------------------------|----------------------|--|
| | | tracks and resiting of hard standings. |

SCHEDULE 3

Regulations 3(3)(b) and 9(2)(b)

CAPITAL ACTIVITIES

| | <i>Column 1 Capital activity</i> | <i>Column 2 Specification</i> |
|----|--|--|
| 1. | Bracken control on any area of land identified in a moorland management plan as requiring such control or on any area where such control would benefit a site managed as part of the undertaking under these regulations or under any of the Regulations mentioned in Regulation 7(1). | <p>(a) (a) Control must be effected by cutting or crushing twice per year for 3 years or, subject to paragraph b., by spraying with asulam or other herbicides approved by the Secretary of State for this purpose; and</p> <p>(b) Aerial spraying may be carried out only with the prior written consent of Scottish Natural Heritage and, where the area to be sprayed is an area which drains into still or flowing water from which a public water supply is obtained, of the local water authority.</p> |
| 2. | Erection of a fence, gate, footbridge or stile required for any of the management activities set out in Schedule 2 or which provide some other conservation benefit. | <p>(a) (a) The construction and all materials used must conform with the appropriate British standards.</p> <p>(b) Except as otherwise provided, fence stobs must be placed at intervals of no more than 3.5 metres or, where high tensile wire and droppers are used, 12 metres;</p> |

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| | Column 1 <i>Capital activity</i> | Column 2 <i>Specification</i> |
|----|---|---|
| | | (c) Except as otherwise provided, a fence must have a minimum of 6 line wires or 2 line wires and woven wire netting; and |
| | | (d) A scare fence must consist of a minimum of 2 line wires with stobs at intervals of not more than 6 metres. |
| 3. | Building or restoration of traditional drystone or flagstone dyke or wall | Drystone or flagstone dyke or wall should be rebuilt with material traditional to the locality and to a standard normally found there. |
| 4. | External work to restore vernacular building to a wind and watertight condition | Restoration must normally be carried out using the same material used in the original construction. |
| 5. | Amenity tree planting on a site not exceeding 0.25 hectares | (a) (a) Planting density must not exceed one tree per 10m ² ; and (b) Native species appropriate to the site must be planted. |
| 6. | Installation of tree guard and stake or a self-supporting tree guard required to protect amenity tree and hedge planting carried out as part of an undertaking under these Regulations. | The guard and stake or self-supporting tree guard must be securely fixed to protect newly planted material from damage by rodents and grazing animals. |
| 7. | Planting of marram grass into areas threatened with erosion. | (a) (a) Transplants should be harvested from areas where marram is well established and there is little danger from erosion; (b) Plants should be established at a density of at least |

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| | Column 1 <i>Capital activity</i> | Column 2 <i>Specification</i> |
|-----|---|---|
| | | 9 plants per square metre; and |
| | | (c) Planting should take place in late spring or autumn. |
| 8. | Installation of a water trough required because the management of a water margin as part of an undertaking under these Regulations will result in stock being denied access to traditional watering points. | (a) (a) The water trough must be a purpose made item and incorporate a ballcock to shut off the water supply; and (b) The trough must be permanently mounted on a durable base and a stop cock must be provided to control the water supply. |
| 9. | Planting, replanting, coppicing or laying of a hedge. | (a) (a) Where new hedging or gapping up of existing hedges is undertaken, plants must be established in a double row with a minimum of 8 plants per metre in total; and (b) A single species must not account for more than 75% of the plants established. |
| 10. | Creation or restoration of pond | (a) (a) Existing habitats must not be damaged; (b) The site must be capable of retaining water; and (c) There must be an adequate supply of water. |
| 11. | Sowing of species rich grass as part of the management activity, creation of species rich grassland, included in the undertaking. | (a) (a) Any existing sward should first be destroyed by cultivation or herbicide treatment; and |

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| | Column 1 <i>Capital activity</i> | Column 2 <i>Specification</i> |
|-----|--|--|
| | | (b) A mixture consisting of no more than 85% fine-leaved or non-aggressive grasses and at least 15% mixed native flowers must be sown. |
| 12. | Erection of suitable fencing to trap blowing sand and infill previously eroded dune areas. | Fencing must be fixed at right angles to the prevailing sand bearing wind and constructed of posts and rails with stobs no more than 3 metres apart and 4 rails (70mm × 20mm). |

SCHEDULE 4

Regulation 8(1)

MAXIMUM PAYMENT RATES FOR ACTIVITIES

PART I

MANAGEMENT ACTIVITIES

| | Column 1 <i>Activity</i> | Column 2 <i>Maximum payment rate</i> |
|----|--------------------------------------|--|
| 1. | Management of grassland for birds | £125 per hectare per annum. |
| 2. | Management of species-rich grassland | £80 per hectare per annum. |
| 3. | Creation of species-rich grassland | £250 per hectare per annum. |
| 4. | Management of wetland | £80 per hectare per annum. |
| 5. | Creation of wetland | £250 per hectare per annum. |
| 6. | Management of water margin | £100 per 0.25 hectare per annum. |
| 7. | Management of flood plain | £25 per hectare per annum. |
| 8. | Management of coastal heath | £80 per hectare per annum. |
| 9. | Stock disposal | Subject to Part IV of this Schedule £35 per ewe per annum for each ewe removed from the flock including, where the undertaking is in substitution for an undertaking |

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| | Column 1 <i>Activity</i> | Column 2 <i>Maximum payment rate</i> |
|-----|---|---|
| | | under the Heather Moorland (Livestock Extensification) Regulations 1995, any ewe removed prior to such substitution in respect of the undertaking under those Regulations. |
| 10. | Muirburn | £5 per hectare per annum for the area of moorland identified for burning. |
| 11. | Creation of grass margin or beetlebank | £184 per 0.25 hectare or part thereof per annum. |
| 12. | Creation of conservation headland | £100 per hectare per annum. |
| 13. | Introduction or retention of extensive cropping | £120 per hectare per annum. |
| 14. | Management of cropped machair | £140 per hectare per annum or, where cultivation is combined with the traditional application of seaweed and dung, £220 per hectare. |
| 15. | Creation of extended hedge | £125 per 0.25 hectare or part thereof per annum. |
| 16. | Management of scrub | £55 per hectare per annum. |
| 17. | Provision of access | Where the site comprises a 10 metre wide strip £170 per hectare per annum or, in the case of set aside land, £90 per hectare per annum; or Where the site comprises all or part of a field, £50 per hectare per annum; or, in the case of set aside land, £45 per hectare per annum. |
| 18. | Management of a site of archaeological or historic interest | £80 per 0.25 hectares per annum or part thereof up to 1.5 hectares and £20 per 0.25 hectare or part thereof thereafter. |

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PART II

CAPITAL ACTIVITIES

| Column 1 <i>Activity</i> | Column 2 <i>Maximum payment rate</i> |
|--|---|
| 1. Bracken control | £100 per hectare. |
| 2. Erection of— | £2.50 per metre. |
| a. stock fence | |
| (b) (b) Scare, temporary or rabbit fence | £1.25 per metre. |
| (c) (c) deer fence | £5.50 per metre. |
| (d) (d) gate and posts | £20 per metre. |
| (e) (e) single stile | £20 per stile. |
| (f) (f) double stile | £40 stile. |
| (g) (g) footbridge | £125 per footbridge. |
| 3. Building or restoration of traditional stone dyke or wall | £9 per square metre. |
| 4. Restoration of vernacular building | 50% of the cost approved by the Secretary of State. |
| 5. Amenity tree planting | £1 per tree (maximum 250 trees per 0.25 hectare). |
| 6. (a) (a) Tree guard and stake | £1 per tree guard and stake. |
| (b) (b) Self-supporting tree guard | 35 pence per tree guard. |
| 7. Planting of marram grass | £4 per square metre. |
| 8. Water trough | £100 per trough. |
| 9. Planting, replanting, coppicing or laying of a hedge | £3 per metre. |
| 10. Creation or restoration of a pond | £2 per square metre up to 100 square metres and £1 per square metre thereafter. |
| 11. Sowing of species-rich grassland | £300 per hectare. |
| 12. Sand blow fencing | £7 per metre. |

PART III

ADVICE

| | Column 1 <i>Activity</i> | Column 2 <i>Maximum payment</i> |
|----|-----------------------------|------------------------------------|
| 1. | Conservation audit | £375. |
| 2. | Moorland management plan | £500. |

PART IV

1. Where an undertaking includes stock disposal, payments for that activity shall not exceed £7,000 per annum or in the case of a common grazings committee £10,000 per annum or, in either case, such lower sum as may be determined in accordance with the provisions of this Part.

2. Where the undertaking is at the commencement of any year thereof a subsequent undertaking, the sum specified in paragraph 1 in relation to the undertaking shall be reduced to the extent that the amount mentioned in paragraph 3 relates to the same year.

3. The amount referred to in paragraph 2 of this Part is the amount of grant payable in respect of stock disposal, including any amount already paid, under these Regulations to the applicant, or to any person who together with the applicant is a farmer for the purposes of IACS, in respect of any prior undertaking.

4. For the purposes of this Part an undertaking is a subsequent undertaking if it is a subsequent undertaking for the purposes of regulation 8 and an undertaking is a prior undertaking if it is a prior undertaking for those purposes.

5. Where an undertaking is deemed to have, for the purposes of regulation 8, a date of commencement earlier than another undertaking it shall be so deemed also for the purposes of this Part.

6. Where regulation 8(8) applies, the Secretary of State shall review the sum specified in paragraph 1, or such lower sum as is determined after application of the provisions of this Part, including the prior application of this paragraph, in relation to an undertaking and shall reduce such sum to the extent that payment of it would result in the applicant or any person mentioned in paragraph 3 receiving grant under these Regulations which he would not have received had the applicant been the applicant at the commencement of the year or been established as being a person who together with others was a farmer for the purposes of IACS at that date.

7. The provisions of this Part shall not apply to an undertaking which is in substitution for an undertaking under the Heather Moorland (Livestock Extensification) Regulations 1995.

SCHEDULE 5

Regulation 2

INTERPRETATION OF SCHEDULES

In Schedules 1 to 4—

“agricultural land” means land used for agriculture and includes land which is set-aside land or is a habitat site as defined in regulation 2(1) of the Habitats (Scotland) Regulations 1994;

“amenity woodland” means small-scale woodland planted and maintained primarily for improvement of the landscape;

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“beetlebank” means a grass sward created in the margin of arable fields, or strips through fields taken out of arable production in order to allow insects to over-winter;

“coastal heath” means land bordering the sea containing moorland or species-rich grassland affected by salt spray and exposure;

“conservation audit” means a report of the survey of a farm to identify the extent and location of habitats and features of conservation interest and the opportunities for enhancement;

“conservation headland” means a strip of land at least 6 metres wide which borders an arable field and which is left untreated by herbicide or insecticide applications to allow the natural development of varied flora;

“cropped machair” means sandy plains formed when calcareous shell-sand has been blown over glacial deposits and peat and which has been subject to cultivation within the last 10 years;

“designed landscape” means garden or a landscape, including parkland policy grassland, which is included in a record, recognised by the Secretary of State, of existing historic gardens and designed landscapes;

“ewe” means a female sheep which is at least one year old on the 1st of January preceding the date of the application for grant;

“extensive cropping” means a specified arable rotation system without the use of pesticides (except to control statutory weeds) and restricted use of fertilisers in order to promote habitats for birds, in particular to allow nesting to be completed;

“extended hedge creation” means management of new or existing hedges by fencing off a strip 3 metres from the centre line of the hedge and taking the necessary land out of agricultural production in order to provide more diverse flora and an improved habitat for invertebrates, birds and small mammals;

“floodplains” means eligible land adjacent to a watercourse which is subject to periodic flooding in times of high precipitation;

“heather moorland” means areas of land in which heather (*calluna vulgaris*) or other dwarf shrubs including bell heather (*erica cinera*), cross-leaved heath (*erica tetralix*), crowberry (*empetrum nigrum*), blaeberry (*vaccinium myrtillus*) or bog myrtle (*myrica gale*), occur throughout the vegetation;

“hedge” means a line of shrubs or trees which delineate field boundaries;

“improved grassland” means either land used for grazing where over one third of the sward comprises, singly or in mixture, ryegrass, cocksfoot or timothy, or land that has been improved by management practices such as liming and top dressing, where there is not a significant presence of sensitive plant species indicative of native unimproved grassland;

“inbye land” means that part of a farm not comprising the hill and rough grazings, the bulk of which is used for arable and grassland production;

“Less Favoured Area” means land which is disadvantaged land or severely disadvantaged land as defined in the Hill Livestock (Compensatory Allowances) Regulations 1996⁽¹⁶⁾;

“machair” means sandy plains formed when calcareous shell-sand has been blown over glacial deposits and peat but does not include cropped machair;

“moorland” means land with predominantly semi-natural upland vegetation or comprising predominantly rock outcrops and semi-natural upland vegetation used primarily for rough grazing;

“muirburn” has the same meaning as in section 39(1)(f) of the Hill Farming Act 1946⁽¹⁷⁾;

⁽¹⁶⁾ S.I. 1996/1500 as amended by S.I. 1997/33.

⁽¹⁷⁾ 1946 c. 73.

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“native woodland” means self-seeded woodland of native species or woodland derived from an originally naturally occurring woodland;

“over-grazing” means grazing land with livestock in such numbers as adversely to affect the growth, quality or species composition of vegetation on that land to a significant degree;

“parkland policy grassland” means permanent pasture forming part of a designed landscape including individual or groups of amenity trees;

“pesticides” means herbicides, insecticides or fungicides;

“poaching” means the trampling or treading of the ground surface by livestock resulting in permanent damage to the vegetation;

“reverted improved grassland” means land, previously improved by agricultural management operations which, from an agricultural viewpoint, has degenerated and is now showing significant presence of plant species indicative of unimproved grassland;

“rough grazings” means land containing semi-natural vegetation including heathland, heather moorland, bog and rough grassland used or suitable for use as grazing;

“scrub” means low growing woody vegetation of small trees and shrubs including linear scrub along field margins;

“semi-natural woodland” means native woodland which has been modified by human activity;

“species-rich grassland” means inbye land used for grazing or mowing which is not normally treated with mineral fertiliser or lime and does not constitute rough grazing, but which is floristically diverse;

“statutory weeds” means spear thistle (*cirsium vulgare*), creeping or field thistle (*cirsium arvense*), curled dock (*rumex crispus*), broad-leaved dock (*rumex obtusifolius*) and ragwort (*senecio jacobaea*);

“unimproved grassland” means inbye land used for grazing or mowing which is not normally treated with mineral fertiliser or lime and does not constitute rough grazing;

“vernacular buildings” means traditional, agricultural buildings which are not in use or intended for use as dwellinghouses or for permanent or temporary accommodation.

“water margin” means an area of inbye land bordering an area of still or flowing water;

“wetland” means inbye ground which is normally saturated with water for a significant proportion of the year;

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Scotland only, provide for payment of a grant in respect of an undertaking to follow the general environmental conditions set out in Schedule 1 to the Regulations and to carry out at least one of either the management activities set out in Schedule 2 or the capital activities set out in Schedule 3 (regulations 3(1), (2) and (3) and 9(1), (2) and (3)).

The grant payable in respect of an undertaking is, subject to provisions in relation to the maximum amount payable, calculated with reference to the activities to be undertaken (regulation 8). The maximum payment rate in relation to each activity is specified in Schedule 4.

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The Regulations also provide for payment of a grant towards the cost of a conservation audit included in an application for grant in respect of an undertaking and where an application includes activities to benefit moorland, a grant towards the cost of the moorland management plan submitted with the application (regulations 3(4) and 9(4)).

The Regulations supplement Council Regulations (EEC) No 2078/92 (OJ L215,30.7.92, p.85) (“the Council Regulation”) on agricultural methods compatible with the requirements of the protection of the environment and the maintenance of the countryside and include provisions to meet the requirements of Commission Regulation (EC) No 746/96 (OJ L 102, 25.4.96, p.19) (“the Commission Regulation”) laying down detailed rules for the application of the Council Regulation. Commission Decision (C(89)97) of 23 January 1997 approved in part the agri-environmental programme entitled “the Countryside Premium Scheme” to which the Regulations give effect. Insofar as thus approved, grant paid under the Regulations is subject to the provisions in implement of the Commission Regulation (regulations 7, 9(5), 10(10), 12(3) and 13). Those provisions are made under section 2(2) of the European Communities Act 1972.

The Regulations also–

- (a) make provision as to the form and content of applications (regulation 4);
- (b) make provision in respect of applications for grant in relation to common grazings (regulation 5);
- (c) impose restrictions on the acceptance of applications (regulation 6);
- (d) make provision in relation to a change of occupation to the land to which an undertaking relates (regulation 10);
- (e) impose an obligation on applicants to permit entry and inspection (regulation 11);
- (f) make provision in relation to the withholding and recovery of grant (regulation 12); and
- (g) make provision as to the recovery of payments (regulation 14).