

Scottish Statutory Instrument 2003 No. 129

The Less Favoured Area Support Scheme (Scotland) Regulations 2003

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SCOTTISH STATUTORY INSTRUMENTS

2003 No. 129

AGRICULTURE

The Less Favoured Area Support Scheme (Scotland) Regulations 2003

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| <i>Made</i> | <i>3rd March 2003</i> |
| <i>Laid before the Scottish Parliament</i> | <i>4th March 2003</i> |
| <i>Coming into force</i> | <i>25th March 2003</i> |

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The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^[1] and of all powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and application

1. - (1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2003 and shall come into force on 25th March 2003.

(2) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Integrated Administration and Control System Regulations 1993^[2].

Interpretation

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

"agricultural" includes the use of land-

- (a) for the purposes of horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping;
- (b) as grazing land, meadow land, osier land, market gardens and nursery grounds; and
- (c) for woodlands, where that use is ancillary to the use of land for other agricultural purposes;

"agri-environment scheme" means an arrangement which is-

- (a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter into an agreement in relation to the use or management of land; and

(b) approved by the Commission of the European Communities under either-

- (i) Article 44 of Council Regulation 1257/1999 as part of a rural development plan drawn up pursuant to Article 41 of that Regulation and containing measures pursuant to articles 22 to 24 of that Regulation; or
- (ii) Article 7 of Council Regulation (EEC) No. 2078/1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside^[3];

"alpaca" means any alpaca of any breed which are kept by way of business for the primary purpose of fibre production;

"applicant" means a person who has made an application for less favoured area support under these Regulations in accordance with regulation 3;

"area aid application" has the same meaning as in Article 6 of Council Regulation 3508/1992;

"authorised person" means a person who is authorised by the Scottish Ministers, either generally or specifically, to act in relation to matters arising under these Regulations;

"cattle" for the purposes of Regulation 11 (enterprise mix), means-

(a) suckler cows and heifers; and

(b) for those applicants maintaining a dairy herd in the islands of Shetland, the islands of Orkney, the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert, or any other islands in the Outer Hebrides and the Inner Hebrides, a livestock unit for each 5730 litres of milk quota held,

which the Scottish Ministers determine are to be taken into account from time to time;

"Commission Regulation 2419/2001" means Commission Regulation (EC) No. 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes^[4];

"Commission Regulation 445/2002" means Commission Regulation (EC) No. 445/2002 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)^[5];

"common grazing" has the same meaning as it has for the purpose of Article 11 of Commission Regulation 445/2002;

"competent authority" has the same meaning as in regulation 2A of the Integrated Administration and Control System Regulations 1993^[6];

"Council Regulation 3508/1992" means Council Regulation (EEC) No. 3508/1992 establishing an Integrated Administration and Control System for certain Community aid schemes^[7];

"Council Regulation 1254/1999" means Council Regulation (EC) No. 1254/1999 on the common organisation of the market in beef and veal^[8];

"Council Regulation 1257/1999" means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations^[9];

"Council Regulation 2529/2001" means Council Regulation (EC) 2529/2001 on the common organisation of the market in sheep meat and goat meat^[10];

"cross-border holding" means a holding in the United Kingdom which is situated partly in Scotland;

"designated maps" means the four maps numbered 1 to 4, each such map being marked "Map of less-favoured farming areas in Scotland", dated 5th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY;

"eligible agricultural activity" means one or more of the following activities which, in the opinion of the

Scottish Ministers are undertaken on a continuous basis:-

- (a) maintaining a herd of suckler cows;
- (b) maintaining a flock of sheep comprising eligible ewes as defined by Council Regulation 2529/2001;
- (c) maintaining a dairy herd in-
 - (i) the islands of Shetland;
 - (ii) the islands of Orkney;
 - (iii) the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert; or
 - (iv) any other islands in the Outer Hebrides and the Inner Hebrides;
- (d) maintaining a breeding herd of farmed deer for meat production;
- (e) maintaining a breeding herd of goats for fibre production; or
- (f) maintaining a breeding herd of alpaca for fibre production;

"eligible land" has the same meaning as in regulation 6;

"eligible livestock unit" means a livestock unit determined in accordance with regulation 9(9) and Part I of Schedule 1;

"farmed deer" means any deer (of any species) which are managed on a holding enclosed by a deer-proof barrier and are kept on the holding by way of business for the primary purpose of the production of meat;

"forage area" has the same meaning as in Article 12(2)(b) of Council Regulation 1254/1999;

"goat" means any goat (of any species) which is kept by way of business for the primary purpose of fibre production;

"holding" has the same meaning as in regulation 2 of the Integrated Administration and Control System Regulations 1993;

"less favoured area" means the land shown coloured in blue or in pink on the designated maps-

(a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive 84/169/EEC concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (United Kingdom)[[11](#)]; and

(b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or any combination of, soil, relief, aspect or climate;

"livestock" means suckler cow, dairy cow, beef heifer, dairy heifer, sheep, goat, farmed deer and alpaca;

"livestock unit" means a unit of measurement of livestock numbers, and each of the following constitute one livestock unit:-

- (a) one suckler cow;
- (b) 1.66 heifers 8 months and over;
- (c) 6.66 breeding ewes;
- (d) 6.66 breeding female goats;
- (e) 3.33 breeding female farmed deer 27 months and over;

(f) 5 breeding farmed deer over 6 months but less than 27 months;

(g) 3.33 breeding female alpaca;

(h) 5730 litres of milk quota;

"maximum stocking density" means 2.00 livestock units per hectare;

"minimum stocking density" means 0.12 livestock units per hectare;

"Payable Area" means the adjusted area of land on which less favoured area support is to be paid, calculated in accordance with regulations 9 to 11;

"retirement pension" mean a category A or category B pension within the meaning of section 20(1)(f) of the Social Security Contributions and Benefits Act 1992[[12](#)], a category C or category D pension within the meaning of section 63(f) of that Act, or graduated retirement benefit as referred to in section 62 of that Act;

"Scheme Year" means a calendar year commencing on 1st January;

"Scheme 2003 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2002 to 31st December 2002;

"shared grazing" means land used for grazing within a field used by two or more producers;

"suckler cow" means an adult female bovine animal kept in a regular breeding herd which is not maintained primarily for the production of milk;

"the 1996 Regulations" means the Hill Livestock (Compensatory Allowances) Regulations 1996[[13](#)];

"the 1999 Regulation payment" means the payment which an applicant under these Regulations was eligible for and paid under and in accordance with the 1999 Regulations or, as the case may be, the sum fixed in accordance with regulation 13(3) to (6);

"the 1999 Regulations" means the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999[[14](#)];

"the 2001 Regulations" means the Less Favoured Area Support Scheme (Scotland) Regulations 2001[[15](#)];

"the 2002 Regulations" means the Less Favoured Area Support Scheme (Scotland) Regulations 2002[[16](#)];

"usual good farming practices" means those practices undertaken on a holding in compliance with-

(a) the provisions of environmental legislation set out in Part I of Schedule 2; and

(b) the verifiable standards set out in Part II of Schedule 2.

(2) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made.

(3) For the purposes of the saving provision at article 53.1 of Commission Regulation 2419/2001, references to articles of that Regulation shall so far as necessary be treated as references to the equivalent provision in Commission Regulation 3887/1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes[[17](#)].

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or paragraph or to a Schedule is a reference to the regulation or paragraph of the regulation or the Schedule so numbered in these Regulations.

(5) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000[[18](#)], which has been recorded and is consequently capable of being reproduced.

Applications for payment of less favoured area support

3. - (1) An application for less favoured area support shall be in such form and shall contain such particulars relating to that application as the Scottish Ministers may reasonably require.

(2) An applicant shall submit the application for less favoured area support in respect of the Scheme Year in question to the Scottish Ministers on or before a date each year which the Scottish Ministers will determine from time to time.

(3) Subject to paragraph (4), if an applicant submits an application for less favoured area support in respect of the relevant Scheme Year later than the date determined by the Scottish Ministers, the Scottish Ministers must reduce, or as the case may be exclude the applicant from, payment of less favoured area support in accordance with Article 13 of Commission Regulation 2419/2001.

(4) Paragraph (3) shall not apply to an applicant who has not previously claimed any subsidy dependent upon an area aid application, who submits a claim form in accordance with regulation 6(1)(b).

Eligibility for payment of less favoured area support

4. - (1) Payment of less favoured area support may be made to an applicant in respect of a Scheme Year only if-

(a) subject to paragraphs (2) and (3), that applicant has given an undertaking, in such form as the Scottish Ministers may reasonably require, to continue to use eligible land for eligible agricultural activities for a period of not less than five years from the first payment made under-

- (i) these Regulations;
- (ii) the 2002 Regulations;
- (iii) the 2001 Regulations;
- (iv) the 1999 Regulations; or
- (v) the 1996 Regulations;

(b) that applicant applies usual good farming practices on the eligible land of the applicant; and

(c) that applicant does not use substances referred to in Article 14.2 of Council Regulation 1257/1999.

(2) Paragraph (1)(a) does not apply to an applicant who is in receipt of a retirement pension at the time when that undertaking requires (or was required) to be given.

(3) An applicant is released from the undertaking referred to in paragraph (1)(a)-

- (a) at the moment that such an applicant receives a retirement pension;
- (b) if that applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person; or
- (c) if the applicant ceases farming and at least three hectares of the eligible land of the applicant continues to be used for carrying out an eligible agricultural activity.

Payment of less favoured area support

5. The Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land which is not less than 3 hectares.

Eligible land

6. - (1) Eligible land comprises the number of hectares of forage area in a less favoured area-

- (a) as declared in an area aid application submitted to the Scottish Ministers, on or before 15th May in the Scheme Year for which payment is to be made, by the applicant in accordance with Article 6 of Council Regulation 3508/1992; or
- (b) where the applicant has not previously claimed any subsidy dependent upon an area aid application, as

declared by the applicant in a form which the Scottish Ministers shall from time to time specify.

(2) Eligible land includes land in respect of which the applicant has a right of use pursuant to arrangements such as short term lets, seasonal grazing and common grazing.

(3) If an application made in accordance with regulation 3 relates in part to land upon which an activity is carried out which is not an eligible agricultural activity for the purposes of these Regulations, the Scottish Ministers shall determine the area of land which is to be attributed to the eligible agricultural activity.

Transfer of a holding

7. - (1) In determining eligible land under regulation 6(1), the decision of the Scottish Ministers shall be in accordance with Article 50 of Commission Regulation 2419/2001 as appropriate.

(2) For the purpose of paragraph 6 of Article 50 of Commission Regulation 2419/2001, the Scottish Ministers shall grant less favoured area support to the transferor of a holding, if the transferor-

- (a) fulfils the conditions laid down by paragraphs 2 to 5 of Article 50 of Commission Regulation 2419/2001; and
- (b) has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned.

Amount of less favoured area support

8. Subject to regulations 13 (transitional payments) and 14 (minimum payments), the amount of less favoured area support shall be calculated in accordance with the following formula:-

$$LFAS = P \times R$$

Where

- LFAS is the amount of less favoured area support payable;
- P is the payable area calculated in accordance with regulations 9 or 10 and, where appropriate, adjusted in accordance with regulation 11; and
- R is the rate of payment determined in accordance with regulation 12.

Determination of Payable Area

9. - (1) Subject to regulation 10, the payable area shall be the total of the areas of eligible land of the applicant, adjusted in accordance with the following formula:-

$$P = E \times V$$

Where

- P is the Payable Area;
- E is the area of eligible land in each field or shared grazing in calendar year 2002; and
- V is the hectare value for each field or shared grazing determined in accordance with paragraph (2).

- (2) For the purpose of paragraph (1) the hectare value shall be the entry in the third column of Schedule 3 corresponding to the grazing category in the second column of that Schedule.
- (3) For the purposes of paragraph (2) the grazing category of the land of the applicant shall be the entry in the second column of Schedule 3 corresponding to the stocking density in the first column of that Schedule, and the stocking density for that land shall be calculated in accordance with paragraphs (4) to (12).
- (4) Subject to paragraph (12), the stocking density for each field which is not a shared grazing shall be calculated according to the following formula:-

$$L \div H$$

Where

- S is the stocking density expressed in livestock units per hectare (LU/Ha);

L is the total number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2001; and

H is the total number of eligible hectares at 15th May 2001 determined in accordance with regulation 6 of the 2002 Regulations.

(5) Subject to paragraph (12), the stocking density for a shared grazing shall be calculated according to the provisions of paragraphs (6) to (8).

(6) The stocking density for a shared grazing shall be calculated according to the following formula:-

$$S = N \div H$$

Where

S is the stocking density for the shared grazing expressed in livestock units per hectare (LU/Ha);

N is the total number of livestock units calculated in accordance with paragraph (7); and

H is the total area of the shared grazing, which shall be the sum of the areas of land attributable to each producer using the grazing.

(7) For the purposes of paragraph (6), the total number of livestock units is the aggregate of the numbers of livestock units for each producer using the grazing, calculated in accordance with the following formula:-

$$U = A \times D$$

Where

U is the number of livestock units for that producer on the shared grazing;

A is the area of the shared grazing attributable to that producer on the basis of the proportion of the number of animals (which may include animals other than those which are livestock for the purposes of these Regulations) on the shared grazing, which belongs to that producer; and

D is the overall stocking density for that producer calculated according to paragraph (8).

(8) For the purposes of paragraph (7), the overall stocking density for each producer shall be calculated according to the following formula:-

$$D = Y \div (A + B)$$

Where

D is the overall stocking density for that producer;

Y is that producer's total number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2002;

A is the area of the shared grazing attributable to that producer on the basis of the proportion of the number of animals (which may include animals other than those which are livestock for the purposes of these Regulations) on the shared grazing, which belongs to that producer; and

B is the area of eligible land ascertained for that producer in accordance with regulation 6, other than land forming a shared grazing.

(9) Subject to paragraphs (10) and (11), the number of eligible livestock units shall be calculated using-

(a) where eligibility rests solely on livestock claimed under the Sheep Annual Premium Scheme, the greater of-

(i) the number of ewes and gimmers declared as the flock composition as part of a claim for Sheep Annual Premium; or

(ii) the lesser of the number of livestock claimed and the number of livestock quota units held;

(b) where eligibility rests solely on livestock claimed under the Suckler Cow Premium Scheme, the greater of-

- (i) the number of cows declared as the herd composition as part of a claim for Suckler Cow Premium; or
 - (ii) the lesser of the number of livestock claimed and the number of livestock quota units held;
- (c) where neither sub-paragraph (a) nor (b) applies, the number of livestock units determined by a decision of the Scottish Ministers using any, or a combination of any, of the following:-

- (i) livestock described in sub-paragraph (a) above;
- (ii) livestock described in sub-paragraph (b) above;
- (iii) livestock units calculated from numbers of deer, goats or alpacas held throughout the relevant calendar year;
- (iv) where the applicant has not claimed any subsidy under the Sheep Annual Premium Scheme, ewes, gimmers and hogs declared separately as being held throughout the Scheme Year;
- (v) where the applicant has not claimed any subsidy under the Suckler Cow Premium Scheme, suckler cows declared separately as being held throughout the Scheme Year.

(10) Where the applicant believes that the stocking density calculated for that applicant in accordance with paragraphs (4) or (5) to (8) based on eligible agricultural activity in calendar year 2001 was unrepresentatively low due to any sufficient reason established to the satisfaction of the Scottish Ministers, which may include the following:-

- (i) the acquisition by the applicant of a holding carrying a low level of stock in calendar year 2001 where the applicant demonstrates to the satisfaction of the Scottish Ministers both a genuine commitment to increase the number of stock on the holding, and an increase in the number of stock on the holding since the date of acquisition of the holding;
- (ii) participation by the applicant in an agri-environment scheme or an arrangement with the Scottish Ministers requiring reduction of the stocking levels of the applicant, other than an agri-environment scheme or an arrangement with the purpose of allowing suppressed grazing to recover, or otherwise compensating for the effects of past over-grazing, where that agri-environment scheme or arrangement has now ended, and the subsequent increase in stock of the applicant has not had a detrimental effect on the improvements achieved by the scheme or arrangement;
- (iii) the culling of the stock of the applicant in the context of the control of an outbreak of an epizootic disease;

the applicant may request that the Scottish Ministers make a decision determining the number of livestock units to be used for the purposes of determining the stocking density in accordance with paragraphs (4) or (5) to (8).

(11) Where the Scottish Ministers have been requested to determine a number of livestock units under paragraph (10), they shall fix the number of livestock units to be used in the formulae in paragraphs (4) or (6) to (8).

(12) Where the Scottish Ministers are unable to calculate the stocking density for any part of the eligible land of the applicant using the formulae in paragraphs (4) or (6) to (8) because they have not been provided with sufficient information by the applicant to enable them to use the formulae in paragraphs (4) or (6) to (8), the Scottish Ministers shall, by a decision, fix a stocking density figure for that part of the land of the applicant.

Stocking density outwith maximum and minimum parameters

10. - (1) The following provisions of this regulation shall apply for the purposes of the Scheme 2003 payment where the stocking density calculated in accordance with regulation 9(9) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2002 is either less than the minimum stocking density or greater than the maximum stocking density:-

- (a) at the start of the retention period where eligibility rests on livestock claimed under the Sheep Annual Premium Scheme;

- (b) at the start of the retention period where eligibility rests on livestock claimed under the Suckler Cow Premium Scheme;
- (c) during calendar year 2002 where eligibility rests on livestock declared separately in an application for less favoured area support; or
- (d) in the opinion of the Scottish Ministers where eligibility must be determined from a combination of livestock described in sub-paragraphs (i) to (iii) above.

(2) Where the stocking density calculated in accordance with regulation 9(9) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2002 is less than the minimum stocking density, the Payable Area shall be the number of hectares calculated in accordance with the following formula:-

$$P_1 = K \div M$$

Where

- P₁ is the Payable Area;
- K is, subject to paragraph (4), the number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2002; and
- M is the minimum stocking density.

(3) Where the stocking density calculated in accordance with regulation 9(9) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2002 is greater than the maximum stocking density, the Payable Area shall be the number of hectares calculated in accordance with the following formula:-

$$P_2 = F \times Q \div (J \div F)$$

Where

- P₂ is the Payable Area;
- F is the area of eligible land determined in accordance with regulation 6;
- Q is the maximum stocking density; and
- J is the number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2002.

(4) Where an applicant fails to achieve the minimum stocking density as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981[19] or in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983[20], the Scottish Ministers may, by a decision, determine the total number of livestock units to be used for the purpose of the calculation at paragraph (2).

Enterprise mix

11. - (1) Where the applicant maintains at least 10% of the total eligible livestock units of the applicant based on eligible agricultural activity undertaken in 2002 as cattle, the Payable Area calculated in accordance with regulation 9 or 10 shall be adjusted in accordance with this regulation according to the following formula:-

$$P_3 = P_4 \times Z$$

Where

- P₃ is the Payable Area adjusted in accordance with this regulation;
- P₄ is the Payable Area calculated in accordance with regulation 9 or 10; and
- Z is the multiplier contained in the second column of Schedule 4 corresponding to the appropriate proportion of eligible livestock units maintained as cattle set out in the first column of that Schedule.

(2) Where an applicant fails to achieve the necessary cattle livestock units for the purposes of this regulation as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981 in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983, the Scottish

Ministers may, by a decision, determine the total number of cattle livestock units to be used for the purposes of this regulation.

Rate of Payment of Less Favoured Area Support

12. - (1) For the purposes of regulation 8, the rate of payment of less favoured area support shall be determined in accordance with this Regulation.

(2) The rate of payment shall be the rate per hectare of the Payable Area set out in the entry in the second column of Schedule 5 corresponding to the category in the first column of that Schedule applicable to the applicant in terms of paragraph (3).

(3) For the purposes of paragraph (2), the category applicable to the applicant shall be determined according to the category of the parish in which the main farm of the applicant lies.

(4) For the purposes of paragraphs (2) and (3), the category of each parish shall be that set out in Schedule 6 to this Order.

(5) The main farm of the applicant shall be the farm identified as the main farm in the application for less favoured area support submitted by the applicant in accordance with Regulation 3.

Transitional payments

13. - (1) Subject to paragraph (6) this regulation applies to an applicant under these Regulations who was eligible for and was granted a payment under the 1999 Regulations.

(2) In respect of the Scheme 2003 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than a sum equal to 50% of the 1999 Regulation payment.

(3) Where the forage area of the holding is reduced, in any of calendar years 2000, 2001 or 2002, by more than 25%, when compared with the forage area declared by the applicant in 1999 for the purpose of the 1999 Regulation payment, the Scottish Ministers shall, in respect of the Scheme 2003 payment, by a decision, fix the 1999 Regulation payment used for the purposes of calculating the minimum payment under paragraph (2), by reducing the 1999 Regulation payment received by the applicant by 1/75th for each percentage point above 25% that the forage area has been reduced.

(4) In respect of the Scheme 2003 payment, where an applicant has, as at 31st December 2002, permanently increased the amount of eligible land since the date on which the 1999 Regulation payment was made and paragraph (3) does not apply to the applicant, the Scottish Ministers shall, if requested by the applicant, by a decision, fix the 1999 Regulation payment which shall be used for the purposes calculating the payment under paragraph (2):

Provided that-

- (a) the applicant is the owner or tenant of the eligible land in question; and
- (b) the land was available and accessible for use in maintaining eligible livestock,

and in doing so shall have regard to the sum which would have been payable under the 1999 Regulations had that person-

- (i) had the amount of eligible land held at 31st December 2002; and
- (ii) met the conditions specified at sub-paragraph (a) and (b) above in relation to that land,

as at the date on which entitlement under those Regulations was ascertained.

(5) In respect of the Scheme 2003 payment, where the applicant applies to the Scottish Ministers, and demonstrates that the number of livestock claimed by the applicant under the 1999 Regulations was unrepresentatively low due to any sufficient reason, which reason must be established to the satisfaction of the Scottish Ministers, the Scottish Ministers may, by a decision, fix the 1999 Regulation payment which shall be used for the purposes of calculating the payment under paragraph (2).

(6) In respect of the Scheme 2003 payment, where an applicant-

- (a) did not receive a transitional payment under the 2001 Regulations by virtue of being a person to whom regulation 10 of those Regulations did not apply; and
- (b) establishes to the satisfaction of the Scottish Ministers any sufficient reason, other than one caused by the fault or negligence of the applicant, why regulation 10 of the 2001 Regulations did not apply to the applicant,

the Scottish Ministers may, on the application of the applicant, by a decision, fix the 1999 Regulation payment which shall be used for the purposes of calculating the payment under paragraph (2).

(7) This regulation is subject to regulation 14.

Minimum Payments

14. In respect of the Scheme 2003 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than £350.

Powers of authorised persons

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

- (a) verification of accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Articles 59 to 61 of Commission Regulation 445/2002; or
- (b) ascertaining whether an offence under these Regulations has been or is being committed,

and in doing so may be accompanied by a person assigned to assist the authorised person, for those purposes.

(2) An authorised person may enter any land or premises (other than dwelling houses not being used in connection with these Regulations).

(3) An authorised person who has entered any land or premises by virtue of this regulation may-

- (a) inspect and verify the total area of such land;
- (b) inspect and count livestock on such land and require the applicant to arrange for the collection of animals, penning and securing;
- (c) require production of and examine any records in whatever form, and take copies of those records;
- (d) remove and retain any document or other record referred to in sub-paragraph (c) above which may be required for use as evidence in proceedings under these Regulations; and
- (e) inspect and verify that the applicant has complied with usual good farming practices.

(4) An authorised person may require, where any computer and any associated apparatus or material which is or has been used in connection with any such records mentioned in paragraph (3)(c), wherever situated, records which are kept by means of such computer or associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

Assistance to authorised persons

16. An applicant, any employee or agent of an applicant or any person having charge of animals on the land shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable that person to exercise any power conferred by regulation 15.

Withholding or recovery of less favoured area support

17. The Scottish Ministers may withhold or recover the whole or any part of any payment of less favoured area support payable or paid to an applicant in any of the following circumstances:-

- (a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to

regulation 4(1)(a) from which the applicant has not been released under regulation 4(3);

(b) where the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 15, or fails without reasonable excuse to comply with a requirement made by an authorised person under regulation 15 or 16;

(c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with usual good farming practices on or in relation to eligible land.

Rate of interest

18. Where the Scottish Ministers intend to recover on demand the whole or any part of a payment of less favoured area support pursuant to regulation 17, unless the sum recovered is paid as a result of their own error, interest shall be charged thereon at the rate of one percentage point above the sterling three month London Interbank Offered Rate on a day-to-day basis for the period from payment to recovery.

Cross-border holdings

19. Schedule 7 applies to cross-border holdings.

Offences

20. - (1) Any person who, for the purposes of obtaining for the benefit of that or any other person part of, or the whole of, a payment of less favoured area support under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, shall be guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 15) in the exercise of the powers conferred by regulation 15 shall be guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 15 shall be guilty of an offence.

Penalties

21. - (1) A person guilty of an offence under regulation 20(1) or (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 20(3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecutions

22. - (1) Summary proceedings for an offence under regulation 20 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995[[21](#)] (date of commencement of proceedings) applies for the purposes of this regulation as it does for the purposes of that section.

Offences by bodies corporate

23. - (1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity (or, in the case of a partnership, partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.

Appeal against decision to withhold or recover payment of less favoured area support

24. - (1) Where the Scottish Ministers withhold or recover the whole or any part of any grant under regulation 17, the applicant may apply for a review of the decision by the Scottish Ministers.

(2) The review referred to in paragraph (1) must be applied for in accordance with the provisions of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000[[22](#)].

Appeal against decision as to eligibility of holding

25. - (1) An applicant may apply to the Hill Farming Advisory Committee ("the Committee") for a review of the

decision of the Scottish Ministers of the eligibility of the holding under regulation 6(1).

(2) The applicant must apply to the Committee for review within 60 days of the date of the decision of the Scottish Ministers.

(3) The application for review must be in writing and accompanied by such information as the Committee considers necessary.

(4) The Committee shall determine the review of the decision and notify its determination to the Scottish Ministers and the applicant within 10 days of reaching that determination.

(5) Subject to regulation 26, the determination of the Committee shall be binding on the Scottish Ministers.

Review

26. - (1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 25(4).

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the date of the determination referred to in regulation 25(4).

(3) The review referred to in paragraph (1) shall be undertaken by a person appointed by the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors.

(4) The person appointed for the purpose of this regulation shall review the said determination and may-

(a) consider any document or other evidence produced by the applicant or the Scottish Ministers;

(b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and

(c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.

(5) The person appointed shall review the said determination and shall make a decision confirming or refusing that determination.

(6) The person appointed shall be entitled to require the reasonable costs of the review to be paid by the unsuccessful party and the person appointed shall determine the amount of such costs.

Amendment of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000

27. - (1) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 shall be amended in accordance with this regulation.

(2) In regulation 3 (application)[\[23\]](#), for "and (ca)" substitute ", (ca), (cb) and (cc)".

(3) In regulation 4 (decisions amenable to review and appeal), insert after paragraph (ca)-

" (cb) a decision by the Scottish Ministers to withhold or recover (in whole or in part) payment of less favoured area support under regulation 17 of the Less Favoured Area Support Scheme (Scotland) Regulations 2003;

(cc) a decision by the Scottish Ministers under regulation 9(9)(c), (10), (12), 10(4), 11(2) or 13(3) to (6) of the Less Favoured Area Support Scheme (Scotland) Regulations 2003;"

Revocation and savings provisions

28. Other than for the purposes of regulations 13 to 24 of the Less Favoured Area Support Scheme (Scotland) Regulations 2002 in relation to payments made thereunder, those Regulations (except regulations 25 and 26) are hereby revoked.

ROSS FINNIE

A member of the Scottish Executive

Pentland House, Edinburgh
3rd March 2003

SCHEDULE 1

Regulation 2(1)

LIVESTOCK UNITS AND STOCKING DENSITY

PART I

CALCULATION OF LIVESTOCK UNITS ("LU")

| | | |
|---|--|-----------------|
| <i>For all claimants, (excluding Ring-Fence Dairy Farmers)</i> | | |
| Number of Suckler Cows | | X 1.0 = _A_ LU |
| Number of heifers 8 months and over | | X 0.6 = _B_ LU |
| For Ring-fenced daily farmers: | | |
| Litres of Milk Quota | | / 5730 = _C_ LU |
| For all claimants | | |
| Number of Breeding Ewes | | X 0.15 = _D_ LU |
| Number of Breeding Female Goats | | X 0.15 = _E_ LU |
| Number of Breeding Female Alpaca | | X 0.3 = _F_ LU |
| Number of Breeding Female Deer (hinds over 27 months) | | X 0.3 = _G_ LU |
| Number of Breeding Deer (over 6 months but less than 27 months) | | X 0.2 = _H_ LU |

PART II

CALCULATION OF STOCKING DENSITY

| | | |
|--|---|----------------|
| <i>Total LFASS Livestock Units (A + B + C + D + E + F + G + H)</i> | = | <i>_I_ LU</i> |
| Total Forage Area | = | <i>_J_ Ha</i> |
| Stocking Density (to two decimal places) | = | I divided by J |

SCHEDULE 2

Regulation 2(1)

USUAL GOOD FARMING PRACTICES

PART I

ENVIRONMENTAL LEGISLATION

Water pollution

1. The Control of Pollution Act 1974[[24](#)].
2. The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil (Scotland) Regulations 2001[[25](#)].
3. The Groundwater Regulations 1998[[26](#)].

Air pollution

4. The Clean Air Act 1993[[27](#)].
5. The Hill Farming Act 1946[[28](#)].

Fertilisers and Pesticides

6. The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003[[29](#)].
7. Part III of the Food and Environment Protection Act 1985[[30](#)] and the Control of Pesticides Regulations 1986[[31](#)].
8. The Plant Protection Products Regulations 1995[[32](#)].

Designated sites

9. The Ancient Monuments and Archaeological Areas Act 1979[[33](#)].
10. The Wildlife and Countryside Act 1981[[34](#)].
11. The Conservation (Natural Habitats etc.) Regulations 1994[[35](#)].
12. The Ancient Monuments (Class Consents) (Scotland) Order 1996[[36](#)].

Forestry Management

13. The Forestry Act 1967[[37](#)] (c.10).

PART II

VERIFIABLE STANDARDS

1. Any farmer who constructs a new silage or storage facility must give notification to the Scottish Environmental Protection Agency prior to starting to use it. The farmer must keep records showing that this notification has been given.
2. Where it is proposed to dispose of sheep dip on a holding, prior authorisation to do this must be obtained from the Scottish Environmental Protection Agency. The farmer must keep documents and records showing that this authorisation has been obtained. The farmer must keep records detailing the manner of disposal of the sheep dip.
3. Trimming of hedgerows must not be carried out between 1st March and 31st July.
4. Removal or destruction of any hedges, stone walls or other boundary features shall not be allowed except with the prior written agreement of the Scottish Ministers.
5. Any farmer who intends to undertake any operation which is likely to damage a Site of Special Scientific Interest designated pursuant to section 28 of the Wildlife and Countryside Act 1981 must obtain the prior approval of Scottish Natural Heritage to the carrying out of that operation. The farmer shall maintain records showing that this authorisation has been obtained.
6. Livestock shall be managed in such a way as to avoid overgrazing. Where the Scottish Ministers form the opinion that land was being overgrazed, a management regime including a maximum (and, where appropriate, a minimum) stocking rate to be observed on that site will be prescribed. Overgrazing is defined as grazing land with livestock in such numbers as to adversely affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree.
7. Unsuitable supplementary feeding methods shall be avoided.

8. Undergrazing shall be avoided.
9. In paragraph 8, "Undergrazing" has the meaning of not using land fully or scrub or coarse becoming evident, where it is detrimental to the environmental interest of the site.

SCHEDULE 3

Regulation 9(2) and (3)

GRAZING CATEGORY: HECTARE VALUES

| <i>STOCKING DENSITY</i> | <i>GRAZING CATEGORY</i> | <i>HECTARE VALUE</i> |
|-------------------------|-------------------------|----------------------|
| Up to 0.19 LU/ha | A | 0.167 |
| 0.2 to 0.39 LU/ha | B | 0.333 |
| 0.4 to 0.59 LU/ha | C | 0.667 |
| 0.6 or more LU/ha | D | 0.8 |

SCHEDULE 4

Regulation 11

ENTERPRISE MIX

| <i>ENTERPRISE MIX</i> | <i>HECTARE MULTIPLIER</i> |
|--|---------------------------|
| If 50% or more of livestock units are made up of cattle LU. | 1.70 |
| If 10% or more, but less than 50% of livestock units are made up of cattle LU. | 1.35 |

SCHEDULE 5

Regulation 12

RATES OF PAYMENT FOR LESS FAVOURED AREA SUPPORT

| <i>CATEGORY</i> | <i>RATE</i> |
|------------------------|-------------|
| Very Fragile (Islands) | £44.50 |
| Fragile (Mainland) | £42.50 |
| Standard | £36.50 |

SCHEDULE 6

Regulation 12(4)

FRAGILITY CATEGORIES

FRAGILITY MARKERS FOR PARISH CODE NUMBERS

| Standard | | | | | | | | | | | | | | | | | | | | |
|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 28 | 30 | 31 | 32 | 35 | 36 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 |
| 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 |
| 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 |
| 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 |
| 113 | 114 | 115 | 116 | 117 | 118 | 119 | 120 | 121 | 122 | 123 | 124 | 125 | 126 | 127 | 128 | 129 | 130 | 131 | 132 | 133 |
| 134 | 135 | 136 | 176 | 177 | 178 | 179 | 180 | 181 | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 | 191 | 192 | 193 |
| 194 | 195 | 196 | 197 | 198 | 199 | 200 | 201 | 202 | 203 | 204 | 205 | 206 | 207 | 208 | 209 | 210 | 211 | 212 | 213 | 214 |
| 215 | 216 | 217 | 218 | 219 | 220 | 221 | 242 | 243 | 244 | 245 | 246 | 247 | 248 | 249 | 250 | 251 | 252 | 253 | 254 | 255 |
| 256 | 257 | 258 | 259 | 260 | 261 | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | 270 | 271 | 272 | 273 | 290 | 291 | 292 |
| 293 | 294 | 295 | 296 | 297 | 298 | 299 | 300 | 301 | 302 | 303 | 304 | 305 | 306 | 307 | 308 | 309 | 310 | 311 | 312 | 313 |
| 314 | 315 | 316 | 317 | 318 | 319 | 320 | 321 | 322 | 323 | 324 | 325 | 326 | 327 | 328 | 329 | 330 | 331 | 332 | 333 | 334 |
| 335 | 336 | 337 | 338 | 339 | 340 | 341 | 342 | 343 | 344 | 345 | 346 | 347 | 348 | 349 | 350 | 351 | 352 | 353 | 354 | 355 |
| 356 | 357 | 358 | 359 | 360 | 361 | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | 370 | 371 | 372 | 373 | 374 | 375 | 376 |
| 377 | 378 | 379 | 380 | 381 | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 | 391 | 392 | 393 | 394 | 395 | 396 | 397 |
| 398 | 399 | 400 | 401 | 402 | 403 | 404 | 405 | 406 | 407 | 408 | 409 | 410 | 411 | 412 | 413 | 414 | 415 | 416 | 417 | 418 |
| 419 | 420 | 421 | 422 | 423 | 424 | 425 | 426 | 427 | 428 | 429 | 430 | 431 | 432 | 445 | 449 | 451 | 466 | 467 | 468 | 469 |
| 470 | 471 | 472 | 473 | 474 | 475 | 476 | 477 | 478 | 479 | 480 | 481 | 482 | 483 | 484 | 485 | 486 | 487 | 488 | 489 | 490 |
| 491 | 492 | 493 | 494 | 495 | 496 | 497 | 498 | 499 | 500 | 501 | 502 | 503 | 504 | 505 | 506 | 507 | 508 | 509 | 510 | 511 |
| 512 | 513 | 514 | 515 | 516 | 517 | 518 | 519 | 520 | 521 | 522 | 523 | 524 | 525 | 526 | 527 | 528 | 529 | 530 | 531 | 532 |
| 533 | 534 | 535 | 536 | 537 | 538 | 539 | 540 | 541 | 542 | 543 | 544 | 545 | 546 | 547 | 548 | 549 | 550 | 551 | 552 | 553 |
| 554 | 555 | 556 | 557 | 558 | 559 | 560 | 561 | 562 | 563 | 564 | 565 | 566 | 567 | 568 | 569 | 570 | 571 | 572 | 573 | 574 |
| 575 | 576 | 577 | 578 | 579 | 580 | 581 | 582 | 583 | 584 | 585 | 598 | 600 | 601 | 606 | 609 | 635 | 636 | 637 | 638 | 639 |
| 640 | 641 | 642 | 643 | 644 | 645 | 646 | 647 | 648 | 649 | 650 | 651 | 652 | 653 | 654 | 655 | 656 | 657 | 658 | 659 | 660 |
| 661 | 662 | 663 | 664 | 665 | 666 | 667 | 668 | 669 | 670 | 671 | 672 | 673 | 674 | 675 | 676 | 677 | 678 | 679 | 680 | 681 |
| 682 | 683 | 684 | 685 | 686 | 687 | 688 | 689 | 690 | 691 | 692 | 693 | 694 | 695 | 696 | 697 | 698 | 699 | 700 | 701 | 702 |
| 703 | 704 | 705 | 706 | 707 | 708 | 709 | 710 | 711 | 712 | 713 | 714 | 715 | 716 | 717 | 718 | 719 | 720 | 721 | 722 | 723 |
| 724 | 725 | 726 | 727 | 728 | 729 | 730 | 731 | 732 | 733 | 734 | 735 | 769 | 770 | 771 | 772 | 773 | 774 | 775 | 776 | 777 |
| 778 | 779 | 780 | 781 | 782 | 783 | 784 | 785 | 786 | 787 | 788 | 789 | 790 | 791 | 792 | 793 | 794 | 795 | 796 | 797 | 798 |
| 799 | 800 | 801 | 802 | 803 | 804 | 805 | 806 | 807 | 808 | 809 | 810 | 811 | 812 | 813 | 814 | 815 | 816 | 817 | 818 | 819 |
| 820 | 821 | 822 | 823 | 824 | 825 | 826 | 827 | 841 | 842 | 843 | 844 | 845 | 846 | 847 | 848 | 849 | 850 | 851 | 853 | 854 |
| 855 | 856 | 859 | 860 | 861 | 863 | 864 | 865 | 866 | 868 | | | | | | | | | | | |
| Fragile | | | | | | | | | | | | | | | | | | | | |
| 25 | 26 | 27 | 29 | 33 | 34 | 37 | 137 | 138 | 139 | 140 | 141 | 142 | 143 | 144 | 145 | 146 | 152 | 154 | 155 | 156 |
| 157 | 158 | 159 | 160 | 161 | 162 | 163 | 169 | 170 | 171 | 172 | 173 | 174 | 175 | 222 | 223 | 224 | 225 | 226 | 227 | 228 |
| 229 | 230 | 231 | 232 | 233 | 234 | 235 | 236 | 237 | 238 | 239 | 240 | 241 | 280 | 281 | 282 | 283 | 284 | 285 | 286 | 287 |
| | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | |
|--------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 288 | 289 | 433 | 434 | 435 | 436 | 437 | 438 | 439 | 440 | 441 | 442 | 446 | 447 | 448 | 450 | 452 | 453 | 454 | 455 | 586 |
| 587 | 588 | 589 | 590 | 591 | 592 | 593 | 594 | 595 | 596 | 597 | 599 | 602 | 603 | 604 | 605 | 607 | 608 | 736 | 737 | 738 |
| 739 | 740 | 741 | 742 | 743 | 744 | 745 | 746 | 747 | 748 | 749 | 750 | 751 | 752 | 757 | 758 | 759 | 760 | 761 | 762 | 763 |
| 764 | 765 | 766 | 767 | 768 | 828 | 829 | 830 | 831 | 832 | 833 | 834 | 835 | 836 | 837 | 838 | 839 | 840 | 852 | 857 | 858 |
| 862 | 867 | | | | | | | | | | | | | | | | | | | |
| Very Fragile | | | | | | | | | | | | | | | | | | | | |
| 147 | 148 | 149 | 150 | 151 | 153 | 164 | 165 | 166 | 167 | 168 | 274 | 275 | 276 | 277 | 278 | 279 | 443 | 444 | 456 | 457 |
| 458 | 459 | 460 | 461 | 462 | 463 | 464 | 465 | 610 | 611 | 612 | 613 | 614 | 615 | 616 | 617 | 618 | 619 | 620 | 621 | 622 |
| 623 | 624 | 625 | 626 | 627 | 628 | 629 | 630 | 631 | 632 | 633 | 634 | 753 | 754 | 755 | 756 | 869 | 870 | 871 | 872 | 873 |
| 874 | 875 | 876 | 877 | 878 | 879 | 880 | 881 | 882 | 883 | 884 | 885 | 886 | 887 | 888 | 889 | 890 | 891 | | | |

SCHEDULE 7

Regulation 19

AGENCY AND CROSS BORDER HOLDINGS

Agency arrangements

1. The Scottish Ministers may, with the agreement of any competent authority (as defined for the purposes of the Integrated Administration and Control System Regulations 1993), arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.
2. The Scottish Ministers may also agree to exercise functions on behalf of another competent authority corresponding to those which are exercisable by the Scottish Ministers under these Regulations.
3. Any such arrangement shall be in writing and be signed by or on behalf of the Scottish Ministers and the competent authority and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

Set off

4. Without prejudice to the amount of any sum payable by the Scottish Ministers to any other competent authority, the amount of any sum payable by the Scottish Ministers, whether as principal or agent, by way of a specified payment may be set off against the amount of any sum recoverable by the Scottish Ministers, whether as principal or agent.

Calculation of payments in respect of cross border holdings

5. Where any holding in respect of which a claim has been made is a cross border holding, the Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land, providing the applicant has declared the eligible land in an area aid application which has been treated as a valid application by the competent authority concerned.
6. Whether the eligible agricultural activity undertaken on the eligible land is an integral part of the management of the whole holding or independently managed, Scottish Ministers shall only pay less favoured area support in respect of the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.
7. For cross-border holdings where the applicant has submitted a declaration of eligible land to another competent authority, the Scottish Ministers shall apply the standard rate of payment.
8. Applicants in respect of cross border holdings are required to supply such information as authorised persons may reasonably require to assess the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.
9. All conditions applying to applicants in respect of holdings lying wholly within the less favoured areas shall apply equally to applicants in respect of cross border holdings.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which replace the Less Favoured Area Support Scheme (Scotland) Regulations 2002, make provision for the purposes of implementation of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund and Commission Regulation (EC) No. 445/2002 laying down detailed rules for the application of Council Regulation No. 1257/1999.

They apply to holdings in respect of which the Scottish Ministers are the competent authority under the Integrated Administration and Control System Regulations 1993 (regulation 1(2)).

Applications for less favoured area support ("LFAS") are to be made to the Scottish Ministers on a date which they shall determine each year. Failure to meet the deadline will result in reduction of the payment of support (regulation 3).

Eligibility for payment of LFAS is dependent upon the applicant meeting the criteria set out in regulation 4. It can only be paid to an applicant who carries out an eligible agricultural activity (defined in regulation 2(1)) on eligible land (defined in regulation 6). No payment will be made where the amount of eligible land is less than 3 hectares (regulation 5). There is provision at regulation 7 to determine to whom payment should be made where a holding is transferred during a Scheme Year.

LFAS is paid for eligible hectares on farms in Scottish less favoured areas at specified rates (regulations 8 and 12). The rate is fixed according to the fragility of the parish in which the applicant's main farm lies (regulation 12 and Schedule 6). The area of land on which LFAS is paid is normally the area of eligible land which the applicant has, adjusted in accordance with a formula set out in regulation 9(1). The manner in which the area of eligible land is adjusted will depend on the grazing category of that land (regulation 9(2)). The grazing category is allocated according to the stocking density of the applicant's land (regulation 9(3)). The manner of calculating the stocking density for different types of land is set out in regulation 9(4) to 9(12). However, where the applicant has a stocking density which falls above the maximum stocking density or below the minimum stocking density, then the area of land on which LFAS is to be paid is instead calculated in accordance with formulae set out in regulation 10. The maximum and minimum stocking densities are laid out in regulation 2. There is provision at regulation 10 (4) to allow Scottish Ministers to determine the total number of livestock units where an applicant has not been able to achieve the minimum stocking density because of slaughter in consequence of foot and mouth disease.

Where more than 10% of the applicant's livestock units are made up of cattle, the area of land on which LFAS will be paid will be increased in accordance with the adjustment set out in regulation 11 and Schedule 4.

There are transitional arrangements for payments in 2003 (regulation 13). LFAS may be increased if an applicant is due to receive less under these Regulations when compared with a figure of 50% of any payment paid under the 1999 Regulations. In all cases, LFAS is subject to a minimum payment of £350 (regulation 14). There is also provision to reduce the payment to be paid under the transitional provisions where the forage area of the holding was reduced by more than 25% during any of the calendar years 2000, 2001 or 2002. For the 2003 payment, where an applicant has increased the amount of eligible land since being paid under the 1999 Regulations the Scottish Ministers will fix the amount of the 1999 payment for the purposes of calculations in regulation 13.

Regulation 15 contains powers of enforcement. Regulation 17 provides for withholding or recovery of LFAS where there is a breach of the rules of the Scheme. Regulations 20 to 23 deal with offences and penalties.

Regulations 24 to 26 deal with an applicant's right of appeal against decisions taken by the Scottish Ministers. Regulation 27 makes consequential amendments to the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000.

Notes:

[1] 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.[back](#)

[2] S.I. 1993/1317, amended by S.I. 1994/1134, 1997/1148, 1999/1820 and 2000/2573.[back](#)

- [3] O.J. L 215, 30.7.92, p. 85, as amended by Commission Regulation (EC) No. 2772/95 (O.J. No. L 288, 1.12.95, p.35), and repealed by Council Regulation 1257/1999.[back](#)
- [4] O.J. No. L 327, 12.12.01, p.11, as corrected by Corrigendum to Commission Regulation (EC) 2419/22001 (O.J. L 7, 11.1.02, p.48) and amended by Commission Regulation (EC) No. 2550/2001 (O.J. No. L 341, 22.12.01, p.105).[back](#)
- [5] O.J. No. L 74, 15.3.02, p.1.[back](#)
- [6] Regulation 2A was inserted by S.I. 2000/2573.[back](#)
- [7] O.J. No. L 355, 5.12.92, p.1, amended by Council Regulation (EC) No. 165/1994 (O.J. L 24, 29.1.94, p.6), Council Regulation (EC) No. 3233/1994 (O.J. L 338, 28.12.94, p.13), Council Regulation (EC) No. 3235/1994 (O.J. L 338, 28.12.94, p.16), Council Regulation (EC) No. 3072/1995 (O.J. L 329, 30.12.95, p.18), Council Regulation (EC) No. 1577/1996 (O.J. L 206, 16.8.96, p.4), Council Regulation (EC) No. 2466/1996 (O.J. L 335, 24.12.96, p.1), Commission Regulation (EC) No. 613/1997 (O.J. L 94, 9.4.97, p.1), Council Regulation (EC) No. 820/1997 (O.J. L 117, 7.5.97, p.1), Council Regulation (EC) No. 1036/1999 (O.J. L 127, 21.5.99, p.4), Council Regulation (EC) No. 1593/00 (O.J. L 182, 21.7.00, p.4) and Council Regulation (EC) No. 495/2001 (O.J. L 072, 14.3.01, p.6).[back](#)
- [8] O.J. No. L 160, 26.6.99, p.21, corrected by Corrigendum to Council Regulation (EC) No. 1254/1999 (O.J. L 263, 18.10.00, p.34) and amended by Council Regulation (EC) No. 1455/2001 (O.J. L 198, 21.7.01, p.58), Commission Regulation (EC) No. 1512/2001 (O.J. L 201, 26.7.01, p.1) and Commission Regulation (EC) No. 2345/2001 (O.J. L 315, 1.12.01, p.29).[back](#)
- [9] O.J. No. L 160, 26.6.99, p.80.[back](#)
- [10] O.J. No. L 341, 22.12.01, p.3.[back](#)
- [11] O.J. No. L 82, 26.3.84, p.67, as amended by Commission decision 91/25/EEC altering the limits of the less-favoured areas in the United Kingdom within the meaning of Council Directive 75/268/EEC (O.J. No. L 16, 22.1.91, p.25).[back](#)
- [12] 1992 c.4; section 20(1)(f) was amended by the Tax Credits Act 2002 (c.21), Schedule 6; section 62 was amended by the Pensions Act 1995 (c.26), section 131 and Schedule 4, paragraph 7; and section 63 was amended by the Tax Credits Act 2002 (c.21), Schedule 6.[back](#)
- [13] S.I. 1996/1500, amended by S.I. 1997/33, 1998/206 and 1999/375, and revoked by S.S.I. 1999/187, regulation 23.[back](#)
- [14] S.S.I. 1999/187; revoked by S.S.I. 2001/50, regulation 23.[back](#)
- [15] S.S.I. 2001/50; revoked by S.S.I. 2002/139, regulation 26.[back](#)
- [16] S.S.I. 2002/139.[back](#)
- [17] O.J. No. L 391, 31.12.92, p.36, amended by Commission Regulation (EC) No. 229/95 (O.J. L 27, 4.2.95, p.3), Commission Regulation (EC) No. 1648/95 (O.J. L 156, 7.7.95, p.27) Commission Regulation (EC) No. 2015/95 (O.J. L 197, 22.8.95, p.2), Commission Regulation (EC) No. 1678/98 (O.J. L 212, 30.7.98, p.23), Commission Regulation (EC) No. 2801/1999 (O.J. L 340, 31.12.99, p.29) and Commission Regulation (EC) No. 2721/2000 (O.J. L 314, 14.12.00, p.8); repealed by Commission Regulation 2419/2001.[back](#)
- [18] 2000 c.7.[back](#)
- [19] 1981 c.22.[back](#)
- [20] S.I. 1983/1950, as amended by S.I. 1993/3119 and S.I. 1995/2922 and, as regards Scotland, by S.S.I. 2001/52, 55, 101 and 390.[back](#)
- [21] 1995 c.46.[back](#)
- [22] S.S.I. 2000/347, amended by S.S.I. 2001/50, 226 and 300, 2002/139 and 228.[back](#)
- [23] Regulation 3 was substituted by S.S.I. 2001/226, regulation 2(3).[back](#)
- [24] 1974 c.40.[back](#)
- [25] S.S.I. 2001/206, amended by S.S.I. 2001/248.[back](#)

[26] S.I. 1998/2746, amended by S.S.I. 2000/323.[back](#)

[27] 1993 c.11.[back](#)

[28] 1946 c.73.[back](#)

[29] S.S.I. 2003/51.[back](#)

[30] 1985 c.48.[back](#)

[31] S.I. 1986/1510, amended by S.I. 1990/2487, 1994/3142 and 1997/188.[back](#)

[32] S.I. 1995/887, amended by S.I. 1996/1940, 1997/7 and 2499, 1998/2760, 1999/1228, S.S.I. 2001/161, 202 and 454 and 2002/279.[back](#)

[33] 1979 c.46.[back](#)

[34] 1981 c.69.[back](#)

[35] S.I. 1994/2716, amended by S.I. 1997/3055 and S.S.I. 2000/323.[back](#)

[36] S.I. 1996/1507.[back](#)

[37] 1967 c.10.[back](#)

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