

2012 No. 143

AGRICULTURE

**The Rural Payments (Appeals) (Scotland) Amendment
Regulations 2012**

<i>Made</i>	- - - -	<i>10th May 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>14th May 2012</i>
<i>Coming into force</i>	- -	<i>12th June 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to relevant EU instruments to be construed as references to those instruments as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Rural Payments (Appeals) (Scotland) Amendment Regulations 2012 and come into force on 12th June 2012.

Amendment of the Rural Payments (Appeals) (Scotland) Regulations 2009

2. The Rural Payments (Appeals) (Scotland) Regulations 2009(b) are amended in accordance with regulations 3 to 6.

3. In regulation 2(1) (interpretation)—

- (a) omit the definitions of “Commission Regulation 2419/2001” and “Commission Regulation 2237/2003”;
- (b) for the definition of “Commission Regulation 795/2004” substitute—
““Commission Regulation 795/2004” means Commission Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, section 3(3) and Schedule, Part 1.

(b) S.S.I. 2009/376, amended by S.S.I. 2010/273 and 2011/415.

rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers(a);”;

(c) for the definition of “Commission Regulation 796/2004” substitute—

““Commission Regulation 796/2004” means Commission Regulation (EC) No 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008(b);”;

(d) after the definition of “Commission Regulation 796/2004” insert—

““Commission Regulation 1973/2004” means Commission Regulation (EC) No 1973/2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials(c);

“Commission Regulation 1120/2009” means Commission Regulation (EC) No 1120/2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers(d), as amended from time to time;

“Commission Regulation 1121/2009” means Commission Regulation (EC) No 1121/2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof(e), as amended from time to time;

“Commission Regulation 1122/2009” means Commission Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector(f), as amended from time to time;”;

(e) omit the definition of “Council Regulation 3508/92”;

(f) for the definition of “Council Regulation 1782/2003” substitute—

““Council Regulation 1782/2003” means Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001(g);”;

-
- (a) OJ L 141, 30.4.2004, p.1, as last amended by Commission Regulation (EC) No 370/2009 (OJ L 114, 7.5.2009, p.3) and repealed, subject to savings, by Commission Regulation 1120/2009.
- (b) OJ L 141, 30.4.2004, p.18, as last amended by Commission Regulation (EC) No 380/2009 (OJ L 116, 9.5.2009, p.9) and repealed, subject to savings, by Commission Regulation 1122/2009.
- (c) OJ L 345, 20.11.2004, p.1, as last amended by Commission Regulation (EC) No 316/2009 (OJ L 100, 18.4.2009, p.3) and repealed, subject to savings, by Commission Regulation 1121/2009.
- (d) OJ L 316, 2.12.2009, p.1, as last amended by Commission Implementing Regulation (EU) No 1126/2011 (OJ L 289, 8.1.2011, p.24).
- (e) OJ L 316, 2.12.2009, p.27, as last amended by Commission Implementing Regulation (EU) No 1368/2011 (OJ L 341, 22.12.2011, p.33).
- (f) OJ L 316, 2.12.2009, p.65, as last amended by Commission Implementing Regulation (EU) No 1368/2011 (OJ L 341, 22.12.2011, p.33).
- (g) OJ L 270, 21.10.2003, p.1, as last amended by Commission Regulation (EC) No 674/2008 (OJ L 341, 22.12.2011, p.33) and repealed, subject to savings, by Council Regulation 73/2009.

- (g) for the definition of “Council Regulation 73/2009” substitute—
 ““Council Regulation 73/2009” means Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006 and (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(a), as amended from time to time;”;
- (h) after the definition of “holding” insert—
 ““IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005(b) or the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(c);”;
- (i) for the definition of “IACS scheme” substitute—
 ““IACS scheme” means one of the EU support schemes specified in Article 17 of Council Regulation 1782/2003 or Article 14 of Council Regulation 73/2009;”;
- (j) omit the definition of “IACS year”;
- (k) omit “and” at the end of the definition of “the 2004 Regulations”; and
- (l) at the end of the definition of “relevant decision” insert—
 “;
 “scheme year” means the year commencing on the last day for submission of the single application as specified in the IACS Regulations; and
 “single application” has the same meaning as in Article 2(11) of Commission Regulation 796/2004 or Article 2(11) of Commission Regulation 1122/2009”.

4. For regulation 3 (application in relation to IACS matters) substitute—

“Application in relation to IACS matters

3. A decision specified in paragraphs 3 to 13 of the Schedule includes a decision of the Scottish Ministers in relation to a holding administered by them in accordance with the IACS Regulations.”.

5. In regulation 5(2)(b) (application for review), for “IACS year” substitute “scheme year”.

6. In the Schedule (relevant decisions)—

- (a) omit paragraphs 1 and 2;
- (b) for paragraphs 3 to 8 substitute—

“3. Insofar as not otherwise falling within any of paragraphs 4 to 10, a decision by the Scottish Ministers to postpone, refuse, reduce or recover (in whole or in part) any payment under an IACS scheme for any scheme year under or in accordance with—

- (a) Council Regulation 1782/2003;
- (b) Commission Regulation 795/2004;
- (c) Commission Regulation 796/2004 (including anything done in accordance with Article 71(2) of that Regulation);
- (d) Commission Regulation 1973/2004;
- (e) Council Regulation 73/2009;
- (f) Commission Regulation 1120/2009;

(a) OJ L 30, 31.1.2009, p.16, as last amended by Commission Implementing Regulation (EU) No 785/2011 (OJ L 203, 6.8.2011, p10).
 (b) S.I. 2005/218, which was revoked, subject to savings, by S.I. 2009/3263.
 (c) S.I. 2009/3263, amended by S.I. 2012/66.

- (g) Commission Regulation 1121/2009; or
- (h) Commission Regulation 1122/2009.

4. A decision by the Scottish Ministers to refuse, reduce or withdraw (in whole or in part) any payment entitlement (including any set-aside or special entitlement), under and in accordance with—

- (a) Title III of Council Regulation 1782/2003 and Commission Regulation 795/2004; or
- (b) Title III of Council Regulation 73/2009 and Commission Regulation 1120/2009

5. A decision by the Scottish Ministers under Article 40 of Council Regulation 1782/2003 or Annex IX, Part A, point 4, 5 or 6 of Council Regulation 73/2009, to refuse (in whole or in part) a request to have an applicant's reference amount calculated on the basis that the applicant's production was adversely affected by force majeure or exceptional circumstances or agri-environment commitments.

6. A decision by the Scottish Ministers under or in accordance with Article 42 of Council Regulation 1782/2003 or Article 41 of Council 73/2009, to refuse or withdraw entirely any national reserve entitlement in relation to an application.

7. A decision by the Scottish Ministers to refuse, reduce or withdraw (in whole or in part) any other payment entitlement, under or in accordance with—

- (a) Council Regulation 1782/2003;
- (b) Commission Regulation 795/2004;
- (c) Commission Regulation 796/2004;
- (d) Council Regulation 73/2009;
- (e) Commission Regulation 1120/2009; or
- (f) Commission Regulation 1122/2009.

8. A decision by the Scottish Ministers to refuse the transfer (in whole or in part) of any payment entitlement, under or in accordance with—

- (a) Council Regulation 1782/2003;
- (b) Commission Regulation 795/2004;
- (c) Council Regulation 73/2009; or
- (d) Commission Regulation 1120/2009.”; and

(c) for paragraph 10 substitute—

“10.—(1) Any decision by the Scottish Ministers under or in accordance with the relevant EU instrument in respect of part of a holding outwith Scotland or legislation implementing any of those instruments in any other part of the United Kingdom.

(2) In this paragraph, “the relevant EU instrument” means any of the following—

- (a) Council Regulation 1782/2003;
- (b) Commission Regulation 795/2004;
- (c) Commission Regulation 796/2004;
- (d) Commission Regulation 1973/2004;
- (e) Council Regulation 73/2009;
- (f) Commission Regulation 1120/2009;

- (g) Commission Regulation 1121/2009; or
- (h) Commission Regulation 1122/2009.”.

St Andrew’s House,
Edinburgh
10th May 2012

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Rural Payments (Appeals)(Scotland) Regulations 2009 (“the 2009 Regulations”) which provide for a right of review and appeal in relation to certain decisions of the Scottish Ministers (a “relevant decision” as listed in the Schedule to the 2009 Regulations). Those include decisions made for the purposes of various EU instruments which implement the Common Agricultural Policy, and in relation to holdings administered by the Scottish Ministers under the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005 or the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (“the IACS Regulations”), which may be partly situated elsewhere in the UK.

Regulation 6 amends the Schedule to the 2009 Regulations to update the list of EU instruments which can give rise to a relevant decision. In consequence, regulation 3(a) to (g) amends regulation 2(1) of the 2009 Regulations to update and include definitions of the relevant EU instruments.

Regulation 4 substitutes a new regulation 3 of the 2009 Regulations, which specifies what constitutes a relevant decision for the purpose of the IACS Regulations. Regulations 3(h) to (l) and 5 make consequential amendments to regulations 2(1) and 5 of the 2009 Regulations.

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

© Crown Copyright 2012

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland.

2012 No. 143

AGRICULTURE

**The Rural Payments (Appeals) (Scotland) Amendment
Regulations 2012**

£5.75

S5517 05/2012 325517T 19585

ISBN 978-0-11-101698-5



9 780111 016985