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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 64**

**AGRICULTURE**

**The Less Favoured Area Support Scheme  
(Scotland) Amendment Regulations 2005**

*Made* - - - - 8th February 2005  
*Laid before the Scottish  
Parliament* - - - - 9th February 2005  
*Coming into force* - - 12th March 2005

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005 and shall come into force on 12th March 2005.

(2) In these Regulations “principal Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2004<sup>(2)</sup>.

**Amendment of the Less Favoured Area Support Scheme (Scotland) Regulations 2004**

2. The principal Regulations are amended in accordance with regulations 3 to 16.

**Amendment of regulation 2**

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) omit the definitions of “agri environment scheme”, “Commission”<sup>(3)</sup> Regulation 445/2002” and “retirement pension” are omitted;

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(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.

(2) S.S.I. 2004/70 as amended by S.S.I. 2004/128.

(3) Commission Regulation 445/2002 (O.J. No. L 74, 15.3.02, p.1) was repealed by Article 74(1) of Commission Regulation 817/2004 (O.J. L 153, 30.4.2004, p.30).

- (ii) after the definition of “alpaca” insert ““animal” means any animal (including fish, reptiles or amphibians) bred or kept for the production of food, wool, skin or fur or for other farming purposes;”;
  - (iii) after the definition of “Commission Regulation 2419/2001”(4) insert ““Commission Regulation 817/2004” means Commission Regulation (EC) No. 817/2004 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);”;
  - (iv) in the definition of “common grazing” for “Commission Regulation 445/2002” substitute “Commission Regulation 817/2004”;
  - (v) in the definition of “less favoured area” for “Directive 75/268/EEC (United Kingdom)(6) substitute “Article 21 of Council Regulation (EC) No. 950/97(7)”
  - (vi) after the definition of “Scheme 2004 payment” insert ““Scheme 2005 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2004 to 31st December 2004;”;
  - (vii) after the definition of “shared grazing” insert ““Sheep Annual Premium Scheme” means the Sheep Annual Premium Regulations 1992(8);”;
  - (viii) after the definition of “suckler cow” insert ““Suckler Cow Premium Scheme” means the Suckler Cow Premium (Scotland) Regulations 2001(9);”;
- (b) in paragraph (3) after “as defined in” insert “section 15 of”.

#### **Amendment of regulation 4**

4. In regulation 4 (eligibility for payment of less favoured area support)–
- (a) in paragraph (1), in each of sub paragraphs (b), (c) and (d) for “eligible land” substitute “holding”;
  - (b) for paragraph (2) substitute–
    - “(2) An applicant may be released from the undertaking referred to in paragraph (1)(a)–
      - (a) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to another person and that person agrees to take over the undertaking;
      - (b) if, where the applicant has ceased farming during the period for which the undertaking was given, the applicant’s successor agrees to take over the undertaking; or

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(4) Commission Regulation 2419/2001 was repealed by Article 80(1) of Commission Regulation (EC) No. 796/2004 (O.J. No. L 141, 30.4.2004, p.18) laying down detailed rules for the implementation of cross compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No. 1782/2003, but by virtue of that Article Commission Regulation 2419/2001 shall continue to apply in respect of aid applications relating to marketing years or premium periods which start before 1st January 2005.

(5) O.J. L 153, 30.4.2004, p.30.

(6) Directive 75/268/EEC (O.J. No L 128, 19.5.75, p.1) was repealed by Article 41(1) of Council Regulation (EC) No. 950/97 (O.J. L 42, 2.6.97, p.1).

(7) Council Regulation (EC) No. 950/97 on improving the efficiency of agricultural structures (O.J. No. L 42, 2.6.97, p.1) was repealed by Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), subject to Article 55(4) which provided that Directives adopting lists of less favoured areas or amending such lists in accordance with Article 21 of Regulation No. 950/97 shall remain in force.

(8) S.I.1992/2677 as amended by S.I. 1994/2471, 1995/2779, 1996/491997/2500, 2000/2335, 2000/2573, 2001/281, 2003/151 and S.S.I. 2000/418.

(9) S.S.I. 2001/225.

- (c) if, in the opinion of the Scottish Ministers, the applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person.”; and
- (c) for paragraph (3) substitute–
  - “(3) In the event that the applicant has ceased farming and the applicant’s successor does not agree to be bound by the undertaking referred to in paragraph (1), the Scottish Ministers may, if satisfied that the applicant has, at the time of the cessation of farming, honoured a significant proportion of the undertaking, release the applicant from that undertaking.”.

#### **Amendment of regulation 9**

- 5. In regulation 9 (determination of payable area) in paragraph (1) for “2003” substitute “2004”.

#### **Amendment of regulation 10**

- 6. In regulation 10 (stocking density outwith maximum and minimum parameters)–
  - (a) for paragraph (1) substitute–
    - “The following provisions of this regulation shall apply for the purposes of the Scheme 2005 payment where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in the calendar year 2004 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 the calendar year 2004 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 (a) to (c) above.”;
    - and
  - (b) in paragraphs (2) and (3) for “2003” wherever that year occurs, substitute “2004”.

#### **Amendment of regulation 11**

- 7. In regulation 11 (enterprise mix), in paragraph (1) for “2003” substitute “the calendar year 2004”.

#### **Amendment of regulation 12**

- 8. In regulation 12 (rate of payment of less favoured area support)–
  - (a) in paragraph (2) for “Part 1” substitute “Part I”; and
  - (b) in paragraph (3) for “Part 2” substitute “Part II”.

#### **Amendment of regulation 13**

- 9. In regulation 13 (minimum payment) for “Scheme 2004 payment” substitute “Scheme 2005 payment”.

#### **Amendment of regulation 14**

**10.** In regulation 14(1)(a) (powers of authorised persons) for “Articles 59 to 61 of Commission Regulation 445/2002” substitute “Articles 67 to 69 of Commission Regulation 817/2004”.

#### **Amendment of regulation 15**

**11.** In regulation 15 (assistance to authorised persons) after “having” insert “, or appearing to have,”.

#### **Amendment of regulation 16**

**12.** In regulation 16 (withholding or recovery of less favoured area support) in each of paragraphs (c) and (d) for “eligible land” substitute “the holding”.

#### **Amendment of regulation 24**

**13.** For regulation 24 (appeal against decision as to eligibility of holding) substitute—

“**24.**—(1) An applicant may, no later than 60 days following the date of intimation of the Scottish Ministers' decision as to the eligibility of the holding under regulation 6(1), make an application in writing to the Scottish Ministers to have that decision reviewed by persons appointed by the Scottish Ministers for that purpose.

(2) An application under this regulation is to be treated as made if it is received by the Scottish Ministers.

(3) The application must be accompanied by such information as the persons appointed consider necessary.

(4) Such persons appointed under paragraph (1) shall review the decision and notify their determination to the Scottish Ministers and the applicant, by recorded delivery mail, within 10 days of reaching that determination.

(5) Subject to regulation 25, the determination of such persons appointed shall be binding on the Scottish Ministers.

(6) The Scottish Ministers may make such payment, by way of fee or reimbursement of expenses, to any such persons appointed under paragraph (1), as appears to them to be appropriate.”.

#### **Amendment of regulation 25**

**14.** In regulation 25(4)(a) after “the Scottish Ministers” insert “(whether or not that document or other evidence was available at the time of the said determination)”.

#### **Amendment of Schedule 2**

**15.** In Schedule 2 (usual good farming practices)—

(a) in Part I—

(i) after paragraph 1 insert—

“**1A.** The Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005(**10**).”;

and

(ii) after paragraph 13 insert–

**“Animal Welfare**

**14.** The Welfare of Farmed Animals (Scotland) Regulations 2000**(11)**.”;

and

(b) in Part II–

(i) in paragraph 6 after “being overgrazed” insert “or undergrazed”; and

(ii) after paragraph 7 insert–

**“8.** Animals must not be caused any unnecessary pain or suffering and must be inspected at regular intervals. Animals kept in buildings must have access to a well maintained drying area. Animal buildings must be constructed in such a way that will not be harmful to animals. Where necessary artificial light must be provided and animals must not be kept without an appropriate rest from artificial light. Animals must be fed a diet of sufficient quality and quantity to maintain them in good health and to satisfy their nutritional needs. All animals must have access to feed at appropriate intervals (at least once a day) and a suitable water supply or be able to satisfy their fluid intake needs by other means. Animals must not have their movement restricted in such a way as to cause them unnecessary suffering or injury.

**9.** Only those persons who have the appropriate ability, knowledge and professional competence may attend to animals.

**10.** Ill or injured animals must be cared for appropriately and without delay and, where necessary, veterinary advice must be obtained as soon as possible. Records must be kept and retained for 3 years of all medicinal treatment given to animals and of all mortalities.”.

**Amendment of Schedule 8**

**16.** In Schedule 8 (agency and cross border holdings), paragraph 1 omit “(as defined for the purposes of the Integrated Administration and Control System Regulations 1993**(12)**)”.

**Savings provision**

**17.** Notwithstanding regulation 2, in respect of a Scheme 2004 payment, within the meaning of the principal Regulations, the principal Regulations shall continue to have effect as if the amendments made by these Regulations had not been made.

St Andrew’s House, Edinburgh  
8th February 2005

*ROSS FINNIE*  
A member of the Scottish Executive

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**(11)** S.S.I. 2000/442 amended by S.S.I. 2002/334 and 2003/488.

**(12)** S.I. 1993/1317, as amended by S.I. 1994/1134, 1997/1148, 1999/1820, and 2000/2573.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Less Favoured Area Support Scheme (Scotland) Regulations 2004 (“the principal Regulations”). The amendments come into force on 12th March 2005. These Regulations make provision for the purposes of implementation of Commission Regulation (EC) No. 817/2004 which lays 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).

Regulation 4 of the principal Regulations is amended (by regulation 4 of these Regulations) to alter the circumstances when an applicant may be released from an undertaking to continue to use eligible land (defined in regulation 6 of the principal Regulations) for eligible agricultural activities (regulation 2(1) of the principal Regulations).

The years referred to in regulations 9, 10, 11, and 13 of the principal Regulations are updated (by regulations 5, 6, 7 and 9 respectively).

Regulation 14 of the principal Regulations is amended to update the reference to the appropriate Commission Regulation (regulation 10).

Regulation 15 of the principal Regulations is amended to clarify that it applies to persons who appear to have charge of animals (regulation 11).

Regulation 16(c) and (d) of the principal Regulations is amended to provide that the applicant must comply with good farming practices and environmental controls on all of the holding and not just the eligible land (regulation 12).

Regulation 24 of the principal Regulations is amended to provide that appeals against decisions concerning the eligibility of a holding will be conducted by persons appointed by the Scottish Ministers, instead of by the Hill Farming Advisory Committee (regulation 13).

Regulation 25 of the principal Regulations is amended to clarify that reviews of determinations may consider documents or other evidence that was not available at the previous determination (regulation 14).

Part I of Schedule 2 to the principal Regulations is amended to insert references to the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 and the Welfare of Farmed Animals (Scotland) Regulations 2000. Part II of Schedule 2 is amended to insert additional verifiable standards concerning animal welfare (regulation 15).

Paragraph 1 of Schedule 8 to the principal Regulations is amended to remove an unnecessary definition (regulation 16).

Regulation 17 is a savings provision to ensure that the principal Regulations, as they had effect prior to these Regulations, continue to apply to 2004 Scheme payments made under the principal Regulations.