SCOTTISH STATUTORY INSTRUMENTS

2010 No. 273

The Less Favoured Area Support Scheme (Scotland) Regulations 2010

PART I

GENERAL

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2010 and come into force on 2nd July 2010.

(2) These Regulations extend to Scotland only.

(3) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(**1**).

Interpretation

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

"actively farm" means to undertake a continuous activity which is, in the opinion of the Scottish Ministers, an agricultural activity and which is undertaken for a period or periods totalling not less than 183 days in the Scheme Year for which payment is to be made and "active farming" shall be construed accordingly;

"alpaca" means any alpaca of any breed which is 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;

"area aid application" has the same meaning as in Article 6 of Council Regulation (EEC) 3508/92 establishing an integrated administration and control system for certain Community aid schemes(**2**);

"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;

"beef cow" means a female bovine animal which, in the opinion of the Scottish Ministers, is a breeding cow used primarily to produce calves for the purpose of beef production and aged 20 months or over;

"Council Regulation 1698/2005" means Council Regulation (EC) No. 1698/2005 on support for rural development from the European Agricultural Fund for Rural Development (EAFRD)(**3**);

(**1**) S.I. 2009/3263.
(**2**) O.J. L 355, 5.12.1992, p.1.
(**3**) O.J. No. L 277, 21.10.2005, p.1 as last amended by Council Regulation (EC) No. 473/2009, O.J. No. L 144, 9.6.2009, p.3.

"Commission Regulation 1975/2006" means Commission Regulation (EC) No. 1975/2006 laying down detailed rules for the implementation of Council Regulation No. 1698/2005(**4**);

"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(**5**);

"common grazing" means any right in pasture or grazing land held or to be held by the applicant, whether alone or in common with others;

"competent authority" has the same meaning as in regulation 3 of the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009;

"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, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003(**6**);

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

"cross compliance" has the same meaning as it has for the purposes of Article 5 and Annex II as amended from time to time and Article 6 and Annex III of Council Regulation 73/2009;

"dairy activity" means maintaining a dairy herd;

"dairy cow" means a female bovine animal which, in the opinion of the Scottish Ministers, is a breeding cow maintained primarily for the purpose of milk production and aged over 20 months;

"dairy ring fence area" has the meaning given in Schedule 1;

"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 Government Rural Payments and Inspections Directorate, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD;

"eligible land" shall be construed in accordance with regulation 5;

"farmed deer" means any deer of any species which is kept on eligible land enclosed by a deer proof barrier and kept by way of business for the primary purpose of meat production;

"forage area" means the area of the holding available to the applicant throughout the Scheme Year for rearing livestock including areas in shared use and areas subject to mixed cultivation but not including buildings, woods, ponds and paths;

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

"holding" has the same meaning as it has for the purpose of Article 2(b) of Council Regulation 73/2009;

"key dates" for sheep means 1st January and for other livestock means 1st January and 30th June;

(**4**) O.J. No. L 368, 23.12.2006, p.74 as amended by Commission Regulation (EC) No. 1396/2007, O.J. L 311, 29.11.2007, p.3 and Commission Regulation (EC) No. 484/2009, O.J. L 145, 10.6.2009, p.25.

(**5**) O.J. No. L 316, 2.12.2009, p.65 as amended by Commission Regulation (EU) No. 146/2010, O.J. L 47, 24.2.2010, p.1.

(**6**) O.J. No. L 30, 31.1.2009, p.16 as last amended by Commission Regulation (EU) No. 360/2010, O.J. No. L 106, 28.4.2010, p.1.

"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)(**7**); 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 by any combination of, soil, relief, aspect or climate;

"livestock" means a beef cow, a dairy cow, a sheep, a goat, a farmed deer, an alpaca or a llama;

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

(a) one beef cow over 24 months of age;

(b) 1.66 beef cows over 20 months and up to and including 24 months of age;

(c) within the dairy ring fence area, one dairy cow over 24 months of age;

(d) within the dairy ring fence area, 1.66 dairy cows over 20 months and up to and including 24 months of age;

(e) 6.66 breeding ewes or gimmers;

(f) 6.66 breeding female goats kept as part of a regular breeding herd for fibre production;

(g) 3.33 breeding female farmed deer aged 27 months and over;

(h) 5 breeding female farmed deer aged over 6 months but less than 27 months of age;

(i) 3.33 breeding female alpaca kept as part of a regular breeding herd;

(j) 3.33 breeding female llamas kept as part of a regular breeding herd;

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

"maximum stocking density" means 1.40 livestock units per hectare;

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

"payable area" means the area of land on which less favoured area support is to be paid, calculated in accordance with regulation 8 and, adjusted where appropriate, in accordance with regulation 10;

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

"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 under the 2005 Regulations;

"Scheme 2006 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2005 to 31st December 2005 under the 2005 Regulations;

"Scheme 2007 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2007 to 31st December 2007 under the 2007 Regulations;

(**7**) O.J. L 82, 26.3.1984, p.67 as amended by Commission Decision 91/25/EEC, O.J. L 16, 22.1.1991, p.25. Council Regulation (EC) No. 1257/1999 on support for rural development from European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (O.J. No. L 160, 26.6.1999, p.80) provides in Article 55(4) that Directives adopting lists of less-favoured areas or amending such lists in accordance with Article 21 of Council Regulation (EC) No. 950/97 (O.J. No. L 142, 2.6.1997, p.1) shall remain in force. Council Regulation 950/97 repealed and replaced Directive 75/268/EEC (United Kingdom), O.J. No. L 128, 19.5.1975, p.1. Article 55(4) was preserved by Article 93 of Council Regulation (EC) 1698/2005.

"Scheme 2008 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2008 to 31st December 2008 under the 2007 Regulations;

"Scheme 2009 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2009 to 31st December 2009 under the 2007 Regulations and "Scheme Year 2009" shall be construed accordingly;

"Scheme 2010 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2010 to 31st December 2010;

"Scheme 2011 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2011 to 31st December 2011;

"Scheme 2012 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2012 to 31st December 2012;

"Scheme 2013 payment" means the sum to which the applicant is entitled in respect of the period from 1st January 2013 to 31st December 2013;

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

"sheep" means breeding ewes or gimmers, kept by way of business for the primary purpose of meat production;

"single application" has the meaning given in Article 2(11) of Commission Regulation 1122/2009(**8**);

"the 2003 Regulations" means the Less Favoured Area Support Scheme (Scotland) Regulations 2003(**9**);

"the 2005 Regulations" means the Less Favoured Area Support Scheme (Scotland) Regulations 2005(**10**); and

"the 2007 Regulations" means the Less Favoured Area Support Scheme (Scotland) Regulations 2007(**11**).

(2) 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 section 15 of the Electronic Communications Act 2000(**12**) (general interpretation), which has been recorded and is consequently capable of being reproduced.

(**8**) Article 8 of Commission Regulation 1975/2006 applies the deadline for the single application in Article 11 of Commission Regulation (EC) 796/2004 (O.J. L 141, 30.4.2004, p.18) to "area-related measures" within the meaning of Title I of Commission Regulation 1975/2006. "Area-related measures" within the meaning of Title I of Commission Regulation 1975/2006 include less favoured area support. Commission Regulation 796/2004 was repealed and replaced by Commission Regulation 1122/2009.

(**9**) S.S.I. 2003/129, revoked by regulation 27 of S.S.I. 2004/70, subject to the savings provision contained in that regulation.

(**10**) S.S.I. 2005/569 as amended by S.S.I. 2005/64, S.S.I. 2005/624 and S.S.I. 2006/601, revoked by regulation 26 of S.S.I. 2007/439 subject to the savings provision contained in that regulation.

(**11**) S.S.I. 2007/439 as amended by S.S.I. 2008/294 and S.S.I. 2009/412.

(**12**) 2000 (c.7); section 15 was amended by the Communications Act 2003 c.21 section 406 and Schedule 17 paragraph 158.