

SCOTTISH STATUTORY INSTRUMENTS

2001 No. 226

AGRICULTURE

**The Agricultural Subsidies (Appeals)
(Scotland) Amendment Regulations 2001**

Made - - - - 8th June 2001
*Laid before the Scottish
Parliament* - - - - 8th June 2001
Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^{M1} and of all other powers enabling them in that behalf, hereby make the following Regulations:

Marginal Citations

M1 1972 c.68. Section 2(2) was amended by the [Scotland Act 1998 \(c.46\)](#), [Schedule 8](#), paragraph 15(3). The functions conferred on a Minister of the Crown by section 2(2) were transferred, so far as within devolved competence, to the Scottish Ministers by section 53 of the Scotland Act 1998.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2001.

(2) For the purposes of regulation 5(4), these Regulations shall come into force on 9th June 2001 and, for all other purposes, shall come into force on 29th June 2001.

^{F1}(3)

F1 [Reg. 1\(3\)](#) revoked (1.10.2004) by [The Agricultural Subsidies \(Appeals\) \(Scotland\) Regulations 2004 \(S.S.I. 2004/381\)](#), regs. 1, 14(2), [sch.](#)

Amendment of the principal Regulations

^{F2}2.

F2 Reg. 2 revoked (1.10.2004) by [The Agricultural Subsidies \(Appeals\) \(Scotland\) Regulations 2004](#) (S.S.I. 2004/381), regs. 1, 14(2), **sch.**

Application of additional appeal rights

F3.

F3 Reg. 3 revoked (1.10.2004) by [The Agricultural Subsidies \(Appeals\) \(Scotland\) Regulations 2004](#) (S.S.I. 2004/381), regs. 1, 14(2), **sch.**

Amendment of the ESA Orders

- 4.—(1) Each of the ESA Orders shall be amended as follows.
- (2) Article 5(b) shall be omitted.
- (3) There shall be inserted after article 5C—

“**5D.**—(1) Where the Scottish Ministers consider that there has been a breach of any of the requirements referred to in articles 4 or 4A, they may make a decision to that effect.

- (2) Before making a decision under paragraph (1) above, the Scottish Ministers shall—
 - (a) give the crofter, farmer or common grazing committee (as the case may be) a written explanation of the reasons for considering that there has been a breach of any of the requirements referred to in articles 4 or 4A;
 - (b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit; and
 - (c) consider any such representations.”.

Transitional provisions in relation to the ESA Orders

F4.

F4 Reg. 5 revoked (1.10.2004) by [The Agricultural Subsidies \(Appeals\) \(Scotland\) Regulations 2004](#) (S.S.I. 2004/381), regs. 1, 14(2), **sch.**

St Andrew’s House, Edinburgh

ROSS FINNIE
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations principally amend the Agricultural Subsidies (Appeals) (Scotland) Regulations (“the principal Regulations”) to add to the list of decisions amenable to review and appeal set out in regulation 4 of the principal Regulations (regulation 2(4)). This is to add certain decisions made under provisions of the Farm Woodland Scheme 1988, the Farm Woodland Premium Scheme 1992, the Farm Woodland Premium Scheme 1997, the Environmentally Sensitive Area Orders (ESA Orders, as defined), the Organic Aid (Scotland) Regulation 1994, the Habitats (Scotland) Regulations 1994, the Heather Moorland (Livestock Extensification) (Scotland) Regulations 1995 and the Countryside Premium Scheme (Scotland) Regulations 1997. Those schemes are all funded (in whole or in part) from European Community Funds.

By virtue of regulation 3 of these Regulations, the decisions which will now be amenable to review and appeal as above (other than in relation to the ESA Orders) will be decisions made on or after 1st January 2001. A necessary consequential amendment to the 60-day appeal period set out in regulation 5(1) of the principal Regulations is also made (regulation 3(2)). The amendments to regulations 3 and 5(2)(b) of the principal Regulations (regulation 2(3) and (5)) are also consequential on the extension of the appeal right.

In relation to the ESA Orders, particular provision is made to ensure the application of the principal Regulations in future by way of review (rather than proceeding by way of arbitration) in the event of disputes and to ensure that the Scottish Ministers issue a decision where they are of the view that there has been a breach of any of the requirements referred to in articles 4 or 4A of the ESA Orders. Before doing so, the Scottish Ministers are obliged to give an opportunity to an affected person to make representations (regulation 4).

Under regulation 5(1), the arbitration provisions in any existing agreement under the ESA Orders shall cease to have effect. This, read with inserted regulation 4(g) of the principal Regulations, will mean that appeals against decisions relating to breaches of articles 4 or 4A of the ESA Orders in relation to existing agreements will go through the new appeal mechanism rather than through arbitration. Regulation 5(2) to (6) of these Regulations make further provision in that regard of a transitional nature.

These Regulations in addition—

- a) update references to community legislation (regulation 2(2)(a) and (b));
- b) require the Scottish Ministers to advise the applicant seeking review of the existence of the right of review provided by regulation 8 of the principal Regulations and similarly require intimation of the existence of an appeal right under regulation 11 of the principal Regulations (regulation 2(6) and (7)); and
- c) make minor corrective textual amendments in regulation 12 dealing with appeals to the Scottish Land Court (regulation 2(8)).

Changes to legislation:

There are currently no known outstanding effects for the The Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2001.