

SCHEDULE 4

Regulation 25

Scottish Beef Calf Scheme administration and enforcement

Interpretation

1. In this Schedule—

“authorised person” means a person (whether or not an officer of the Scottish Ministers) who is authorised by the Scottish Ministers, either generally or specifically, to act in matters arising under Part 6 and this Schedule;

“LIBOR” means the sterling three month London interbank offered rate;

“specified control measure” means any check which a member State is required to carry out in relation to a claim under the Scheme, or by Council Regulation 1782/2003 or Commission Regulation 796/2004 in relation to the Scheme;

“specified record” means any record which a keeper is required (or has been required) to retain by virtue of—

- (a) Article 9(1) of the Bovine Animals (Identification, Marking and Breeding Records) Order 1990⁽¹⁾;
- (b) Article 5(1) of the Bovine Animals (Records, Identification and Movement) Order 1995⁽²⁾;
- (c) Articles 7(1) and 7(4) of Council Regulation 820/97 and the Cattle Identification (Enforcement) Regulations 1997⁽³⁾;
- (d) Articles 7(1) and 7(4) of Council Regulation 820/97 and the Cattle Identification Regulations 1998⁽⁴⁾;
- (e) Articles 7(1) and 7(4) of Regulation (EC) No. 760/2000 and the Cattle Identification Regulations 1998; or
- (f) regulation 5 of the Cattle (Identification of Older Animals) (Scotland) Regulations 2001⁽⁵⁾.

Powers of authorised persons

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

- (a) carrying out any specified control measure; or
- (b) ascertaining whether an offence under paragraph 7(d) has been or is being committed.

(2) An authorised person may enter any land, other than land used only as a dwelling, which is, or which such person has reasonable cause to believe to be, an IACS holding or keeper’s holding occupied by, or in the possession of, an applicant or any employee, agent, contractor or tenant of an applicant or keeper.

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

- (a) inspect and verify the total area of land farmed by an applicant or used by a keeper;
- (b) inspect and count any cattle on that land; and

(1) S.I. 1990/1867, as amended by S.I. 1993/503 and revoked by S.I. 1995/12.

(2) S.S.I. 1995/12, partially revoked by S.I. 1998/871.

(3) S.I. 1997/1901, revoked by S.I. 1998/871.

(4) S.I. 1998/871, as amended by S.I. 1998/1796, 1998/2969 and 1999/1339.

(5) S.S.I. 2001/1 as amended by S.S.I. 2002/22.

Status: This is the original version (as it was originally made).

- (c) carry out any other activity which is a specified control measure.
- (4) An authorised person may—
- (a) require an applicant or keeper or any employee or agent of an applicant or keeper to produce any specified record and to supply such additional information in the possession or under the control of that person relating to an application for premium as the authorised person may reasonably request;
 - (b) inspect any such specified record and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that specified record;
 - (c) require that copies of, or extracts from, any specified record be produced;
 - (d) seize and retain any such specified record which that authorised person has reason to believe may be required as evidence in proceedings under Part 6 and this Schedule and, where any such record is kept by means of a computer, require it to be produced in a form in which it may be taken away;
 - (e) carry out any inquiries, checks, examinations and tests;
 - (f) take samples;
 - (g) inspect all or any part of the land whether it is farmed or is withdrawn from agricultural production, including land set aside pursuant to Articles 54 and 55(b) of Council Regulation 1782/2003;
 - (h) mark any animal or other thing for identification purposes;
 - (i) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the authorised person may reasonably expect.
- (5) An authorised person entering any premises by virtue of this regulation may be accompanied by—
- (a) such other persons as that person considers necessary to exercise the powers specified in this regulation; and
 - (b) any representative of the European Commission acting for the purpose of Article 27 of Council Regulation 1782/2003.
- (6) If an authorised person enters any unoccupied premises that person shall leave those premises at least as effectively secured against unauthorised entry as when that person took entry.

Assistance to authorised persons

3. An applicant or keeper or any employee or agent of an applicant or keeper shall give to an authorised person such assistance as such person may reasonably request so as to enable that authorised person to exercise any power conferred by regulation and in particular, in relation to any cattle, shall arrange for the collection, penning and securing of such cattle, if so requested.

Withholding and recovery of payments

- 4.—(1) Where—
- (a) an applicant; or
 - (b) a person (other than an applicant) who was at that time an employee or agent of an applicant or a keeper,

intentionally obstructs an authorised person, or a person accompanying such authorised person and acting under the instructions of such person, from exercising a power under paragraph 2, or fails without reasonable excuse to comply with a request made by an authorised person when carrying out a specified control measure, the Scottish Ministers shall be entitled to recover on demand as a debt from that applicant the whole of any Scheme payment to that applicant.

(2) Where an applicant is liable to repay all or part of a Scheme payment in accordance with Article 73 of Commission Regulation 796/2004, the amount of the repayment, together with the interest on that amount calculated in accordance with paragraph 6, shall be recoverable as a debt on demand to Scottish Ministers.

(3) In any legal proceedings brought pursuant to sub-paragraph (2), a certificate of the relevant competent authority which—

- (a) sets out the LIBOR applicable during a specified period; and
- (b) includes a statement that the Bank of England or the coordinating body notified the Scottish Ministers of that rate for that period,

shall be evidence of the rate applicable during that period.

(4) In sub-paragraph (3), “the coordinating body” means the coordinating body referred to in Article 4(1) of Council Regulation (EC) No. 1258/1999 on the financing of the common agricultural policy⁽⁶⁾.

Set off

5.—(1) Without prejudice to the amount of any sum payable by a competent authority to the Scottish Ministers, the amount of any sum payable by the Scottish Ministers under these Regulations or by a competent authority, whether as principal or agent, or by way of a specified payment with in the meaning of the IACS Regulations, may be set-off against the amount of any such sum recoverable by the Scottish Ministers or by a competent authority.

(2) In this regulation, “competent authority” has the meaning given in regulation 5 of the IACS Regulations.

Rate of interest

6.—(1) Interest shall be charged in respect of each day of the period referred to in Article 73(3) of Commission Regulation 796/2004.

(2) For the purposes of Article 73(3) of Commission Regulation 796/2004 the rate of interest applicable on any day shall be one percentage point above the LIBOR on that day.

Offences

7. It shall be an offence for a person—

- (a) intentionally to obstruct an authorised person in the exercise of a power conferred by paragraph 2;
- (b) without reasonable excuse, to fail to comply with a request made under paragraph 3; or
- (c) knowingly or recklessly to make a statement or furnish any information which is false or misleading in a material particular where the statement is made or the information is furnished for the purposes of obtaining for that or any other person the whole or any part of any Scheme payment.

⁽⁶⁾ O.J. No. L 160, 26.6.99, p.103.

Penalties

8.—(1) A person guilty of an offence under paragraph 7(a) or (b) 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 paragraph 7(c) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecutions

9.—(1) Proceedings for an offence under the Scheme may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Section 136(3) of the Criminal Procedure (Scotland) Act 1995(7) (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

Offences by bodies corporate

10.—(1) Where an offence under the Scheme 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 similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a 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, the provisions of sub paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

(7) 1995 c. 46.