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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 225**

**AGRICULTURE**

**The Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005**

*Made* - - - - 21st April 2005  
*Laid before the Scottish Parliament* - - - - 22nd April 2005  
*Coming into force* - - 15th May 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 extent**

1.—(1) These Regulations may be cited as the Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 and shall come into force on 15th May 2005.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“1911 Act” means the Small Landholders (Scotland) Act 1911<sup>(2)</sup>;

“1991 Act” means the Agricultural Holdings (Scotland) Act 1991<sup>(3)</sup>;

“1993 Act” means the Crofters (Scotland) Act 1993<sup>(4)</sup>;

“2003 Act” means the Agricultural Holdings (Scotland) Act 2003<sup>(5)</sup>;

“5 year commitment” means the applicant must undertake to carry out, or carry out and maintain, the activities (or at least one activity) in respect of a relevant Menu Option in

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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 functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) 1911 c. 49.

(3) 1991 c. 55.

(4) 1993 c. 44.

(5) 2003 asp 11.

Schedule 1 and an undertaking to be granted under regulation 4(2) for 5 scheme years and the applicant must be either–

- (a) the owner of the eligible land and–
  - (i) in lawful actual occupation of that land; or
  - (ii) have undertaken, jointly with the tenant, to assume the obligations under their activities or an undertaking to be granted under regulation 4(2) as specified in the application for aid (in the case where the tenant’s tenancy has ended, when regulation 12 shall apply); or
- (b) the tenant of the eligible land who is in lawful actual occupation of that land under a lease–
  - (i) which will run at least until the end of the period of 5 years commencing on the date the applicant assumes the obligations under the undertaking to be granted under regulation 4(2) as specified in the application;
  - (ii) with security of tenure by virtue of any statutory provision until the end of that period; or
  - (iii) where the tenant has jointly with the landlord undertaken to assume the obligations under their activities or an undertaking to be granted under regulation 4(2) as specified in the tenant applicant’s application for aid until the end of that period (in which case regulation 12 shall apply);

“the Act of Accession” means the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded<sup>(6)</sup>;

“activities” means the activities referred to in regulation 4(2) and column 2 of Schedule 1 and “activity” shall be construed accordingly;

“agri environment scheme” means an arrangement which is or was–

- (a) regulated by statutory instrument providing for the payment of aid to persons who enter into an agreement in relation to the use or management of land; and
- (b) approved by the Commission of the European Communities under either–
  - (i) Article 44 of Council Regulation 1257/1999 as part of a rural development plan drawn up pursuant to Article 41 of that Regulation and containing measures pursuant to Articles 22 to 24 of that Regulation; or
  - (ii) Article 7 of Council Regulation (EEC) No. 2078/1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside<sup>(7)</sup>;

“applicant” means a person who has made an application for aid in accordance with regulation 3 of these Regulations and in regulations 13 to 18 includes a person whose application for aid has been accepted and a person who takes on an undertaking on a change of occupation as provided in regulation 12;

“application for aid” means an application for aid under these Regulations;

“authorised person” means a person who is authorised by the Scottish Ministers under regulation 13, either generally or specifically, to act in relation to matters arising under these Regulations;

<sup>(6)</sup> O.J. No. L 236, 23.9.2003, p.33.

<sup>(7)</sup> O.J. No. L 215, 30.7.1992, p. 85, as amended by Commission Regulation (EC) No. 2772/1995 (O.J. No. L 288, 1.12.1995, p.35), and repealed by Council Regulation 1257/1999.

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999<sup>(8)</sup> on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended by Commission Regulation (EC) No. 1783/2003<sup>(9)</sup>, the Act of Accession<sup>(10)</sup>, Council Regulation (EC) No. 567/2004<sup>(11)</sup> and Council Regulation (EC) No. 583/2004<sup>(12)</sup>;

“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 Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers<sup>(13)</sup>, as amended by Commission Regulation (EC) No. 239/2005<sup>(14)</sup>;

“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)<sup>(15)</sup>;

“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<sup>(16)</sup>, as amended by Council Regulation (EC) No. 21/2004<sup>(17)</sup>, Council Regulation (EC) No. 583/2004<sup>(18)</sup>, Council Regulation (EC) No. 864/2004<sup>(19)</sup> and Commission Regulation (EC) No. 118/2005<sup>(20)</sup>;

“eligible land” means land which is eligible in accordance with regulation 7;

“IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005<sup>(21)</sup>;

“IACS year” has the meaning given to it in regulation 2(1) of the IACS Regulations;

“landlord” means–

- (a) in the case of an agricultural lease constituting a 1991 Act tenancy within the meaning of the 2003 Act, the landlord within the meaning of section 85 of the 1991 Act;
- (b) in the case of a lease constituting a limited duration tenancy or short limited duration tenancy under the 2003 Act, the landlord within the meaning of section 93 of that Act;
- (c) in the case of a croft within the meaning of the 1993 Act, the landlord within the meaning of section 61(1) of that Act;
- (d) in the case of a holding within the meaning of the 1911 Act to which the 1991 Act does not apply, the same as it means in the 1911 Act,

and, where appropriate, includes a head tenant;

“relevant competent authority” has the meaning given to it in regulation 5 of the IACS Regulations;

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(8) O.J. No. L 160, 26.06.1999, p.80.

(9) O.J. No. L 270, 21.10.2003, p.70.

(10) See Annex II of the Act of Accession, part 6, paragraph 26.

(11) O.J. No. L 90, 27.3.2004, p.1.

(12) O.J. No. L 91, 30.3.2004, p.1.

(13) O.J. No. L 141, 30.4.2004, p.18.

(14) O.J. No. L 42, 12.2.2005, p.3.

(15) O.J. No. L 153, 30.4.2004, p.30.

(16) O.J. No. L 270, 21.10.2003, p.1.

(17) O.J. No. L 5, 9.1.2004, p.8.

(18) O.J. No. L 91, 30.3.2004, p.1.

(19) O.J. No. L 206, 9.6.2004, p.20.

(20) O.J. No. L 24, 27.1.2005, p. 15.

(21) S.I.2005/218.

“scheme year” means the year commencing on the last date for submission of the single application under regulation 6 of the IACS Regulations and Article 20 of Commission Regulation 796/2004 and having the same period as the IACS year;

“single application” has the meaning given to it in Article 2(11) of Commission Regulation 796/2004;

“tenant” means–

- (a) in the case of an agricultural lease constituting a 1991 Act tenancy within the meaning of the 2003 Act, the tenant within the meaning of section 85 of the 1991 Act;
- (b) in the case of a lease constituting a limited duration tenancy or short limited duration tenancy under the 2003 Act, the tenant within the meaning of section 93 of that Act;
- (c) in the case of a croft within the meaning of the 1993 Act, the crofter within the meaning of section 3(3) of that Act;
- (d) in the case of a holding within the meaning of the 1911 Act to which the 1991 Act does not apply, the landholder within the meaning of section 2(2) of the 1911 Act,

and, where appropriate, includes a sub tenant;

“undertaking” means an undertaking mentioned in regulation 4(2).

(2) A 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(22) which has been recorded and is consequently capable of being reproduced.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or numbered Schedule, shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

(4) Any reference in these Regulations to a numbered paragraph, shall be construed as a reference to the paragraph so numbered in the regulation or Schedule in which the reference occurs.

(5) Words and phrases used in Schedules 1 and 2 and not defined in paragraph (1) shall be construed in accordance with Schedule 3.

### **Applications for aid**

**3.—**(1) Subject to paragraph (4), an application for aid shall be made in writing to such authority, at such time, in such form and shall contain such information as the Scottish Ministers may reasonably require.

(2) The Scottish Ministers may at any time suspend the operation of the scheme provided for by these Regulations and, while so suspended, no application under paragraph (1) may be submitted to them.

(3) Where an application for aid is made in respect of a scheme year, applicants must also submit a single application to a relevant competent authority in accordance with the IACS Regulations for the IACS year which begins in the calendar year in which that scheme year begins.

### **Payment of aid**

**4.—**(1) Subject to the provisions of these Regulations, the Scottish Ministers may make payment of aid in respect of an undertaking to which these Regulations apply, to an applicant–

- (a) who is the owner or tenant of the eligible land to which such an undertaking relates and is in lawful actual occupation of that land or, in the case of an owner, has undertaken, jointly

with the tenant, to assume the obligations under their activities or any undertaking to be granted under paragraph (2); and

(b) whose application for aid has been accepted by the Scottish Ministers.

(2) These Regulations apply to an undertaking in writing by the applicant to carry out, or as the case may be, to carry out and maintain, at least one of the activities referred to in Schedule 1.

### **Maximum amount of aid payable**

5. The maximum amount of aid payable to an applicant under these Regulations in respect of a scheme year shall be calculable as the sum of the allowance allocated to each individual whole hectare of land in Scotland comprised in the agricultural parcels declared in the single application submitted to the relevant competent authority by the applicant in accordance with Article 22 of Council Regulation 1782/2003 and Article 12(1)(d) of Commission Regulation 796/2004 as set out in the following table:

<i>Hectare of land</i>	<i>Allowance per hectare (£)</i>
Hectare 1 to hectare 10	75
Hectares over 10 to hectare 100	30
Hectares over 100 to hectare 1000	1
Hectares over 1000	0.1

### **Restrictions on acceptance of applications for aid**

6.—(1) The Scottish Ministers shall not accept an application for aid—

- (a) which is received by them after the closing date for applications, as specified in regulation 3(1);
- (b) in relation to any eligible land which is occupied by a tenant unless they are satisfied that the tenant has notified the landlord, and in the case of a sub tenant, the owner of the eligible land and the head tenant, of the intention of that tenant to make an application;
- (c) if they are satisfied that the use of the land in accordance with the proposals contained in the application would frustrate the purposes of any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community;
- (d) if they are satisfied that any payment under these Regulations would duplicate any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community;
- (e) where the applicant is prohibited from giving the undertaking under these Regulations by application of a penalty consequent upon Article 73 of Commission Regulation 817/2004 (which requires Member States to determine a system of penalties for breaches of the obligations entered into and of regulatory provisions applicable to the case); or
- (f) where the applicant is excluded from all aid under Chapter VI of Title II of Council Regulation 1257/1999 by virtue of Article 72 of Commission Regulation 817/2004 (which requires a person who, intentionally or by reason of serious negligence, makes a false declaration to be excluded from all rural development measures falling under the relevant chapter of Council Regulation 1257/1999) and the payment of aid in respect of the proposed undertaking would include such aid.

(2) The Scottish Ministers shall not accept an application for aid without first having agreed with the applicant the date of commencement of the undertaking, which shall in no circumstances be earlier than the date on which the application was accepted.

### **Eligible land**

7.—(1) Land shall be eligible to have activities carried out on it if it is land in Scotland declared in the application for aid and the land is—

- (a) comprised in an agricultural parcel declared in the single application submitted to the relevant competent authority by the applicant in accordance with Article 22 of Council Regulation 1782/2003 and Article 12(1)(d) of Commission Regulation 796/2004; or
- (b) approved for that purpose and given an unique identification number compatible with the identification system for agricultural parcels referred to in Article 20 of Council Regulation 1782/2003 by the Scottish Ministers.

(2) In declaring the land in the application for aid under paragraph (1), the applicant must use the unique identification number for each reference parcel of land under or compatible with the identification system for agricultural parcels referred to in Article 20 of Council Regulation 1782/2003 and Article 6 of Commission Regulation 796/2004 where that number exists at the date of the application.

### **Transfer of a holding**

8.—(1) In determining eligible land under regulation 7 the decision of the Scottish Ministers shall be in accordance with Article 74 of Commission Regulation 796/2004 as appropriate.

(2) For the purpose of paragraph 6 of Article 74 of Commission Regulation 796/2004, the Scottish Ministers shall grant aid to the transferor of a holding of eligible land, if the transferor fulfils the conditions laid down by paragraphs 2 to 5 of Article 74 of Commission Regulation 796/2004.

### **Determination of applications for aid**

9.—(1) The Scottish Ministers may approve (in whole or in part) or may reject an application for aid made under regulation 3, and in determining whether an application should be so approved or rejected, they shall have regard to—

- (a) the environmental benefits expected to be derived from the carrying out of the activities described in the application;
- (b) the aid likely to be required and how that value compares with other applications; and
- (c) the value for money which the undertaking represents having regard to sub paragraphs (a) and (b).

(2) Approval of an application may be subject to such conditions as the Scottish Ministers think fit.

(3) The Scottish Ministers may vary an approval of an application for aid as they think fit including any conditions subject to which it was given.

(4) Before varying an approval or amending conditions attached to an approval in accordance with paragraph (3), the Scottish Ministers shall—

- (a) give to the person to whom the approval has been granted written notification of the action proposed to be taken;
- (b) give that person an opportunity to make representations about the action proposed to be taken within such time and in such form as the Scottish Ministers may require; and
- (c) consider any such representations.

### **Rates of payment for activities undertaken**

10. The amount of aid payable under regulation 4 shall, subject to the maximum amount of aid per hectare calculated under regulation 5, any maximum limit per hectare provided for in Annex I of Council Regulation 1257/1999 and the provisions of these Regulations, be calculated with reference to the activity or activities undertaken, and the rate of payment in respect of each activity described in column 2 of Schedule 1 shall be the rate shown opposite the entry for that activity in column 3 of that Schedule.

### **Claims and payment**

11.—(1) A claim for payment of aid under regulation 4—

- (a) shall be made in writing at such time and in such form and shall contain such information as the Scottish Ministers may require; and
- (b) shall not be accepted by the Scottish Ministers if it is received by them after the closing date for claims, as provided for in sub paragraph (a).

(2) Payment of aid in respect of a scheme year under regulation 4 shall be paid annually in arrears, after the applicant has carried out, or as the case may be, carried out and maintained, at least one of the activities referred to in Schedule 1.

(3) Payment as provided in paragraph (2) shall be made only where the Scottish Ministers are satisfied that—

- (a) the requirements and conditions as to eligibility for payment set out in the paragraph which begins Schedule 1 and in column 2 of that Schedule and, as the case may be, the requirements set out in column 3 of that Schedule, in relation to that activity have been met; and
- (b) the general environmental requirements set out, or applicable under the enactments specified, in Schedule 2 have been complied with during the period to the date of payment.

(4) Payment shall be made upon determination of an application for aid in accordance with regulations 9 and 10 and following the submission of a claim for aid under paragraph (1).

(5) The provisions of these Regulations are insofar as the aid claimed includes aid under Council Regulation 1257/1999, subject to Article 37(3) of Council Regulation 1257/1999 and Articles 40, 41, 42 and 43 of Commission Regulation 817/2004 (combination of aids).

### **Change of occupation of land**

12.—(1) Where during the period of an undertaking, there is a change of occupation of all or any part of the land to which that undertaking relates, subject to the provisions of this regulation, the Scottish Ministers shall accept an undertaking from the new occupier.

(2) Where such a change of occupation occurs the former occupier (or, if that occupier has died, the occupier's executors) shall within 3 months notify the Scottish Ministers in writing of the change of occupation, and shall supply to the Scottish Ministers such information relating to that change in such form and within such period as the Scottish Ministers may determine.

(3) A new occupier of all or any part of the land who wishes to take on the undertaking, or a landlord who has signed an undertaking to complete a 5 year commitment for a tenant whose tenancy has ended, shall furnish the Scottish Ministers with such information in such form and within such period following the change of occupation as the Scottish Ministers may determine.

(4) A new occupier of all or any part of the land may take on the undertaking where the Scottish Ministers are satisfied that—

- (a) the former occupier had complied with the undertaking to the date of the change of occupation; and

- (b) the new occupier is the lawful occupier of the land and has since the date of the change of occupation complied with the undertaking.
- (5) A new occupier of all or any part of the land or, as the case may be, the former occupier of all or any part of the land may take on the undertaking insofar as it extends to that part of the land which that person occupies, or as the case may be continues to occupy, where the Scottish Ministers are satisfied that—
- (a) such new occupier or, as the case may be, such former occupier of all of the land, is the lawful occupier of the part of the land which that person occupies and has since the date of change of occupation complied or, as the case may be, continued to comply with the undertaking insofar as it extends to the part of the land which that person occupies; and
- (b) it is reasonable for the occupier to do so having regard to the activities included in the undertaking and the part of the land which is occupied by the new occupier or, as the case may be, continues to be occupied by the former occupier of all the land.
- (6) Where during the period of an undertaking, an occupier increases the area of their landholding the occupier shall comply with the general environmental requirements set out in Schedule 2 as regards the increased area of landholding and, if the occupier wishes the undertaking to also apply to the increased area of landholding, the occupier shall submit to the Scottish Ministers an application for aid in accordance with regulation 3.
- (7) Where occupation of the land is divided, the Scottish Ministers shall determine—
- (a) the extent to which the activities included in the undertaking relate to any part of the land occupied by a new occupier or, as the case may be, the former occupier of all the land; and
- (b) the proportion, if any, of any payments which would be payable under paragraph (8) for the remainder of the period of the undertaking in respect of that part of the land.
- (8) Where the Scottish Ministers are satisfied as specified in paragraph (4), they shall, subject to regulation 4, make payments for the remainder of the period of the undertaking to the new occupier of the land who has taken on the undertaking.
- (9) Where the Scottish Ministers are satisfied as to the matters specified in paragraph (5), they shall, subject to regulation 4, make payments of such proportion, if any, as they have determined under paragraph (7) are due for the remainder of the period of the undertaking to the new occupier or, as the case may be, former occupier of all the land who has taken on the undertaking.
- (10) Where within 3 months from the date of change of occupation the undertaking has not been taken on in accordance with paragraph (4) or, as the case may be, paragraph (5), the Scottish Ministers may—
- (a) withhold the whole or any part of any payment under these Regulations due to the former occupier in respect of the undertaking; and
- (b) recover from the former occupier, or make a claim in the former occupier's executry, for the whole or any part of any payment awarded under these Regulations already made to that person in respect of the undertaking.
- (11) The provisions of this regulation are, insofar as the aid paid under these Regulations includes aid under Council Regulation 1257/1999, subject to Articles 36 to 38 (transfer of holding) and Article 39 (force majeure) of Commission Regulation 817/2004, and where by virtue of Article 11 of Council Regulation 1257/1999 an applicant for aid is required to reimburse the aid paid, in accordance with Articles 70, 71, 72 and 73 of Commission Regulation 817/2004 interest shall be payable thereon at the rate calculated in accordance with that provided in regulation 19.

### **Powers of authorised persons**

**13.—**(1) The Scottish Ministers may authorise a person, either generally or specifically, to act in relation to matters arising under these Regulations, and an authorised person may at all reasonable



hours, on producing, if so required, some duly authenticated document showing the authorised person's authority, enter on any land—

- (a) to which an application or undertaking relates; or
  - (b) on which the authorised person has reasonable grounds to believe that documents relating to an application or undertaking are being kept, for any of the purposes mentioned in paragraph (2).
- (2) The purposes referred to in paragraph (1) are—
- (a) inspecting the land to which the application or undertaking relates;
  - (b) verifying the accuracy of any information provided by an applicant or on the applicant's behalf, relating to an application, a claim for aid or an undertaking; and
  - (c) determining whether or not an applicant has complied with an undertaking.
- (3) An authorised person who has entered any land under paragraph (1) may—
- (a) inspect the land and any premises, plant, machinery, equipment, document or record on it which that person reasonably believes relates to an application, a claim for aid or an undertaking;
  - (b) require the applicant, or any employee or agent of such applicant, to produce, or secure the production of, any document or supply any additional information in the applicant's possession or under the applicant's control relating to an application, a claim for aid or an undertaking, as the case may be;
  - (c) where any information referred to in sub paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require that information to be reproduced in a form in which it may be easily read and can be taken away;
  - (d) require copies of or extracts from any such document or other record referred to in sub paragraphs (a) or (b) to be produced;
  - (e) retain a copy of any document produced to the authorised person;
  - (f) seize and retain any document or other record which that person reasonably believes may be required as evidence in proceedings under these Regulations; and
  - (g) in so far as may be necessary for the purposes of paragraph (2)(b) or (c), inspect and count livestock on the land and may, for this purpose, require the applicant, or any employee or agent of such applicant, to arrange for the collection, penning and securing of such livestock.
- (4) An applicant or any employee or agent of such applicant shall give an authorised person all reasonable assistance in relation to the matters mentioned in paragraphs (1) and (3) above.
- (5) An authorised person entering any land under paragraph (1) may be accompanied by—
- (a) any official of the European Commission; and
  - (b) such other person as the authorised person considers necessary,
- and paragraphs (3) and (4) shall apply to that person when acting under the instructions of an authorised person as they apply to an authorised person.
- (6) Paragraph (1) above shall apply to any land used for the purposes of a dwellinghouse only where reasonable notice of its intended exercise has been given to all residents of that dwellinghouse.

**Breaches of undertakings etc.**

- 14.—(1) Subject to paragraph (2), where—

- (a) any information furnished to the Scottish Ministers by the applicant or on the applicant's behalf, is false or misleading in a material respect;
- (b) the applicant is in breach of any of the terms of an undertaking;
- (c) the applicant is in breach of any requirement to which the applicant is subject under these Regulations or under Council Regulation 1257/1999 or Commission Regulation 817/2004;
- (d) the whole or any part of any sum paid or payable under an undertaking duplicates assistance provided or to be provided out of monies made available by—
  - (i) the European Community; or
  - (ii) under any statutory provision,

the Scottish Ministers may exercise any of the powers specified in regulation 16.

(2) For the purposes of paragraph (1)(d), a sum duplicates such assistance if it is, or would be, paid for any of the same purposes.

(3) Where—

- (a) there is a change of occupation under regulation 12 and an applicant has transferred all or part of the land to which an undertaking relates to another person (“the successor”);
- (b) the successor has, within three months of the date of the transfer, given notice to the Scottish Ministers to assume the undertaking in place of the applicant; and
- (c) the Scottish Ministers have accepted that undertaking,

the applicant shall be released from their undertaking with effect from the date of the acceptance by the Scottish Ministers of the successor's undertaking other than in respect of any breach or other matter occurring before the date last mentioned.

#### **Other cases in which recovery etc. powers apply**

**15.** The Scottish Ministers may exercise the powers specified in paragraph (1)(a) and (b) of regulation 16 where they are satisfied that—

- (a) there has been a material change in the nature, scale or timing of the activities in relation to which an undertaking has been made;
- (b) the activities in relation to which an undertaking has been made are delayed or are unlikely to be completed;
- (c) the applicant has intentionally obstructed an authorised person (or a person accompanying that person and acting under that person's instructions) in the exercise of the powers under regulation 13;
- (d) sums paid have exceeded the maximum limit per hectare under regulation 5 or are otherwise not due under these Regulations; or
- (e) sums paid have exceeded any maximum limit per hectare provided for in Annex I of Council Regulation 1257/1999.

#### **Powers of recovery etc. of the Scottish Ministers**

**16.**—(1) The powers conferred by regulations 14 and 15 are—

- (a) to withhold the whole or any part of the aid payable to the applicant; and
- (b) to recover on demand the whole or any part of any aid already paid to an applicant.

(2) Where the powers specified in paragraph (1) are exercised, further to regulation 14(1), and where in the view of the Scottish Ministers, the conduct of the applicant was reckless or was carried out with the intention of breaching any of the requirements set out in that paragraph, the Scottish

Ministers may also require the applicant to pay to the Scottish Ministers an additional sum equal to no more than 10% of the aid paid or payable to the applicant.

(3) Where the Scottish Ministers take any step specified in paragraph (1), the Scottish Ministers may also suspend or terminate the undertaking, and thereupon any entitlement of the applicant to aid in respect of the unexpired period of the undertaking shall likewise be suspended or terminated, as the case may be.

(4) Where the Scottish Ministers terminate an undertaking under paragraph (3), they may also prohibit the applicant from entering into any new undertaking for such period (not exceeding two years) from the date of the termination as the Scottish Ministers may specify.

(5) The powers conferred on the Scottish Ministers by paragraphs (2), (3) and (4) shall be exercisable by a notice served on the applicant by post at his last known address, and in paragraph (4) “specify” means specify in such notice.

### **Information**

17.—(1) An applicant must supply the Scottish Ministers with such information about an application for aid or undertaking as they reasonably may require.

(2) When the Scottish Ministers require such information the applicant must supply them with it within such period as they reasonably may require.

### **Record keeping**

18.—(1) An applicant must keep any invoice, account or other document relating to an application for aid or undertaking, for the period of four years after payment of aid is made.

(2) If an applicant transfers the original of any such document to another person in the normal course of business, the applicant must instead keep a copy of that document for that period.

(3) Paragraph (1) shall not apply where the document has been removed by any person lawfully authorised to remove it.

### **Recovery of interest**

19.—(1) Where the Scottish Ministers exercise the power conferred by regulation 16(1)(b) they may also recover on demand interest on the sum to be recovered at a rate of interest one per cent above the sterling three month London interbank offered rate on a day to day basis from the date of payment until the date of recovery.

(2) In any proceedings for recovery under these Regulations, a certificate issued by the Scottish Ministers stating the rate or rates of interest, the amount of such interest recoverable and the period for which such interest is calculated, shall unless the contrary is shown, be conclusive of those matters.

### **Sums payable to the Scottish Ministers to be recoverable as a debt**

20. Where an amount falls to be paid to the Scottish Ministers by virtue of (or by virtue of an action taken under) these Regulations, such amount shall be recoverable as a debt.

### **Offences and penalties**

21.—(1) A person is guilty of an offence if—

- (a) for the purposes of obtaining any financial assistance under these Regulations for themselves or any other person, they knowingly or recklessly make a statement which is false or misleading in any material particular; or

(b) they intentionally obstruct an authorised person (or a person accompanying that person and acting under that person's instructions) in the exercise of the powers under regulation 13.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Proceedings for an offence under these Regulations may be commenced within the period of six months from the date on which the offence was committed.

(4) Section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(23)</sup> (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

(5) Where an offence under paragraph (1) is committed by a body corporate or a partnership and is proved to have been committed with the consent or connivance of, or to be 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 such a 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 the offence and shall be liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, paragraph (5) above shall apply in relation to the acts and defaults of a member in connection with the member's management functions as if the member were a director of the body corporate.

### **Right of appeal**

**22.** The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004<sup>(24)</sup> shall be amended by inserting after regulation 4(r)–

“(s) a decision by the Scottish Ministers to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum under the Land Management Contracts (Menu Scheme) Regulations 2005<sup>(25)</sup>, in terms of those Regulations.”.

St Andrew's House, Edinburgh  
21st April 2005

*ROSS FINNIE*  
A member of the Scottish Executive

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<sup>(23)</sup> 1995 c. 46.

<sup>(24)</sup> S.S.I. 2004/381, amended by S.S.I. 2005/117.

<sup>(25)</sup> S.S.I. 2005/225.

## SCHEDULE 1

Regulations 2(1), 4(2), 10, 11

## MENU OPTION ACTIVITIES, ELIGIBILITY CONDITIONS AND RATES OF PAYMENT

It is an additional eligibility condition of the activities specified in Menu Options 6 to 13 and 15 to 17 below that they must not be carried out, or must not be carried out and maintained, on land set aside from production or land set aside for non food purposes.

<i>Column 1</i> <i>Menu Option</i>	<i>Column 2</i> <i>Activities and Eligibility</i> <i>Conditions</i>	<i>Column 3</i> <i>Rate of Payment</i>
1. Animal health and welfare programme	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) has at least 4 livestock units entered on the single application;</p> <p>(b) takes at least the actions described in activity (i) below.</p> <p>(3) Activities (ii) to (v) below are optional.</p> <p>(4) Activities (ii), (iii)(b) and (c) and (iv) below can be taken each scheme year and activities (iii)(a) and (v) can only be taken once in the 5 years of the commitment.</p> <p>(5) This Menu Option has the following activity elements for eligibility–</p> <p><b>(i) Animal health and welfare programme</b></p> <p>The applicant must–</p> <p>(a) develop, by 1st December of the scheme year, following discussions with a veterinary surgeon, and implement by the end of that scheme year, a proactive scheme for treating animal diseases, including guidance on following a veterinary surgeon’s advice and treatment,</p>	£220 per scheme year.

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

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>including details of first and second lines of treatment, individual dosage instructions and withdrawal periods for each treatment, as agreed with the veterinary surgeon; and</p> <p>(b) develop and implement a scheme for using vaccines and preventative medicines, including details of the vaccines or preventative medicines to be used, and individual dosage instructions and withdrawal periods for each vaccine or preventative medicine.</p>	
	<p>(ii) <b>Benchmarking</b></p> <p>The applicant must–</p> <p>(a) carry out additional inspections of animals to record performance indicators and the numbers of occurrences of disease symptoms in the animal population which are pre determined objective measurements; and</p> <p>(b) together with a veterinary surgeon, make and record comparisons between the applicant’s enterprise and others across the veterinary practice area, the local government area or across Scotland.</p>	<p>£320 per scheme year.</p>
	<p>(iii) <b>Enhancing biosecurity</b></p> <p>The applicant must–</p> <p>(a) (a) produce an action plan to ensure the safe integration of new stock on farm; and</p>	<p>£30 once within the 5 year commitment.</p>

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(b) (b) minimise the risk of spreading disease by maintaining fences around isolation areas (which may consist of boundary and internal fencing but must be used throughout the scheme year as an isolation facility) to enhance biosecurity levels and to prevent animal diseases from entering the herd or flock; and</p> <p>(c) (c) maintain the fencing by inspecting the fencing, tightening slack wiring, reattaching loose wiring and replacing damaged fence posts or sections.</p>	<p>£0.10 per running metre of fencing established around the isolation areas (up to a maximum of 3,000 metres).</p>
	<p><b>(iv) Sampling</b></p> <p>The applicant must–</p> <p>(a) on the advice of a veterinary surgeon undertake sampling such as blood testing to identify diseases or conditions such as twin lamb disease or copper deficiency, which may be present on the farm having a negative impact on animal health and welfare; and</p> <p>(b) take informed control measures to address such diseases or conditions.</p>	<p>£155 per scheme year.</p>
	<p><b>(v) Nutritional advice</b></p> <p>The applicant may analyse forages and obtain professional nutritional advice and implement that advice.</p>	<p>£110 once within the 5 year commitment.</p>

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

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
2. Membership of quality assurance and organic schemes	An applicant is eligible for payment under this Menu Option if the applicant: <ul style="list-style-type: none"> <li>(a) participates in a quality assurance or organic scheme which is certified to EN45011 standard by 1st February 2006; and</li> <li>(b) is a member of that quality assurance or organic scheme on 16th May 2005 and 16th January 2006.</li> </ul>	50% of joining fee and ongoing membership costs, up to a maximum of £150 per scheme year for each quality assurance or organic scheme.
3. Training	An applicant is eligible for payment under this Menu Option if the applicant, an immediate family member of the applicant involved in the business or an employee of the applicant, attends a training course provided by a training provider, recognised by Lantra, which relates to business skills, marketing, people management, diversification opportunities or technical skills but which is not– <ul style="list-style-type: none"> <li>(a) full time or part time education in a secondary school, Further Education College or Higher Education establishment;</li> <li>(b) a course required by law to permit persons to carry out their basic work activities; or</li> <li>(c) funded, in whole or in part, by other public funds.</li> </ul>	75% of the course fees, up to a maximum of £500 per scheme year.
4. Farm and woodland visits	(1) An applicant is eligible for payment under this Menu Option if the applicant conducts farm or woodland visits, which are accompanied throughout by the host farmer or woodland manager (or both), last for at least one hour, consist	£100 per farm or woodland visit subject to a combined total of 10 farm or woodland visits and off farm or woodland talks (as specified in Menu Option 5) per scheme year.



<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>of a group of at least 5 people, do not involve persons already associated with land management, for profit organisations or pre school aged children and which–</p> <ul style="list-style-type: none"><li>(a) increase public awareness of land management;</li><li>(b) provide active educational experience for children and young people; or</li><li>(c) contribute to a better understanding of the contribution land managers make to their local community and the local environment.</li></ul> <p>(2) The applicant under this Menu Option must:</p> <ul style="list-style-type: none"><li>(a) have sufficient public liability insurance to receive visitors onto a farm or woodland (or both) in relation to the type of visits undertaken;</li><li>(b) comply with obligations under the Health and Safety at Work etc. Act 1974(26); and</li><li>(c) prepare a Risk Assessment and a Farm or Woodland Information Pack (or both) in relation to the types of visit undertaken, in accordance with guidance approved</li></ul>	

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<i>Column 1</i> <i>Menu Option</i>	<i>Column 2</i> <i>Activities and Eligibility</i> <i>Conditions</i>	<i>Column 3</i> <i>Rate of Payment</i>
5. Off farm and woodland talks	<p>by the Scottish Ministers.</p> <p>(1) An applicant is eligible for payment under this Menu Option if the applicant conducts off farm and woodland talks, which take place away from any farm or woodland, last for at least 30 minutes, do not involve persons already associated with land management, for profit organisations or pre school aged children and which–</p> <p>(a) increase public awareness of land management; or</p> <p>(b) contribute to a better understanding of the contribution land managers make to their local community and the local environment.</p> <p>(2) The applicant under this Menu Option must prepare a Farm or Woodland Information Pack (or both) in accordance with guidance, approved by the Scottish Ministers.</p>	£50 per off farm or woodland talk subject to a combined total of 10 off farm or woodland talks and farm or woodland visits (as specified in Menu Option 4) per scheme year.
6. Buffer areas	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) establishes a 3 metre to 6 metre wide buffer area which may be in arable fields, on improved grassland along watercourses, around areas of wetland, species rich grassland, woodland or archaeological sites;</p>	£200 per hectare of the buffer area per scheme year.

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> <li>(b) prepares a sketch map showing the location of the proposed buffer area;</li> <li>(c) does not cultivate the buffer area, nor apply fertiliser, manure or pesticides to it;</li> <li>(d) does not use the buffer area for supplementary feeding of stock; and</li> <li>(e) in the case of prominent, individual in field and ancient trees on the landscape establishes a buffer area reaching at least the length of the canopy, leaves fallen timber in the buffer area, and if the tree falls, replaces it but leaves the deadwood in the buffer area.</li> </ul> <p>(3) The applicant may in the buffer area–</p> <ul style="list-style-type: none"> <li>(a) cut and control scrub, where necessary to meet the standards of good agricultural and environmental condition under regulation 4 of the Common Agricultural Policy Single Payment and Support Schemes (Cross-Compliance) (Scotland) Regulations 2004(27); and</li> </ul>	

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(27) S.S.I. 2004/518.

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

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
<p>7. Management of linear features: hedgerows and hedgerow trees; ditches; and dykes</p>	<p>(b) graze animals so long as this does not cause environmental damage.</p> <p>(4) For applicants carrying out Nutrient management (as specified in Menu Option 14) in fields with a watercourse, spring or borehole, a buffer area must be established alongside the watercourse, spring or borehole.</p> <p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) prepares a sketch map showing at the date of the application for aid the location of the linear features proposed to be managed under this Menu Option;</p> <p>(b) where the linear feature is also a property boundary, has gained the written consent of the owner or tenant of the neighbouring property for an application under this Menu Option; and</p> <p>(c) carries out at least one of the activities (i) to (iii) below.</p> <p>(3) This Menu Option has the following activity elements for eligibility–</p> <p>(i) <b>Hedgerows and hedgerow trees</b></p>	

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>The applicant must–</p> <ul style="list-style-type: none"> <li>(a) cut both sides of the hedges no more than every third year, with no more than one third of the hedges and trees shown on the sketch map prepared cut in any one year;</li> <li>(b) manage hedges over several years to be at least 1.5 metres tall and at least 2 metres wide at the base, in an A frame shape;</li> <li>(c) only cut hedges and coppice, pollard or lop hedgerow trees between 1st December and 1st March; and</li> <li>(d) plant native species to fill in gaps in hedges.</li> </ul> <p><b>(ii) Ditches</b></p> <p>The applicant must–</p> <ul style="list-style-type: none"> <li>(a) clear ditches no more than every third year; with no more than one third of the ditches shown on the sketch map prepared cleared in any one year;</li> <li>(b) only clear ditches and cut bankside vegetation between 1st September and 31st January;</li> <li>(c) only cut vegetation, clear and re profile on one side of a ditch on any occasion;</li> <li>(d) where possible, give banks shallow sloping sides (of 10o or less from the horizontal), to encourage plant diversity and to benefit waders and other bird species;</li> </ul>	<p>£0.10 per metre up to a maximum of 50 metres per hectare of eligible land per scheme year.</p>
	<p>The applicant must–</p> <ul style="list-style-type: none"> <li>(a) clear ditches no more than every third year; with no more than one third of the ditches shown on the sketch map prepared cleared in any one year;</li> <li>(b) only clear ditches and cut bankside vegetation between 1st September and 31st January;</li> <li>(c) only cut vegetation, clear and re profile on one side of a ditch on any occasion;</li> <li>(d) where possible, give banks shallow sloping sides (of 10o or less from the horizontal), to encourage plant diversity and to benefit waders and other bird species;</li> </ul>	<p>£1.00 per metre up to a maximum of 5 metres per hectare of eligible land per scheme year.</p>

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<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(e) where possible, work from the lowest part of the ditch upstream; and</p> <p>(f) spread and level spoil across the field and not mound it on the bank.</p> <p><b>(iii) Dykes</b></p> <p>The applicant must–</p> <p>(a) repair and reinstate deteriorated and damaged drystone walls; and</p> <p>(b) replace coping and minor damage, including collapsed sections of wall less than 2 metres long.</p>	<p>£0.10 per square metre (the area of a dyke shall be calculable by multiplying its length by its average height) up to a maximum of 50 square metres per hectare of eligible land per scheme year.</p>
<b>8. Management of moorland grazing</b>	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) prepares and carries out a grazing plan for the moorland which reports on the current condition and existing management of the moorland and specifies changes proposed in shepherding, stock management and feeding practices to benefit conservation interests;</p> <p>(b) uses the moorland for agricultural livestock production; and</p> <p>(c) retains the existing overall area of permanent pasture contained on any farm or croft on the applicant’s eligible land, follows stocking limits on all the permanent</p>	<p>£1 per hectare of the moorland grazing per scheme year.</p>

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	pasture on that land and does not overgraze or under utilise any of that grassland.	
<b>9. Management of rush pasture</b>	<p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) manages areas of dense rushes (that is, areas of rush pasture which are over 50% rushes) by annual grazing or cutting (or both); and</p> <p>(b) between 1st August and 31st March, either grazes cattle to remove and thin rushes by a maximum of two thirds or cuts a maximum of two thirds of the rushes in random patterns, in order to leave an open, variable mix of rushes and grass pasture.</p>	£125 per hectare of the areas of dense rushes per scheme year.
<b>10. Biodiversity on in bye land</b>	<p>(1) This is a 5 year commitment but the location of the cropped areas may change from year to year.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) only applies in respect of land in the Less Favoured Area which is classified as disadvantaged or severely disadvantaged;</p> <p>(b) sows plots of spring cereals, fodder root</p>	£40 per hectare of the sown plots of per scheme year, or £150 per hectare of the sown plots per scheme year if a cereal crop is harvested by binder and the stooks gathered into stacks.

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<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>crops or fodder rape up to a maximum of 2 hectares of each crop and which crops in total comprise no more than 4 hectares;</p> <p>(c) does not apply herbicides or insecticides without the prior written consent of the Scottish Ministers;</p> <p>(d) does not, after cropping, plough or cultivate the area before 28th February in the following calendar year; and</p> <p>(e) does not receive any payment under an agri-environment scheme during the scheme year for the same area of land but excluding any payment made under Menu Option 14 (Nutrient management).</p>	
<p><b>11.</b> Retention of winter stubbles</p>	<p>(1) This is a 5 year commitment but the location of the areas managed for the purposes of this Menu Option may change from year to year.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) retains stubbles from the harvest of spring sown cereals, protein or oilseed crops until the end of the following February;</p> <p>(b) does not plough or cultivate the area before the end of the following February;</p>	<p>£40 per hectare of the winter stubbles retained per scheme year.</p>



<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> <li>(c) does not apply herbicides without the prior written consent of the Scottish Ministers; and</li> <li>(d) does not receive any payment under an agri-environment scheme during the scheme year for the same area of land but excluding any payment made under Menu Option 14 (Nutrient management).</li> </ul>	
<p>12. Wild bird seed mixture</p>	<ul style="list-style-type: none"> <li>(1) This is a 5 year commitment.</li> <li>(2) An applicant is eligible for payment under this Menu Option if the applicant– <ul style="list-style-type: none"> <li>(a) sows a mixture (that is, either a seed mixture or alternate rows of the different crops) of at least 3 seed bearing crops;</li> <li>(b) sows in strips which are at least 6 metres wide at the edges of fields or in blocks (or in both strips and blocks) not exceeding 0.5 hectares per individual strip or block and there must be no more than 0.5 hectares sown per 20 hectares of eligible land on the farm or croft;</li> <li>(c) re sows at least every other year so as to maintain seed production;</li> </ul> </li> </ul>	<p>£329 per hectare sown per scheme year.</p>

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<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> <li>(d) only applies fertiliser or manure if this is necessary for establishment of the growing of the seed mixture;</li> <li>(e) only applies herbicides to spot treat or weed wipe for the control of injurious weeds or invasive alien species, except that Glyphosate may be used before spring re sowing to help re establishment;</li> <li>(f) does not apply any other pesticides;</li> <li>(g) does not use the area for access, turning, storage or grazing; and</li> <li>(h) does not receive any payment under an agri-environment scheme during the scheme year for the same area of land but excluding any payment made under Menu Option 14 (Nutrient management).</li> </ul>	
<p><b>13. Summer cattle grazing</b></p>	<ul style="list-style-type: none"> <li>(1) This is a 5 year commitment.</li> <li>(2) An applicant is eligible for payment under this Menu Option if the applicant– <ul style="list-style-type: none"> <li>(a) turns cattle out onto identified unenclosed or hill land on or before 1st June and keeps them there until after 31st August;</li> </ul> </li> </ul>	<p>£1 per hectare of land on which the cattle are maintained, per scheme year.</p>

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> <li>(b) ensures that grazing is evenly distributed and that there are adequate sheltered areas where the ground is firm and free draining;</li> <li>(c) ensures that there is at least one bovine per 25 hectares of identified unenclosed or hill land;</li> <li>(d) ensures that the cattle are–               <ul style="list-style-type: none"> <li>(i) at least 6 months of age at the start of that grazing period; and</li> <li>(ii) owner or leased under a written lease; and</li> </ul> </li> <li>(e) retains the existing overall area of permanent pasture contained on any farm or croft on the applicant’s eligible land, follows stocking limits on all the permanent grassland on that land and does not overgraze or under utilise any of that grassland.</li> </ul>	
<p><b>14. Nutrient management</b></p>	<ul style="list-style-type: none"> <li>(1) This is a 5 year commitment.</li> <li>(2) An applicant is eligible for payment under this Menu Option if the applicant–               <ul style="list-style-type: none"> <li>(a) carries out soil testing in the field to find out its pH, nutrient status and trace element levels;</li> </ul> </li> </ul>	<p>£2 per hectare of the eligible land in relation to which the activities are carried out per scheme year.</p>

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<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<ul style="list-style-type: none"> <li>(b) assesses nutrient requirements dependent on soil analysis and cropping;</li> <li>(c) keeps records of no spread zones including areas of steep slopes, free draining sandy soils, unimproved land, flood risk and waterlogged areas;</li> <li>(d) applies fertiliser at a time which will promote maximum nutrient uptake by the crop;</li> <li>(e) keeps records of substances applied to the field; and</li> <li>(f) maintains a buffer area (as specified in Menu Option 6) around any watercourse, spring or borehole in the field on which nutrient management is being conducted.</li> </ul>	
<p><b>15. Improving access</b></p>	<ul style="list-style-type: none"> <li>(1) This is a 5 year commitment.</li> <li>(2) An applicant is eligible for payment under this Menu Option if the applicant– <ul style="list-style-type: none"> <li>(a) identifies a path with reasonably direct access across the land;</li> <li>(b) considers road safety issues if a path crosses a public road;</li> <li>(c) ensures that the minimum width</li> </ul> </li> </ul>	<p>£2.75 per metre per scheme year for the provision or maintenance (or both) of a path; and</p> <p>75% of the cost of signposts, waymarkers, gates, stiles, steps, bridges and culverts, up to a maximum of £150 per item.</p>

<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>of the path is 1.2 metres;</p> <p>(d) provides use direction signs (or ‘finger’ posts) to point to the destination and the distance to that destination with a sign at the start of the identified route of all paths or at an appropriate entrance point;</p> <p>(e) installs waymarkers at the start of the route at a convenient point of entry;</p> <p>(f) provides where necessary gates, stiles, steps, bridges or culverts to keep the route out of water, divert it around difficult ground or clear a path through vegetation;</p> <p>(g) regularly maintains the path;</p> <p>(h) manages vegetation on and around the path at certain times of the year; and</p> <p>(i) prepares a sketch map showing the location of the path proposed to be managed and the location and type of capital items.</p>	
<p><b>16. Farm planning</b></p>	<p>woodland (1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant prepares a Farm Woodland Plan</p>	<p>£10 per hectare of the eligible land in relation to which the activities are carried out (any hectare being capable of being made up of several areas of at least 0.1 hectare each) per</p>

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<i>Column 1 Menu Option</i>	<i>Column 2 Activities and Eligibility Conditions</i>	<i>Column 3 Rate of Payment</i>
	<p>(“FWP”) in such form and containing such information as the Scottish Ministers may reasonably require and, in particular, the FWP must—</p> <ul style="list-style-type: none"> <li>(a) assess the condition of all existing owned woodlands on the land;</li> <li>(b) identify work needed to manage the woodlands to the standard for Sustainable Farm Woodland Management;</li> <li>(c) identify those individual woods or groups of woods suitable for entry into Farm Woodland Management (as specified in Menu Option 17);</li> <li>(d) include a copy of a 1:10,000 map, showing the location of the applicant’s holding and all woodland within it; and</li> <li>(e) be submitted to the Scottish Ministers by 15th August 2005 and approved or rejected by them within 2 months of its receipt.</li> </ul> <p>(3) The standard for Sustainable Farm Woodland Management, as mentioned in sub-paragraph (2)(b) above, is—</p> <ul style="list-style-type: none"> <li>(a) managing the woodlands consistently with the objectives and work set out in the FWP;</li> </ul>	<p>scheme year, up to a maximum of 30 hectares per holding of eligible land, except that—</p> <ul style="list-style-type: none"> <li>(a) if the applicant’s native woodland or woodland declared in the single application as forage open woodland is more than 30 such hectares, the additional hectares receive £10 per hectare per scheme year; or</li> <li>(b) if the total area of woodland on the holding is 15 hectares or less and the applicant enters it all into Farm Woodland Management (as specified in Menu Option 17) a minimum of £150 per scheme year will be paid.</li> </ul>

<i>Column 1</i> <i>Menu Option</i>	<i>Column 2</i> <i>Activities and Eligibility</i> <i>Conditions</i>	<i>Column 3</i> <i>Rate of Payment</i>
	<ul style="list-style-type: none"><li>(b) providing adequate protection measures to prevent domestic stock and wild animals significantly damaging trees within the woodland, including damage to the ongoing development of natural regeneration in native woodland but excluding managed grazing which is necessary and has been approved by the Scottish Ministers in order to achieve specific biodiversity objectives identified in the FWP;</li><li>(c) preventing any non-native vegetation, within the canopy or shrub layers of native woodland, which pose a significant threat to the condition of that native woodland;</li><li>(d) ensuring that operations in and around woodlands do not have a significant adverse impact on habitats and species of national or regional importance or on features of cultural importance, as identified by the Scottish Ministers;</li><li>(e) managing woodlands, identified by the Scottish Ministers as important for the character of</li></ul>	

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<i>Column 1</i> <i>Menu Option</i>	<i>Column 2</i> <i>Activities and Eligibility</i> <i>Conditions</i>	<i>Column 3</i> <i>Rate of Payment</i>
	<p>the landscape, so as to maintain their landscape significance;</p> <p>(f) managing public access through the woodlands in accordance with the Scottish Outdoor Access Code; and</p> <p>(g) keeping, so far as possible, woodlands free of inappropriate materials and waste, that adversely affect the natural environment.</p>	
<b>17. Farm management</b>	<p>woodland</p> <p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this Menu Option if the applicant–</p> <p>(a) has an approved FWP (as specified in Menu Option 16) or is applying for one;</p> <p>(b) keeps woodland in accordance with the standard for Sustainable Farm Woodland Management as specified in Menu Option 16(3);</p> <p>(c) ensures that any work conducted is consistent with the FWP; and</p> <p>(d) does not receive any payment under the Farm Woodland Scheme 1988(28), the Farm Woodland Premium Scheme</p>	<p>£30 per hectare of the eligible land in relation to which the activities are carried out (any hectare being capable of being made up of several areas of at least 0.1 hectare each) per scheme year, up to a maximum of 30 hectares per holding of eligible land, except that if the applicant's native woodland or woodland declared in the single application as forage open woodland is more than 30 such hectares, the additional hectares receive £30 per hectare per scheme year.</p>



<i>Column 1</i> <i>Menu Option</i>	<i>Column 2</i> <i>Activities and Eligibility</i> <i>Conditions</i>	<i>Column 3</i> <i>Rate of Payment</i>
	1992 <del>(29)</del> , the Farm Woodland Premium Scheme 1997 <del>(30)</del> , the Rural Stewardship Scheme (Scotland) Regulations 2001 <del>(31)</del> or the SFGS Farmland Scheme 2003 <del>(32)</del> during the scheme year for the same individual woods.	

## SCHEDULE 2

Regulation 11(3)(b)

## GENERAL ENVIRONMENTAL REQUIREMENTS

Part I of this Schedule applies to the activities specified in Menu Options 1, 2 and 6 to 14 of Schedule 1.

Part II of this Schedule applies to all the activities specified in the Menu Options in Schedule 1.

Part III of this Schedule applies to the activities specified in Menu Options 6 to 14 of Schedule 1.

## PART I

THE STANDARDS OF GOOD FARMING PRACTICE  
INCLUDING GOOD ANIMAL HUSBANDRY

1. On rough grazings, unimproved grassland, reverted improved grassland, machair and dune grassland, wetlands and native, amenity or semi natural woodlands, livestock must be managed to avoid either overgrazing or undergrazing. Where the Scottish Ministers form the opinion that land was being overgrazed, a management regime including a maximum (and, where appropriate, a minimum) stocking rate to be observed on that site will be prescribed. The removal or clearance of drystone or flagstone dykes or walls, hedges and hedgerow trees will not be permitted except with the prior written approval of the Scottish Ministers. Records shall be maintained by the applicant showing that this approval has been obtained.

2. Trimming of hedges and hedgerows must not be carried out between 1st March and 31st July.

3. Where it is intended to undertake any operation on the land that is likely to damage any Site of Special Scientific Interest, designated pursuant to section 28 of the Wildlife and Countryside

(29) S.I. 1992/905 as amended by S.I. 1997/829 and S.S.I. 2003/209.

(30) S.I. 1997/829 as amended by S.S.I. 2000/290 and 2003/209.

(31) S.S.I. 2001/300.

(32) S.S.I. 2003/209.

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

Act 1981**(33)**, the prior approval of Scottish Natural Heritage must be obtained. Records shall be maintained by the applicant showing that this approval has been obtained.

4. If a new silage or slurry storage facility is constructed on the land, the Scottish Environment Protection Agency must be notified before it is used. Records showing that this notification has been given must be maintained by the applicant.

5. Prior authorisation must be obtained from the Scottish Environment Protection Agency before any sheep dip is disposed of on the land. Records showing that this authorisation has been obtained, and records detailing the manner of disposal of the sheep dip, shall be maintained by the applicant.

6. Prior authorisation must be obtained from the Forestry Commission before the felling of any trees on the land. Records shall be maintained by the applicant showing that this approval has been obtained.

7. 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.

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

9. 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 maintained and retained by the applicant for 3 years of all medicinal treatment given to animals and of all mortalities.

## PART II

### ENVIRONMENTAL LEGISLATION

#### Water pollution

1. The Control of Pollution Act 1974**(34)**.
2. The Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005**(35)**.
3. The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003**(36)**.
4. The Groundwater Regulations 1998**(37)**.

#### Air pollution

5. The Clean Air Act 1993**(38)**.

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**(33)** 1981 c. 69.

**(34)** 1974 c. 40.

**(35)** S.S.I. 2005/63.

**(36)** S.S.I. 2003/531.

**(37)** S.I. 1998/2746, amended by S.S.I. 2000/323

**(38)** 1993 c. 11.

6. The Hill Farming Act 1946(39).

#### **Fertilisers and pesticides**

7. The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003(40).
8. Part III of the Food and Environment Protection Act 1985(41) and the Control of Pesticides Regulations 1986(42).
9. The Plant Protection Products Regulations 1995(43).

#### **Designated sites**

10. The Ancient Monuments and Archaeological Areas Act 1979(44).
11. The Wildlife and Countryside Act 1981(45).
12. The Conservation (Natural Habitats etc.) Regulations 1994(46).
13. The Ancient Monuments (Class Consents) (Scotland) Order 1996(47).

#### **Forestry Management**

14. The Forestry Act 1967(48).

#### **Animal Welfare**

15. The Welfare of Farmed Animals (Scotland) Regulations 2000(49).

## **PART III**

### **GENERAL ENVIRONMENTAL CONDITIONS**

1. To avoid damage to the conservation interest of rough grazings, unimproved grassland, reverted improved grassland, machair and dune grassland, wetlands, water margins, and native, amenity or semi natural woodlands, new drainage works, ploughing, clearing, levelling, re seeding or cultivating may not be undertaken. Livestock must be managed to avoid poaching.

2. Pesticides, lime or fertiliser (including farmyard manure and slurry) must not be applied to rough grazings, unimproved pasture, reverted improved grassland, machair and dune grassland, wetlands, water margins, native, amenity or semi natural woodlands and scrub, except in exceptional circumstances and only with the prior written approval of the Scottish Ministers. Records shall be maintained by the applicant showing that this approval has been obtained.

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(39) 1946 c. 73.

(40) S.S.I. 2003/51

(41) 1985 c. 48.

(42) S.I. 1986/1510, amended by S.I. 1990/2487, 1994/3142 and 1997/188.

(43) S.I. 1995/887, amended by S.I. 1996/1940, 1997/7 and 2499, 1998/2760, 1999/1228, S.S.I. 2001/161, 202 and 454 and 2002/279

(44) 1979 c. 46.

(45) 1981 c. 69.

(46) S.I. 1994/2716, amended by S.I. 1997/3055 and S.S.I. 2000/323.

(47) S.I. 1996/1507.

(48) 1967 c. 10.

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

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

3. Injurious weeds to which the Weeds Act 1959(50) applies must be controlled to prevent their spread and to avoid the risk of damage to the conservation interest of any habitat or feature on the land.
4. Muirburn may only be carried out in accordance with guidance approved by the Scottish Ministers.
5. The damage or destruction of any historic or archaeological features or areas must be avoided and guidance approved by the Scottish Ministers must be followed for the protection of such features or areas.
6. Guidance, approved by the Scottish Ministers, on the prevention of environmental pollution from agricultural activity must be followed for the avoidance of pollution or to minimise the risk of pollution.

### SCHEDULE 3

Regulation 2(5)

#### INTERPRETATION OF SCHEDULES

In Schedules 1 and 2 and in this Schedule—

“alpaca” means any alpaca of any breed which are kept by way of business for the primary purpose of fibre production;

“cropped machair” means sandy plains formed when calcareous shell sand has been blown over glacial deposits and peat and which has been subject to cultivation within the last 10 years;

“EN45011 standard” means the recognised European standard for the accreditation of bodies involved in product quality certification;

“ewe” means a female sheep which is at least one year old on the 1st of January preceding the application for aid and which is kept in a breeding flock;

“farmed deer” means any deer (of any species) which are managed on a holding enclosed by a deer-proof barrier and are kept on the holding by way of business for the primary purpose of the production of meat;

“goat” means any goat (of any species) which is kept by way of business for the purposes of fibre, meat or milk production;

“hedge” means a line of shrubs or trees which delineate field boundaries;

“improved grassland” means either land used for grazing where over one third of the sward comprises, singly or in mixture, ryegrass, cocksfoot or timothy, or land that has been improved by management practices such as liming and top dressing, where there is not a significant presence of sensitive plant species indicative of native unimproved grassland;

“in bye land” means that part of a farm not comprising the hill and rough grazings, the bulk of which is used for arable and grassland production;

“injurious weeds” means creeping, spear or field thistle, curled or broadleaved dock, and common ragwort;

“land set aside for non-food purposes” means land set aside pursuant to Article 55(b) of Council Regulation 1782/2003 under the conditions laid down in Chapter 16 of Commission Regulation 1973/2004 for the provision of materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, and any reference to a farmer setting aside land for that purpose shall be construed accordingly;

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(50) 1959 c. 54.

“land set aside from production” means land set aside pursuant to Article 54(3) of Council Regulation 1782/2003 (other than land set aside for non-food purposes), and any reference to a farmer setting aside land from production shall be construed accordingly;

“Lantra” means the Sector Skills Council for the Environmental and Land based Sector;

“Less Favoured Area” has the same meaning as in regulation 2(1) of the Less Favoured Area Support Scheme (Scotland) Regulations 2004<sup>(51)</sup>;

“livestock” means bovine, ovine, caprine, alpaca and farmed deer;

“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitute one livestock unit:–

- (a) one cow (including suckling calves);
- (b) one unit of cattle, other than a cow, aged 24 months and over;
- (c) 1.66 cattle, other than cows, aged over 6 months but less than 24 months;
- (d) 6.66 ewes (including suckling lambs);
- (e) 6.66 sheep, other than ewes;
- (f) 6.66 goats;
- (g) 2.5 adult stags farmed deer aged 27 months and over;
- (h) 3.33 hinds farmed deer (including suckling calves) aged 27 months and over;
- (i) 5 juvenile farmed deer, aged over 6 months but less than 27 months;
- (j) 3.33 alpacas;

“local government area” means the area for which a council is constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(52)</sup>;

“machair” means sandy plains formed when calcareous shell sand has been blown over glacial deposits and peat but does not include cropped machair;

“moorland” means land with predominantly semi natural upland vegetation or comprising predominantly rock outcrops and semi natural upland vegetation, which is used for rough grazing;

“muirburn” has the same meaning as in section 39(1)(f) of the Hill Farming Act 1946<sup>(53)</sup>;

“native woodland” means self seeded woodland of native species or woodland derived from an originally naturally occurring woodland;

“overgrazing” means grazing land with livestock in such numbers as to adversely affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree;

“pesticides” means herbicides, insecticides or fungicides;

“poaching” means the trampling or treading of the ground surface by livestock resulting in permanent damage to the vegetation;

“reverted improved grassland” means land, previously improved by agricultural management operations which, from an agricultural viewpoint, has degenerated and is now showing significant presence of plant species indicative of unimproved grassland;

“rough grazings” means land containing semi natural vegetation including heathland, heather moorland, bog and rough grassland used or suitable for use as grazing;

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<sup>(51)</sup> S.S.I. 2004/70, amended by S.S.I. 2004/128 and 2005/64.

<sup>(52)</sup> 1994 c. 39.

<sup>(53)</sup> 1946 c. 73.

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

“rush pasture” means permanent pasture on poorly drained in bye land that is periodically saturated with water where extensive areas are dominated by soft rush and/or compact rush;

“Scottish Outdoor Access Code” means the code prepared under section 10 of the Land Reform (Scotland) Act 2003<sup>(54)</sup>

“scrub” means low growing woody vegetation of small trees and shrubs including linear scrub along field margins;

“semi natural woodland” means native woodland which has been modified by human activity;

“undergrazing” means grazing at a level where there is evidence of the annual growth not being fully utilised or scrub or coarse vegetation is becoming evident and such changes are detrimental to the environmental interest of the site;

“unenclosed or hill land” means rough grazings;

“unimproved grassland” means in bye land used for grazing or mowing which is not normally treated with mineral fertiliser or lime and does not constitute either improved grassland or rough grazings;

“water margin” means an area of in bye land bordering an area of still or flowing water; and

“wetland” means in bye ground which is normally saturated with water for a significant proportion of the year.

## EXPLANATORY NOTE

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

These Regulations implement Articles 9, 22, 23, 24, 30 and 33 of Council Regulation (EC) No. 1257/1999<sup>(55)</sup> on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), as amended by Commission Regulation (EC) No. 1783/2003<sup>(56)</sup>, the Act of Accession<sup>(57)</sup>, Council Regulation (EC) No. 567/2004<sup>(58)</sup> and Council Regulation (EC) No. 583/2004<sup>(59)</sup>. The Regulations extend to Scotland only.

The Regulations provide for payment of aid to be made to any person who enters into an undertaking with the Scottish Ministers to carry out, or as the case may be to carry out and maintain, the activities relevant to at least one of the Menu Options set out in Schedule 1 and to comply with the general environmental requirements set out in Schedule 2 to the Regulations (regulations 4 and 11).

The amount of aid payable in respect of an undertaking is calculated with reference to the activity to be undertaken (regulation 10), subject to the maximum amount of aid payable (regulation 5). The rate of payment corresponding to each activity is specified in Schedule 1 to the Regulations.

The Regulations also—

- (a) make provision as to the form and content of applications for aid (regulation 3);
- (b) impose restrictions on the acceptance of applications for aid (regulation 6);

<sup>(54)</sup> 2003 asp 2.

<sup>(55)</sup> O.J. No. L 160, 26.06.1999, p.80.

<sup>(56)</sup> O.J. No. L 270, 21.10.2003, p.70.

<sup>(57)</sup> O.J. No. L 236, 23.9.2003, p.33.

<sup>(58)</sup> O.J. No. L 90, 27.3.2004, p.1.

<sup>(59)</sup> O.J. No. L 91, 30.3.2004, p.1.

- (c) define land which is eligible for aid (regulation 7);
- (d) make provision in respect of a transfer of the land to which an undertaking relates (regulation 8);
- (e) make provision in respect of the determination of applications for aid (regulation 9);
- (f) make provision in respect of claims and payment (regulation 11);
- (g) make provision in relation to a change of occupation of the land to which an undertaking relates (regulation 12);
- (h) confer powers of entry and inspection on authorised persons (regulation 13);
- (i) make provision in relation to breaches of undertakings (regulation 14);
- (j) make provision in relation to the withholding and recovery of aid (regulations 15 and 16);
- (k) make provision for the supply of information (regulation 17) and record-keeping (regulation 18);
- (l) make provision as to the recovery of interest (regulation 19);
- (m) provide that sums payable to Scottish Ministers shall be recoverable as a debt (regulation 20);
- (n) make provision for offences and penalties (regulation 21); and
- (o) make provision in respect of appeals (regulation 22).

Commission Regulation (EC) No. 817/2004<sup>(60)</sup> also contains detailed rules relevant to the operation of the payment scheme established by these Regulations.

No Regulatory Impact Assessment has been prepared in respect of these Regulations.

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<sup>(60)</sup> O.J. No. L 153, 30.4.2004, p.30.