

2005 No. 569

AGRICULTURE

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

Made - - - - - *10th November 2005*

Laid before the Scottish Parliament *11th November 2005*

Coming into force - - - *2nd December 2005*

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

Citation, commencement and application

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2005 and shall come into force on 2nd December 2005.

(2) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005(b).

Interpretation

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

“agricultural” includes the use of land—

- (a) for the purposes of horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping;
- (b) as grazing land, meadow land, osier land, market gardens and nursery grounds; and
- (c) for woodlands, where that use is ancillary to the use of land for other agricultural purposes;

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

“animal” means any animal (including fish, reptiles or amphibians) bred or kept for the production of food, wool, skin or fur or for other farming purposes;

“applicant” means a person who has made an application for less favoured area support under these Regulations in accordance with regulation 3;

“area aid application” has the same meaning as in Article 6 of Council Regulation 3508/1992;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.I. 2005/218.

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

“cattle” for the purposes of regulation 11 (enterprise mix), means–

- (a) suckler cows and heifers; and
- (b) for those applicants maintaining a dairy herd in the islands of Shetland, the islands of Orkney, the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert, any other islands in the Outer Hebrides and the Inner Hebrides, or part of the Cowal peninsula as defined in Schedule 10, a livestock unit for each 5730 litres of milk quota held,

which the Scottish Ministers determine are to be taken into account from time to time;

“CLOPS” means cereals, linseed, oils and proteins corresponding to the types and use codes detailed in Schedule 4;

“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(a) ;

“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);

“common grazing” has the same meaning as it has for the purpose of Article 11 of Commission Regulation 817/2004;

“competent authority” has the same meaning as in regulation 5 of the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005;

“Council Regulation 3508/1992” means Council Regulation (EEC) No. 3508/1992 establishing an Integrated Administration and Control System for certain Community aid schemes(b);

“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(c);

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations(d);

“cross-border holding” means a holding in the United Kingdom which is situated partly in Scotland;

“designated maps” means the four maps numbered 1 to 4, each such map being marked “Map of less-favoured farming areas in Scotland”, dated 5th May 1991, signed by the Secretary of

(a) O.J. L 141, 30.4.04 p.18 as amended by Commission Regulation (EC) No 239/2005, O.J. L 42 , 12.2.05 p.3.

(b) O.J. No. L 355, 5.12.92, p.1, amended by Council Regulation (EC) No. 165/1994 (O.J. No. L 24, 29.1.94, p.6), Council Regulation (EC) No. 3233/1994 (O.J. No. L 338, 28.12.94, p.13), Council Regulation (EC) No. 3235/1994 (O.J. No. L 338, 28.12.94, p.16), Council Regulation (EC) No. 3072/1995 (O.J. No. L 329, 30.12.95, p.18), Council Regulation (EC) No. 1577/1996 (O.J. No. L 206, 16.8.96, p.4), Council Regulation (EC) No. 2466/1996 (O.J. No. L 335, 24.12.96, p.1), Commission Regulation (EC) No. 613/1997 (O.J. No. L 94, 9.4.97, p.1), Council Regulation (EC) No. 820/1997 (O.J. No. L 117, 7.5.97, p.1), Council Regulation (EC) No. 1036/1999 (O.J. No. L 127, 21.5.99, p.4), Council Regulation (EC) No. 1593/00 (O.J. No. L 182, 21.7.00, p.4), Council Regulation (EC) No. 495/2001 (O.J. No. L 72, 14.3.01, p.6) and Council Regulation (EC) No. 1782/2003 (O.J. No. L 270, 21.10.03, p.1). Council Regulation (EEC) No. 3508/92 was repealed by Article 153(1) of Council Regulation (EC) No. 1782/2003, but continues to apply to applications for direct payments in respect of the calendar years preceding 2005.

(c) O.J. L 270, 21.10.03, p. 1, as corrected by Corrigendum, O.J. L 94, 31.3.04, p.70 and as amended by Council Regulation (EC) No 583/2004, L 91 30.3.04, p.1.

(d) O.J. L 160, 26.6.99, p.80 as corrected by Corrigendum to Commission Regulation 1257/1999, O.J. L 302, 1.12.2000, p.72 and Corrigendum to Commission Regulation 1783/2003, O.J. L 94, 31.3.04, p.71 and as amended by Council Regulation (EC) No 1783/2003 O.J. L 270 21.10.03, p.70, Council Regulation (EC) No. 567/2004, O.J. L 90 27.3.04, p.1 and Council Regulation (EC) No 583/2004, O.J. L 91 30.3.04, p.1.

State for Scotland and deposited at the offices of the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY;

“eligible agricultural activity” means one or more of the following activities which, in the opinion of the Scottish Ministers are undertaken for a period or periods totalling not less than 183 days in the 2005 calendar year;–

- (a) maintaining a herd of suckler cows;
- (b) maintaining a flock of sheep comprising females of the ovine species which have lambed at least once or are at least 1 year old by 15th May in the Scheme year;
- (c) maintaining a dairy herd in–
 - (i) the islands of Shetland;
 - (ii) the islands of Orkney;
 - (iii) the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert;
 - (iv) any other islands in the Outer Hebrides and the Inner Hebrides; or
 - (v) part of the Cowal peninsula as defined in Schedule 10;
- (d) maintaining a breeding herd of farmed deer for meat production;
- (e) maintaining a breeding herd of goats for fibre production;
- (f) maintaining a breeding herd of alpaca for fibre production; or
- (g) maintaining a breeding herd of llamas for fibre production;

“eligible land” has the same meaning as in regulation 6;

“eligible livestock unit” means a livestock unit determined in accordance with regulation 10(4) and Part I of Schedule 1;

“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;

“forage area” has the same meaning as in Article 131(2)(b) of Council Regulation 1782/2003;

“goat” means any goat (of any species) which is kept by way of business for the primary purpose of fibre production;

“holding” has the same meaning as in Article 2(b) of Council Regulation 1782/2003;

“less favoured area” means the land shown coloured in blue or in pink on the designated maps–

- (a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive 84/169/EEC concerning the Community list of less-favoured farming areas within the meaning of Article 21 of Council Regulation (EC) No. 950/97(a); and
- (b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or any combination of, soil, relief, aspect or climate;

“livestock” means suckler cow, dairy cow, beef heifer, dairy heifer, sheep, goat, farmed deer, alpaca and llama;

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

- (a) one suckler cow;
- (b) 1.66 heifers 8 months and over;

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

- (c) 6.66 breeding ewes;
- (d) 6.66 breeding female goats;
- (e) 3.33 breeding female farmed deer 27 months and over;
- (f) 5 breeding female farmed deer over 6 months but less than 27 months;
- (g) 3.33 breeding female alpaca;
- (h) 5730 litres of milk quota;
- (i) 3.33 breeding female llamas;

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

“maximum stocking density” means 1.40 livestock units per hectare;

“minimum stocking density” means 0.12 livestock units per hectare;

“payable area” means the adjusted area of land on which less favoured area support is to be paid, calculated in accordance with regulation 9 and, where appropriate, regulation 11;

“rough grazings and other semi-natural areas” means land containing semi-natural vegetation including heathland, heather moorland, bog, unimproved grassland and rough grassland which is used or suitable for grazing;

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

“Scheme 2005 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2004 to 31st December 2004;

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

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

“Sheep Annual Premium Scheme” means the Sheep Annual Premium Regulations 1992(a);

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

“suckler cow” means an adult female bovine animal kept in a regular breeding herd which is not maintained primarily for the production of milk;

“Suckler Cow Premium Scheme” means the Suckler Cow Premium (Scotland) Regulations 2001(b);

“the 1996 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1996(c);

“the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(d);

“the 2001 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2001(e);

“the 2002 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2002(f);

“the 2003 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2003(g);

“the 2004 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2004(h);

(a) S.I. 1992/2677 was revoked by S.S.I. 2005/143 Schedule 5, paragraph 1.

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

(c) S.I. 1996/1500, amended by S.I. 1997/33, 1998/206 and 1999/375, and revoked by S.S.I. 1999/187, regulation 23.

(d) S.S.I. 1999/187; revoked by S.S.I. 2001/50, regulation 23, subject to the savings provision contained in that regulation.

(e) S.S.I. 2001/50; revoked by S.S.I. 2002/139, regulation 26, subject to the savings provision contained in that regulation.

(f) S.S.I. 2002/139; revoked by S.S.I. 2003/129, regulation 28, subject to the savings provision contained in that regulation.

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

(h) S.S.I. 2004/70, as amended by S.S.I. 2004/128 and S.S.I. 2005/64.

“usual good farming practices” means those practices undertaken on a holding in compliance with—

- (a) the provisions of environmental legislation set out in Part I of Schedule 2; and
- (b) the verifiable standards set out in Part II of Schedule 2.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or paragraph or to a Schedule is a reference to the regulation or paragraph of the regulation or the Schedule so numbered in these Regulations.

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of Electronic Communications Act 2000(a), which has been recorded and is consequently capable of being reproduced.

Applications for payment of less favoured area support

3.—(1) An application for less favoured area support shall be in such form and shall contain such particulars relating to that application as the Scottish Ministers may reasonably require.

(2) An applicant shall submit the application for less favoured area support in respect of the Scheme Year in question to the Scottish Ministers on or before a date each year which the Scottish Ministers shall determine from time to time.

(3) Subject to paragraph (4), if an applicant submits an application for less favoured area support in respect of the relevant Scheme Year later than the date determined by the Scottish Ministers, the Scottish Ministers must reduce, or as the case may be exclude the applicant from, payment of less favoured area support in accordance with Article 21 of Commission Regulation 796/2004.

(4) Paragraph (3) shall not apply to an applicant who has not previously claimed any subsidy dependent upon an area aid application, who submits a claim form in accordance with regulation 6(1)(b).

Eligibility for payment of less favoured area support

4.—(1) Payment of less favoured area support may be made to an applicant in respect of a Scheme Year only if—

- (a) subject to paragraphs (2) and (3), that applicant has given an undertaking, in such form as the Scottish Ministers may reasonably require, to continue to use eligible land for eligible agricultural activities for a period of not less than five years from the first payment made under—
 - (i) these Regulations;
 - (ii) the 2004 Regulations;
 - (iii) the 2003 Regulations;
 - (iv) the 2002 Regulations;
 - (v) the 2001 Regulations;
 - (vi) the 1999 Regulations; or
 - (vii) the 1996 Regulations;
- (b) that applicant applies usual good farming practices on their holding;
- (c) that applicant does not use on the holding any of the substances referred to in Article 14.2 of Council Regulation 1257/1999; and
- (d) that applicant complies with the environmental controls set out in Schedule 3 in respect of the holding.

(a) 2000 c.7.

- (2) An applicant may be released from the undertaking referred to in paragraph (1)(a)–
- (a) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to another person and that person agrees to take over the undertaking;
 - (b) if, where the applicant has ceased farming during the period for which the undertaking was given, the applicant's successor agrees to take over the undertaking; or
 - (c) if, in the opinion of the Scottish Ministers, the applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person.

(3) In the event that the applicant has ceased farming and the applicant's successor does not agree to be bound by the undertaking referred to in paragraph (1), the Scottish Ministers may, if satisfied that the applicant has, at the time of the cessation of farming, honoured a significant proportion of the undertaking, release the applicant from that undertaking.

Payment of less favoured area support

5. The Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land which is not less than 3 hectares.

Eligible land

6.—(1) Subject to paragraph (2), eligible land comprises the number of hectares of forage area in a less favoured area–

- (a) as declared in a single application submitted to the Scottish Ministers, on or before 15th May in the Scheme Year for which payment is to be made, by the applicant in accordance with Article 11 of Council Regulation 796/2004; or
- (b) where the applicant has not previously claimed any subsidy dependent upon a single application form, as declared by the applicant in a form which the Scottish Ministers shall from time to time specify.

(2) Where the forage area contains land used for CLOPS, the number of hectares declared for CLOPS and treated as eligible land for the purposes of the Scheme 2006 payment of the applicant shall not exceed the number of hectares of CLOPS for which an applicant received a Scheme 2005 payment.

(3) Eligible land includes land in respect of which the applicant has a right of use pursuant to arrangements such as short term lets, seasonal grazing and common grazing.

(4) If an application made in accordance with regulation 3 relates in part to land upon which an activity is carried out which is not an eligible agricultural activity for the purposes of these Regulations, the Scottish Ministers shall determine the area of land which is to be attributed to the eligible agricultural activity.

Transfer of a holding

7.—(1) In determining eligible land under regulation 6(1), 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 less favoured area support to the transferor of a holding, if the transferor–

- (a) fulfils the conditions laid down by paragraphs 2 to 5 of Article 74 of Commission Regulation 796/2004; and
- (b) has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned.

Amount of less favoured area support

8.—(1) Subject to paragraph (2) and regulation 13 (minimum payment), the amount of less favoured area support shall be calculated in accordance with the following formula:—

$$\text{LFAS} = \text{P} \times \text{R}$$

Where

LFAS is the amount of less favoured area support payable;

P is the payable area calculated in accordance with regulation 9 and, where appropriate, adjusted in accordance with regulation 11; and

R is the rate of payment determined in accordance with regulation 12.

(2) Where an applicant has eligible land in more than one grazing category (as determined for the purposes of regulation 9) then—

- (a) the calculation in paragraph (1) shall be applied in respect of the total area of eligible land in each grazing category and, for the purposes of each calculation—
 - (i) P is the payable area of land in each grazing category calculated in accordance with regulation 9 and, where appropriate, adjusted in accordance with regulation 11; and
 - (ii) R is the rate of payment for each type of grazing category determined in accordance with regulation 12; and
- (b) the total amount of less favoured area support payable shall be the sum of each of those calculations.

Determination of Payable Area

9.—(1) Subject to regulation 10, the payable area shall be the total of the areas of eligible land of the applicant in each grazing category, adjusted in accordance with the following formula:—

$$\text{P} = \text{E} \times \text{V}$$

Where

P is the payable area;

E is the area of eligible land in each field or shared grazing in calendar year 2005; and

V is the hectare value for each field or shared grazing determined in accordance with paragraph (2).

(2) For the purpose of paragraph (1) the hectare value shall be the entry in the third column of Schedule 5 corresponding to the grazing category in the second column of that Schedule.

(3) For the purposes of this regulation the grazing category of each field or shared grazing of the applicant shall be the entry in the second column of Schedule 5 corresponding to the entry in the first column of that Schedule relating to the stocking density of the applicant who declared the field or shared grazing in an area aid application on or before 15th May 2001.

(4) Subject to paragraph (5), for the purposes of paragraph (3), the stocking density for each field or shared grazing shall be the stocking density that was determined for that field or shared grazing by regulation 9 of the 2003 Regulations following upon an application for less favoured area support under those Regulations.

(5) Where no stocking density was determined under regulation 9 of the 2003 Regulations for a field or shared grazing then, for the purposes of paragraph (3), the Scottish Ministers shall determine a stocking density figure for that part of the land of the applicant.

Stocking density outwith maximum and minimum parameters

10.—(1) Subject to paragraph (7), the following provisions of this regulation shall apply for the purposes of the Scheme 2006 payment where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 using eligible livestock units calculated for the purpose of the Scheme 2005 payment, in accordance with paragraph (4) based on eligible agricultural activity in the calendar year 2004, and eligible land in the calendar year 2005 is either less than the minimum stocking density or greater than the maximum stocking density—

- (a) at the start of the retention period where eligibility rests on livestock claimed under the Sheep Annual Premium Scheme;
- (b) at the start of the retention period where eligibility rests on livestock claimed under the Suckler Cow Premium Scheme;
- (c) during the calendar year 2004 where eligibility rests on livestock declared separately in an application for less favoured area support;
- (d) on 31st March 2004, where eligibility rests on maintaining a dairy herd in the area referred to in paragraph (c) of the definition of “eligible agricultural activity” in regulation 2(1); or
- (e) in the opinion of the Scottish Ministers where eligibility must be determined from a combination of livestock described in sub-paragraphs (a) to (d) above.

(2) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2004 is less than the minimum stocking density, the eligible land for the purposes of the calculation at regulation 9(1) shall be the number of hectares calculated in accordance with the following formula:—

$$E_1 = K \div M$$

Where

E_1 is the area of eligible land adjusted in accordance with this regulation;

K is, subject to paragraph (6), the number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2004; and

M is the minimum stocking density.

(3) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in calendar year 2004 is greater than the maximum stocking density, the eligible land for the purposes of the calculation at regulation 9(1) shall be the number of hectares calculated in accordance with the following formula:—

$$E_2 = (F \times Q) \div (J \div F)$$

Where

E_2 is the area of eligible land adjusted in accordance with this regulation;

F is the area of eligible land determined in accordance with regulation 9(1);

Q is the maximum stocking density; and

J is the number of eligible livestock units based on eligible agricultural activity undertaken in calendar year 2004.

(4) For the purposes of paragraphs (1), (2) and (3), the number of eligible livestock units shall be calculated using—

- (a) where eligibility rests solely on livestock claimed under the Sheep Annual Premium Scheme, the greater of—

- (i) the number of ewes and gimmers declared as the flock composition as part of a claim for Sheep Annual Premium; or
 - (ii) the lesser of the number of livestock claimed and the number of livestock quota units held;
- (b) where eligibility rests solely on livestock claimed under the Suckler Cow Premium Scheme, the greater of–
- (i) the number of cows declared as the herd composition as part of a claim for Suckler Cow Premium; or
 - (ii) the lesser of the number of livestock claimed and the number of livestock quota units held;
- (c) where neither sub-paragraph (a) nor (b) applies, the number of livestock units determined by a decision of the Scottish Ministers using any, or a combination of any, of the following:–
- (i) livestock described in sub-paragraph (a) above;
 - (ii) livestock described in sub-paragraph (b) above;
 - (iii) livestock units calculated from numbers of deer, goats, alpacas or llamas held throughout the relevant calendar year;
 - (iv) where the applicant has not claimed any subsidy under the Sheep Annual Premium Scheme, ewes, gimmers and hogs declared separately as being held throughout the Scheme Year;
 - (v) where the applicant has not claimed any subsidy under the Suckler Cow Premium Scheme, suckler cows declared separately as being held throughout the Scheme Year; or
 - (vi) where the applicant maintains a dairy herd in an area referred to in paragraph (c) of the definition of “eligible agricultural activity” in regulation 2(1), livestock units calculated from litres of milk quota held as at 31st March 2004.

(5) Where–

- (a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 9); and
- (b) where eligible land, for the purpose of the calculation in regulation 9(1), for that applicant has been reduced under paragraph (2) or (3),

the Scottish Ministers shall apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 9(1).

(6) Where an applicant fails to achieve the minimum stocking density as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981(a) or in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983(b), the Scottish Ministers may, by a decision, determine the total number of livestock units to be used for the purpose of the calculation at paragraph (2).

(7) Where the Scottish Ministers do not hold for an applicant any details of eligible livestock units, based on eligible agricultural activity in 2004 in relation to a Scheme 2005 payment–

- (a) the stocking density referred to in paragraph (1) shall be calculated in accordance with Parts I and II of Schedule 1 on the basis of eligible agricultural activity undertaken in calendar year 2005; and
- (b) the eligible livestock units referred to in paragraph (4) shall be calculated using the number of livestock units determined by a decision of Scottish Ministers using numbers of suckler cows, ewes, gimmers, hogs, deer, goats, alpacas and llamas declared separately as being held throughout the 2005 calendar year and, where the applicant maintains a dairy herd in the area referred to in paragraph (c) of the definition of “eligible

(a) 1981 c.22.

(b) S.I. 1983/1950, as amended by S.I. 1993/3119, S.I. 1995/2922 and further amended, as regards Scotland, by S.S.I. 2001/52, S.S.I. 2001/55, S.S.I. 2001/101 and S.S.I. 2001/390.

agricultural activity” in regulation 2(1), livestock units calculated from litres of milk quota held as at 31st March 2005.

Enterprise mix

11.—(1) Subject to paragraphs (3) and (4), where the applicant maintains at least 10% of the total eligible livestock units of the applicant based on eligible agricultural activity undertaken in the calendar year 2004 as cattle, the payable area calculated in accordance with regulation 9 shall be adjusted in accordance with this regulation according to the following formula:—

$$P_1 = P_2 \times Z$$

Where

P_1 is the payable area adjusted in accordance with this regulation;

P_2 is the payable area calculated in accordance with regulation 9; and

Z is the multiplier contained in the second column of Schedule 6 corresponding to either:

- (a) the appropriate proportion of eligible livestock units, based on eligible agricultural activity in the calendar year 2004, maintained as cattle; or
- (b) if paragraph (3) applies, the appropriate proportion of livestock units, determined in accordance with paragraph (4) and Part I of Schedule 1, based on eligible agricultural activity in the calendar year 2005, maintained as cattle.

(2) Where an applicant fails to achieve the necessary cattle livestock units for the purposes of this regulation as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981 in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983, the Scottish Ministers may, by a decision, determine the total number of cattle livestock units to be used for the purposes of this regulation.

(3) Where—

- (a) the Scottish Ministers do not hold for an applicant any details of eligible livestock units, based on eligible activity in 2004 in relation to a Scheme 2005 payment; or
- (b) the multiplier determined in accordance with Schedule 6 based on eligible agricultural activity undertaken in 2004, and the multiplier contained in the second column of Schedule 6 corresponding to the appropriate proportion of livestock units, determined in accordance with paragraph (4) on the basis of eligible agricultural activity in 2005, are found, following administrative and periodic checks carried out in accordance with Articles 67 to 69 of Commission Regulation 817/2004, or notification by the applicant, to be different

the livestock units referred to in paragraph (1) shall be determined in accordance with paragraph (4).

(4) Where it is established in accordance with paragraph (3) that a different multiplier is appropriate, livestock units for the purposes of paragraph (1) shall be calculated using the number of livestock units determined by a decision of the Scottish Ministers using numbers of suckler cows, ewes, gimmers hogs, deer, goats, alpacas and llamas held throughout the 2005 calendar year and, where the applicant maintains a dairy herd in an area referred to in paragraph (c) of the definition of “eligible agricultural activity” in regulation 2(1), livestock units calculated from litres of milk quota held as at 31st March 2005.

Rate of Payment of less favoured area support

12.—(1) For the purposes of regulation 8, the rate of payment of less favoured area support shall be determined in accordance with this regulation.

(2) Where, for the purposes of regulation 9, the grazing category of land, as specified in Schedule 5, is A or B, the rate of payment shall be the rate per hectare of the payable area set out

in the entry in the second column in Part I (More Disadvantaged Land) of Schedule 7 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (4).

(3) Where, for the purposes of regulation 9, the grazing category of land, as specified in Schedule 5, is C or D, the rate of payment shall be the rate per hectare of the payable area set out in the entry in the second column in Part II (Less Disadvantaged Land) of Schedule 7 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (4).

(4) For the purposes of paragraphs (2) and (3), the fragility category applicable to the applicant shall be determined according to the fragility category of the parish in which the main farm of the applicant lies as set out in Schedule 8 to these Regulations.

(5) For the purpose of paragraph (4), the main farm of the applicant shall be the farm identified as the main farm in the application for less favoured area support submitted by the applicant in accordance with regulation 3.

Minimum payment

13. In respect of the Scheme 2006 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than £350.

Powers of authorised persons

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

- (a) verification of the accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Articles 67 to 69 of Commission Regulation 817/2004; or
- (b) ascertaining whether an offence under these Regulations has been or is being committed,

and in doing so may be accompanied by a person assigned to assist the authorised person, for those purposes.

(2) An authorised person may enter any land or premises (other than dwelling houses not being used in connection with these Regulations).

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

- (a) inspect and verify the total area of such land;
- (b) inspect and count livestock on such land and require the applicant to arrange for the collection of animals, penning and securing;
- (c) require production of and examine any records in whatever form, and take copies of those records;
- (d) remove and retain any document or other record referred to in sub-paragraph (c) above which may be required for use as evidence in proceedings under these Regulations; and
- (e) inspect and verify that the applicant has complied with the environmental controls set out in Schedule 3 and with usual good farming practices.

(4) An authorised person may require, where any computer and any associated apparatus or material which is or has been used in connection with any such records mentioned in paragraph (3)(c), wherever situated, records which are kept by means of such computer or associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

Assistance to authorised persons

15. An applicant, any employee or agent of an applicant or any person having, or appearing to have, charge of animals on the land shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable that person to exercise any power conferred by regulation 14.

Withholding or recovery of less favoured area support

16. The Scottish Ministers may withhold or recover the whole or any part of any payment of less favoured area support payable or paid to an applicant in any of the following circumstances:—

- (a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to regulation 4(1)(a) from which the applicant has not been released under regulation 4(2) or 4(3);
- (b) where the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 14, or fails without reasonable excuse to comply with a requirement or request made by an authorised person under regulation 14 or 15;
- (c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with usual good farming practices on or in relation to the holding;
- (d) where, in the opinion of the Scottish Ministers, the applicant has failed to comply with the environmental controls set out in Schedule 3 on or in relation to the holding.

Rate of interest

17. For the purpose of Article 73 of Commission Regulation 796/2004, interest shall be charged thereon at the rate of one percentage point above the sterling three month London Interbank Offered Rate on a day-to-day basis for the period specified in that Article.

Cross-border holdings

18. Schedule 9 applies to agency arrangements and to cross-border holdings.

Offences

19.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person part of, or the whole of, a payment of less favoured area support under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, shall be guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 15) in the exercise of the powers conferred by regulation 14 shall be guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 14 or request under regulation 15 shall be guilty of an offence.

Penalties

20.—(1) A person guilty of an offence under regulation 19(1) or (2) 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 regulation 19(3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecutions

21.—(1) Summary proceedings for an offence under regulation 19 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995^(a) (date of commencement of proceedings) applies for the purposes of this regulation as it does for the purposes of that section.

Offences by bodies corporate

22.—(1) Where an offence under these Regulations 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 other 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 any 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.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts or defaults of a member in connection with the member's management functions as if that member were a director of the body corporate.

Appeal against decision as to eligibility of holding

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

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

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

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

(5) Subject to regulation 24, the determination of such persons appointed shall be binding on the Scottish Ministers.

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

Review

24.—(1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 23(4).

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the date of the determination referred to in regulation 23(4).

(3) On an application for a review under this regulation, the Scottish Ministers shall refer the matter to a person appointed by the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors.

(a) 1995 c.46.

(4) The person appointed for the purpose of this regulation shall review the said determination and may—

- (a) consider any document or other evidence produced by the applicant or the Scottish Ministers (whether or not that document or other evidence was available at the time of the said determination);
- (b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and
- (c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.

(5) The person appointed shall review the said determination and shall make a decision confirming or refusing that determination, and shall intimate that decision to the Scottish Ministers and to the applicant in writing.

(6) The person appointed shall be entitled to require the reasonable costs of the review to be paid by such party as that person may direct, and the person appointed shall determine the amount of such costs.

Amendment of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004

25.—(1) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004(a) shall be amended in accordance with this regulation.

(2) In regulation 3 (Application in relation to IACS matters) for “(g)” substitute “(ga)”.

(3) In regulation 4 (decisions amenable to review and appeal), insert—

(a) in paragraph (e) after “2004”—

“or under regulation 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2005.”; and

(b) after paragraph (g)—

“(ga) a decision by the Scottish Ministers under regulation 7(2), 9(5), 10(4), 10(6), 10(7), 11(2) and 11(4) of the Less Favoured Area Support Scheme (Scotland) Regulations 2005;”.

Revocation and savings provisions

26.—(1) Subject to the savings referred to in paragraph (2), the Less Favoured Area Support Scheme (Scotland) Regulations 2004(b), the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2004(c) and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005(d) are hereby revoked.

(2) Notwithstanding paragraph (1), in respect of a Scheme 2004 payment or a Scheme 2005 payment, within the meaning of the 2004 Regulations, the 2004 Regulations shall continue to have effect as if those Regulations had not been revoked.

ROSS FINNIE

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
10th November 2005

(a) S.S.I. 2004/381, amended by S.S.I. 2005/117 and 2005/225.
(b) S.S.I. 2004/70, as amended by S.S.I. 2004/128 and S.S.I. 2005/64.
(c) S.S.I. 2004/218.
(d) S.S.I. 2005/64.

SCHEDULE 1

Regulation 2(1) and 10(4)

LIVESTOCK UNITS AND STOCKING DENSITY

PART I

CALCULATION OF LIVESTOCK UNITS (“LU”)

<i>For all claimants</i>		
Number of Suckler Cows		X 1.0 = <u> </u> A <u> </u> LU
Number of heifers 8 months and over		X 0.6 = <u> </u> B <u> </u> LU
Number of Breeding Ewes		X 0.15 = <u> </u> C <u> </u> LU
Number of Breeding Female Goats		X 0.15 = <u> </u> D <u> </u> LU
Number of Breeding Female Alpaca		X 0.3 = <u> </u> E <u> </u> LU
Number of Breeding Female Deer (hinds over 27 months)		X 0.3 = <u> </u> F <u> </u> LU
Number of Breeding Deer (over 6 months but less than 27 months)		X 0.2 = <u> </u> G <u> </u> LU
Number of Breeding Llamas		X 0.3 = <u> </u> H <u> </u> LU
<i>For dairy farmers maintaining a dairy herd in the area referred to in paragraph (c) of the definition of “eligible agricultural activity” in regulation 2(1).</i>		
Litres of Milk Quota		/ 5730 = I LU

PART II

CALCULATION OF STOCKING DENSITY

Total LFASS Livestock Units (A = B = C = D = E = F = G = H = D	=	<u> </u> J <u> </u> LU
Total Forage Area	=	<u> </u> K <u> </u> Ha
Stocking Density (to two decimal places)	=	J divided by K

USUAL GOOD FARMING PRACTICES

PART I

ENVIRONMENTAL LEGISLATION

Water pollution

1. The Control of Pollution Act 1974(a).
2. The Code of Good Practice for the Prevention of Environmental Pollution from Agricultural Activity(b).
3. The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(c).
4. The Groundwater Regulations 1998(d).

Air pollution

5. The Clean Air Act 1993(e).
6. The Hill Farming Act 1946(f).

Fertilisers and pesticides

7. The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003(g).
8. Part III of the Food and Environment Protection Act 1985(h) and the Control of Pesticides Regulations 1986(i).
9. The Plant Protection Products (Scotland) Regulations 2005(j).

Designated sites

10. The Ancient Monuments and Archaeological Areas Act 1979(k).
11. The Wildlife and Countryside Act 1981(l).
12. The Conservation (Natural Habitats etc.) Regulations 1994(m).

(a) 1974 c.40 as amended.

(b) Issued by the Scottish Ministers on 11th March 2005, and approved by them by the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 (S.S.I. 2005/63).

(c) S.S.I. 2003/531.

(d) S.I. 1998/2746, amended by S.S.I. 2003/323 and S.S.I. 2005/22.

(e) 1993 c.11 as amended.

(f) 1946 c.73 as amended.

(g) S.S.I. 2003/51, amended by S.S.I. 2003/169.

(h) 1985 c.48 as amended.

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

(j) S.S.I. 2005/331.

(k) 1979 c.46 as amended.

(l) 1981 c.69 as amended.

(m) S.I. 1994/2716. Relevant amendments are the Land Reform (Scotland) Act 2003, asp 2, S.I. 1996/973, 1997/3055, 1999/1820, S.S.I. 2000/323 and S.S.I. 2004/475.

PART II

VERIFIABLE STANDARDS

1. Any farmer who constructs a new silage or storage facility must give notification to the Scottish Environmental Protection Agency prior to starting to use it. The farmer must keep records showing that this notification has been given.

2. Where it is proposed to dispose of sheep dip on a holding, prior authorisation to do this must be obtained from the Scottish Environmental Protection Agency. The farmer must keep documents and records showing that this authorisation has been obtained. The farmer must keep records detailing the manner of disposal of the sheep dip.

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

4. Removal or destruction of any hedges, stone walls or other boundary features shall not be allowed except with the prior written agreement of the Scottish Ministers.

5. Any farmer who intends to undertake any operation which is likely to damage a Site of Special Scientific Interest designated pursuant to section 28 of the Wildlife and Countryside Act 1981 must obtain the prior approval of Scottish Natural Heritage to the carrying out of that operation. The farmer shall maintain records showing that this authorisation has been obtained.

6. Livestock shall be managed in such a way as to avoid overgrazing and undergrazing. Where the Scottish Ministers form the opinion that land was being overgrazed or undergrazed, a management regime including a maximum (and, where appropriate, a minimum) stocking rate to be observed on that site will be prescribed. Overgrazing is defined as 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; and to ensure that livestock is managed in such a way as to prevent damage to sensitive habitats^(a) that are important for biodiversity reasons. Undergrazing means not using land fully, or scrub or coarse becoming evident, where it is detrimental to the environmental interest of the land.

7. Unsuitable supplementary feeding methods shall be avoided.

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

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

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

(a) Sensitive habitats, important for biodiversity reasons, may include juniper and montone scrub, herb-rich swards, already coded areas and wetland habitats as well as other natural and semi-natural habitats.

ENVIRONMENTAL CONTROLS

1. To ensure the protection of rough grazings and other semi-natural areas, new drainage works, ploughing, clearing, levelling, re-seeding or cultivating must not be undertaken. Livestock must be managed to avoid poaching to a level which would destroy the natural vegetation in respect of such rough grazings and other semi-natural areas.

2. To ensure the protection of rough grazings and other semi-natural areas, pesticides, lime or fertiliser must not be applied to rough grazings and other semi-natural areas except–

- (a) to control injurious weeds to which the Weeds Act 1959(a) applies;
- (b) to control bracken with Asulam or other approved herbicides; or
- (c) in exceptional circumstances where no conservation damage will result, lime or fertiliser may be applied.

3. Muirburn may only be carried out in accordance with guidance approved by the Scottish Ministers.

4. The damage to features of any historic or archaeological interest must be avoided and guidance approved by the Scottish Ministers must be followed for the protection of such areas.

5. Guidance on the prevention of environmental pollution from agricultural activity approved by the Scottish Ministers must be followed for the avoidance of pollution or to minimise the risk of pollution through good management of nutrients and effluents.

6. Notwithstanding the provisions of paragraphs 1 to 5 above, any of the matters referred to therein which would otherwise be subject to the relevant control, may be carried out if approved in terms of the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002(b).

(a) 1959 c.54 as amended.
(b) S.S.I. 2002/6.

SCHEDULE 4

Regulation 2(1)

CEREALS LINSEED OILS AND PROTEINS (CLOPS) TYPES AND USE CODES

CROP	CODE
LINSEED CROP	
LINSEED	LIN
OILSEED CROP	
SPRING OILSEED RAPE	SOSR
WINTER OILSEED RAPE	WOSR
CEREAL CROP	
BUCKWHEAT	BW
CANARY SEED	CANS
DURUM WHEAT	DW
MAIZE	MAIZ
MILLET	MIL
MIXED CEREALS	MC
RYE	RYE
SORGHUM	SOR
SPRING BARLEY	SB
SPRING OATS	SO
SPRING WHEAT	SW
SWEETCORN	SC
TRITICALE	TRIT
WINTER BARLEY	WB
WINTER OATS	WO
WINTER WHEAT	WW
PROTEIN CROPS	
FIELD BEANS	FB
PROTEIN PEAS	PP
SWEET LUPINS	SL

SCHEDULE 5

Regulation 9

GRAZING CATEGORY: HECTARE VALUES

<i>STOCKING DENSITY</i>	<i>GRAZING CATEGORY</i>	<i>HECTARE VALUE</i>
Up to and including 0.19 LU/ha	A	0.167
0.2 to 0.39 LU/ha	B	0.333
0.4 to 0.59 LU/ha	C	0.667
0.6 or more LU/ha	D	0.8

SCHEDULE 6

Regulation 11

ENTERPRISE MIX

<i>ENTERPRISE MIX</i>	<i>HECTARE MULTIPLIER</i>
If 50% or more of livestock units are made up of cattle LU	1.70
If 10% or more, but less than 50% of livestock units are made up of cattle LU	1.35

SCHEDULE 7

Regulation 12

RATES OF PAYMENT FOR LESS FAVOURED AREA SUPPORT

PART I

MORE DISADVANTAGED LAND

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
Very Fragile (Islands)	£47.00
Fragile (Mainland)	£45.00
Standard	£39.00

SCHEDULE 8

Regulation 12(4)

FRAGILITY CATEGORIES

FRAGILITY MARKERS FOR PARISH CODE NUMBERS

Standard																				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
22	23	24	28	30	31	32	35	36	38	39	40	41	42	43	44	45	46	47	48	49
50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91
92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112
113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133
134	135	136	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193
194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214
215	216	217	218	219	220	221	242	243	244	245	246	247	248	249	250	251	252	253	254	255
256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	290	291	292
293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313
314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334
335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355
356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376
377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397
398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418
419	420	421	422	423	424	425	426	427	428	429	430	431	432	445	449	451	466	467	468	469
470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490
491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511
512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532
533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553
554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574
575	576	577	578	579	580	581	582	583	584	585	598	600	601	606	609	635	636	637	638	639
640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660
661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681
682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702

703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723
724	725	726	727	728	729	730	731	732	733	734	735	769	770	771	772	773	774	775	776	777
778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798
799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819
820	821	822	823	824	825	826	827	841	842	843	844	845	846	847	848	849	850	851	853	854
855	856	859	860	861	863	864	865	866	868											

Fragile

25	26	27	29	33	34	37	137	138	139	140	141	142	143	144	145	146	152	154	155	156
157	158	159	160	161	162	163	169	170	171	172	173	174	175	222	223	224	225	226	227	228
229	230	231	232	233	234	235	236	237	238	239	240	241	280	281	282	283	284	285	286	287
288	289	433	434	435	436	437	438	439	440	441	442	446	447	448	450	452	453	454	455	586
587	588	589	590	591	592	593	594	595	596	597	599	602	603	604	605	607	608	736	737	738
739	740	741	742	743	744	745	746	747	748	749	750	751	752	757	758	759	760	761	762	763
764	765	766	767	768	828	829	830	831	832	833	834	835	836	837	838	839	840	852	857	858
862	867																			

Very Fragile

147	148	149	150	151	153	164	165	166	167	168	274	275	276	277	278	279	443	444	456	457
458	459	460	461	462	463	464	465	610	611	612	613	614	615	616	617	618	619	620	621	622
623	624	625	626	627	628	629	630	631	632	633	634	753	754	755	756	869	870	871	872	873
874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891			

AGENCY AND CROSS BORDER HOLDINGS**Agency arrangements**

1. The Scottish Ministers may, with the agreement of any competent authority, arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.

2. The Scottish Ministers may also agree to exercise functions on behalf of another competent authority corresponding to those which are exercisable by the Scottish Ministers under these Regulations.

3. Any such arrangement shall be in writing and be signed by or on behalf of the Scottish Ministers and the competent authority and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

Set off

4. Without prejudice to the amount of any sum payable by the Scottish Ministers to any other competent authority, the amount of any sum payable by the Scottish Ministers, whether as principal or agent, by way of a specified payment may be set off against the amount of any sum recoverable by the Scottish Ministers, whether as principal or agent.

Calculation of payments in respect of cross border holdings

5. Where any holding in respect of which a claim has been made is a cross border holding, the Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land, providing the applicant has declared the eligible land in a single application which has been treated as a valid application by the competent authority concerned.

6. Whether the eligible agricultural activity undertaken on the eligible land is an integral part of the management of the whole holding or independently managed, Scottish Ministers shall only pay less favoured area support in respect of the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.

7. For cross-border holdings where the applicant has submitted a declaration of eligible land to another competent authority, the Scottish Ministers shall apply the standard rate of payment.

8. Applicants in respect of cross border holdings are required to supply such information as authorised persons may reasonably require to assess the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.

9. All conditions applying to applicants in respect of holdings lying wholly within the less favoured areas shall apply equally to applicants in respect of cross border holdings.

SCHEDULE 10

Regulation 2(1)

COWAL PENINSULA

The areas of land within Argyll & Bute Council comprising those parts of the parishes of Dunoon & Kilmun and Inverchaolain bounded as follows:–

Starting in the North on the shore of Loch Striven at point national grid reference NS/095708; then in an easterly direction along the MOD boundary to point national grid reference NS/098708; then in a northerly direction along the MOD boundary to point national grid reference NS/097711; then in a north-easterly direction along the MOD boundary to point national grid reference NS/098711; then in a northerly direction along the MOD boundary to point national grid reference NS/098712; then in a north north-easterly direction along the MOD boundary to point national grid reference NS/099713; then in a north-easterly direction to point national grid reference NS/103714; then in a south-easterly direction to point national grid reference NS/107712; then in an easterly direction along the forestry fence to point national grid reference NS/111712; then in a southerly direction along the forestry fence to point national grid reference NS/110708; then in a south-easterly direction along the forestry fence to point national grid reference NS/112707; then in a south south-easterly direction along the forestry fence to point national grid reference NS/113704; then in a south-easterly direction to point national grid reference NS/114704; then in a southerly direction along the forestry fence to point national grid reference NS/114699; then in a south-westerly direction along the forestry fence to point national grid reference NS/112699; then in a south south-westerly direction along the forestry fence to point national grid reference NS/111693 where the forestry fence meets the A815; then in a southerly direction along the A815 to point national grid reference NS/112689; then in a north-easterly direction along the forestry fence to point national grid reference NS/114690; then in an east south-easterly direction along the forestry fence to point national grid reference NS/117688; then in a southerly direction along the forestry fence to point national grid reference NS/116685; then in a westerly direction to point national grid reference NS/114685 where the forestry fence meets a track; then in a southerly direction down the track to point national grid reference NS/114683; then in a westerly direction down a burn to point national grid reference NS/112682 where the burn meets the A815; then in a southerly direction down the A815 to point national grid reference NS/111679; then in a westerly direction to point national grid reference NS/110679 at the high water mark; then in a westerly direction for approximately 1200 metres which then turns in a northerly direction all along the shore back to the starting point of national grid reference NS/095708.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which replace the Less Favoured Area Support Scheme (Scotland) Regulations 2004 (“the 2004 Regulations”), make provision for the purposes of implementation of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund and Commission Regulation (EC) No. 817/2004 laying down detailed rules for the application of Council Regulation No. 1257/1999.

They apply to holdings in respect of which the Scottish Ministers are the competent authority under the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005 (regulation 1(2)).

Applications for less favoured area support (“LFAS”) are to be made to the Scottish Ministers on a date which they shall determine each year. Failure to meet the deadline will result in reduction of the payment of support (regulation 3).

Eligibility for payment of LFAS is dependent upon the applicant meeting the criteria set out in regulation 4. It can only be paid to an applicant who carries out an eligible agricultural activity (defined in regulation 2(1)) on eligible land (defined in regulation 6). No payment will be made where the amount of eligible land is less than 3 hectares (regulation 5). There is provision at regulation 7 to determine to whom payment should be made where a holding is transferred during a Scheme Year.

LFAS is paid for eligible hectares on farms in Scottish less favoured areas at specified rates (regulations 8 and 12). The rate is fixed according to the grazing category (regulation 9 and Schedule 5) and the fragility of the parish in which the main farm of the applicant lies (regulation 12 and Schedule 8).

The area of land on which LFAS is paid is normally the area of eligible land which the applicant has, adjusted in accordance with a formula set out in regulation 9(1). The manner in which the area of eligible land is adjusted will depend on the grazing category of that land (regulation 9(2)). The grazing category is allocated according to the historical stocking density of the applicant's land (regulation 9(3)).

A separate stocking density is calculated annually, and for the 2006 Scheme, in accordance with an agreement with the European Commission, is based upon eligible land in 2005 and eligible agricultural activity in 2004. Where the applicant has a stocking density which falls above the maximum stocking density or below the minimum stocking density, then the area of land on which LFAS is to be paid is instead calculated in accordance with formulae set out in regulation 10. The maximum and minimum stocking densities are laid out in regulation 2. There is provision at regulation 10(4) to allow the Scottish Ministers to determine the total number of livestock units where an applicant has not been able to achieve the minimum stocking density because of slaughter in consequence of foot and mouth disease.

Where more than 10% of the applicant's livestock units are made up of cattle, the area of land on which LFAS will be paid will be increased in accordance with the adjustment set out in regulation 11 and Schedule 6.

Regulation 13 fixes a minimum payment of £350. Regulation 14 contains powers of enforcement. Regulation 16 provides for withholding or recovery of LFAS where there is a breach of the rules of the Scheme. Regulations 19 to 22 deal with offences and penalties.

Regulations 23 and 24 deal with an applicant's right of appeal against decisions taken by the Scottish Ministers. Regulation 25 makes amendments to the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 to provide for an applicant's right of appeal against decisions taken by the Scottish Ministers.

Regulation 26 revokes the 2004 Regulations (and also those instruments which amended the 2004 Regulations) (regulation 26(1)). Regulation 26 also makes a saving provision to ensure that the 2004 Regulations continue to apply to Scheme 2004 payments and Scheme 2005 payments made under the 2004 Regulations (regulation 26(2)).

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

£4.50

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 11/05 19593