

EXECUTIVE NOTE
THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) REGULATIONS
2005 SSI/2005/569

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure and will come into force on December 2005. The Regulations replace SSI No. 2004/70, as amended by SSI No. 2004/128 and SSI No. 2005/64.

Background

2. The European Commission Rural Development regulations make provision for a scheme of area based support for farmers in the Less Favoured Areas (LFA). Less favoured areas are those that suffer from a permanent natural disadvantage such as, for example, poor soil, adverse climate or difficult topography, that makes it difficult for them to compete on level terms with other areas. In Scotland 85% of agricultural land is classified as within an LFA. The principal regulations, SSI 2004/70, provided for payment of Less Favoured Area Support (LFAS) in Scotland in 2004. The SSI rolls forward these arrangements for the 2006 scheme.

Description of the LFAS Scheme

3. The scheme has broadly remained the same since 2003 and is based on the principle that payments should be based on land quality. Since payments provide compensation for additional costs incurred as a result of natural disadvantage they must be related to agricultural activity. By and large the better the quality the land, the greater the agricultural activity and therefore the higher the costs that need to be compensated. Consequently the higher the quality of the land the higher the payments, although there are adjustments for location and stock mix. The scheme identifies eligible hectares according to designated grazing categories, followed by, if appropriate, adjustments to account for minimum or maximum stocking density restrictions, and the influence of cattle on the holding. Having arrived at the number of adjusted hectares, payment is made at a rate that reflects the degree of disadvantage.

4. The intention is to apply similar arrangements to the LFASS 2006 scheme. The main changes arise as a direct consequence of the Single Farm Payment which will replace the range of production subsidies previously paid under the Common Agricultural Policy. As a result, the previous means of identifying livestock numbers (namely, Sheep Annual Premium Scheme (SAPS) and Suckler Cow Premium Scheme (SCPS) claims) will no longer be available. Therefore, the features of LFASS that are livestock dependant (namely, minimum and maximum stocking densities and enterprise mix), will have to change.

5. The SSI includes the following changes to the LFASS 2006 scheme:

Regulation 2

“Eligible agricultural activity” is defined in regulation 2 (1) as one or more of certain defined activities which “in the opinion of Scottish Ministers are undertaken on a continuous basis”. Previously, when we were able to rest eligible activity on SAPS and SCPS activities undertaken in the preceding calendar year (i.e. the scheme year), we have had the underlying assurance of sheep and cattle activity being undertaken on a “continuous basis” courtesy of

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the separate SAPS and SCPS retention requirements. For LFASS 2006 we will use as a proxy historic data from the 2004 livestock subsidy schemes for the minimum and maximum stocking density checks (regulation 10) and the Enterprise mix (regulation 11). However, to qualify for payment, we still expect the applicant to carry out eligible agricultural activity on eligible land during the scheme year. As we cannot rely on livestock retention periods for assurance of eligible activities being undertaken on a continuous basis in the calendar year 2005 in the same way as in previous years, we will require them to maintain their eligible activity for the majority (i.e. 183 days) of the 2005 calendar year to qualify.

EC legislative definitions are updated to reflect the new IACS regulations as are the definitions of “competent authority”, “forage” and “holding”.

Regulation 3 – Applications for Less Favoured Area Support

Reference in paragraph 3 to the IACS late penalty provision reflects the new IACS implementing regulation, Commission Regulation (EC) No. 796/2004.

Regulation 6 – Eligible land

This defines eligible land for the purposes of LFASS as LFA forage hectares declared in a Single Application Form (SAF) 2005 submitted to Scottish Ministers in accordance with the IACS regulation, Council Regulation (EC) No 1782/2003.

Regulation 9 – Determination of Payable Area

The formula in paragraph (1) enables the calculation of the payable area to be based on eligible land in 2005.

Regulation 10 – Stocking density outwith maximum and minimum parameters

This regulation: defines livestock units eligible for inclusion in the stocking density calculation; calculates stocking density using 2004 eligible stock numbers and 2005 land; and includes formulae to restrict hectares payable, where the maximum or minimum parameters are breached. It also allows 2005 stock numbers to be used for first time applicants; and others for whom we hold no historic livestock data.

Regulation 11 – Enterprise mix

The formula in this regulation enhances the payable area, where appropriate, by one of two hectare multipliers (set out in Schedule 5) determined by the percentage of livestock units maintained as eligible cattle in 2004. However, EC acceptance of SEERAD’s policy to use 2004 livestock data for LFASS 2006 included a condition that farmers notify changes in enterprise mix in 2005 which means that, if an applicant’s entitlement to enterprise mix uplift were based on eligible activity in 2005, a different hectare multiplier would apply to his payable area. For this reason, and to accommodate first time applicants; and others for whom we hold no historic livestock data, paragraphs (3) and (4) allow, where appropriate, separately declared 2005 animal data to be used in the formula in paragraph (1).

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Regulations 12 – 25

These regulations provide for rates of payment; a minimum level of payment of £350; powers of entry; recovery of undue payments; offences; penalties and an avenue of appeal against land classification, and are unchanged from the previous regulations.

Regulation 26

As in previous years these regulations include an amendment to the Agricultural (Appeals) (Scotland) regulations. Although the latter were consolidated in 2004 and amended in 2005, they must be updated to indicate those LFASS 2005 regulations which are amenable to appeal.

Effects of the Instrument

6. The effect of this instrument is:
- to roll forward the 2005 arrangements for the 2006 Scheme, including the provision to use historic livestock data; and
 - reflect new EC legislation.

The SSI will enable the Scottish Executive to inject around £61 million into LFA farming businesses in Scotland in Spring 2006.

Consultation

7. The LFASS 2006 scheme arrangements were discussed and agreed with LFA stakeholders.

Compliance with Parliamentary Procedures

8. Article 10(2) of The Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (No. 1096) is being complied with. This provision normally requires at least 21 days to elapse between an instrument being laid and it coming into force.

Periodicity of the Instrument

9. This Instrument is for LFASS 2006 only, and it is envisaged that it will remain in force until early 2007 when SEERAD will introduce a new instrument for the 2007. The reasons for this are:

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- The Commission made clear that the arrangements we propose for LFASS 2006 were acceptable for one year only as it is the final year of the current rural development programming period.
- The EC legal basis for the Less Favoured Area Support Scheme (LFASS) is the Rural Development Regulation EC 1257/1999 which allows Member States to operate a range of Rural Development (RD) measures, including LFASS. The Council regulation required that all measures be combined in a rural development plan for each Member State, or region within each Member State. The details of LFASS were included in the Scottish Rural Development Plan, which was approved by the EC. LFASS 2006 will be the final year of LFA support under the current Rural Development Plan which runs from 2000 – 2006. A new plan is required from 2007.
- A new EC regulation on support for rural development - Council Regulation (EC) No 1698/2005 - was finalised in September but there is as yet no implementing regulation. The new Council regulation includes provision for a revision to LFA designation and support which will not come into force until 2010. In the interim, those articles of 1257/1999 relevant to LFA support will remain in force for 2007 – 2009, but subject to the new programming arrangements. It requires rural development strategies to be drawn up at EU and Member State levels, before regional rural development plans can be drawn up or finalised. The EU and UK processes will take until summer 2006 to complete and we cannot make the relevant domestic legislation until we have EC approval of new LFA support arrangements in the context of the Scottish rural development plan, later next year.

Scottish Executive Rural Affairs Department
10 November 2005