EXECUTIVE NOTE TO

THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) REGULATIONS 2007
SI/2007/439

1. The above instrument (hereafter 'the principal regulations') was 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 28 September 2007. The regulations replace SSI No. 2005/569 as amended by SSI No. 2005/64, SSI No. 2005/624 and SSI No 2006/601.

Policy Objectives

2. The purpose of the principal regulations is to provide the legal basis for making payments through the Less Favoured Area Support Scheme (hereafter 'LFASS'). EC rural development legislation makes provision for such a scheme of area based support for LFA farmers in recognition that they 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 being within an LFA.

3. LFA support throughout the previous rural development programming period was governed by Council Regulation (EC) No 1257/1999 and delivered in Scotland via domestic legislation as part of the Scottish Rural Development Plan 2000-2006. In 2005, the European Commission introduced a new rural development regulation Council Regulation (EC) 1698/2005 (hereafter 'the new RDR') covering the period 2007 – 2013, which for the most part came into force on 1 January 2007, and repealed (except in cases of legacy payments carried over from the 2000-2006 programme) and replaced 1257/1999.

4. With one exception, the articles of the new RDR dealing with LFA support do not come into force until 2010, to coincide with a EU-wide LFA redesignation exercise. For this reason, the LFA support component of 1257/1999 remains in force until 2010. The single exception to this is the third indent of article 14(2) of 1257/1999 which required beneficiaries of LFA support to apply usual good farming practices on their land. This requirement has been repealed by the new RDR and replaced with the need to comply with the IACS cross compliance conditions contained in articles 4 and 5 of Council Regulation 1782/2003 (establishing common rules for direct support under the common agricultural policy).

5 LFA support is one of number of optional measures to aid rural development from the European Agricultural Fund for Rural Development (EAFRD) provided for in the RDR. This, like its predecessor, also requires all rural development measures to be applied within a region to be integrated into a single rural development programme which has been considered and approved by the EC. Each regional programme remains in force for the duration of the programming period, which for the new programme runs from 2007 to 2013.

The Scotland Rural Development Programme 2007 – 2013

6. The Scotland Rural Development Programme (hereafter 'SRDP') was submitted formally to the European Commission week ending 22 June 2007. The Commission have six

months from that date to either approve the Programme or send it back for modification. The SRDP includes provision for an interim LFASS for 2007-2009. LFASS has a high profile and will be worth £61 million per year, to the benefit of around 13,000 farmers. The industry is expecting LFASS 2007 payments to be made around the end of the year with or without the EC's formal approval of the SRDP.

7. A SSI is required now to bring the scheme into being but in the normal course of events, this would not be until after approval of the SRDP. However, if formal approval is awaited before bringing the SSI into force, and opening the scheme to applications, it will not be possible to make LFASS payments to the planned timescale - with consequential problems for the cash flow of hill farms.

8 Traditionally, LFASS has been paid to farmers each Spring for land declared in the Single Application Form (SAF) as part of the IACS process the previous year. However, changes in the new RDR mean that from 2007 payment must be for land declared in May of the same calendar year. This change, combined with the need to complete administrative checks before payments are made, means that the traditional LFASS payment timetable has, from 2007, moved permanently to the end of each calendar year.

9 The last full payment of LFASS - £61 million – issued in Spring 2006. A supplementary LFASS 2006 payment totalling £40 million was made in January 2007 under the previous Rural Development Programme, to help address the cash flow problems arising from the transition from Spring to Winter payments. Given the importance of the scheme to the industry, the intention is, exceptionally, to make provision for Scotland prior to SRDP approval, arising out of, or relating to, UK community obligations or rights under the RDR using the broad powers available to Ministers under section 2(2) of the European Communities Act 1972. This will allow the scheme to open for applications in mid –October 2007. However, without EC approval this will be an 'at risk' scheme funded wholly through domestic funding as Commission authority will be required to use funding from the EAFRD. Once the Programme is approved, that element of domestic funding will be recovered through EAFRD.

Description of interim LFASS 2007 - 2009

10 LFASS supports eligible farmers and crofters and has remained broadly the same since 2003. It 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 value of payments, although there are adjustments for location and historic 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 livestock mix on the holding. Having arrived at the number of adjusted hectares, LFASS 2007 payment will be made at a rate that reflects the degree of disadvantage.

11 Recognising that substantial changes in EC legislation relating to LFASS are likely to take effect from 1 January 2010, Scotland will operate an interim scheme during 2007, 2008 and 2009. This interim LFASS scheme will be based on the existing model, but will use the historic payments made in 2006 as the basis for calculating payments in 2007, 2008 and 2009. The key features of the interim scheme are that:

- it is historically based, derived from data used in the calculation of 2006 LFASS payments under the 2005 regulations;
- payments are payable to the occupier of the land who must be actively farming; and
- applicants must respect cross-compliance

12 The following explains the interim scheme arrangements, set out in the principal regulations in more detail.

12.1 Application arrangements are set out in regulation 3 of the principal regulations. The Rural Development implementing regulations, 1975/2006, align certain Rural Development measures to the control principals set out in the EC Integrated Administration and Control System (IACS) legislation. For this reason, regulation 3(3) of the principal regulations applies the IACS penalties for late submission to LFASS.

12.2 The eligibility criteria, set out in regulation 4 of the principal regulations, include the requirement (originating in 1257/1999) that a first time applicant must undertake to remain in farming for 5 years from the date of their first LFASS payment, but may be released from the undertaking in certain circumstances.

12.3 Regulation 5 of the principal regulations empowers Scottish Ministers to pay LFASS to someone who actively farms eligible land. The term "actively farm" is defined in regulation 2(1) as undertaking an agricultural activity on a continuous basis. Eligible land is defined at regulation 6 as Scottish LFA forage land, declared in a single application form and with an LFASS grazing category allocated to it. There is an additional condition for first time applicants and those who did not receive an LFASS 2005 or 2006 payment. To be eligible, at least 3 hectares of the land they claim must have contributed to an LFASS 2006 payment for someone else (regulation 6(2)). Land transfers are provided for in regulation 7 whilst regulation 8 sets out the formula to calculate the amount of LFASS due i.e. multiplying the payable area in regulation 9 by the rates provided for in regulation 12 and Schedule 3.

12.4 The payable area to be used in the payment calculation will be calculated by adjusting the eligible land by certain historic values that underpinned the LFASS 2006 payment, to be rolled forward each year for the purposes of the 2007 – 2009 interim scheme:

- grazing category values are based on 2001 stocking densities; were attributed at field level in 2003; and have been "frozen" as at 31 December 2006 for the purposes of the interim LFASS scheme. The 2001 stocking density associated with each field identifies the appropriate hectare multiplier from schedule 2 to be used in the calculation of the payable area.
- LFASS 2006 stocking density value will be used to determine any minimum or maximum stocking density restrictions (regulation 10) – these mechanisms ensure that we do not over compensate an applicant. The minimum stocking density restriction ensures that, based on the LFASS 2006 stocking density value, we reduce the payable area and only pay on the number of hectares deemed to be stocked at the minimum stocking density (0.12, as defined at regulation 2). The maximum stocking density limit (1.4, also defined) restricts payment on land deemed historically to be overstocked.
- Enterprise mix value provided for in regulation 10 reflects the historic mix of livestock and recognises the environmental benefit derived from a predominantly

cattle based grazing regime. Depending on the percentage of cattle that underpinned the LFASS 2006 payment, one of two hectare multipliers (determined in accordance with the 2005 regulations) may be used in the calculation of the payable area for the interim scheme.

Regulations 9, 10 and 11 contain exceptions for those who did not receive LFASS payments in 2006, but did so in 2005 i.e. they can use their LFASS 2005 historic values for the duration of the interim scheme. First time applicants and those who did not receive LFASS payments in 2005 or 2006 must from 2007 claim land that contributed to the LFASS 2006 payment of the previous farmer, and will benefit from the historic values associated with the 2006 payment, for the land they claim from 2007.

13 The payment rates provided for in regulation 12 and schedules 3 and 4 are determined by the location of the main farm together with the degree of disadvantage suffered by the land.

Financial Effects

14 The principal regulations will enable the Scottish Government to open the LFASS for applications on an 'at risk' basis in mid-October (see paragraph 9) prior to the EC's formal approval of the SRDP. This means that the Scottish Government will be ready to inject around £61 million into LFA farming businesses in Scotland. However, if at the end of the year we still await Commission approval of the SRDP, there will need to be separate Ministerial decisions on making LFASS payments. The financial risk this creates for the Scottish Government should our proposals for LFASS not meet with EC approval is unknown, but could extend to the full value of the scheme.

Consultation

15 The LFASS 2007 – 2009 interim arrangements were discussed and agreed with LFA stakeholders. In addition, future arrangements for LFASS and the interim LFASS were considered in the previous administration's wide-ranging consultation on proposals for the development of the new SRDP.

Compliance with Parliamentary Procedures

16 To allow the instrument to come into force before the scheme is introduced, Article 10(2) of The Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (No. 1096) is not being complied with. This provision normally requires at least 21 days to elapse between an instrument being laid and it coming into force. Instead, use will be made of the facility offered by Article 10(3) and the Minister wrote to the Presiding Officer of the Scottish Parliament on 12 September to explain the circumstances of the non-compliance.

Periodicity of the Instrument

17 It is envisaged that this Instrument will remain in force until 2009.

Scottish Government Rural Payments and Inspections Directorate