

EXECUTIVE NOTE

THE RURAL PAYMENTS (APPEALS) (SCOTLAND) REGULATIONS 2009

SSI 2009/376

The above Regulations were made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. They are subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to revoke the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 (as amended) which provides for the current 3 stage EU Agricultural Subsidies procedure and introduce legislation to implement a new one. The development of a new rural payments appeals procedure was contained in the Government's manifesto in 2007.

The instrument also extends coverage of the appeals process to three rural payment schemes provided by;

- SSI No. 2008/162 – The Land Managers Skills Development Grants (Scotland) Regulations 2008,
- SSI No. 2008/135 The Forestry Challenge Funds (Scotland) Regulations 2008,
- SSI 2008/64 The Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008.

Background

The existing appeals procedure became operational on 9 November 2000 under the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 and introduced, initially, an appeals process against decisions under the Integrated Administration and Control System (IACS) regulating EU agricultural payments.

The process was extended in 2001 and again in 2003 to cover decisions under Agri-environment and Afforestation schemes. A consolidation of the various amendments to the principal legislation took place in 2004 through the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004. The 2004 Regulations were amended by the Agricultural Subsidies (Appeals) (Scotland) Amendment Regulations 2005 which extended coverage to the calculation of entitlements under the Single Farm Payment Scheme. This scheme replaced 8 former production based schemes. There have been subsequent amendments to extend coverage to schemes funded under the Scottish Rural Development Programme.

In 2007 there was a manifesto commitment by the Government to review the current appeals procedure. The current procedure was criticised by the agricultural industry for lacking independence and for being incapable of resolving appeals within a reasonable period of time. An independent Review was carried out by four persons with John Kinnaird, the former NFUS President, as Chairperson. The Review highlighted the difficulties with the current procedure, in particular the lack of dialogue between SGRPID offices and the aggrieved producer. A process

which was more streamlined and independent was sought to address these concerns. []This recommendation was accepted by the Cabinet Secretary for Rural Affairs and the Environment.

The new procedure contained within the proposed instrument provides the aggrieved producer (the applicant) with a right of review of a decision regarding relevant rural payments. The applicant must apply to the Scottish Ministers for a review by means of application within 30 days of receiving his decision letter. In practice the applications will come to the producer's local Rural Payments and Inspections Directorate (RPID) Area Office. On receiving an application for review the applicant will be given an opportunity to be heard on any matter relevant to his application by method of a review meeting. This review meeting can be held on the telephone, by video conference as well as in person. and the applicant may bring a representative to make representations on his behalf. Where resolution cannot be achieved, the Principal Agricultural Officer (or his delegate) who conducted the meeting will prepare a written report outlining the requirements of the scheme of which the claim was made under, the facts which support that the requirements were not met and the matters understood to remain in dispute.

Where the applicant remains dissatisfied with the decision of the review an appeal to the Scottish Land Court on any issue of fact or law may be made.

Appeals submitted to the Court will be dealt with by the Land Court's procedure under the terms set out in the SSI. RPID and the producer will be on an equal footing as parties to the appeal. The Land Court may also have regard to the review process as a whole when considering an award of expenses.

The Cabinet Secretary agreed that this extended role for the Scottish Land Court (which currently undertakes hearings at stage 3 of the existing process) provided the degree of independence recommended by the review team.

Consultation

The review panel undertook a wide ranging review of the existing procedure and invited the agricultural industry and its stakeholders to provide their comments as part of its overall consideration. Officials and farming organisations from the other UK administrations as well as some other European member states were also consulted. Many of the opinions received informed its recommendations for change.

Financial Effects

The new procedure may involve the recruitment of one additional Scottish Land Court member but as the current level of appeals being submitted is relatively low this will initially be on a part-time basis. If numbers do increase significantly then the appointment would revert to a full time one. At the moment the Scottish Land Court consider that it can absorb its additional workload within its current complement.

Scottish Government Rural Payments and Inspections Directorate
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