
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 273

**The Less Favoured Area Support
Scheme (Scotland) Regulations 2010**

PART IV

ENFORCEMENT

Powers of authorised persons

13.—(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 11, 12 and 20 of Commission Regulation 1975/2006; 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 dwellinghouses not being used for a purpose relevant to 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) 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 requirements of cross compliance.

(4) An authorised person may require any records mentioned in paragraph (3)(c) which are kept by means of a computer or any associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

Assistance to authorised persons

14. An applicant, employee or agent of an applicant or any person having, or appearing to have, charge of animals on the land must 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 13.

Withholding or recovery of less favoured area support

15. 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 3(1)(a) from which the applicant has not been released under regulation 3(2) or (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 13, or fails without reasonable excuse to comply with a requirement or request made by an authorised person under regulation 13 or 14;
- (c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with cross compliance on or in relation to the holding; or
- (d) where, in the opinion of the Scottish Ministers, the applicant has failed to comply with the requirement in regulation 4 to actively farm eligible land.

Guidance

16.—(1) The Scottish Ministers may publish guidance from time to time on—

- (a) the circumstances in which they will normally withhold or recover any sums under regulation 15, and the amount which any sums withheld will normally be; and
- (b) generally, how they intend to perform their functions under these Regulations.

(2) The Scottish Ministers must have regard to any guidance published under paragraph (1) when performing their functions under these Regulations.

Rate of interest

17. For the purpose of Article 80 of Commission Regulation 1122/2009, interest shall be charged 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 7 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, is guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 14) in the exercise of the powers conferred by regulation 13 is guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 13 or request under regulation 14 is guilty of an offence.

Penalties

20.—(1) A person guilty of an offence under regulation 19(1) or (2) is 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) is 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 (date of commencement of proceedings)(1) applies for the purposes of this regulation as it applies for the purposes of that section.

Offences by bodies corporate

22.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, the members;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.