EXECUTIVE NOTE
THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) REGULATIONS 2010 (SSI 2010/273)

1. This note explains the need for the above SSI which was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The regulations replace the Less Favoured Area Support Scheme (Scotland) Regulations 2007 SSI No. 2007/439 (the 'the 2007 regulations') as amended by the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008 SSI No. 2008/294 and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 SSI No. 2009/412.

Parliamentary Procedure

2. The instrument is subject to negative resolution procedure. Negative procedure is considered appropriate as the instrument does not amend primary legislation nor does it substantially increase financial burdens.

Policy Objectives

3. The purpose of the Less Favoured Area Support Scheme (Scotland) Regulations 2010 ("the 2010 Regulations") is to provide a basis, in domestic legislation, for changes to the Less Favoured Area Support Scheme ("LFASS") for the period 2010-2013.

Background

4. LFASS is a Rural Development (RD) measure under Axis 2 (Article 36 (a) (ii) Council Regulation (EC) No 1698/2005). It was originally intended that an EU-wide LFA redesignation exercise would take place in 2010, but this is now expected to take place in 2014.

5. The EU legislation makes provision for 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. The provision is implemented in Scotland, where 85% of agricultural land is classified as being within an LFA, as the LFASS. LFASS has a high profile and is expected to be worth in the region of £60 million per year to around 13,000 farmers and crofters for the period 2010 - 2013.

The Scotland Rural Development Programme

6. LFA support is one of number of optional measures, to aid rural development, provided for in the RD Regulation. This requires all RD measures, to be applied within a region, to be integrated into a single rural development programme which must be considered and approved by the EC. Each regional programme remains in force for the duration of the programming period, which for the current programme runs from 2007 to 2013.

7. LFASS is part of the Scotland Rural Development Programme ("the SRDP") which was approved by the Rural Development Committee of the EC on 19 February 2008. The SRDP supplements the legislative background by making detailed provision in relation to LFASS support. LFASS payment rate changes for 2009, and revised arrangements for the period 2010-2013, were announced in June 2009, and formed part of a modification to the SRDP which was approved by the EU in October 2009.

Timing of the 2010 SSI

8. The 2007 Regulations, which came into force in September 2007, covered the 2007-2009 schemes. Following the approval of the modification to the SRDP a detailed consultation with industry stakeholders was undertaken through the LFASS Technical Working Group ("the TWG."). The 2010 SSI is being made to make provision for the new arrangements covering the period 2010 – 2013, including a further payment rate increase.

9. LFASS applications were included in the Single Application Form ("SAF") and made, on an administrative basis, by farmers during the period March to May 2010. Farmer guidance covering the new arrangements was issued to all apllicants at the beginning of May. Payments for 2010 applications will be made from January 2011.

10. Commission Regulation (EC) No 1975/2006, laying down the detailed rules for the implementation of the RD regulation, requires unannounced inspections of at least 5% of LFASS applicants, to verify their compliance with all aspects of LFASS. It also requires all inspection activity to be finalised before payments can start. All RD measures, for which an applicant is claiming, must be checked at the same time. Given that this is a time consuming and resource intensive block of work, which for practical reasons has to take full advantage of the summer months, the inspection programme must start now if payments for LFASS 2010 are to be made in early 2011. Notwithstanding that:

    - Article 26 of Council Regulation 1122/2009 requires rejection of an LFASS application, if the applicant or his representatives prevent an inspection from taking place; and
    - The SAF 2010, which included applications for LFASS, contained an undertaking, signed by the applicant, to cooperate with authorised inspecting officers,

    domestic legal cover is needed now to support the inspection programme. The 2010 Regulations provide authorised officers with the power to enter private premises and carry out inspections of the premises, livestock and documents. They also contain associated offences and penalties.

Description of interim LFASS 2010 - 2013

11. 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 payment will be made at a rate that reflects the degree of disadvantage.

12. Because substantial changes in EC legislation relating to LFASS were expected to take effect from 1 January 2010, Scotland operated interim LFASS arrangements during the period 2007 - 2009. These were based on the established model, but used historic payments made in 2006 as the basis for calculating payments in 2007, 2008 and 2009. Because the LFA re-designation exercise has been deferred until 2014, the EC have approved a further interim scheme for LFASS 2010 - 2013. The main change is the update of the 2006 historic values to reflect activity levels in 2009, thus ensuring that payments will reflect a more relevent position. Savings expected from this change have also allowed increased payment rates to be made in the Very Fragile and Fragile areas.

13. The key features of the 2010 – 2013 interim scheme are that:

- it is again historically based, using updated values derived from land area and livestock data declared by farmers in 2009;
- payments are payable to the occupier of the land who must be actively farming; and
- applicants must respect cross-compliance

The following paragraphs explain the interim scheme arrangements set out in the SSI, in more detail.

The 2010 Regulations

14. The eligibility criteria, which is set out in regulation 3 of the SSI, includes the requirement (originating in Council Regulation EC No.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.

15. Regulation 4 of the principal regulations empowers Scottish Ministers to pay LFASS to someone who actively farms eligible land each year. 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 5 as Scottish LFA forage land, declared in a single application form and with an

LFASS grazing category and land use code allocated to it. Land transfers are provided for in regulation 6 whilst regulation 7 sets out the formula to calculate the amount of LFASS due i.e. multiplying the payable area in regulation 7 (which consists of the "unadjusted payable area calculated in accordance with regulation 8, adjusted where appropriate in accordance with regulation 10) by the rates provided for in regulation 11 and Schedule 3.

Determination of unadjusted payable area

16. The first step in calculating the "payable area" is to calculate the "unadjusted payable area". This is arrived at by determining the grazing category of the land. The grazing category is allocated on the basis 2001 stocking densities i.e. the "base year stocking density." These were attributed at field level in 2003; and have again been "frozen" as at 31 December 2006 for the purposes of the 2010-2013 interim scheme. The base year stocking density associated with each field identifies the appropriate hectare multiplier from Schedule 3 to be used in the calculation of the unadjusted payable area.

17. A further factor to be taken into account in calculating the "unadjusted payable area" is the minimum or maximum stocking density restrictions (regulation 9). These mechanisms ensure that we do not over compensate an applicant. The minimum stocking density restriction ensures that, based on the 2009 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 in regulation 2) restricts payment on land deemed historically to be overstocked.

18. 2009 stocking density is calculated in accordance with regulation 9 (4) and schedule 4. Livestock related terms used in Schedule 4 are defined in regulation 2 (1). These terms are broadly the same as those which underpinned the historic values used in the 2007 – 2009 scheme, originally derived from 2004 livestock numbers (and, for the majority, drawn from the final year of the Suckler Cow and Sheep Annual Premium Schemes).

Cattle Uplift

19. Once the "unadjusted payable area" has been calculated, in some cases, it is to be increased in accordance with regulation 10. The "cattle uplift" provided for in regulation 10 reflects the historic mix of livestock and recognises the environmental benefit derived from a predominantly cattle based grazing regime. However, to address specific stakeholder concerns, regulation 10 allows only those who have increased their cattle numbers, since 2004, to benefit from a more favourable hectare multiplier for the 2010 – 2013 scheme, than they received under the 2007 – 2009 arrangements. This is to prevent those who have increased their cattle percentage, solely as a consequence of reducing sheep numbers, from receiving a higher payment.

20. Regulations 9 and 10 contain exceptions for those who did not receive LFASS, or submit a SAF, in or prior to 2009. Their historic values will be based on stock and land held in the first year they apply during the 2010 – 2013 period. These regulations also allow those who had unrepresentative stocking levels in 2009, following a cull due to a disease outbreak, to ask for alternative livestock numbers to be used

21. The payment rates provided for in regulation 11 and schedule 5 are determined by the location of the main farm together with the degree of disadvantage suffered by the land. The rates payable in the very Fragile and Fragile areas are 19% more than the equivalent rates under LFASS 2009, and 38% more than those paid under LFASS 2008.

Other provisions

22. As discussed in paragraph 11 above, the 2010 Regulations also provide an enforcement regime, offences and penalties as well as appeals. Regulation 25 provides that certain provisions of these Regulations are to be appealable under the Rural Payment (Appeals) (Scotland) Regulations 2009 ("the 2009 Regulations"). They also amend paragraph 13 of the Schedule to the 2009 Regulations. This responds to a point made by the Subordinate Legislation Committee on the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008.

Financial Effects

23. The SSI will enable the Scottish Government to process applications and make payments, under the 2010 – 2013 LFASS, amounting to around £60 million per annum. 50% of this expenditure will be co-funded from the European Agricultural Fund for Rural Development. The combined effects of re-basing the historic livestock values, and increased payment rates in the very Fragile and Fragile areas, will be a moderate redistribution of funds, compared with LFASS 2009, in favour of more active farmers.

Consultation

24. The LFASS 2010 – 2013 interim arrangements were discussed at length and agreed with LFA stakeholders in the LFASS TWG. In addition, the LFASS 2007-2009 interim arrangements (which this SSI is a variation on) were considered as part of the previous administration's wide-ranging consultation on their proposals for the development of the SRDP 2007 - 2013.

Compliance with Parliamentary Procedures

25. To allow the instrument to come into force in line with the inspection programme, 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 Gill Tucker, Head of the Common Agricultural Policy Payments Division of the Scottish Government Rural Payments and Inspections Directorate, wrote to the Presiding Officer of the Scottish Parliament on 1 July to explain the circumstances of the non-compliance.

Periodicity of the Instrument

26. It is envisaged that this Instrument will remain in force until 2013

Scottish Government Rural Payments and Inspections Directorate