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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 416**

**AGRICULTURE**

**The Common Agricultural Policy Single Farm Payment  
and Support Schemes (Scotland) Regulations 2011**

		<i>22nd November</i>
<i>Made</i>	- - - -	<i>2011</i>
<i>Laid before the Scottish</i>		
<i>Parliament</i>	- - - -	<i>24th November 2011</i>
<i>Coming into force</i>	- -	<i>1st January 2012</i>

The Scottish Ministers make the following regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(1)</sup> and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to EU instruments to be construed as references to those instruments as amended from time to time.

**PART 1**

**Introduction**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2011 and come into force on 1st January 2012.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

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(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1.

“Commission Regulation 1120/2009” means [Commission Regulation \(EC\) No 1120/2009](#) laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation [\(EC\) No 73/2009](#) establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers<sup>(2)</sup>, as amended from time to time;

“Commission Regulation 1122/2009” means [Commission Regulation \(EC\) No 1122/2009](#) laying down detailed rules for the implementation of Council Regulation [\(EC\) No 73/2009](#) as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation [\(EC\) No 1234/2007](#) as regards cross-compliance under the support scheme provided for the wine sector<sup>(3)</sup>, as amended from time to time;

“Council Regulation 1698/2005” means Council Regulation [\(EC\) No 1698/2005](#) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)<sup>(4)</sup>, as amended from time to time;

“Council Regulation 378/2007” means Council Regulation [\(EC\) No 378/2007](#) laying down rules for voluntary modulation of direct payments provided for in Regulation [\(EC\) No 1782/2003](#) establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and amending Regulation [\(EC\) No 1290/2005](#)<sup>(5)</sup>, as amended from time to time;

“Council Regulation 73/2009” means Council Regulation [\(EC\) No 73/2009](#) establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations [\(EC\) No 1290/2005](#), [\(EC\) No 247/2006](#) and [\(EC\) No 378/2007](#) and repealing Regulation [\(EC\) No 1782/2003](#)<sup>(6)</sup>, as amended from time to time;

“direct payment” has the same meaning as in Article 2(d) of Council Regulation 73/2009;

“farmer” has the same meaning as in Article 2(a) of Council Regulation 73/2009;

“IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009<sup>(7)</sup>;

“Regulation 1760/2000” means Regulation [\(EC\) No 1760/2000](#) of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation [\(EC\) No 820/97](#)<sup>(8)</sup>, as amended from time to time;

“relevant competent authority” means the competent authority which determines the single application as specified in regulation 3 of the IACS Regulations; and

“single application” has the same meaning as in Article 2(11) of Commission Regulation 1122/2009.

(2) Except in Part 4 of, and Schedule 2 to, these Regulations, in these Regulations “holding” has the meaning given to it in Article 2(b) of Council Regulation 73/2009.

(3) Other expressions used in these Regulations have, unless the context otherwise requires, the meaning they bear in Council Regulation 73/2009, Commission Regulation 1120/2009 and Commission Regulation 1122/2009.

(2) OJ L 316, 2.12.2009, p.1, as last amended by Commission Regulation (EU) No 331/2011 (OJ L 93, 7.4.2011, p.16).

(3) OJ L 316, 2.12.2009, p.65, as last amended by Commission Regulation (EU) No 173/2011 (OJ L 49, 24.2.2011, p.16).

(4) OJ L 277, 21.10.2005, p.1, as last amended by Council Regulation [\(EC\) No 473/2009](#) (OJ L 144, 9.6.2009, p.3).

(5) OJ L 95, 5.4.2007, p.1, as amended by Council Regulation [\(EC\) No 73/2009](#) (OJ L 30, 31.1.2009, p.16).

(6) OJ L 30, 31.1.2009, p.16, as last amended by Commission Implementing Regulation (EU) No 785/2011 (OJ L 203, 6.8.2011, p10).

(7) [S.I. 2009/3263](#).

(8) OJ L 204, 11.8.2000, p.1, as last amended by Council Regulation [\(EC\) No 1791/2006](#) (OJ L 363, 20.12.2006, p.1).

(4) A reference to anything done “in writing” or produced “in written form” includes a reference to an electronic communication, as defined in section 15 (general interpretation) of the Electronic Communications Act 2000<sup>(9)</sup>, which has been recorded in written form and is capable of being reproduced in that form.

## PART 2

### Single Farm Payment Scheme

#### Regional application

3. Scotland is a region for the purposes of Article 46(2) of Council Regulation 73/2009.

#### Minimum requirements for receiving direct payments

4. For the purposes of Article 28(1)(b) of Council Regulation 73/2009, the Scottish Ministers must not grant direct payments arising from activated standard payment entitlements where the eligible area of the holding concerned is, before the application of any reductions or exclusions arising from non-compliance by reason of Articles 21 and 23 of Council Regulation 73/2009, less than 3 hectares.

#### Transfers

5. For the purposes of Article 12(3) of Commission Regulation 1120/2009, a transferor of a payment entitlement must communicate the transfer to the relevant competent authority at least 6 weeks before—

- (a) the transfer is to take place; and
- (b) the last day for submission of the single application.

## PART 3

### Voluntary Modulation

#### Voluntary modulation

6.—(1) For the purposes of calculating the total amount of direct payments to be paid to a farmer for any year, the Scottish Ministers must, in application of Articles 1 and 3(1) of Council Regulation 378/2007, deduct a sum equal to the specified proportion of the relevant amount.

(2) In accordance with Article 1(2) of Council Regulation 378/2007, the Scottish Ministers must apply the sum deducted under paragraph (1) for one or more of the relevant purposes.

(3) In this regulation—

“the relevant amount” means the amount which would have been granted to the farmer in respect of the year concerned before the application of Article 7 of Council Regulation 73/2009;

“the relevant purposes” means support for the measures under the following provisions of Council Regulation 1698/2005<sup>(10)</sup>—

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<sup>(9)</sup> 2000 c.7, relevantly amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

<sup>(10)</sup> As funded in Scotland under the Scotland Rural Development Programme 2007-2013.

- (a) Articles 20 to 33 (measures improving the competitiveness of the agricultural and forestry sector);
- (b) Articles 36 to 49 (measures improving the environment and the countryside);
- (c) Articles 52 to 59 (measures as regards the quality of life in rural areas and diversification of the rural economy); or
- (d) Articles 61 to 65 (Leader); and

“the specified proportion” means, in relation to the year 2012, the percentages given in the following table:—

<i>Amount of Direct Payment (€ Euros)</i>	<i>Specified Proportion</i>
€00.01 to 5,000	9%
€5,000.01 to 300,000	4%
€300,000 and above	0%

(\*) Percentages are applied according to the threshold reached for total direct payments.

## PART 4

### The Scottish Beef Scheme

#### Interpretation of Part 4

7. In this Part of, and Schedule 2 to, these Regulations—

“animal” means, in respect of a particular Scheme year, a bovine animal in respect of which an application for a Scheme payment has been or will be made;

“applicant” means a farmer producing beef or veal at the time of lodging an application for a Scheme payment under regulation 8 whose IACS holding is wholly or partly in Scotland;

“the Cattle Identification Regulations” means the Cattle Identification (Scotland) Regulations 2007<sup>(11)</sup>;

“cattle passport” has the same meaning as in the Cattle Identification Regulations;

“eartag identification code” means the unique identification code for the purposes of Article 4(1) of Regulation 1760/2000 and regulation 5 of, and Schedule 1 (ear tags) to, the Cattle Identification Regulations;

“eligible animal” has the meaning given in regulation 9;

“keeper’s holding” means a holding as defined in Article 2 of Regulation 1760/2000;

“IACS holding” means a holding as defined in Article 2(b) of Council Regulation 73/2009;

“identification document” has the same meaning as in the Cattle Identification Regulations;

“keeper” means any person responsible for an animal in respect of which an application for a Scheme payment is made or will be made, whether on a permanent or a temporary basis, including during transportation or at a market;

“the Scheme” means the Scottish Beef Scheme established by this Part of, and Schedule 2 to, these Regulations;

(11) S.S.I. 2007/174, amended by S.S.I. 2007/312, S.I. 2011/1043 and S.S.I. 2011/.

“Scheme payment” means an annual additional payment under Article 68(1)(b) and (4)(b) of Council Regulation 73/2009; and

“Scheme year” means the calendar year in which a particular application under regulation 8 for a Scheme payment is made.

### **Application for a Scheme payment**

**8.**—(1) An applicant is entitled, during a calendar year, to submit an application to the Scottish Ministers for a Scheme payment in respect of any eligible animal.

(2) A Scheme payment for a particular Scheme year is to be made in respect of an application for Scheme payment made during that Scheme year.

(3) An application must include the following information for any animal in respect of which the application is made—

- (a) the eartag identification code;
- (b) details concerning the identification document which has been issued in respect of that animal; and
- (c) such other information as the Scottish Ministers may reasonably require.

(4) An application for a Scheme payment must be in writing in such a form and containing such particulars as may be specified by the Scottish Ministers.

(5) An application for a Scheme payment may be withdrawn in writing in respect of any animal included in that application unless the applicant or keeper has been notified by the Scottish Ministers of—

- (a) an inspection under—
  - (i) the Common Agricultural Policy Single Payment and Support Schemes (Cross-Compliance) (Scotland) Regulations 2011(**12**);
  - (ii) the Cattle Identification Regulations; or
  - (iii) these Regulations; or
- (b) any errors in the application.

(6) For the purposes of Article 11(1) of Commission Regulation 1122/2009, an applicant must have submitted a single application in accordance with the IACS Regulations in the same year of application for a Scheme payment.

### **Eligible animal**

**9.** For the purpose of this Part and Schedule 2, an eligible animal means an animal—

- (a) which genetically is at least 75% of a breed of cattle other than a breed listed in Schedule 1;
- (b) which was born on the applicant’s IACS holding on or after 2nd December 2009 and was kept on that holding from birth for a continuous period of at least 30 days;
- (c) in respect of which the requirements of regulation 7 of, and Schedule 3 (cattle passports etc) to, the Cattle Identification Regulations have been met;
- (d) in respect of which information has been accurately recorded in the register of cattle kept on the keeper’s holding in accordance with regulation 8 of, and Schedule 4 (records) to, the Cattle Identification Regulations;

- (e) in respect of which the keeper has notified the Scottish Ministers about the animal's movements in accordance with regulation 6 of, and paragraph 2 of Schedule 2 (notification) to, the Cattle Identification Regulations; and
- (f) in respect of which no payment has previously been made following an application made under regulation 20 (the Scottish Beef Calf Scheme) of the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005(13).

### Scheme Payments

**10.**—(1) Subject to regulation 11, the Scheme payment to be made in respect of each eligible animal must be determined by the Scottish Ministers and funded from any retention in accordance with Article 69 of Council Regulation 73/2009.

(2) A higher payment may be determined by the Scottish Ministers in respect of the first 10 eligible animals claimed by each applicant than the remainder of the eligible animals claimed.

### Scheme penalties

**11.**—(1) Subject to regulation 12, where in respect of an application for a Scheme payment, a difference is found between the number of animals claimed as eligible by the applicant and the number of eligible animals, the total amount of the Scheme payment to which the applicant is entitled in respect of the Scheme year concerned must be reduced in accordance with this regulation.

(2) Where 3 or fewer animals are not eligible, the total amount of the Scheme payment is reduced by the percentage (in this regulation “the relevant percentage”) calculated in accordance with the following formula—

$$RP\% = I \div E \times 100$$

Where—

*RP* % is the relevant percentage reduction;

*I* is the number of ineligible animals; and

*E* is the number of eligible animals.

(3) Where more than 3 animals are not eligible, the total amount of the Scheme payment is reduced by—

- (a) the relevant percentage, if the relevant percentage is not more than 10%;
- (b) twice the relevant percentage, if the relevant percentage is more than 10% but not more than 20%; or
- (c) 100%, if the relevant percentage is more than 20%.

(4) Where the relevant percentage is more than 50%, an amount equal to the amount by which a Scheme payment is reduced in application of paragraph (3)(c) must also be applied to reduce any other Scheme payment to which the applicant would otherwise be entitled; provided that amount is offset against any such payment made within the following three Scheme years.

(5) Where an applicant knowingly makes a statement or supplies to the Scottish Ministers any information in respect of an application which is false or misleading—

- (a) a Scheme payment to which the applicant would otherwise be entitled must be reduced by 100%; and
- (b) an amount equal to the amount by which a Scheme payment is reduced in application of sub-paragraph (a) must also be applied to reduce any other Scheme payment to which

(13) S.S.I. 2005/143, amended by S.S.I. 2005/257, S.S.I. 2007/414, S.S.I. 2008/184 and S.S.I. 2009/391 and revoked by these Regulations.

the applicant would otherwise be entitled; provided that amount is offset against any such payment made within the following three Scheme years.

### **Exceptions from scheme penalties**

- 12.**—(1) Subject to paragraph (2), the penalties in regulation 11 do not apply—
- (a) where the applicant submitted factually accurate information or can otherwise show that he or she is not at fault;
  - (b) to those parts of an application for a Scheme payment in relation to which—
    - (i) the applicant has informed the Scottish Ministers in writing that the application is incorrect or has become incorrect since it was submitted; or
    - (ii) the keeper has notified the Scottish Ministers about an animal’s movements in accordance with regulation 6 of, and paragraph 2 of Schedule 2 (notification) to, the Cattle Identification Regulations; or
    - (iii) the applicant or the keeper has supplied information in writing to the Scottish Ministers about the animals or the IACS holding or keeper’s holding which are the subject of that application which would have the effect described in head (i).
- (2) Paragraph (1)(b) does not apply if the Scottish Ministers have already informed the applicant that—
- (a) they intend to inspect the applicant’s animals or IACS holding or keeper’s holding; or
  - (b) an animal or the application is not eligible.
- (3) Where an applicant has informed the Scottish Ministers or supplied them with information under paragraph (1)(b), the application is deemed to be adjusted so as to incorporate that information.

### **Administration and enforcement of the Scottish Beef Scheme**

- 13.** Schedule 2 (the Scottish Beef Scheme administration and enforcement) has effect.

## **PART 5**

### **Revocations and Savings**

#### **Revocations and Savings**

- 14.**—(1) Subject to paragraph (2), the Regulations specified in column 1 of Schedule 3 to these Regulations are revoked to the extent specified in column 3 of that Schedule.
- (2) Those Regulations continue to apply to a relevant application made before 1st January 2012.
- (3) In this regulation, “relevant application” means—
- (a) a single application; or
  - (b) an application made under regulation 20 (the Scottish Beef Calf Scheme) of the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005.

St Andrew's House,  
Edinburgh  
22nd November 2011

*RICHARD LOCHHEAD*  
A member of the Scottish Executive



## SCHEDULE 1

Regulation 9(a)

### The Scottish Beef Scheme ineligible breeds

1. Angler Rotvieh (Angeln) Rød dansk maelkerace (RDM).
2. Ayrshire.
3. Armoricaïne.
4. Bretonne Pie-Noire.
5. Friesian, including Fries Holland (FH); Francaise frisonne pie noire (FFPN); British Friesian; Friesian-Holstein; Holstein; Black and White Friesian; Red and White Friesian; Frisona Italiana; Frisona Espanola; Zwartbonten van Belgie/Pie-noire de Belgique; Sørtbrøget dansk maelkerace (SDM); Deutsche Schwartzbunte and Swartzbunte Milchrasse (SMR).
6. Groninger Blaarkop.
7. Guernsey.
8. Jersey.
9. Malkeborhorn.
10. Reggiana.
11. Valdostana Nera.
12. Itäsuomenkarja.
13. Länsisuomenkarja.
14. Pohjoissuomenkarja.

## SCHEDULE 2

Regulations 7 and 13

### The Scottish Beef Scheme administration and enforcement

#### **Interpretation**

1. In this Schedule—

“additional information” includes any information (other than as contained in a specified record) which may be relevant to an application for a Scheme payment;

“authorised person” means a person (whether or not an officer of the Scottish Ministers) who is authorised by the Scottish Ministers, either generally or specifically, to act in matters arising under Part 4 of, and Schedule 2 to, these Regulations;

“LIBOR” means the sterling three month London interbank offered rate;

“specified control measure” means any check which a member State is required to carry out in relation to a claim under the Scheme, or by Council Regulation 73/2009 or Commission Regulation 1122/2009; and

“specified record” means any record which a keeper is required (or has been required) to retain by virtue of paragraph 1 of Schedule 4 (records) to the Cattle Identification Regulations.

## **Powers of authorised persons**

2.—(1) An authorised person may at all reasonable hours and on producing, if so required, a duly authenticated document showing that person's authority, exercise any of the powers specified in this regulation for the purposes of—

- (a) carrying out any specified control measure; or
- (b) ascertaining whether an offence under paragraph 7 has been or is being committed.

(2) An authorised person may enter any land, other than premises used only as a dwelling, which is, or which such person has reasonable cause to believe to be, an IACS holding or keeper's holding occupied by, or in the possession of, an applicant or keeper, or any employee, agent, contractor or tenant of an applicant or keeper.

(3) If a sheriff or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any premises by an authorised person under this paragraph and either that—

- (a) entry has been refused or a refusal is reasonably expected, and that person has given notice to the occupier of his or her intention to apply for an entry warrant; or
- (b) a request for entry, or the giving of such a notice, would defeat the object of entry, or entry is urgently required, or the premises are unoccupied, or the occupier is temporarily absent, and it would defeat the object of entry to await the occupier's return,

the sheriff or justice may by signed warrant, valid for a period of no more than one month, authorise that person, together with any person who may accompany him or her by virtue of sub-paragraph (6), to enter the premises, if need be by reasonable force.

(4) An authorised person who has entered any land by virtue of this paragraph may—

- (a) inspect and verify the total area of land farmed by an applicant or used by a keeper;
- (b) inspect and count any cattle on that land; and
- (c) carry out any other activity which is a specified control measure.

(5) An authorised person may—

- (a) require an applicant or keeper, or any employee, agent, contractor or tenant of an applicant or keeper, to produce any specified record or supply such additional information in the possession or under the control of that person as the authorised person may reasonably require;
- (b) inspect any specified record or additional information required under head (a) and, where any such record or information is kept by means of a computer, have access to and check the data on, and operation of, any computer and any associated apparatus or material that is or has been used in connection with that record or information; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance (including the provision of passwords) as may reasonably be required and, where these items are kept by means of a computer may require them to be produced in a visible and legible form in which they may be taken away;
- (c) require that copies of, or extracts from, any specified record or additional information be produced;
- (d) seize and retain any specified record or additional information which that authorised person has reason to believe may be required as evidence in any court or other proceedings under these Regulations and, where any such record or information is kept by means of a computer, require it to be produced in a form in which it may be taken away;
- (e) carry out any inquiries, checks, examinations and tests;

- (f) take samples;
  - (g) inspect all or any part of the land whether it is farmed or is withdrawn from agricultural production; and
  - (h) mark any animal or other thing for identification purposes.
- (6) An authorised person entering any premises by virtue of this paragraph may be accompanied by—
- (a) such other persons as that person considers necessary to exercise the powers specified in this paragraph; and
  - (b) any representative of the European Commission acting for the purpose of Article 27 of Council Regulation 73/2009.
- (7) An authorised person who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as before those premises were entered.

### **Assistance to authorised persons**

**3.** An applicant or keeper, or any employee, agent, contractor or tenant of an applicant or keeper must give an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred by paragraph 2 and in particular, in relation to any cattle, must arrange for the collection, penning and securing of such cattle in a safe and secure manner, if so requested.

### **Withholding and recovery of payments**

**4.—(1)** The Scottish Ministers are entitled to recover as a debt the whole of any Scheme payment made to an applicant where the applicant or keeper, or any employee, agent, contractor or tenant of the applicant or keeper—

- (a) obstructs an authorised person (or a person accompanying an authorised person and acting under the instructions of the authorised person), from exercising a power under paragraph 2; or
- (b) fails without reasonable excuse to comply with a request made by an authorised person—
  - (i) under paragraph 3; or
  - (ii) when that person is carrying out a specified control measure.

(2) Where an applicant is liable to repay all or part of a Scheme payment in accordance with Article 80 of Commission Regulation 1122/2009, the amount of the repayment, together with the interest on that amount as calculated in accordance with paragraph 6, is recoverable as a debt.

(3) In any legal proceedings brought pursuant to sub-paragraph (2), a certificate of the relevant competent authority which—

- (a) sets out the LIBOR applicable during a specified period; and
- (b) includes a statement that the Bank of England or the coordinating body notified the Scottish Ministers of that rate for that period,

is evidence of the rate applicable during that period.

(4) In sub-paragraph (3), “the coordinating body” means the coordinating body referred to in Article 6(3) of Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy<sup>(14)</sup>.

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<sup>(14)</sup> OJ L 209, 11.8.2005, p.1, as last amended by Council Regulation (EC) No 473/2009 of 25 May 2009 (OJ L 144, 9.6.2009, p.3).

### **Set off**

5. The Scottish Ministers may set off a debt due in accordance with paragraph 4, against any specified payment to be made by them to the farmer under Titles III or IV of Council Regulation 73/2009.

### **Rate of interest**

6.—(1) Interest is to be charged in respect of each day of the period referred to in Article 80(2) of Commission Regulation 1122/2009.

(2) For the purposes of Article 80(2) of Commission Regulation 1122/2009, the rate of interest applicable on any day is to be one percentage point above the LIBOR on that day.

### **Offences**

7. A person commits an offence if he or she—

- (a) obstructs an authorised person (or a person accompanying an authorised person and acting under the authorised person's instructions) in the exercise of a power conferred by paragraph 2;
- (b) fails, without reasonable excuse, to comply with a request made under paragraph 3; or
- (c) supplies information to an authorised person (or a person accompanying an authorised person and acting under the authorised person's instructions), knowing it to be false or misleading.

### **Penalties**

8.—(1) A person who commits an offence under paragraph 7(a) or (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who commits an offence under paragraph 7(c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Time limit for prosecutions**

9.—(1) Proceedings for an offence under paragraph 7 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(15)</sup> (date of commencement of proceedings) applies for the purposes of this paragraph as it applies for the purposes of that section.

### **Offences by bodies corporate**

10.—(1) Where—

- (a) an offence under these Regulations is 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,

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(15) 1995 c.46.

the individual as well as the body corporate, Scottish partnership or unincorporated association commits 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, a member;

(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.

### SCHEDULE 3

Regulation 14(1)

#### Revocations

<b><i>Column 1</i></b>	<b><i>Column 2</i></b>	<b><i>Column 3</i></b>
<b><i>Regulations revoked</i></b>	<b><i>References</i></b>	<b><i>extent of revocation</i></b>
The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005	<a href="#">S.S.I. 2005/143</a>	The whole Regulations.
The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations 2005	<a href="#">S.S.I. 2005/257</a>	The whole Regulations.
The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations 2007	<a href="#">S.S.I. 2007/ 414</a>	The whole Regulations.
Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2008	<a href="#">S.S.I. 2008/184</a>	Regulation 2(a) and Schedule 1.
Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009	<a href="#">S.S.I. 2009/391</a>	Regulations 2 to 14.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in Scotland for the administration of Council Regulation (EC) No 73/2009 (OJ No L 30, 31.1.2009, p.16) (“the Council Regulation”) and other EU instruments in relation to direct support schemes (including the Single Farm Payment Scheme) under the Common Agricultural Policy.

The Regulations also establish the Scottish Beef Scheme (“the Scottish Beef Scheme”) which is an additional payment under Article 68 of the Council Regulation and which is funded from a retention of Single Farm Payment Scheme entitlements in Scotland’s beef sector.

In relation to the Single Farm Payment Scheme, these Regulations—

- (a) define Scotland as a region for the purposes of Article 46(2) of the Council Regulation (regulation 3);
- (b) prescribe the minimum size of a holding in respect of which a direct payment may be made (regulation 4);
- (c) provide that the transferor of a payment entitlement must communicate the transfer no later than 6 weeks before the transfer is to take place and no later than 6 weeks before the last day for submission of the single application (regulation 5).

Regulation 6 requires the Scottish Ministers to deduct a specified proportion, as calculated in accordance with that regulation, from the total amount of direct payments which would otherwise have been granted to the farmer. This implements Articles 1 and 3 (1) of Council Regulation (EC) No 378/2007 (OJ L 95, 5.4.2007, p.1). The regulation also provides that Ministers must apply the sums deducted as additional support for rural development measures under Council Regulation (EC) No 1698/2005 (OJ No L 277, 21.10.2005, p.1).

Part 4 (regulations 7-13) and Schedule 2 establish the Scottish Beef Scheme. They provide for the conditions for payment under the Scheme, and for the administration of that Scheme, including submission of applications for Scheme payments (regulation 8). They set out the conditions of eligibility for an animal in respect of which an application for a Scheme payment may be made (regulation 9 and Schedule 1) and the basis on which the Scottish Ministers may determine payments (regulation 10).

The Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (S.I. 2009/32630) do not apply to the Scottish Beef Scheme. Accordingly, in relation to the Scottish Beef Scheme, the Regulations provide for scheme penalties (regulation 11), exceptions from those penalties (regulation 12) and administration and enforcement provisions (Schedule 2).

Regulation 14(1) revokes the regulations specified in Schedule 3, subject to the savings in regulation 14(2).