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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 85**

**AGRICULTURE**

**The Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011**

*Made* - - - - 10th February 2011  
*Laid before the Scottish Parliament* - - - - 14th February 2011  
*Coming into force* - - 15th March 2011

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 that section and it appears to the Scottish Ministers that it is expedient for references in these Regulations to Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91<sup>(2)</sup> to be construed as references to that Regulation as amended from time to time.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011 and come into force on 15th March 2011.

(2) In these Regulations, “the principal Regulations” means the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008<sup>(3)</sup>.

**Amendment of the principal Regulations**

2. The principal Regulations are amended in accordance with regulations 3 to 27.

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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”), 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 the 2006 Act, section 28 and was amended by the 2008 Act, Schedule, Part 1.

(2) O.J. L 189, 20.7.2007, p.1. This Regulation has been amended by Council Regulation (EC) No 967/2008 (O.J. L 264, 3.10.2008, p.1).

(3) S.S.I. 2008/159, amended by S.S.I. 2009/155.

### **Amendment to regulation 2**

#### **3. In regulation 2(1) (interpretation)—**

- (a) omit the definitions of—
  - (i) “IACS year”; and
  - (ii) “relevant competent authority”;
- (b) in the definition of “area related options”, after “19” insert “and 23 and 24”;
- (c) for the definition of “Commission Regulation 796/2004” substitute—
 

““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(4);”;
- (d) for the definition of “Commission Regulation 1975/2006” substitute—
 

““Commission Regulation 65/2011” means Commission Regulation (EU) No 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(5);”;
- (e) before the definition of “compliance requirements” insert—
 

““competent authority” has the meaning given to it in regulation 3 of the IACS Regulations;”;
- (f) in the definition of “IACS Regulations”, for “the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005” substitute “the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(6)”;;
- (g) for the definition of “scheme year” substitute—
 

““scheme year” means the year commencing on the last day for submission of the single application under regulation 5 of the IACS Regulations;”;
- (h) in the definition of “single application”, for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

### **Amendment to regulation 3**

#### **4. In regulation 3 (applications for aid), for paragraph (6) substitute—**

“(6) An applicant must also submit a single application to a competent authority in accordance with the IACS Regulations.”.

### **Amendment to regulation 5**

#### **5. In regulation 5 (maximum amount of aid payable)—**

- (a) for “relevant competent authority” substitute “competent authority”; and

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(4) O.J. L 316, 2.12.2009, p.65. This Regulation has been amended by Commission Regulation (EU) No 146/2010 (O.J. L 47, 24.2.2010, p.1).

(5) O.J. L 25, 28.1.2011, p.8.

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

(b) for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

#### **Amendment to regulation 7**

6. In regulation 7(2)(c) (restrictions on acceptance of applications and payment of aid), for “Articles 18, 23 or 31 of Commission Regulation 1975/2006” substitute “Article 18, 21 or 30 of Commission Regulation 65/2011”.

#### **Amendment to regulation 8**

7. In regulation 8 (eligible land)—

(a) in paragraph (1)(a)—

(i) for “relevant competent authority” substitute “competent authority”; and

(ii) for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”; and

(b) in paragraph (3), for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

#### **Amendment to regulation 10**

8. In regulation 10(5) and (6) (undertakings), after “17” insert “and 23 and 24”.

#### **Amendment to regulation 13**

9. In regulation 13(2)(d) (powers of authorised persons), for “Commission Regulation 1975/2996” substitute “Commission Regulation 65/2011”.

#### **Amendment to regulation 14**

10. In regulation 14(1)(c) (breaches of undertakings etc.), for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

#### **Amendment to regulation 15**

11. In regulation 15(e) (other cases in which recovery etc. powers apply), for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

#### **Amendment to regulation 16**

12. In regulation 16(4) (powers of recovery etc. of the Scottish Ministers), for “Council Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

#### **Amendment to Schedule 2**

13. In Schedule 2 (land managers options: option, activities and eligibility conditions and rates of payment)—

(a) omit the introductory paragraph; and

(b) amend the land managers options in accordance with regulations 14 to 26.

#### **Amendment of option 2 (business audit)**

14. Omit the whole of option 2 (business audit).

**Amendment of option 3 (nutrient management plan)**

15. Omit the whole of option 3 (nutrient management plan).

**Amendment of option 9 (wild bird seed mixture/unharvested crop)**

16. In column 2 of option 9 (wild bird seed mixture/unharvested crop)—
- (a) omit “and” at the end of paragraph (3)(a); and
  - (b) in paragraph (3)(b), after “permitted”, insert—
    - “except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds; and
  - (c) applicants need not manage the same field each year, but must give details of the different fields and their locations and their areas in the application for aid. If during the relevant period, a different rotation to that originally approved is agreed with the Scottish Ministers, the area upon which the annual management payment is calculated will be restricted to either the area originally approved or the revised area, whichever is smaller.”

**Amendment of option 11 (summer cattle grazing)**

17. In column 3 of option 11 (summer cattle grazing), for “£1.30” substitute “£1.95”.

**Amendment of option 12 (management of moorland grazing)**

18. In column 2 of option 12 (management of moorland grazing), in paragraph (2)(b)—
- (a) for “changes in”, substitute “management of”; and
  - (b) omit “managing”.

**Amendment of option 13 (management of linear features: hedgerows and hedgerow trees and dykes)**

19. In column 2 of option 13 (management of linear features: hedgerows and hedgerow trees and dykes), in paragraph (2)—
- (a) for “For both options (a) and (b) above”, substitute “For sub-paragraphs (a) and (b) of option A referred to above”;
  - (b) omit “and” at the end of head (ii); and
  - (c) at the end of head (iii), insert—
    - “; and
    - (iv) cut a different section of hedge each year so that all hedges are cut in rotation.”.

**Amendment of option 14 (management of grass margins and beetlebanks)**

20. In option 14 (management of grass margins and beetlebanks)—
- (a) in column 2—
    - (i) for paragraph (3)(a), substitute—
      - “(a) manages a strip between 1.5 metres to 6 metres in width in an arable field with a minimum width of 3 metres or more where the management is to benefit Hen Harriers, Corn Buntings, Barn Owls or Kestrels and

plants at least one species of nectar-feeding plant such as red clover if none is currently planted;”;

- (ii) in paragraph (3)(c), before “establishes”, insert “where no strip currently exists,”;
  - (iii) in paragraph (3)(d), omit “, spot treatment of injurious weeds or non-native invasive weeds is permitted”;
  - (iv) omit paragraph (3)(g);
  - (v) in paragraph 3(i), after “site”, insert “except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds”;
  - (vi) in paragraph (4), for “transferred”, in both places where it occurs, substitute “relocated”; and
  - (vii) in paragraph (5), for “Beneficiaries” substitute “Applicants”; and
- (b) in column 3, for “£473.76 per hectare per scheme year.”, substitute “Establishment and management, £473.76 per hectare per scheme year. Management only, £407.92 per hectare per scheme year.”.

#### **Amendment of option 15 (biodiversity cropping on in-bye land)**

**21.** In column 2 of option 15 (biodiversity cropping on in-bye land)—

- (a) omit paragraph (2)(c); and
- (b) in paragraph (2)(d), after “site”, insert “except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds”.

#### **Amendment of option 16 (management of conservation headlands)**

**22.** In column 2 of option 16 (management of conservation headlands), for paragraph (2)(b), substitute—

- “(b) does not apply pesticides except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds.”.

#### **Amendment of option 17 (retention of winter stubbles)**

**23.** In column 2 of option 17 (retention of winter stubbles), for paragraph (2), substitute—

- “(2) An applicant is eligible for payment under this option if the applicant—
- (a) retains stubbles from the harvest of spring or winter cereals, protein or oilseed crops and does not plough or cultivate the area until the end of the following February;
  - (b) does not apply post-harvest pesticides except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds; and
  - (c) does not apply pre-harvest desiccants.”.

#### **Amendment of option 21 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes)**

**24.** In option 21 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes)—

- (a) in column 2—
- (i) in paragraph (1), option A, for “carries out management works” to “historic landscapes”, substitute “carries out management works to improve the condition of archaeological or historic sites or historic landscapes in accordance with the scheme guidance”;
  - (ii) in paragraphs (2)(a)(i) and (3)(a)(i), for “during year 3 of the undertaking and during year 5 of the undertaking”, substitute “and after 1 year, 3 years and 5 years following commencement of the undertaking”;
  - (iii) omit “and” at the end of paragraph (2)(b)(iv);
  - (iv) for paragraph (2)(c), substitute—
    - “(c) an applicant must submit receipted invoices in support of a claim for payment; and
    - (d) an applicant is not eligible for payment in respect of—
      - (i) artefact find spots and battlefield sites; or
      - (ii) buildings, structures and engineering works that are still serving a function, or are in use, or are intended to be brought back into use.”;
  - (v) for paragraph (3)(b), substitute—
    - “(b) an applicant must submit receipted invoices in support of a claim for payment; and”;
  - (vi) omit “or” at the end of paragraph (3)(c)(ii);
  - (vii) at the end of paragraph (3)(c)(iii), insert—
    - “(iv) if the active management and repair work being undertaken is part of a project to bring other buildings on site into use for human habitation or occupation, either permanent, temporary or seasonal; or
    - (v) if the works to the building entail the repair or introduction of electrics, plumbing, non-original features, materials, interior fixtures or fittings unless required by building regulations or health and safety legislation.
- (4) In the 5 years following the end of the year in which payment was made—
- (a) items funded under this option must be maintained and not modified; and
  - (b) any building repaired under this option must not be sold or used for human habitation or occupation, either permanent, temporary or seasonal.”; and
- (b) in column 3, for “at”, in both places where it occurs, substitute “up to”.

#### **Amendment of option 22 (animal welfare management programme)**

##### **25. In option 22 (animal welfare management programme)—**

- (a) in column 2, paragraph (4)—
- (i) in Action Three (maintaining bodily condition), in the third table (sheep), in the second column (lowland ewes, lambing), for “2.0-2.5”, substitute “2.5-3.0”;
  - (ii) in Action Four (preventing lameness), in sub-paragraph (f), for “untaken”, substitute “undertaken”;
  - (iii) for Action Six (control and prevention of diarrhoea and pneumonia), substitute—

- “(a) The applicant must undertake a lungworm surveillance programme to comprise—
  - (i) collecting faecal samples from at least 5 milking dairy cows and 5 non-milking cows every 2 months from June to October for laboratory analysis; and
  - (ii) initiating a treatment and/or vaccination programme as appropriate if disease is identified; and
- (b) where livestock managed together suffer an outbreak of scour or pneumonia, the applicant must—
  - (i) take faecal samples from a selection of animals affected by scour;
  - (ii) take swabs and/or blood samples from a selection of animals affected by pneumonia;
  - (iii) ensure laboratory analysis for diarrhoea and pneumonia pathogens is carried out; and
  - (iv) reduce stocking density, increase ventilation and/or carry out treatment and/or vaccination as appropriate.”; and
- (iv) in Action Seven (liver fluke control)—
  - (aa) omit sub-paragraph (d);
  - (bb) omit “and” at the end of sub-paragraph (e); and
  - (cc) at the end of sub-paragraph (f), insert—
    - “; and
    - (g) conduct an annual review of the effectiveness of treatment and the extent of any area identified as high risk areas of ground for grazing and, in doing so, must take account of the advice of a veterinary surgeon together with any feedback referred to in sub-paragraph (a) and the result of any analysis referred to in sub-paragraph (b)”;
- (b) in column 3, for the entry corresponding to Action One in paragraph (4) of column 2, substitute—
 

“£372.00 per scheme year, plus £30.00 per hectare per scheme year for field based separation facility up to 5 hectares (or £29.00 per hectare per scheme year for field based separation facility up to 5 hectares on nitrate vulnerable zone land).”.

**Additional land managers options**

26. After option 22, insert—

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Option</i>	<i>Activities and Eligibility Conditions</i>	<i>Rate of Payment</i>
<b>23.</b> Natural regeneration after cereals	(1) This is a 5 year commitment.  (2) An applicant is eligible for payment under this option if the applicant—	£406 per hectare per scheme year

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Option</i>	<i>Activities and Eligibility Conditions</i>	<i>Rate of Payment</i>
	<p>(a) retains stubbles from the harvest of winter cereals and leaves the area uncropped to naturally regenerate and produce rough fallow conditions until the end of August following the harvest;</p> <p>(b) does not graze, plough or cultivate the area of stubble and any subsequent natural regeneration until after 31st August in the year following the harvest; and</p> <p>(c) following the harvest, does not apply fertilisers, manure or pesticides except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds.</p>	
	<p>(3) Plots may be rotated and the location of the areas managed for the purpose of this option may change from year to year but the number of hectares applied for in any year must be maintained for 5 years.</p>	
	<p>(4) Where crops are not rotated an applicant must—</p> <p>(a) cut at least once in every 2 years in early autumn to a minimum sward height of 10 centimetres and remove cuttings; or</p>	



<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Option</i>	<i>Activities and Eligibility Conditions</i>	<i>Rate of Payment</i>
	<p>(b) leave plots uncut if conservation benefits are expected to result.</p> <p>(5) Applicants must set out the conservation objectives in a plan which must be retained and be available for inspection.</p>	

**24. Maintenance of organic farming** of (1) This is a 5 year commitment. £60 for arable and vegetable and fruit land, £50 for improved grassland and £5 for unimproved grassland/rough grazing, per hectare per scheme year.

(2) Land is eligible if—

- (a) the land is an organic production unit or, if the applicant is a grazings committee, the common grazings is fully organic;
- (b) the land is at least one hectare;
- (c) the land falls within any of the following categories:—
  - (i) arable land;
  - (ii) improved grassland;
  - (iii) rough grazings or unimproved grassland;
  - (iv) vegetable and fruit land; and
- (d) either—
  - (i) no aid is payable under these Regulations, the 2004 Regulations or the 1994 Regulations

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Option</i>	<i>Activities and Eligibility Conditions</i>	<i>Rate of Payment</i>

in respect of the land; or

- (ii) aid is payable by virtue of the 2008 Regulations, the 2004 Regulations or the 1994 Regulations in respect of the land but the entitlement to that aid has ceased before the commencement of the scheme year.

(3) An applicant is eligible for payment under this option if the applicant—

- (a) submits to the Scottish Ministers evidence of full organic certification for the land included in the application;
- (b) continues to farm the land in accordance with Council Regulation 834/2007 throughout the relevant period;
- (c) ensures that where land is to be registered with a different control body, such registration must occur before the expiry of the existing registration;
- (d) maintains full organic certification throughout the relevant period and submits confirmation of such certification to the Scottish Ministers; and
- (e) where land is vegetable and fruit land, produces vegetables or fruit for a minimum of 2 years

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Option</i>	<i>Activities and Eligibility Conditions</i>	<i>Rate of Payment</i>
	during the relevant period.	

(4) In this option—

“control body” means an independent private third party organisation carrying out inspection and certification in the field of organic production as referred to in Article 2(p) of Council Regulation 834/2007;

“Council Regulation 834/2007” means Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, as amended from time to time;

“full organic certification” means certification from a control body that the land is fully organic;

“fully organic” means land which is farmed in accordance with Council Regulation 834/2007, which has been certified as fully organic by a control body;

“organic production unit” means land other than a common grazing, which is fully organic; and

“vegetable and fruit land” means land used for growing vegetables and fruit.”.

### **Amendment to Schedule 3**

**27.** In Schedule 3, Part 2 (secondary legislation)—

- (a) omit “The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003”;  
and
- (b) insert at the end—

“The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(7).”.

### **Saving provision**

**28.**—(1) In respect of an application for aid relating to a land manager’s option made before 1st January 2011, the principal Regulations continue to have effect as if the amendments made by regulations 3(d), 6, 9, 10, 11 and 12 had not been made.

(2) In this regulation, a “land manager’s option” means any of the options set out in Schedule 2 to the principal Regulations.

St Andrew’s House, Edinburgh  
10th February 2011

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations amend the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 (S.S.I. 2008/159) (“the 2008 Regulations”) which introduce measures to supplement Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (O.J. L 277, 21.10.2005, p.1) (“the Council Regulation”) and the detailed rules for the application of the Council Regulation.

The 2008 Regulations provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007-13 to any person who enters into an undertaking with the Scottish Ministers to carry out or, as the case may be, carry out and maintain activities relevant to at least one of the land managers options set out in Schedule 2.

Regulation 3, among other things, inserts definitions in regulation 2(1) of the 2008 Regulations following the repeal and replacement of Commission Regulations 796/2004 and 1975/2006.

Regulations 5(b) to 7 and 9 to 12 of these Regulations replace references to Commission Regulations 796/2004 and 1975/2006 in consequence of their repeal and replacement respectively by Commission Regulations 1122/2009 and 65/2011.

Regulation 8 of these Regulations amends regulation 10(5) and (6) of the 2008 Regulations by extending the list of options, to include the new option 23 (natural regeneration after cereals) and option 24 (maintenance of organic farming), under which any activity specified in an undertaking will require cross-compliance as indicated.

Regulations 13 to 26 of these Regulations include the following amendments to Schedule 2 to the 2008 Regulations:

- option 2 (business audit) and 3 (nutrient management plan) are omitted;
- option 9 (wild bird seed mixture/unharvested crop) is amended to permit the application of pesticides only with the consent of the Scottish Ministers and to allow field rotation;
- option 11 (summer cattle grazing) is amended to increase the payment rate from £1.30 to £1.95 per hectare (per scheme year);
- option 13 (management of linear features: hedgerows and hedgerow trees and dykes) is amended to provide for an additional requirement to cut hedges in rotation;
- option 14 (management of grass margins and beetlebanks) is amended to: provide for an additional payment rate for the management only (excluding establishment) of grass margins etc.; reduce the minimum width of grass margin to benefit certain bird species; add a requirement to plant a nectar-feeding plant species; clarify that the requirement to establish a strip applies only where none exists on the land; and permit the application of pesticides only with the consent of the Scottish Ministers;
- option 15 (biodiversity cropping on in-bye land), option 16 (management of conservation headlands) and option 17 (retention of winter stubbles) are amended to permit the application of pesticides only with the consent of the Scottish Ministers, and option 17 is also amended to restrict the application of pre-harvest desiccants;
- option 21 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes) is amended to: refer to certain management work being carried out in accordance with the scheme guidance; clarify the requirement to maintain photographic records; remove the ability of applicants to claim in

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respect of their own labour or machinery costs; specify additional ineligible management work; change the payment rate limit; and impose a requirement to maintain and retain funded items for at least five years following the final payment of aid;

option 22 (animal welfare management programme) is amended to: make a minor change to Action Three (maintaining bodily condition); make a minor correction to Action Four (preventing lameness); clarify the requirements of Action Six (control and prevention of diarrhoea and pneumonia); change the requirements under Action Seven (liver fluke control); and clarify the rate of payment available under Action One (implementing biosecurity); and

two new options relating to natural regeneration after cereals (option 23) and maintenance of organic farming (option 24) are added.

Regulation 27 amends Schedule 3 to the 2008 Regulations to insert a reference to the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008.

Regulation 28 makes a saving provision.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.