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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 185**

**AGRICULTURE**

**The Less Favoured Area Support Scheme  
(Scotland) Amendment Regulations 2015**

<i>Made</i>	- - - -	<i>29th April 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>1st May 2015</i>
<i>Coming into force</i>	- -	<i>9th June 2015</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 1972 Act and it appears to the Scottish Ministers that it is expedient for references to the Direct Payments Regulation, the Horizontal Delegated Regulation, the Horizontal Implementing Regulation and the Horizontal Regulation (as defined by virtue of regulation 3) to be construed as references to those instruments as amended from time to time.

**Citation and commencement**

1. These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 and come into force on 9th June 2015.

**Amendment of the Less Favoured Area Support Scheme (Scotland) Regulations 2010**

2. The Less Favoured Area Support Scheme (Scotland) Regulations 2010<sup>(2)</sup> are amended in accordance with regulations 3 to 19.

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

(a) after the definition of “alpaca” insert—

““applicable year” is to be construed in accordance with regulation 9(8);”;

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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), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far 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.

(2) S.S.I. 2010/273, amended by S.S.I. 2011/73, S.S.I. 2012/24, S.S.I. 2013/9 and S.S.I. 2014/7.

- (b) the definition of “area aid application” is omitted;
- (c) for the definition of “competent authority” substitute—  
 ““competent authority”—  
 (a) in relation to a Scheme Year commencing before 1st January 2015, has the same meaning as in regulation 3 of the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009<sup>(3)</sup>; and  
 (b) in relation to a Scheme Year commencing on or after 1st January 2015, has the same meaning as it has in regulations 2(1) and 3 of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014<sup>(4)</sup>”;
- (d) for the definition of “cross compliance” substitute—  
 ““cross-compliance”—  
 (a) in relation to a Scheme Year commencing before 1st January 2015, has the same meaning as it has for the purposes of Article 5 and Annex II and Article 6 and Annex III of Council Regulation 73/2009<sup>(5)</sup>; and  
 (b) in relation to a Scheme Year commencing on or after 1st January 2015, has the same meaning as it has for the purposes of Articles 93 and 94 and Annex II of the Horizontal Regulation<sup>(6)</sup>”;
- (e) after the definition of “designated maps” insert—  
 ““Direct Payments Regulation” means Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, as amended from time to time<sup>(7)</sup>”;
- (f) after the definition of “forage area” insert—  
 ““force majeure or exceptional circumstances” is to be construed in accordance with Article 2(2) of the Horizontal Regulation”;
- (g) for the definition of “holding” substitute—  
 ““holding”—  
 (a) in relation to a Scheme Year commencing before 1st January 2015, has the same meaning as it has for the purposes of Article 2(b) of Council Regulation 73/2009; and  
 (b) in relation to a Scheme Year commencing on or after 1st January 2015, has the same meaning as it has in Article 4(1)(b) of the Direct Payments Regulation”;
- (h) after the definition of “holding” insert—  
 ““Horizontal Delegated Regulation” means Commission Delegated Regulation (EU) No 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration

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(3) [S.I. 2009/3263](#), which was revoked subject to savings by [S.I. 2014/3263](#).

(4) [S.I. 2014/3263](#).

(5) OJ L 30, 31.1.2009, p.16, as last amended by Commission Delegated Regulation (EU) No 994/2014 (OJ L 280, 24.9.2014, p.1). Council Regulation 73/2009 was repealed subject to savings by Article 72 of the Direct Payments Regulation.

(6) The standards for good agricultural and environmental condition are set out in regulation 3(2) of, and Part 2 of the Schedule to, the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 ([S.S.I. 2014/325](#), as amended by [S.S.I. 2015/58](#)).

(7) OJ L 347, 20.12.2013, p.608, as last amended by Commission Delegated Regulation (EU) No 1378/2014 (OJ L 367, 23.12.2014, p.16).

and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance<sup>(8)</sup>, as amended from time to time;

“Horizontal Implementing Regulation” means Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance<sup>(9)</sup>, as amended from time to time;

“Horizontal Regulation” means Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008<sup>(10)</sup>, as amended from time to time;”;

(i) after the definition of “Scheme 2014 payment”<sup>(11)</sup> insert—

““Scheme 2015 payment” means the sum to which the applicant is entitled in respect of the period 1st January 2015 to 31st December 2015;

“Scheme 2016 payment” means the sum to which the applicant is entitled in respect of the period 1st January 2016 to 31st December 2016;

“Scheme 2017 payment” means the sum to which the applicant is entitled in respect of the period 1st January 2017 to 31st December 2017;”;

(j) for the definition of “single application” substitute—

““single application” —

(a) in relation to a calendar year prior to 2015, has meaning given in Article 2(11) of Commission Regulation 1122/2009<sup>(12)</sup>; and

(b) in relation to the calendar year 2015 or a later year, means an application for direct payments (within the meaning of Article 1 of the Direct Payments Regulation) in relation to any of the area-related aid schemes (as defined in point (20) of Article 2(1) of the Horizontal Delegated Regulation);”.

4. In regulation 3 (eligibility for payment of less favoured area support)—

(a) in paragraph (1), for “the Scheme Year commencing on 1st January 2014,” substitute “a Scheme Year commencing on or after 1st January 2014”; and

(b) in paragraph (1A)<sup>(13)</sup>, for “the Scheme Year commencing on 1st January 2014” substitute “a Scheme Year commencing on or after 1st January 2014”.

5. For regulation 4 (payment of less favoured area support)<sup>(14)</sup> substitute—

#### **“Payment of less favoured area support**

4. The Scottish Ministers may, in respect of a Scheme Year, pay less favoured area support to an applicant who in their opinion—

(a) actively farms eligible land—

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<sup>(8)</sup> OJ L 181, 20.6.2014, p.48.

<sup>(9)</sup> OJ L 227, 31.7.2014, p.69.

<sup>(10)</sup> OJ L 347, 20.12.2013, p.549, as amended by Regulation (EU) No 1310/2013 (OJ L 347, 20.12.2013, p.865).

<sup>(11)</sup> That definition was inserted by S.S.I. 2014/7.

<sup>(12)</sup> OJ L 316, 2.12.2009, p.65, as last amended by Commission Regulation (EU) No 426/2013 (OJ L 127, 9.5.2013, p.17). Commission Regulation 1122/2009 was repealed subject to savings by Commission Delegated Regulation (EU) No 640/2014, article 43 (OJ L 181, 20.6.2014, p.48).

<sup>(13)</sup> Paragraph (1A) was inserted by S.S.I. 2014/7.

<sup>(14)</sup> Regulation 4 was substituted by S.S.I. 2013/9.

- (i) which is not less than 3 hectares; and
  - (ii) for a period or periods totalling not less than 183 days during the Scheme Year; and
  - (b) is an active farmer within the meaning of Article 9 of the Direct Payments Regulation.”.
6. For regulation 5(3) (eligible land) substitute—
- “(3) If an application for less favoured area support relates to land situated outwith the dairy ring fence area and all or part of the land was used for dairy activity in the applicable year, the Scottish Ministers shall determine the area of ineligible land attributable to dairy activity.”.
7. For regulation 6 (transfer of a holding) substitute—

**“Transfer of a holding**

- 6.—(1) A decision by the Scottish Ministers to make a payment under regulation 4—
- (a) in relation to a Scheme Year commencing before 1st January 2015, must be in accordance with Article 82 of Commission Regulation 1122/2009; and
  - (b) in relation to a Scheme Year commencing on or after 1st January 2015, must be in accordance with Article 8 of the Horizontal Implementing Regulation.
- (2) In relation to a Scheme Year commencing before 1st January 2015, for the purposes of paragraph 6 of Article 82 of Commission Regulation 1122/2009, the Scottish Ministers must grant less favoured area support to the transferor of a holding if—
- (a) the transferor has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned; and
  - (b) the requirements of paragraphs 2 to 5 of Article 82 of Commission Regulation 1122/2009 have, in the opinion of the Scottish Ministers, been fulfilled.
- (3) In relation to a Scheme Year commencing on or after 1st January 2015, for the purposes of paragraph 5 of Article 8 of the Horizontal Implementing Regulation, the Scottish Ministers must grant less favoured area support to the transferor of a holding if—
- (a) the transferor has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned; and
  - (b) the requirements of paragraphs 2 to 4 of Article 8 of the Horizontal Implementing Regulation have, in the opinion of the Scottish Ministers, been fulfilled.”.

8. In regulation 7(1) (amount of less favoured area support), for “paragraph (2) and regulation 12” substitute “paragraph (2), regulation 12 and regulation 12A”.

9. In regulation 9 (stocking density outwith the minimum and maximum stocking density parameters)(15)—

    - (a) for paragraphs (4) and (5) substitute—

“(4) For the purpose of regulation 5(1)(a)(ii), regulation 8(4)(c) and paragraphs (1), (2) and (3), the stocking density is to be calculated in accordance with Parts I and II of Schedule 4, using—

    - (a) livestock units based on the number of livestock which the Scottish Ministers determine were maintained by the applicant on eligible land in the applicable year; and

(b) the historic land area.

(5) In determining the number of livestock for the purposes of paragraph (4)(a), the Scottish Ministers must have regard to the livestock numbers declared by the applicant as being maintained by the applicant on eligible land on key dates in the applicable year.”; and

(b) for paragraphs (7) and (8) substitute—

“(7) Where the stocking density calculated in accordance with paragraph (4) was less than the minimum stocking density due to force majeure or exceptional circumstances, the applicant may request that the Scottish Ministers determine the stocking density to be used for the purposes of the formula at paragraph (2).

(8) For the purposes of this regulation and Parts I and II of Schedule 4—

“applicable year” means—

(a) 2009, in respect of an applicant—

- (i) who submitted a single application in or prior to 2009; and
- (ii) to whom paragraph (9) does not apply;

(b) 2013, in respect of an applicant to whom paragraph (9) applies; or

(c) the first year of application for less favoured area support, where the applicant did not submit a single application in or prior to 2009; and

“historic land area” means—

(a) the area of eligible land declared by the applicant in a single application in the applicable year; or

(b) land comprising the number of hectares of forage in a less favoured area, as declared by the applicant in a single application in relation to 2009 and having one of the land use codes specified in column 2 of Schedule 2 corresponding to the entry in column 1 of Schedule 2 relating to the use of land, where no less favoured area grazing category was attributed for the purposes of the 2003 Regulations, the 2005 Regulations or the 2007 Regulations, prior to deduction of either or both of—

- (i) any penalty area calculated in accordance with Commission Regulation 1975/2006 or Commission Regulation 65/2011; and
- (ii) any area deducted in accordance with regulation 6(5) of the 2007 Regulations.

(9) This paragraph applies to an applicant—

(a) who submitted a single application in or prior to 2009 but who did not in 2009—

- (i) maintain livestock on, or declare an area of, eligible land; or
- (ii) declare land comprising hectares of forage in a less favoured area; and

(b) in respect of whom, no stocking density was calculated by the Scottish Ministers for the purposes of a payment of less favoured area support to that applicant in relation to any Scheme Year commencing on or after 1st January 2010 and ending on or before 31st December 2014.”.

**10.** In regulation 10 (enterprise mix)—

(a) in paragraph (2), for “or the Scheme 2014 payment” substitute “, the Scheme 2014 payment, the Scheme 2015 payment, the Scheme 2016 payment or the Scheme 2017 payment”; and

(b) for paragraphs (3) and (4) substitute—

“(3) Where the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1) is, in the opinion of the applicant, unrepresentative of the usual enterprise mix of the applicant, as a result of force majeure or exceptional circumstances, the applicant may request that the Scottish Ministers determine that either of the hectare multipliers contained in the second column of Schedule 8 be used for the purposes of the formula in paragraph (1).

(4) Where less than 10% of the livestock units of the applicant calculated in accordance with regulation 9(4) and Parts I and II of Schedule 4 are cattle but that is, in the opinion of the applicant, the result of force majeure or exceptional circumstances, the applicant may request that the Scottish Ministers treat the application as if paragraph (1) applied.”

**11.** In regulation 11 (rate of payment of less favoured area support)—

(a) in paragraphs (1) and (2), for “the rate of payment” substitute “the maximum rate of payment”; and

(b) after paragraph (5) insert—

“(6) This regulation applies subject to regulation 12A.”

**12.** In regulation 12 (minimum payment), after “Commission Regulation 65/2011” insert “or the Horizontal Delegated Regulation”.

**13.** After regulation 12 insert—

**“Reduction of payments**

**12A.**—(1) This regulation applies where in relation to applications for less favoured area support approved in respect of a Scheme Year commencing on or after 1st January 2015, the Scottish Ministers are of the opinion that the financial resources available are insufficient to make payments of less favoured area support to applicants at the rates calculated in accordance with these Regulations.

(2) Where this regulation applies, the Scottish Ministers must—

(a) determine the amount, including any applicable thresholds, in respect of which payments of less favoured area support are to be reduced, taking into account the financial resources available for the relevant Scheme Year (“the appropriate reduction”); and

(b) apply the appropriate reduction, so as to reduce the amounts of less favoured support payable to applicants in respect of the relevant Scheme Year.

(3) Before making any payments of less favoured area support in respect of the relevant Scheme Year, the Scottish Ministers must publish a statement setting out how they have determined and will apply the appropriate reduction to payments in accordance with this regulation.”

**14.** In regulation 13(1)(a) (powers of authorised persons), after “Commission Regulation 65/2011” insert “or Titles III and V of the Horizontal Delegated Regulation”.

**15.** In regulation 15(d) (withholding or recovery of less favoured area support), after “regulation 4” insert “or, in relation to a Scheme Year commencing on or after 1st January 2015, the applicant is not an active farmer within the meaning of Article 9 of the Direct Payments Regulation”.

**16.** For regulation 17 (rate of interest) substitute—

**“Rate of interest**

17.—(1) In relation to a Scheme Year commencing before 1st January 2015, for the purposes of Article 80 of Commission Regulation 1122/2009, interest is to 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.

(2) In relation to a Scheme Year commencing on or after 1st January 2015, for the purpose of Article 7 of the Horizontal Implementing Regulation, interest is to be charged at the rate of one percentage point above the Bank of England base rate on a day-to-day basis for the period specified in that Article.

(3) In paragraph (2), “the Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998<sup>(16)</sup> is in force, an equivalent determined by the Treasury under that section.”

17. For Schedule 2 (land use codes eligible for less favoured area support scheme) substitute—

“SCHEDULE 2

Regulation 5(1)

LAND USE CODES ELIGIBLE FOR LESS FAVOURED AREA SUPPORT SCHEME

LAND USE	LAND USE CODE
Fodder beet	OCS-B
Swedes for stock feed	SSF
Kale and cabbage for stock feed	OCS-K
Mixed brassica for stock feed	MBSF
Rape for stock feed	RAST
Turnips for stock feed	TSF
Arable silage for stock feed	ASSF
Permanent grassland	PGRS
Rotational grass year 1	TGRS1
Rotational grass year 2	TGRS2
Rotational grass year 3	TGRS3
Rotational grass year 4	TGRS4
Rotational grass year 5	TGRS5
Open woodland (grazed)	WDG
Rough grazing	RGR”

18. In Schedule 5 (rates of payment for less favoured area support)(17)—

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(16) 1998 c.11.

(17) As amended by S.S.I. 2011/73 and S.S.I. 2014/7.

- (a) in Part I (more disadvantaged land), in the second column of the table, after “Scheme 2014 payment”, insert “, Scheme 2015 payment, Scheme 2016 payment, Scheme 2017 payment”; and
  - (b) in Part II (less disadvantaged land), in the second column of the table, after “Scheme 2014 payment”, insert “, Scheme 2015 payment, Scheme 2016 payment, Scheme 2017 payment”.
- 19.** In Schedule 7 (agency arrangements and cross border holdings)**(18)**—
- (a) in paragraph 5, after “the competent authority concerned” insert “and is an active farmer within the meaning of Article 9 of the Direct Payments Regulation”;
  - (b) in paragraph 6, after “these Regulations” insert “and provided the applicant is an active farmer within the meaning of Article 9 of the Direct Payments Regulation”; and
  - (c) in paragraph 8, after “these Regulations” insert “and the active farming undertaken for the purposes of Article 9 of the Direct Payments Regulation”.

St Andrew’s House,  
Edinburgh  
29th April 2015

*RICHARD LOCHHEAD*  
A member of the Scottish Government



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## EXPLANATORY NOTE

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

These Regulations amend the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (“the principal Regulations”). As amended by these Regulations, the principal Regulations make provision for the purposes of the implementation of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (“the Rural Development Regulation” - OJ L 347, 20.12.2013 p.487), in particular Articles 31 and 32, and make provision for less favoured area support (“LFAS”) payments for the period 2015 to 2017 under the Scottish Rural Development Programme (SRDP) (see <http://www.gov.scot/Topics/farmingrural/SRDP>). By 2018, the LFAS Scheme will be replaced by a new scheme for payments in respect of areas facing natural or other specific constraints in accordance with the Rural Development Regulation.

Regulation 3 amends regulation 2(1) of the principal Regulation to insert new definitions and amend existing definitions, in particular, to reflect the EU instruments under the Common Agricultural Policy which now apply to the LFAS Scheme and to insert definitions for Scheme payments in respect of Scheme Years 2015 to 2017.

Regulation 4 amends regulation 3 of the principal Regulations in its application to Scheme Years on or after 1st January 2014.

Regulation 5 substitutes regulation 4 of the principal Regulations, which requires that LFAS payments can only be made to active farmers within the meaning of Article 9 of the Direct Payments Regulation (see the definition inserted by regulation 3), as required by Article 31(2) of the Rural Development Regulation. Regulations 15 (which amends regulation 15 of the principal Regulations) and 19 (which amends Schedule 7 to the principal Regulations) also make further provision to take account of the active farmers provisions in the Direct Payments Regulation.

Regulation 6 amends regulation 5 of the principal Regulations to make provision for the determination of ineligible land attributable to dairy activity in the applicable year (as construed in accordance with regulation 9(8) of the principal Regulations, as amended by regulation 9 of these Regulations).

Regulation 7 substitutes regulation 6 of the principal Regulations to make provision for the transfer of holdings in light of the applicable EU instruments (including those applying as from 1st January 2015).

Regulation 9 amends regulation 9 of the principal Regulations—

- to make provision for the calculation of stocking density by reference to livestock maintained or land declared in applicable years, which now includes 2013 where the circumstances in the new regulation 9(9) of the principal Regulations apply to an applicant for LFAS support; and
- to make provision for the possible application of an alternative calculation as a result of force majeure or exceptional circumstances (see the definition inserted by regulation 3).

Regulation 10 amends regulation 10 of the principal Regulations to deal with its application to Scheme Years commencing on or after 1st January 2015 as well as to make provision for alternative calculations of the adjustment of payable areas as a result of force majeure or exceptional circumstances (see the definition inserted by regulation 3).

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulations 12 and 14 amend regulations 12 and 13 respectively of the principal Regulations, to reflect newly applicable EU instruments (and see the definitions inserted by regulation 3).

Regulation 13 inserts a new regulation 12A into the principal Regulations, to make provision, following the publication of a statement by the Scottish Ministers, for the reduction of LFAS payments as appropriate in any Scheme Year where the financial resources available are insufficient to make payments at the rates otherwise applicable under the principal Regulations. Regulation 8 makes a consequential amendment to regulation 7 of the principal Regulations. Regulation 11 makes a consequential amendment to regulation 11 of the principal Regulations.

Regulation 16 substitutes regulation 17 of the principal Regulations to amend the provision for interest to be payable when recovering irregular payments of LFAS.

Regulation 17 substitutes Schedule 2 to the principal Regulations, which makes provision for the applicable land use codes for the LFAS scheme.

Regulation 18 amends Schedule 5 to the principal Regulations to deal with its application to Scheme Years commencing on or after 1st January 2015.

A business and regulatory impact assessment is being prepared for these Regulations and will be placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.