

2015 No. 194

AGRICULTURE

The Rural Payments (Appeals) (Scotland) Regulations 2015

Made - - - - *12th May 2015*

Laid before the Scottish Parliament *14th May 2015*

Coming into force - - *12th June 2015*

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(a) 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 the Direct Payments Regulation, the Horizontal Delegated Regulation, the Horizontal Implementing Regulation and the Horizontal Regulation (as defined in regulation 2(1)) to be construed as references to those instruments as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Rural Payments (Appeals) (Scotland) Regulations 2015 and come into force on 12th June 2015.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“applicable IACS Regulations” means—

- (a) the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(b); or
- (b) regulations 2 and 3 of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014(c);

“beneficiary” means the person to whom a relevant decision is directed;

(a) 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 Ministers 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.

(b) S.I. 2009/3263, as amended by S.I. 2012/66 and revoked subject to saving by S.I. 2014/3263.

(c) S.I. 2014/3263, as amended by S.I. 2015/XX.

“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(a);

“Commission Regulation 1121/2009” means Commission Regulation (EC) No 1121/2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof(b);

“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(c);

“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, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(d);

“decision letter” means the letter from the Scottish Ministers to the beneficiary notifying the beneficiary of the relevant decision;

“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(e);

“ESA Orders” means—

- (a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992(f);
- (b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992(g);
- (c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993(h);
- (d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993(i);
- (e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993(j);
- (f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993(k);
- (g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(l);

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- (a) OJ L 316, 2.12.2009, p.1, as last amended by Commission Regulation (EU) No 426/2013 (OJ L 127, 9.5.2013, p.17), and repealed subject to savings by Article 78 of Commission Delegated Regulation (EU) No 639/2014 (OJ L 181, 20.6.2014, p.1).
 - (b) OJ L 316, 2.12.2009, p.27, as last amended by Commission Implementing Regulation (EU) No 1147/2013 (OJ L 305, 15.11.2013, p.3) and repealed subject to savings by Article 78 of Commission Delegated Regulation (EU) No 639/2014 (OJ L 181, 20.6.2014, p. 1).
 - (c) 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) and repealed subject to savings by Article 43 of the Horizontal Delegated Regulation.
 - (d) OJ L 30, 31.1.2009, p.16, as last amended by Commission Delegated Regulation (EU) 994/2014 (OJ L 280, 24.9.2014, p.1) and repealed, subject to savings by Article 72(2) of the Direct Payments Regulation.
 - (e) 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).
 - (f) S.I. 1992/1919, as amended by S.I. 1994/3067, S.I. 1995/3097, S.I. 1996/3082, S.S.I. 2001/34 and S.S.I. 2001/226.
 - (g) S.I. 1992/1920, as amended by S.I. 1994/3067, S.I. 1995/3096, S.I. 1996/3082, S.S.I. 2001/30 and S.S.I. 2001/226.
 - (h) S.I. 1993/996, as amended by S.I. 1994/3067, S.I. 1996/1969, S.I. 1996/3082, S.S.I. 2001/32 and S.S.I. 2001/226.
 - (i) S.I. 1993/997, as amended by S.I. 1994/3067, S.I. 1996/1968, S.I. 1996/3082, S.S.I. 2001/31 and S.S.I. 2001/226.
 - (j) S.I. 1993/2345, as amended by S.I. 1994/3067, S.I. 1996/1963, S.I. 1996/3082, S.S.I. 2001/33 and S.S.I. 2001/226.
 - (k) S.I. 1993/2767, as amended by S.I. 1994/3067, S.I. 1996/1964, S.I. 1996/3082, S.S.I. 2001/25 and S.S.I. 2001/226.
 - (l) S.I. 1993/2768, as amended by S.I. 1994/3067, S.I. 1996/1967, S.I. 1996/3082, S.S.I. 2001/26 and S.S.I. 2001/226.

- (h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(a);
- (i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Watersay) Designation Order 1993(b); or
- (j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(c);

“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 and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance(d), 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(e), 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(f), as amended from time to time;

“IACS scheme” means one of the EU support schemes specified in Article 14 of Council Regulation 73/2009 or Article 67(2) of the Horizontal Regulation;

“Land Court” means the Scottish Land Court;

“relevant decision” means a decision specified in any of the paragraphs of the Schedule; and

“the 2009 Regulations” means the Rural Payments (Appeals) (Scotland) Regulations 2009(g).

(2) Any reference in these regulations to a beneficiary appealing to the Land Court includes a reference to any successor, executor, trustee in sequestration, receiver or liquidator of such a beneficiary.

Application in relation to IACS matters

3.—(1) A decision specified in paragraphs 1 to 8 of the Schedule includes a decision of the Scottish Ministers in relation to a holding administered by them in accordance with the applicable IACS Regulations.

(2) In paragraph (1) “holding” has the same meaning as it has for the purposes of the applicable IACS Regulations.

Decisions amenable to review

4. A beneficiary may apply to the Scottish Ministers for a review of a relevant decision in accordance with regulation 5.

Application for review

5.—(1) An application for review of a relevant decision is to be made no later than 60 days following the date of the decision letter.

(a) S.I. 1993/3136, as amended by S.I. 1994/3067, S.I. 1996/1966, S.I. 1996/3082, S.S.I. 2001/27 and S.S.I. 2001/226.
 (b) S.I. 1993/3149, as amended by S.I. 1994/3067, S.I. 1996/1962, S.I. 1996/3082, S.S.I. 2001/28 and S.S.I. 2001/226.
 (c) S.I. 1993/3150, as amended by S.I. 1994/3067, S.I. 1996/1965, S.I. 1996/3082, S.S.I. 2001/29 and S.S.I. 2001/226.
 (d) OJ L 181, 20.6.2014, p.48.
 (e) OJ L 227, 31.7.2014, p.69.
 (f) OJ L 347, 20.12.2013, p.549, as amended by Regulation (EU) No 1310/2013 (OJ L 347, 20.12.2013, p.865).
 (g) S.S.I. 2009/376, amended by S.S.I. 2010/273, S.S.I. 2011/415, S.S.I. 2012/143, S.S.I. 2014/7, S.S.I. 2014/325 and S.S.I. 2015/58. The 2009 Regulations are revoked subject to savings by regulation 11.

- (2) An application for review must be in writing and specify—
- (a) the name and address of the beneficiary and, where relevant, the details of the beneficiary's representative;
 - (b) the scheme in relation to which the review is sought and, in relation to an IACS scheme, the calendar year to which the relevant decision referred;
 - (c) the relevant decision and its date;
 - (d) the change sought to the relevant decision; and
 - (e) the reasons for seeking the change to the relevant decision.

Procedure at review

6.—(1) Where an application is made in accordance with regulation 5, the Scottish Ministers must review the relevant decision.

(2) The Scottish Ministers must provide the beneficiary with an opportunity of being heard at a review meeting to be held within 60 days of receipt of the application on any matter relevant to the application.

(3) The Scottish Ministers must intimate the date of the review meeting to the beneficiary in writing.

(4) Representations made under paragraph (2) may be made by the beneficiary or by a representative of the beneficiary.

(5) For the purposes of this regulation, a review meeting may be conducted in person or, with the agreement of the beneficiary, by use of telephone or video conference facilities or such other arrangements by which the beneficiary is able to participate in the meeting.

Decision and report

7.—(1) Following the review of a relevant decision in accordance with regulation 6, the Scottish Ministers may in respect of that decision—

- (a) confirm it;
- (b) amend it; or
- (c) revoke it in its entirety and substitute a new decision.

(2) The Scottish Ministers must issue their decision under paragraph (1) in a written report.

(3) A written report must set out the following—

- (a) the decision of the Scottish Ministers following the review;
- (b) the requirements of the scheme in respect of which the claim was made;
- (c) where appropriate, the facts relied upon by the Scottish Ministers as showing that the requirements were not met; and
- (d) where appropriate, the matters (in fact or in law) which are understood to remain in dispute.

(4) A written report must be sent by recorded delivery post to the beneficiary before the expiry of the period of 60 days beginning on the date intimated to the beneficiary under regulation 6(3).

Appeal to the Land Court

8.—(1) The beneficiary may appeal against a decision under regulation 7(1) on any issue of fact or law to the Land Court.

(2) An appeal under paragraph (1) must be made within 60 days of receipt of the written report.

(3) Where the Scottish Ministers have not sent a written report within the period of 60 days referred to in regulation 7(4), the beneficiary may instead appeal against the relevant decision on any issue of fact or law to the Land Court.

(4) An appeal made under paragraph (3) must be made within the period of 60 days beginning on the date on which the period referred to in regulation 7(4) expired.

(5) An appeal is to be in such form as may be prescribed from time to time by the Land Court.

(6) An appeal must, so far as possible, specify—

- (a) the grounds of appeal;
- (b) what finding of the Scottish Ministers is challenged;
- (c) any facts the beneficiary seeks to rely on;
- (d) the arguments to be advanced in support of the appeal; and
- (e) brief details of the legislative provisions or judicial authorities to be referred to in relation to the appeal.

(7) An appeal under paragraph (1) must be accompanied by the decision letter, the application for review and the written report.

(8) An appeal under paragraph (3) must be accompanied by the decision letter, the application for review and evidence of the date of the review meeting intimated to the beneficiary under regulation 6(3).

Procedure in the Land Court

9.—(1) Without prejudice to the power of the Land Court to determine its own procedure, the court may—

- (a) where a written report has not been sent in accordance with regulation 7(4), require the Scottish Ministers to submit a written report;
- (b) grant leave to the Scottish Ministers to amend the written report;
- (c) relieve the appellant of any of the obligations set out in regulation 8(6); or
- (d) require such additional information or submissions to be submitted by the parties to the appeal as it thinks fit.

(2) In determining an appeal, the Land Court may—

- (a) confirm the decision of the Scottish Ministers;
- (b) amend or alter that decision in any respect which it considers appropriate;
- (c) substitute for that decision any decision which it considers appropriate; or
- (d) refer the matter back to the Scottish Ministers to decide the matter of new,

and any such determination of the Land Court is binding upon the Scottish Ministers and the appellant.

(3) Where an appeal is made under regulation 8(3), paragraph (2) shall apply in relation to the relevant decision as it applies in relation to a decision under regulation 7(1).

(4) Any party to a matter determined by the Land Court by virtue of these Regulations may appeal to the Court of Session against the determination on a question of law.

Expenses

10. Without prejudice to paragraph 15 of Schedule 1 to the Scottish Land Court Act 1993(a) or rules 88 to 95 (expenses) of the Rules of the Scottish Land Court Order 2014(b), the Land Court may in considering an award of expenses against any party to an appeal have regard to the conduct of that party during the review process as a whole.

(a) 1993 c.45.

(b) S.S.I. 2014/229.

Savings and revocations

11.—(1) Subject to paragraphs (2) and (3),—

- (a) the following instruments are revoked—
 - (i) the 2009 Regulations; and
 - (ii) the Rural Payments (Appeals) (Scotland) Amendment Regulations 2012(a); and
- (b) the following provisions are revoked—
 - (i) regulation 25 of the Less Favoured Area Support Scheme (Scotland) Regulations 2010(b);
 - (ii) regulation 7 of the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2014(c);
 - (iii) regulation 9 of the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014(d); and
 - (iv) regulation 26 of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015(e).

(2) Nothing in these Regulations has effect in relation to any relevant decision (within the meaning of the 2009 Regulations) in respect of which the date of the decision letter is before 12th June 2015.

(3) The 2009 Regulations, as in force immediately before 12th June 2015, continue to apply and have effect in relation to any review or appeal that may be made in respect of a decision specified in regulation 4 or 7, or an appeal under regulation 9(4), of those Regulations.

RICHARD LOCHHEAD

A member of the Scottish Government

St Andrew's House,
Edinburgh
12th May 2015

(a) S.S.I. 2012/143.
(b) S.S.I. 2010/273, to which there are no relevant amendments.
(c) S.S.I. 2014/7.
(d) S.S.I. 2014/325, as amended by S.S.I. 2015/58.
(e) S.S.I. 2015/58.

SCHEDULE

Regulations 2(1) and 3

Relevant decisions

1. A decision of the Scottish Ministers to postpone, refuse, reduce or recover (in whole or in part) any payment under an IACS scheme, under or in accordance with—

- (a) Council Regulation 73/2009;
- (b) Commission Regulation 1120/2009;
- (c) Commission Regulation 1121/2009; or
- (d) Commission Regulation 1122/2009.

2. A decision of the Scottish Ministers to refuse, reduce or withdraw (in whole or in part) any payment entitlement, under or in accordance with—

- (a) Council Regulation 73/2009;
- (b) Commission Regulation 1120/2009; or
- (c) Commission Regulation 1122/2009.

3. A decision of the Scottish Ministers under or in accordance with Article 41 of Council Regulation 73/2009 to refuse or withdraw entirely any national reserve entitlement in relation to an application.

4. A decision of the Scottish Ministers under or in accordance with the Common Agricultural Policy Schemes (Cross-Compliance) Regulations 2011(a).

5. A decision of the Scottish Ministers to withdraw, reduce, recover, suspend or refuse (in whole or in part) any payment of aid or support, or apply an administrative penalty in respect of such aid or support, under or in accordance with—

- (a) the following provisions of the Horizontal Regulation—
 - (i) Article 54;
 - (ii) Chapters I and II of Title V; or
 - (iii) Title VI, as read with Articles 73 to 75 of the Horizontal Implementing Regulation; or
- (b) the following provisions of the Horizontal Delegated Regulation, as read with Articles 5 and 6 of the Horizontal Implementing Regulation—
 - (i) Chapters III and IV of Title II;
 - (ii) Title III; or
 - (iii) Chapter II of Title IV.

6. A decision of the Scottish Ministers in respect of the allocation, refusal, withdrawal, recovery or reversion of payment entitlements, under or in accordance with Section 1, 2 or 3 of Chapter I of Title III to the Direct Payments Regulation, Article 63 of the Horizontal Regulation or Article 23 of the Horizontal Implementing Regulation.

7. Insofar as not otherwise falling within paragraph 5, a decision by the Scottish Ministers under regulation 17 of the Rural Development (Scotland) Regulations 2015(b) to withhold (in whole or in part) any grant payable, apply a reduction to any payment of grant, recover (in whole or in part) grant paid, revoke an approval or terminate or prohibit the giving of an undertaking.

(a) S.S.I. 2011/415, revoked subject to savings by regulation 10 of S.S.I. 2014/325.

(b) S.S.I. 2015/192.

8. Insofar as not otherwise falling within paragraph 5, a decision by the Scottish Ministers under regulation 3(1)(b), (1A), (2) or (3), 4, 5(3), 9(4)(a) or (7), 10(3) or (4) or 15 of the Less Favoured Area Support Scheme (Scotland) Regulations 2010(a).

9. Insofar as not otherwise falling within paragraph 5, a decision by the Scottish Ministers under paragraph 6(4) or (5), 11A(7) or 13(1) of the Crofting Counties Agricultural Grants (Scotland) Scheme 2006(b) to withhold any grant payable or to recover any grant paid (in whole or in part), or require payment or any sum.

10. A decision by the Scottish Ministers to apply a reduction to any payment of aid, to withhold any aid payable, recover any aid paid (in whole or in part) or require payment of any sum in terms of—

- (a) regulation 10 of the Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008(c);
- (b) regulation 18 of the Leader Grants (Scotland) Regulations 2008(d);
- (c) regulation 17 of the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(e);
- (d) regulation 12 of the Forestry Challenge Funds (Scotland) Regulations 2008(f);
- (e) regulation 16 of the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008(g); or
- (f) regulation 11 of the Land Managers Skills Development Grants (Scotland) Regulations 2008(h).

11. A decision of the Scottish Ministers under regulation 4(1)(b), 5, 7(1), 9(4)(b), 10(7), 11(4) or 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2007(i).

12. A decision by the Scottish Ministers to withhold or recover (in whole or in part) payment of less favoured area support in terms of regulation 16 of—

- (a) the Less Favoured Area Support Scheme (Scotland) Regulations 2004(j); or
- (b) the Less Favoured Area Support Scheme (Scotland) Regulations 2005(k).

13. A decision by the Scottish Ministers under the Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005(l), to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum in terms of those Regulations.

14. A decision by the Scottish Ministers under the Organic Aid (Scotland) Regulations 2004(m) to withhold or recover (in whole or in part) any payment in terms of regulation 20 of those Regulations.

15. A decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the SFGS Farmland Premium Scheme 2003(n), in terms of paragraph 14 of that Scheme.

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- (a) S.S.I. 2010/273, amended by S.S.I. 2011/73, S.S.I. 2012/24, S.S.I. 2013/9, S.S.I. 2014/7 and S.S.I. 2015/185.
 - (b) S.S.I. 2006/24, as amended by S.S.I. 2008/58, S.S.I. 2011/72, S.S.I. 2011/262 and S.S.I. 2015/105 and by the Crofting Reform (Scotland) Act 2010 (asp 14), section 1(4).
 - (c) S.S.I. 2008/64 revoked subject to savings by S.S.I. 2015/192.
 - (d) S.S.I. 2008/66, revoked subject to savings by S.S.I. 2015/192.
 - (e) S.S.I. 2008/100, revoked subject to savings by S.S.I. 2015/192.
 - (f) S.S.I. 2008/135, revoked subject to savings by S.S.I. 2015/192.
 - (g) S.S.I. 2008/159, revoked subject to savings by S.S.I. 2015/192.
 - (h) S.S.I. 2008/162, revoked subject to savings by S.S.I. 2015/192.
 - (i) S.S.I. 2007/439, revoked subject to savings by S.S.I. 2010/273.
 - (j) S.S.I. 2004/70, revoked subject to savings by S.S.I. 2005/569.
 - (k) S.S.I. 2005/569, revoked subject to savings by S.S.I. 2007/439.
 - (l) S.S.I. 2005/225, as amended by S.S.I. 2006/127 and S.S.I. 2006/213.
 - (m) S.S.I. 2004/143, as amended by S.S.I. 2004/174, S.S.I. 2004/381, S.S.I. 2005/117, S.S.I. 2005/619 and the Crofting Reform (Scotland) Act 2010, section 1(4).
 - (n) S.S.I. 2003/209, as amended by S.S.I. 2007/146 and the Crofting Reform (Scotland) Act 2010, section 1(4).

16. A decision by the Scottish Ministers under the Rural Stewardship Scheme (Scotland) Regulations 2001(a) to withhold (in whole or in part) any aid due, recover (in whole or in part) any aid paid or require payment of a sum, in terms of those Regulations.

17. A decision by the Scottish Ministers under the Countryside Premium Scheme (Scotland) Regulations 1997(b) to withhold (in whole or in part) any grant due, recover (in whole or in part) any grant paid or require payment of a sum, in terms of regulation 12 of those Regulations.

18. A decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, in terms of paragraph 14 of,—

- (a) the Farm Woodland Scheme 1988(c);
- (b) the Farm Woodland Premium Scheme 1992(d); or
- (c) the Farm Woodland Premium Scheme 1997(e).

19. A decision by the Scottish Ministers under the Organic Aid (Scotland) Regulations 1994(f), to withhold (in whole or in part) any grant due, recover (in whole or in part) any grant paid, or require payment of a sum imposed by way of penalty, in terms of regulation 12 of those Regulations.

20. A decision by the Scottish Ministers under the Habitats (Scotland) Regulations 1994(g) to withhold (in whole or in part) any grant due, recover any grant paid (in whole or in part) or require payment of a sum imposed by way of a penalty, in terms of regulation 12 of those Regulations.

21. A decision by the Scottish Ministers under paragraph 8(2) or 12B of the Crofting Counties Agricultural Grants (Scotland) Scheme 1988(h) to withhold any grant payable, to recover any grant paid (in whole or in part) or require payment of any sum.

22. A decision by the Scottish Ministers—

- (a) made under article 5D of any one of the ESA Orders, that there has been a breach of any of the requirements of article 4 or 4A of the ESA Order to which that decision relates; or
- (b) to withhold (in whole or in part) or require the making of, payment under article 5(a) or 5A of any one of the ESA Orders.

(a) S.S.I. 2001/300, as amended by S.S.I. 2003/177, S.S.I. 2003/303, S.S.I. 2004/109, S.S.I. 2004/381, S.S.I. 2005/620, S.S.I. 2009/37 and the Crofting Reform (Scotland) Act 2010 (asp 14), section 1(4).

(b) S.I. 1997/330, as amended by S.S.I. 2004/113 and the Crofting Reform (Scotland) Act 2010, section 1(4).

(c) S.I. 1988/1291, as amended by S.I. 1991/1631, S.I. 1992/905, S.I. 1997/828 and S.I. 2013/1036.

(d) S.I. 1992/905 as amended by S.I. 1997/829, S.S.I. 2003/209, S.I. 2005/3473, S.S.I. 2007/146, S.I. 2013/1036, the Countryside and Rights of Way Act 2000 (c.37) and the Crofting Reform (Scotland) Act 2010, section 1(4).

(e) S.I. 1997/829, as amended by S.S.I. 2000/290, S.S.I. 2003/209, S.S.I. 2005/3473, S.S.I. 2007/146, S.I. 2013/1036, the Countryside and Rights of Way Act 2000 and the Crofting Reform (Scotland) Act 2010, section 1(4).

(f) S.I. 1994/1701, as amended by S.I. 1996/3083, S.S.I. 1999/107, S.S.I. 2004/143, S.I. 2011/1043 and the Crofting Reform (Scotland) Act 2010, section 1(4).

(g) S.I. 1994/2710, revoked subject to savings by S.I. 1996/3035.

(h) S.I. 1988/559, revoked subject to transitional provisions by S.S.I. 2006/24.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the review of certain decisions of the Scottish Ministers in relation to payment of certain agricultural subsidies and other rural payments. After review, a right of appeal of such decisions is provided for to the Scottish Land Court.

The Schedule specifies which decision may be subject to a review under these Regulations (a “relevant decision” as defined in regulation 2(1)). This includes certain decisions which will be taken by the Scottish Ministers in exercise of functions under the common agricultural policy (CAP). The Regulations make provision for decisions under legacy schemes of previous CAP programmes (where the commitments under these schemes continue to apply – see the Schedule, paragraphs 10 to 22) and decisions of the Scottish Ministers taken in relation to the new CAP programme which took effect from 1st January 2015 (see the Schedule, paragraphs 1 to 9).

Regulation 3 ensures that these regulations have effect in Scots law in relation to holdings (whether wholly situated in Scotland or partly in Scotland and partly elsewhere in the United Kingdom), which are administered in accordance with the Integrated Administration and Control System (IACS) under the CAP.

Regulation 4 allows a beneficiary of aid or support to apply to the Scottish Ministers for a review of a relevant decision and regulation 5 provides that the application for review must be made no later than 60 days following the date of the decision letter.

Regulation 6 provides that the review must include an opportunity for the beneficiary to be heard on any matter relevant to the application at a review meeting. The review meeting must be held within 60 days of receipt of the application and the Scottish Ministers must intimate the date of the review meeting in writing. A review meeting will normally take place in person or, as agreed with the beneficiary, by telephone or video-conferencing facilities or such other arrangements.

Regulation 7 provides that the Scottish Ministers must, following a review, give their decision in the form of a written report. The written report must be sent by recorded delivery within the time period specified in regulation 7(4).

Where dissatisfied with the decision on review, regulation 8 provides that a beneficiary may appeal the decision to the Scottish Land Court on any issue of fact or law. This must be done within 60 days of the applicant receiving the written report. That appeal must be accompanied by the decision letter, the application for review and evidence of the date of the review meeting.

Regulation 9 sets out the Scottish Land Court’s powers in relation to an appeal. Any determination by that Court may be further appealed to the Court of Session on a question of law.

Regulation 10 provides that the Scottish Land Court may have regard to the conduct of either party during the review process as a whole when considering an award of expenses.

Regulation 11 revokes the Rural Payments (Appeals) (Scotland) Regulations 2009 subject to savings.

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

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