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STATUTORY INSTRUMENTS

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**1991 No.780 (S.73)**

**EUROPEAN COMMUNITIES**

**The Highlands and Islands Rural  
Enterprise Programme Regulations 1991**

<i>Made</i>	- - - -	<i>19th March 1991</i>
<i>Laid before Parliament</i>		<i>21st March 1991</i>
<i>Coming into force</i>	- -	<i>11th April 1991</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to the common agricultural policy of the European Economic Community(2), in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations, which may be cited as the Highlands and Islands Rural Enterprise Programme Regulations 1991, shall come into force on 11th April 1991.

(2) These Regulations shall apply to the area of Scotland comprising—

- (a) the Highland Region, Western Isles Island area; Orkney Islands area; Shetland Islands area; Argyll and Bute District; Arran, Great Cumbrae and Little Cumbrae in Cunninghame District; and
- (b) in the Moray District, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding, the use of land as grazing land, meadow land, osier land, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes and “agricultural” shall be construed accordingly;

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(1) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with sections 289 GA(1) of the Criminal Procedure (Scotland) Act 1975 (c. 21) (as inserted by section 66(2) of the Criminal Justice (Scotland) Act 1987 (c. 41)) and with S.I. 1984/526.  
(2) S.I.1972/1811.

“agricultural holding” means an agricultural holding as defined in section 1 of the Agricultural Holdings (Scotland) Act 1949(3);

“agricultural unit” means a croft, agricultural holding or smallholding within the programme area;

“apportioned land” means land formerly part of common grazings apportioned by the Crofters Commission under section 27(3) and (4) of the Crofters (Scotland) Act 1955(4) for the exclusive use of a crofter;

“approved” means approved by the Secretary of State in writing and “approve” and “approval” shall be construed accordingly;

“Business Development Scheme” means the scheme to assist the development or expansion of any economic measure of the type set out in the Schedules to these Regulations on or related to the agricultural unit;

“Commission Decision” means the Commission Decision of 18th March 1991 approving the rural enterprise programme(5);

“Community assistance” means assistance from the Guidance Section of the European Agricultural Guarantee and Guidance Fund payable in accordance with Council Regulations;

“Council Regulations” means—

- (a) Council Regulation (EEC) No 2052/88 of 24th June 1988(6) on the tasks of the Structural Funds and their effectiveness and on co-ordination of their activities between themselves and with the operation of the European Investment Bank and other existing financial instruments;
- (b) Council Regulation (EEC) No 4253/88 of 19th December 1988(7) laying down provisions for implementing Regulation (EEC) No 2052/88 as regards co-ordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments; and
- (c) Council Regulation (EEC) No 4256/88 of 19th December 1988(8) laying down provisions for implementing Council Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section;

“croft” has the same meaning as in section 3 of the Crofters (Scotland) Act 1955(9);

“eligible expenditure” means expenditure, including expenditure incurred in determining the feasibility of the project and professional fees and charges incurred in the preparation of the project, approved in relation to measures to be undertaken under the Business Development Scheme;

“eligible person” means a person who is an owner, tenant or any other legal occupier of the agricultural unit or any person authorised to act on his behalf;

“financial assistance” means Community assistance and grant or grant and environment management payments made under these Regulations;

“horticulture” means fruit, vegetables of a kind grown for human consumption, including mushrooms and other edible fungi (main crop potatoes or peas grown for seed or harvesting dry are excluded), flowers, pot plants, decorative foliage, herbs, seeds (other than pea seeds),

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(3) 1949 c. 75.

(4) 1955 c. 21; section 27(3) was amended by the Crofters (Scotland) Act 1961 (c. 58), s.15(4).

(5) OJ No. L

(6) OJ L185, 15.7.88, p.9.

(7) OJ L374, 31.12.88, p.1.

(8) OJ L374, 31.12.88, p.25.

(9) 1955 c. 21; section 3(1) was amended by the Crofters (Scotland) Act 1961 (c. 58), Schedule 1, Part II, paragraph 9; section 3(5) was substituted and section 3(6) was inserted by the Crofting Reform (Scotland) Act 1976 (c. 21), section 14.

bulbs and other planting material being seeds, bulbs, or material for sowing or planting either for the production of the produce included above or for the reproduction of such seeds, bulbs or planting materials and trees and shrubs other than trees grown for the purpose of afforestation;

“inbye land” means any land which is, or has been enclosed or delineated by fences, dykes, hedges etc. (including apportioned land) which has been used for cultivation, production of forage or closely controlled grazing by livestock;

“livestock” includes any creature kept for the production of food, wool, skins, or fur or for the purposes of use in the farming of land;

“nursery stock” means trees (but not for afforestation) shrubs, herbaceous and alpine plants;

“programme” means the rural enterprise programme;

“programme area” means the area of Scotland referred to in regulation 1(2);

“project” means a project comprising diversification measures alone or diversification measures together with either ancillary agricultural measures or environmental measures or both of them;

“rural enterprise programme” means the operational programme submitted for Community assistance under Article 14 of the Council Regulation (EEC) No. 4235/88 and approved by the Commission Decision;

“set-aside land” means set-aside land as defined in regulation 2 of the Set-Aside Regulations 1988<sup>(10)</sup>;

“smallholding” means any holding within the meaning of section 2 and section 32 of the Small Landholders (Scotland) Act 1911<sup>(11)</sup>;

“tenant” means—

- (a) in the case of an agricultural holding a tenant within the meaning of section 93(1) of the Agricultural Holdings (Scotland) Act 1949;
- (b) in the case of a croft, a crofter within the meaning of section 3(2) of the Crofters (Scotland) Act 1955;
- (c) in the case of a smallholding, a landholder within the meaning of section 2(2) of the Small Landholders (Scotland) Act 1911 or a statutory small tenant within the meaning of section 32(1) of that Act;

“traditional winter keep” means the production of oats, barley, rye, bere, turnips, kale and hay.

(2) References in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

### **Selection of areas**

**3.—**(1) The Secretary of State shall select areas from within the programme area when he considers it expedient that the Business Development Scheme should operate in that area.

(2) The Secretary of State in selecting an area shall have regard to the following criteria:—

- (a) share of agricultural employment in total employment;
- (b) level of agricultural income (measure in terms of net value added per holding);
- (c) population density (measured in persons usually resident per square kilometre);
- (d) proportion of land classified by the Macaulay Land Use Research Institute as land suitable for rough grazing only or land of very limited agricultural use.

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<sup>(10)</sup> S.I. 1988/1352.

<sup>(11)</sup> 1911 c. 49; section 2 was extended by the Small Landholders and Agricultural Holdings (Scotland) Act 1931 (c. 44), section 14 and both section 2 and 32 were restricted by the Crofters (Scotland) Act 1955 (c. 21), Schedule 6, Part I.

### **Approval of application**

4.—(1) Any eligible person seeking financial assistance towards the cost of any project to be undertaken under the Business Development Scheme shall submit an application for approval by the Secretary of State.

(2) An application submitted for approval shall be set out in such form as the Secretary of State may from time to time require and the person submitting it shall furnish all such particulars and information relating thereto as the Secretary of State may require, and in particular—

- (a) sufficient information to show that the project is being undertaken by an eligible person;
- (b) confirmation that the project is located on, or is related to, an agricultural unit within an area selected for the operation of the Business Development Scheme;
- (c) a description of the measures comprising the project;
- (d) a statement that the project could not proceed without financial assistance under the Business Development Scheme;
- (e) a business plan including a 3-year cash flow projection;
- (f) a proposed timetable for the work to be undertaken consistent with the business plan and the cash flow projection.

(3) More than one application may be submitted provided that the total amount of financial assistance to be received by the eligible person in respect of these applications does not exceed the limits mentioned in regulation 8(1)(a)(ii), 1(b)(ii) and 1(c)(iv).

(4) The Secretary of State shall only approve the application insofar as it is aimed at the development of the rural economy in accordance with the Council Regulation (EEC) No. 4253/88 and is to be carried out by or on behalf of the eligible person.

(5) Subject to paragraph (3) above, the Secretary of State as he thinks fit may refuse to approve the application or may approve the application in whole or in part for the purposes of financial assistance and he may make his approval subject to such conditions as he may impose.

### **Restrictions on approval of application**

5.—(1) The Secretary of State shall not approve an application for financial assistance unless he is satisfied that in the absence of such assistance the project could not, or could not appropriately, be realised and that the completion of the project will achieve the objectives of the Business Development Scheme and result in a viable self-sustaining enterprise.

(2) The Secretary of State shall not approve an application for financial assistance where the overall limit of subsidy from public funds is likely to exceed 50% of the cost of the project.

(3) The Secretary of State shall not approve an application for financial assistance—

- (a) towards diversification measures unless—
  - (i) the agricultural unit on which the projects takes place or to which it is related is located in an area where the Business Development Scheme is operating at the date of application; and
  - (ii) the proposed expenditure on the diversification measures is at least £1,000;
- (b) towards ancillary agricultural measures unless—
  - (i) the eligible person has a diversification measure approved in respect of the agricultural unit under the Business Development Scheme;
  - (ii) the proposed ancillary agricultural measure contributes to the viability of the agricultural unit;
  - (iii) the proposed ancillary agricultural measure is confined to inbye land;

- (iv) the proposed ancillary agricultural measure will be completed within 24 months of the date of the approval;
- (v) the proposed ancillary agricultural measure will not increase the breeding stock numbers during the 24 month period;
- (c) towards environmental measures unless the eligible person has a diversification measure approved in respect of the agricultural unit under the Business Development Scheme.

### **Variation of approval of application**

6. The Secretary of State may on the written request of the eligible person agree to vary the approval or any condition attached thereto.

### **Financial assistance**

7.—(1) Subject to the provisions of these Regulations the Secretary of State may give to an eligible person financial assistance towards—

- (a) eligible expenditure on—
  - (i) approved diversification measures mentioned in column 1 for the provision of any work or facility of the kind set out in column 2 of Schedule 1 except where the work or facility described in paragraph 3(6)(b) and (c) and paragraph 4(6)(a)-(d) of the said Schedule is to be carried out on set-aside land;
  - (ii) approved ancillary agricultural measures of the kind set out in Part I of Schedule 2;
  - (iii) approved environmental measures of the kind set out in column 1 of Part I of Schedule 3;
- (b) the environmental management of—
  - (i) the categories of land referred to in column 1 of Part II of Schedule 3;
  - (ii) land of high environmental value of a size mentioned in column 1 of Part III of Schedule 3;

(2) Subject to regulation 8(2), the Secretary of State may determine the manner and timing of payment of financial assistance.

### **Amount of financial assistance under regulation 7**

8.—(1) The amount of financial assistance payable under regulation 7 in relation to—

- (a) approved diversification measures shall—
  - (i) be 50% of the eligible expenditure; and
  - (ii) not exceed the sum of £25,000;
- (b) approved ancillary agricultural measures shall—
  - (i) for the specified agricultural work mentioned in column 1 of Part I of Schedule 2 be the corresponding percentage of the eligible expenditure mentioned in column 2;
  - (ii) not exceed a percentage of the amount of financial assistance approved for diversification measures which percentage shall be the percentage specified in column 2 of Part II of Schedule 2 which corresponds to the amount of approved financial assistance for diversification specified in column 1 of the said Part II;
  - (iii) be in addition to the financial assistance approved under sub-paragraphs (a) and (c) of this paragraph;
- (c) approved environmental measures shall—

- (i) for the capital works referred to in column 1 of Part I Schedule 3 be the corresponding percentage of the eligible expenditure mentioned in column 2;
- (ii) for the categories of land referred to in column 1 of Part II of Schedule 3 be the corresponding rate per hectare mentioned in column 2;
- (iii) for the conservation of land of high environmental value of a size mentioned in column 1 Part III of Schedule 3 be the sum mentioned in column 2;
- (iv) not exceed 20% of the amount of financial assistance for diversification approved under sub-paragraph (a) above; and
- (v) be in addition to the financial assistance approved under sub-paragraphs (a) and (b) of this paragraph.

(2) The Secretary of State shall pay 10% of the financial assistance approved under sub-paragraphs (a), (b) and (c) of the foregoing paragraph on approval of the project.

### **Claims for financial assistance**

**9.** Any claims for financial assistance by an eligible person under these Regulations shall be made in such form and manner and at such time as the Secretary of State may from time to time require, and the eligible person shall furnish all such particulars and information relating to the claim and copies of such documents and records relating thereto as the Secretary of State may require and in particular—

- (a) evidence that the amount of expenditure on which financial assistance is claimed has been incurred including details of any discount received by the eligible person;
- (b) documentary evidence that the approved measure has been properly executed.

### **Powers of entry and inspection**

**10.—(1)** For the purposes of these Regulations and in particular for the purpose of—

- (a) securing that financial assistance under these Regulations is made in proper cases only;
- (b) ascertaining whether any financial assistance is payable or recoverable;
- (c) ascertaining whether an offence under these regulations has been or is being committed,

any person duly authorised in that behalf by the Secretary of State may, and upon production if so required of his appointment of authority, at all reasonable times of the day enter upon and inspect any land and may—

- (i) inspect any premises, plant and machinery, equipment or livestock in respect of which financial assistance under these Regulations has been made or claimed provided that admission to any premises used as a dwellinghouse shall not be demanded as of right under this sub-paragraph unless 24 hours' notice of intended entry has been given to the occupier of the building;
- (ii) require the eligible person to furnish for inspection any book, account or other record in his possession or under his control which the authorised person considers is necessary to substantiate the entitlement to financial assistance under these Regulations.

(2) In exercise of the power conferred on him by this regulation, an authorised person may be accompanied by such persons acting under his instructions as appear to him to be necessary and, in relation to the inspection of documents, he shall be entitled to take such copies or extracts therefrom as he may consider necessary.

### **Reduction or withholding of financial assistance**

**11.**—(1) The Secretary of State may reduce or withhold any financial assistance under these Regulations in any case where—

- (a) the carrying out or provision of the work or facility towards the expenditure on which such financial assistance is claimed appears to the Secretary of State to frustrate the purposes served by assistance previously given out of money provided by Parliament or the European Economic Community; or
- (b) the carrying out of the work or facility towards the expenditure on which such financial assistance is claimed has been effected in a way which appears to the Secretary of State to have destroyed or damaged the natural beauty and amenity of the countryside to an extent which cannot be justified by the purpose for which financial assistance is claimed; or
- (c) funding in respect of expenditure towards which such financial assistance is claimed has been or may be given otherwise than under these Regulations; or
- (d) he considers that the expenditure towards which such financial assistance is claimed is excessive, having regard to the work or facility carried out or provided and to which the claim relates; or
- (e) he considers that in the circumstances current at the time of the application other applications are to be preferred.

(2) Before reducing or withholding any financial assistance under the provisions of this regulation, the Secretary of State shall give to any person whose financial assistance it is proposed to reduce or withhold a written notification of the reasons for the action proposed to be taken by him.

### **Revocation of approval and recovery of financial assistance**

**12.** If at any time after the Secretary of State has approved an application or paid financial assistance under these Regulations it appears to him that—

- (a) any condition subject to which the approval was given or the financial assistance has been paid has not been complied with, or the targets have not been met; or
- (b) any work or facility in respect of expenditure on which financial assistance has been paid has been badly done or provided, or has been or is being unreasonably delayed or is unlikely to be completed; or
- (c) the Commission has decided to reduce, suspend or discontinue Community assistance;
- (d) the eligible person has—
  - (i) intentionally obstructed any officer in exercise of his powers under regulation 10; or
  - (ii) failed to comply with a requirement imposed under regulation 10(1);
- (e) the eligible person gave information on any matter relevant to the giving of the approval or the making of the payment which was false or misleading in a material respect,

the Secretary of State may revoke the approval, in whole or in part and, where any financial assistance has been paid, may recover on demand an amount equal to the financial assistance which has been so paid or such part thereof as he may specify; but before revoking an approval or making a demand under the preceding provisions of this regulation, the Secretary of State shall give to any person to whom any such financial assistance would be payable or from whom any such amount would be recoverable a written notification of the reasons for the action proposed to be taken by him.

### **False statements**

13.—(1) If the eligible person, for the purposes of obtaining for himself or any other person any financial assistance under these Regulations, knowingly or recklessly makes a statement which is false in any material particular he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Summary proceedings for such an offence may be commenced at any time within 3 years after the commission of the offence and within 6 months after the relevant date and for the purposes of this paragraph proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted if such warrant is executed without undue delay.

(3) In this regulation “the relevant date” means the date on which evidence sufficient in the opinion of the Procurator Fiscal to justify proceedings comes to his knowledge.

(4) For the purposes of the foregoing paragraph a certificate of the Procurator Fiscal as to the date on which such evidence as is there mentioned came to his knowledge shall be conclusive evidence of that fact.

St. Andrew’s House,  
Edinburgh  
19th March 1991

*Strathclyde*  
Parliamentary Under Secretary of State, Scottish  
Office



SCHEDULE 1

Regulation 7(1)(a)

BUSINESS DEVELOPMENT SCHEME — DIVERSIFICATION MEASURES

Diversification measures	Kind of work or facility
<b>1.</b> Alternative agricultural production or aquaculture	<b>1.</b> Provision, alteration, enlargement or reconditioning of permanent buildings or other permanent structures. <b>2.</b> Works of a capital nature relating to workshops, offices, accommodation, stores and processing rooms including the provision or improvement of toilet and washing facilities. <b>3.</b> The provision and installation of fixed equipment and machinery required in connection with the enterprise. <b>4.</b> The provision of rafts and boats required in connection with the enterprise. <b>5.</b> Provision or improvement of facilities for the supply of gas, electricity, heating oil or water. <b>6.</b> Provision or improvement of drainage including facilities for the disposal of rain and surface water and facilities for the treatment and disposal of foul waste generated by the enterprise. <b>7.</b> Provision or improvement of access roads, paths, fences, hardstandings, car parks, piers and slipways required in connection with the enterprise. <b>8.</b> Provision of livestock and nursery stock for propagation.
<b>2.</b> Tourist accommodation	<b>1.</b> Provision, alteration, enlargement or reconditioning of permanent buildings. <b>2.</b> Works of a capital nature relating to provision of tourist accommodation including the provision or improvement of catering, drying, washing and toilet facilities. <b>3.</b> Provision and installation of fixed equipment and machinery required in connection with the enterprise; <b>4.</b> Provision or improvement of facilities for the supply of gas, electricity, heating oil or water. <b>5.</b> Provision or improvement of drainage, including facilities for the disposal of rain and surface water, and facilities for the treatment and the disposal of foul waste arising from the new enterprise.

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Diversification measures	Kind of work or facility
3. Tourism facilities	<p data-bbox="801 383 1348 472"><b>6.</b> Provision or improvement of access roads, paths, fences, hardstandings and car parks associated with the diversification measure.</p> <p data-bbox="801 495 1348 584"><b>1.</b> Provision, alteration, enlargement or reconditioning of permanent buildings forming part of the enterprise.</p> <p data-bbox="801 607 1348 786"><b>2.</b> Works of a capital nature relating to provision of information, display or exhibition areas, including fixed seating and shelters, viewing galleries, notices and signs and the provision or improvement of toilet and washing facilities.</p> <p data-bbox="801 808 1348 898"><b>3.</b> Provision and installation of fixed equipment and machinery required in connection with the enterprise.</p> <p data-bbox="801 920 1348 1010"><b>4.</b> Provision and improvement of facilities for the supply of gas, electricity, heating oil or water.</p> <p data-bbox="801 1032 1348 1189"><b>5.</b> Provision or improvement of drainage, including facilities for the disposal of rain and surface water and facilities for the treatment and disposal of foul waste associated with the diversification measure.</p> <p data-bbox="801 1211 1348 1301"><b>6.</b> Provision or improvement of access roads, paths, fences, hardstandings and car parks associated with the diversification measure.</p> <p data-bbox="801 1323 1348 1648"><b>7.</b> Works of a capital nature relating to the establishment of nature trails, including—</p> <ul style="list-style-type: none"> <li data-bbox="865 1391 1348 1458">(a) the establishment of paths and wet areas;</li> <li data-bbox="865 1469 1348 1536">(b) the clearance of obstacles (other than trees or shrubs);</li> <li data-bbox="865 1547 1348 1581">(c) the regrading of land; and</li> <li data-bbox="865 1592 1348 1648">(d) the provision and planting of trees, shrubs and other plants.</li> </ul>
4. Provision of facilities for sports and recreation	<p data-bbox="801 1671 1348 1760"><b>1.</b> Provision, alteration, enlargement, or reconditioning of permanent buildings.</p> <p data-bbox="801 1783 1348 1935"><b>2.</b> Works of a capital nature relating to office and club house accommodation, including seating and shelter for spectators, and the provision or improvement of drying, washing and toilet facilities.</p>

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Diversification measures	Kind of work or facility
	<p><b>3.</b> Provision and installation of fixed equipment and machinery required in connection with the enterprise.</p> <p><b>4.</b> Provision or improvement of facilities for the supply of gas, electricity, heating oil or water.</p> <p><b>5.</b> Provision or improvement of roads, paths, fences, hardstanding and car parks.</p> <p><b>6.</b> Works of a capital nature relating to the establishments of sports facilities, including—</p> <ul style="list-style-type: none"> <li>(a) field drainage;</li> <li>(b) land levelling and grading;</li> <li>(c) reseeded and regeneration of amenity grassland;</li> <li>(d) laying of turf and of hard surfaces; and</li> <li>(e) the establishment of ponds for recreational fishing.</li> </ul>
<b>5. Provision of services</b>	<p><b>1.</b> Provision, alteration, enlargement or reconditioning of permanent buildings required to provide the service.</p> <p><b>2.</b> Provision and installation of fixed equipment and machinery required in connection with the enterprise.</p> <p><b>3.</b> Provision or improvement of toilet facilities and facilities for the supply of gas, electricity, heating oil and water.</p>

SCHEDULE 2

Regulations 7(1)(a) and 8(1)(b)

BUSINESS DEVELOPMENT SCHEME ANCILLARY AGRICULTURE MEASURES

Part I

Amount of Financial Assistance

Column 1 Specified agricultural works on inbye land	Column 2 Percentage of eligible expenditure
<b>1.</b> Provision replacement and improvement of dykes	70%
<b>2.</b> Provision replacement and improvement of fencing	60%

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Column 1 Specified agricultural works on inbye land	Column 2 Percentage of eligible expenditure
3. Reseeding and regeneration of grazing land	60%
4. Reconditioning	60%
5. Provision replacement and improvement of livestock accommodation	50%
6. Cleaning of ditches	50%

## Part II

### Limits on Amount of Financial Assistance

Column 1 Amount of approved financial assistance for diversification	Column 2 Percentage of amount in Column 1
£500 to £1,000	100%
more than £1,000 but not exceeding £2,500	75%
more than pound;2,500 but not exceeding £25,000	40%

## SCHEDULE 3

Regulations 7(1)(b) and 8(1)(c)

### BUSINESS DEVELOPMENT SCHEME — ENVIRONMENTAL MEASURES

## PART I

Column 1 Capital works	Column 2 Percentage
1. Provision of dykes to exclude livestock	70%
2. Provision of fencing to exclude livestock	60%
3. Planting of trees as shelter belts or amenity planting	60%
4. Eradication of bracken or selective control of rhododendrons	60%
5. Creation of ponds	50%

## PART II

Column 1 Area based payments	Column 2 Rate per hectare
1. Hill land	£30
2. Inbye land other than for traditional winter keep	£60
3. Inbye land for traditional winter keep	£90

## PART III

Column 1 Land of high environmental value	Column 2 Amount per annum
Conservation management of areas not less than 0.5 and not more than 2.5 hectares	£300

### EXPLANATORY NOTE

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

These Regulations, which come into force on 11th April 1991, lay down measures necessary to implement Council Regulation (EEC) No 4256/88 (OJ No L374, 31.12.88, p.25) laying down provisions for the implementing of Council Regulation (EEC) No 2052/88 (OJ No L185, 15.7.88, p.9) as regards the European Agricultural Guidance and Guarantee Fund Guidance Section and to enable financial assistance to be received from that Section under an approved operational programme designed to promote the development of the rural economy in the programme area being the area of Scotland comprising—

- (a) the Highland Region, Western Isles Island area; Orkney Islands area; Shetland Islands area; Argyll and Bute District; Arran, Great Cumbrae and Little Cumbrae in Cunninghame District; and
- (b) in the Moray District, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes.

Article 1 of Council Regulation (EEC) No. 2052/88 requires the Structural Funds to support the achievement of objectives set out in Articles 130(a) and 130(c) of the EC Treaty by contributing to the attainment of certain priority objectives, one of which is the promotion of the development of rural areas (Objective 5(b)). Article 11 requires areas to be selected.

Council Regulation (EEC) No. 4253/88 (OJ No. L374, 31.12.88, p. 1) lays down provisions for implementing Council Regulation (EEC) No. 2052/88 as regards co-ordination of the activities of the different Structural Funds etc. Article 4 deals with the selection of rural areas which may receive assistance. Council Regulation (EEC) No. 4256/88 lays down provisions for implementing Council Regulation (EEC) No. 2052/88 as regards the EAGGF Guidance Section. Article 6 provides that

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Fund assistance for promoting the development of rural areas in regions covered by Objective 5(b) shall in the main take the form of an operational programme.

The selection of the area of the Highlands and Islands Development Board was confirmed by a Commission Decision dated 10th May 1989 (OJ No. L198,12.7.89, p. 1). An operational programme (Rural Enterprise Programme) has been submitted under Article 14 of Council Regulation (EEC) No. 4253/88 and has been approved by Commission Decision dated 18th March 1991 (OJ No. L ).

The Regulations provide for financial assistance to be given towards the cost of diversification measures (with the exception of certain works to be carried out on set-aside land), ancillary agricultural measures, and environmental measures specified respectively in Schedules 1, 2 and 3 coming within a business development scheme operating in a selected location in the programme area.

In selecting the location the Secretary of State has to have regard to certain criteria (regulation 3). In regulation 3(2)(d) reference is made to land classified by the Macaulay Land Use Research Institute. The Macaulay Land Use Research Institute at Craigiebuckler, Aberdeen classifies land according to limitations imposed on use of the land for agriculture by physical and biological factors. The factors are - climate, gradient, soil type, wetness, erosion and vegetation. The classification system for farm land is recognised as an indication of the agricultural potential of the land. There are 7 classifications but only classification 6 (land capable of use only as rough grazings) and classification 7 (land of very limited agricultural use) are relevant to these Regulations.

To benefit from financial assistance an eligible person must submit to the Secretary of State an application for approval (regulation 4). The application must indicate that the project is on or related to the agricultural unit which must be in a location in which the business development scheme operates and that the project will not proceed without financial assistance under the business development scheme.

The Regulations also—

- (a) impose certain restrictions on the approval of the application (regulation 5);
- (b) allow the variation of the approval given (regulation 6);
- (c) set out the measures on which financial assistance can be given (regulation 7);
- (d) provide for payment of financial assistance (regulation 8);
- (e) provide for financial assistance to be claimed (regulation 9);
- (f) confer a power of entry and inspection (regulation 10);
- (g) provide for the reduction or withholding of financial assistance in circumstances where it would otherwise be payable (regulation 11);
- (h) provide for the revocation of approval and the recovery of financial assistance paid (regulation 12); and
- (i) create an offence punishable on summary conviction of knowingly or recklessly making a false statement to obtain financial assistance (regulation 13).