

SCOTTISH STATUTORY INSTRUMENTS

2010 No. 273

**The Less Favoured Area Support
Scheme (Scotland) Regulations 2010**

PART III

CALCULATION OF LESS FAVOURED AREA SUPPORT

Amount of less favoured area support

7.—(1) Subject to [F1]paragraph (2), regulation 12 and regulation 12A], the amount of less favoured area support is calculated in accordance with the following formula:—

$$LFAS = P \times R$$

Where—

LFAS is the amount of less favoured area support payable;

P is the payable area; and

R is the rate of payment determined in accordance with regulation 11.

(2) Where an applicant has eligible land in more than one grazing category (as determined for the purposes of regulation 8) then—

(a) the calculation in paragraph (1) is applied in respect of the total area of eligible land in each grazing category and, for the purposes of each calculation—

(i) *P* is the payable area of land in each grazing category; and

(ii) *R* is the rate of payment for each type of grazing category determined in accordance with regulation 11; and

(b) the total amount of less favoured area support payable is the sum of the calculations in respect of each grazing category.

Textual Amendments

F1 Words in [reg. 7\(1\)](#) substituted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, **8**

Commencement Information

I1 Reg. 7 in force at 2.7.2010, see [reg. 1\(1\)](#)

Determination of Unadjusted Payable Area

8.—(1) [F2Subject to regulation 8A, the unadjusted payable area] is the total of the areas of eligible land of the applicant in each grazing category, calculated in accordance with the following formula—

$$P = E \times V$$

Where—

P is the unadjusted payable area;

Subject to regulation 9(2) and (3), E is the area of eligible land in each field or shared grazing in the Scheme Year for which payment is to be made; and

V is the hectare value for each field or shared grazing determined in accordance with paragraph (2).

(2) For the purpose of paragraph (1), the hectare value is the entry in the third column of Schedule 3 corresponding to the grazing category in the second column of that Schedule.

(3) For the purposes of this regulation, the grazing category of each field or shared grazing of the applicant is the entry in the second column of Schedule 3 corresponding to the entry in the first column of that Schedule relating to the base year stocking density of each field or shared grazing.

(4) For the purposes of paragraph (3), the “base year stocking density” for each field or shared grazing is either—

- (a) the stocking density that was determined for that field or shared grazing by paragraphs (4) to (12) of regulation 9 of the 2003 Regulations following upon an application for less favoured area support under those Regulations; or
- (b) where no stocking density was determined under regulation 9 of the 2003 Regulations for a field or shared grazing, the stocking density figure determined by the Scottish Ministers under regulation 9(5) of the 2005 Regulations for that part of the land of the applicant on or before 31st December 2006^[F3]; or
- (c) where no stocking density was determined for a field or shared grazing under regulation 9 of the 2003 Regulations or under regulation 9(5) of the 2005 Regulations, the stocking density figure determined for the applicant in accordance with regulation 9(4) and Parts I and II of Schedule 4].

Textual Amendments

- F2** Words in [reg. 8\(1\)](#) substituted (15.5.2019) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2019 \(S.S.I. 2019/98\)](#), regs. 1, 4
- F3** [Reg. 8\(4\)\(c\)](#) and word inserted (14.3.2011) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/73\)](#), regs. 1, 5

Commencement Information

- I2** Reg. 8 in force at 2.7.2010, see [reg. 1\(1\)](#)

^[F4] Adjustment of the area of eligible land for a Scheme Year commencing on or after 1st January 2019

8A.—(1) Paragraph (2) applies for the purpose of the calculation in regulation 8(1) of the area of eligible land (in respect of a Scheme Year commencing on or after 1st January 2019).

- (2) Where the area of eligible land (subject to regulation 9(2) and (3)) exceeds—
 - (a) 4,000 hectares, a reduction of 10% is to be applied to the number of hectares exceeding that amount;
 - (b) 10,000 hectares, a reduction of 25% is to be applied to the number of hectares exceeding that amount (in addition to the application of the reduction in sub-paragraph (a)).
- (3) Where—

- (a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 8); and
- (b) eligible land, for the purpose of the calculation in regulation 8(1), for that applicant has been reduced under paragraph (2),

the Scottish Ministers must apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 8(1).]

Textual Amendments

- F4** Reg. 8A inserted (15.5.2019) by The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2019 (S.S.I. 2019/98), regs. 1, 5

Stocking density outwith the minimum and maximum stocking density parameters

9.—(1) The provisions of this regulation apply where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is either less than the minimum stocking density or greater than the maximum stocking density.

[^{F5}(1A) Subject to paragraphs (1B) and (1C), the minimum stocking density is the entry in the second column in Part III of Schedule 4 corresponding to the grazing category in the first column of that Part of that Schedule.

(1B) Where an applicant has eligible land which comprises land falling into more than one grazing category (as determined for the purposes of regulation 8), the minimum stocking density is the sum (to two decimal places) of the minimum stocking densities for each grazing category calculated in accordance with paragraph (1C).

(1C) The minimum stocking density for each grazing category is the proportion of the minimum stocking density (as set out in the second column in Part III of Schedule 4 corresponding to the grazing category in the first column of that Schedule) that the land in the grazing category represents in relation to the overall eligible land.]

(2) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is less than the minimum stocking density, the eligible land for the purposes of the calculation in regulation 8(1) is the number of hectares calculated in accordance with the following formula—

$$E1 = (F \times S) \div M$$

Where—

E1 is the area of eligible land adjusted in accordance with this regulation;

F is the total area of eligible land of the applicant;

S is the stocking density calculated for the applicant in accordance with paragraph (4) and Parts I and II of Schedule 4; and

M is the minimum stocking density.

(3) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is greater than the maximum stocking density, the eligible land for the purposes of the calculation in regulation 8(1) is the number of hectares calculated in accordance with the following formula—

$$E2 = (F \times M) \div S$$

Where—

E2 is the area of eligible land adjusted in accordance with this regulation;

F is the total area of eligible land of the applicant;

M is the maximum stocking density; and

S is the stocking density calculated for the applicant in accordance with paragraph (4) and Parts I and II of Schedule 4.

[^{F6}(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.]

(6) Where—

- (a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 8); and
- (b) eligible land, for the purpose of the calculation in regulation 8(1), for that applicant has been reduced under paragraph (2) or (3),

the Scottish Ministers must apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 8(1).

[^{F7}(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.]

Textual Amendments

- F5** Reg. 9(1A)-(1C) inserted (14.3.2011) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/73\)](#), regs. 1, **6(a)**
- F6** Reg. 9(4)(5) substituted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, **9(a)**
- F7** Reg. 9(7)-(9) substituted for reg. 9(7)(8) (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, **9(b)**

Commencement Information

- I3** Reg. 9 in force at 2.7.2010, see [reg. 1\(1\)](#)

[^{F8}Calculation of less favoured area support following the transfer of a holding

- 9A.**—(1) This paragraph applies—
- (a) where there has been a transfer of all or part of a holding;
 - (b) prior to that transfer, less favoured area support was granted to the transferor in relation to that holding or that part of the holding in respect of any Scheme Year commencing on or after 1st January 2010; and
 - (c) following that transfer, the transferee—
 - (i) submits an application for less favoured area support in relation to that holding or that part of the holding in respect of the Scheme Year concerned or any Scheme Year following the Scheme Year concerned; and
 - (ii) has not previously received a payment of less favoured area support in respect of any Scheme Year commencing on or after 1st January 2010.
- (2) Where paragraph (1) applies, these Regulations apply subject to the following modifications—
- (a) in regulation 8(4)(b) and (c) (determination of Unadjusted Payable Area), after “the applicant” insert “or, where regulation 9A(1) applies, the transferor”;
 - (b) in regulation 9 (stocking density outwith the minimum and maximum stocking density parameters)—
 - (i) in relation to the formula in paragraph (2), for the definition of *S* substitute—

“*S* is the stocking density calculated for the applicant (or, where regulation 9A(1) applies, the transferor) in accordance with paragraph (4) and Parts I and II of Schedule 4 or, as the case may be, determined under paragraph (7).”;
 - (ii) in relation to the formula in paragraph (3), in the definition of *S*, after “the applicant” insert “or, where regulation 9A(1) applies, the transferor”;

- (iii) in paragraph (4)(a), after “maintained by the applicant” insert “or, where regulation 9A(1) applies, the transferor”;
- (iv) in paragraph (5)—
 - (aa) after “declared by the applicant” insert “or, where regulation 9A(1) applies, the transferor”; and
 - (bb) after “maintained by the applicant” insert “or, where regulation 9A(1) applies, the transferor”;
- (v) in paragraph (8), in the definition of “applicable year”—
 - (aa) in sub-paragraphs (a) and (b), after “an applicant” insert “or, where regulation 9A(1) applies, the transferor”; and
 - (bb) in sub-paragraph (c), after “the applicant” insert “or, where regulation 9A(1) applies, the transferor”;
- (vi) in paragraph (8), in sub-paragraphs (a) and (b) of the definition of “historic land area”, after “the applicant”, in each place where it occurs,” insert “or, where regulation 9A(1) applies, the transferor”; and
- (vii) in paragraph (9)—
 - (aa) after “an applicant” insert “or, where regulation 9A(1) applies, the transferor”; and
 - (bb) in sub-paragraph (b), after “that applicant” insert “or, where regulation 9A(1) applies, that transferor”;
- (c) in regulation 10 (enterprise mix)—
 - (i) in paragraph (1), after “the applicant” insert “or, where regulation 9A(1) applies, the transferor”; and
 - (ii) in paragraph (2)(b), after “an applicant” insert “or, where regulation 9A(1) applies, the transferor”; and
- (d) in Schedule 4 (livestock units and stocking density), in Part I (calculation of livestock units), in the description of I and J in relation to the formula, after “an applicant” insert “or, where regulation 9A(1) applies, a transferor”.
- (3) In this regulation, “transferor” means—
 - (a) the person who transfers the holding or part of the holding who, prior to the transfer, was granted less favoured area support in relation to that holding or that part of the holding in respect of any Scheme Year commencing on or after 1st January 2010; or
 - (b) a person other than a person mentioned in sub-paragraph (a) who, prior to the transfer, was granted less favoured area support in relation to that holding or that part of the holding in respect of any Scheme Year commencing on or after 1st January 2010.]

Textual Amendments

- F8** [Reg. 9A](#) inserted (1.3.2016) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/33\)](#), regs. 1, 3

Enterprise mix

10.—(1) [F9Subject to paragraphs (2), (3), (4) and (5)], where at least 10% of the livestock units of the applicant, calculated in accordance with regulation 9(4) and Part I of Schedule 4, are cattle, the

unadjusted payable area calculated in accordance with regulation 8 is to be adjusted in accordance with this regulation and the following formula—

$$P1 = P2 \times Z$$

Where—

P1 is the payable area;

P2 is the unadjusted payable area calculated in accordance with regulation 8; and

Z is the hectare multiplier contained in the second column of Schedule 8 corresponding to the proportion of livestock units (calculated in accordance with regulation 9(4) and Part I of Schedule 4) which are cattle contained in the first column of Schedule 8.

(2) Where the number of sheep used to calculate livestock units for the purposes of regulation 9(4) and Part I of Schedule 4 is lower than—

- (a) the number of sheep used to calculate livestock units for the purposes of the Scheme 2006 payment; or
- (b) where an applicant did not receive a Scheme 2006 payment, the number of sheep used to calculate livestock units for the purposes of the Scheme 2005 payment,

and the hectare multiplier contained in the second column of Schedule 8, corresponding to the proportion of livestock units (calculated in accordance with regulation 9(4) and Part I of Schedule 4) which are cattle contained in the first column of Schedule 8, is higher than the hectare multiplier established for the purposes of the Scheme 2006 payment or, the Scheme 2005 payment as appropriate, then that hectare multiplier can only apply for the [^{F10}purpose of determining a Scheme payment in the period from 2010 to 2024] if the number of cattle used to calculate livestock units for the purposes of regulation 9(4) and Part I of Schedule 4 is greater than the number of cattle used to calculate livestock units for the purposes of the Scheme 2006 payment or the Scheme 2005 payment as appropriate.

[^{F11}(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.]

(5) Following a request made under paragraph (4), the Scottish Ministers may—

- (a) treat the application as if paragraph (1) applied; and
- (b) 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).

Textual Amendments

- F9** Words in [reg. 10\(1\)](#) substituted (14.3.2011) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/73\)](#), regs. 1, **7(a)**
- F10** Words in [reg. 10\(2\)](#) substituted (1.1.2021) by [The Common Agricultural Policy \(Less Favoured Area Support\) \(EU Exit\) \(Scotland\) Amendment Regulations 2020 \(S.S.I. 2020/456\)](#), regs. 1(2), **3(3)**
- F11** [Reg. 10\(3\)\(4\)](#) substituted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, **10(b)**

Commencement Information

I4 Reg. 10 in force at 2.7.2010, see [reg. 1\(1\)](#)

Rate of payment of less favoured area support

11.—(1) Where for the purposes of regulation 8, the grazing category of land, as specified in Schedule 3, is A or B, [^{F12}the maximum rate of payment] of less favoured area support for the purposes of regulation 7 is the rate per hectare of the unadjusted payable area set out in the entry in the [^{F13}second, third or fourth column] in Part I (More Disadvantaged Land) of Schedule 5 corresponding to the [^{F14}Scheme Year and the] fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (3).

(2) Where, for the purposes of regulation 8, the grazing category of land, as specified in Schedule 3, is C or D, [^{F15}the maximum rate of payment] of less favoured area support for the purposes of regulation 7 is the rate per hectare of the unadjusted payable area set out in the entry in the [^{F16}second, third or fourth column] in Part II (Less Disadvantaged Land) of Schedule 5 corresponding to the [^{F17}Scheme Year and the] fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (3).

(3) For the purposes of paragraphs (1) and (2), the fragility category applicable to the applicant is determined by the code of the parish in which the main farm of the applicant is situated as set out in Schedule 6.

(4) For the purpose of paragraph (3), the code of the parish in which the main farm is situated is the first digit or the first two or three digits as appropriate of the applicant's main farm code.

(5) For the purposes of this regulation, “main farm code” means the code attributed by the Scottish Ministers to the farm which the applicant considers is the applicant's main farm for the purposes of the applicant's single application.

[^{F18}(6) This regulation applies subject to regulation 12A.]

Textual Amendments

- F12** Words in [reg. 11\(1\)](#) substituted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, [11\(a\)](#)
- F13** Words in [reg. 11\(1\)](#) substituted (15.5.2019) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2019 \(S.S.I. 2019/98\)](#), regs. 1, [7\(a\)\(i\)](#)
- F14** Words in [reg. 11\(1\)](#) inserted (15.5.2019) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2019 \(S.S.I. 2019/98\)](#), regs. 1, [7\(a\)\(ii\)](#)
- F15** Words in [reg. 11\(2\)](#) substituted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, [11\(a\)](#)
- F16** Words in [reg. 11\(2\)](#) substituted (15.5.2019) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2019 \(S.S.I. 2019/98\)](#), regs. 1, [7\(b\)\(i\)](#)
- F17** Words in [reg. 11\(2\)](#) inserted (15.5.2019) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2019 \(S.S.I. 2019/98\)](#), regs. 1, [7\(b\)\(ii\)](#)
- F18** [Reg. 11\(6\)](#) inserted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, [11\(b\)](#)

Commencement Information

I5 Reg. 11 in force at 2.7.2010, see [reg. 1\(1\)](#)

[^{F19}Minimum payment

12. The minimum amount of less favoured area support payable by the Scottish Ministers under these Regulations (prior to the deduction of any penalty under Commission Regulation 65/2011 [^{F20}or the Horizontal Delegated Regulation]) is £385 in respect of a Scheme Year.]

Textual Amendments

- F19** Reg. 12 substituted (14.3.2011) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/73\)](#), regs. 1, **8**
- F20** Words in reg. 12 inserted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, **12**

[^{F21}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.]

Textual Amendments

- F21** Reg. 12A inserted (9.6.2015) by [The Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/185\)](#), regs. 1, **13**

Changes to legislation:

There are currently no known outstanding effects for the The Less Favoured Area Support Scheme (Scotland) Regulations 2010, PART III.