

2002 No. 139

AGRICULTURE

**The Less Favoured Area Support Scheme (Scotland)
Regulations 2002**

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| <i>Made</i> | <i>21st March 2002</i> |
| <i>Laid before the Scottish Parliament</i> | <i>21st March 2002</i> |
| <i>Coming into force</i> | <i>22nd March 2002</i> |

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The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2002 and shall come into force on 22nd March 2002.

(2) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Integrated Administration and Control System Regulations 1993(b).

Interpretation

2.—(1) In these Regulations—

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

“applicant” means a person who has made an application for less favoured area support under these Regulations in accordance with regulation 3;

“area aid application” has the same meaning as in Article 6 of Council Regulation 3508/1992;

“authorised person” means a person who is authorised by the Scottish Ministers, either generally or specifically, to act in relation to matters arising under these Regulations;

“cattle” for the purposes of calculating additional payments for environmental measures under regulation 9, means:

(a) suckler cows and heifers; and

(b) for those applicants maintaining a dairy herd in, the islands of Shetland, the islands of Orkney, the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert, or any other islands in the Outer Hebrides and the Inner Hebrides, a livestock unit for each 5730 litres of milk quota held,

which the Scottish Ministers determine are taken into account from time to time;

“Commission Regulation 1750/1999” means Commission Regulation (EC) No. 1750/1999 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agriculture Guidance and Guarantee Fund (EAGGF)(c);

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.I. 1993/1317, amended by S.I. 1994/1134, 1997/1148, 1999/1820 and 2000/2573.

(c) O.J. No. L 214, 13.8.99, p.31, as corrected by Corrigendum to Commission Regulation (EC) 1750/99 (O.J. L 337, 30.12.99, p.75) and amended by Commission Regulation (EC) No. 2075/2000 (O.J. No. L 246, 30.9.00, p.46), Commission Regulation (EC) No. 672/2001 (O.J. L 093, 3.4.01, p.28) and Commission Regulation (EC) No. 1763/2001 (O.J. L 239, 7.9.01, p.10).

“Commission Regulation 2419/2001” means Commission Regulation (EC) No. 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(a);

“common grazing” has the same meaning attributed to it for the purpose of Article 11 of Commission Regulation 1750/1999;

“Council Regulation 3508/1992” means Council Regulation (EEC) No. 3508/1992 establishing an Integrated Administration and Control System for certain Community aid schemes(b);

“competent authority” has the same meaning as in regulation 2A of the Integrated Administration and Control System Regulations 1993(c);

“Council Regulation 1254/1999” means Council Regulation (EC) No. 1254/1999 on the common organisation of the market in beef and veal(d);

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations(e);

“Council Regulation 2529/2001” means Council Regulation (EC) 2529/2001 on the common organisation of the market in sheep meat and goat meat(f);

“cross-border holding” means a holding in the United Kingdom which is situated partly in Scotland;

“designated maps” means the four maps numbered 1 to 4, each such map being marked “Map of less-favoured farming areas in Scotland”, dated 5th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TY;

“eligible agricultural activity” means one or more of the following activities which, in the opinion of the Scottish Ministers are undertaken on a continuous basis:–

- (a) maintaining a herd of suckler cows;
- (b) maintaining a flock of sheep comprising eligible ewes as defined by Council Regulation 2529/2001;
- (c) maintaining a dairy herd in–
 - (i) the islands of Shetland;
 - (ii) the islands of Orkney;
 - (iii) the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintyre Peninsula south of Tarbert; or
 - (iv) any other islands in the Outer Hebrides and the Inner Hebrides;
- (d) maintaining a breeding herd of farmed deer for meat production;
- (e) maintaining a breeding herd of goats for fibre production; or
- (f) maintaining a breeding herd of alpaca for fibre production;

“eligible land” has the meaning as attributed to it in regulation 6;

“farmed deer” means any deer of any species which are managed on a holding enclosed by a deer-proof barrier and are kept on the holding by way of business for the primary purpose of the production of meat;

“forage area” has the same meaning as in Article 12(2)(b) of Council Regulation 1254/1999;

“goat” means any goat (of any species) which is kept by way of business for the primary purpose of fibre production;

“Highlands and Islands area” means that part of Scotland comprising–

- (a) the area of the Argyll and Bute Council, excluding the Parishes of Arrochar, Cardross, Luss, Rhu and Roseneath;

(a) O.J. No. L 327, 12.12.01, p.11, amended by Commission Regulation (EC) No. 2550/2001 (O.J. No. L 341, 22.12.01, p.105).

(b) O.J. No. L 355, 5.12.92, p.1, amended by Council Regulation (EC) No. 165/1994 (O.J. L 24, 29.1.94, p.6), Council Regulation (EC) No. 3233/1994 (O.J. L 338, 28.12.94, p.13), Council Regulation (EC) No. 3235/1994 (O.J. L 338, 28.12.94, p.16), Council Regulation (EC) No. 3072/1995 (O.J. L 329, 30.12.95, p.18), Council Regulation (EC) No. 1577/1996 (O.J. L 206, 16.8.96, p.4), Council Regulation (EC) No. 2466/1996 (O.J. L 335, 24.12.96, p.1), Commission Regulation (EC) No. 613/1997 (O.J. L 94, 9.4.97, p.1), Council Regulation (EC) No. 820/1997 (O.J. L 117, 7.5.97, p.1), Council Regulation (EC) No. 1036/1999 (O.J. L 127, 21.5.99, p.4), Council Regulation (EC) No. 1593/00 (O.J. L 182, 21.7.00, p.4) and Council Regulation (EC) No. 495/2001 (O.J. L 072, 14.3.01, p.6).

(c) Regulation 2A was inserted by S.I. 2000/2573.

(d) O.J. No. L 160, 26.6.99, p.80, amended by Commission Regulation (EC) No. 1512/2001 (O.J. L 201, 26.7.01, p 1).

(e) O.J. No. L 160, 26.6.99, p.80.

(f) O.J. No. L 341, 22.12.01, p.3.

- (b) the area of the Highland Council;
- (c) the area of the Orkney Islands Council;
- (d) the area of the Shetland Islands Council;
- (e) the area of the Western Isles Council;
- (f) in the area of the North Ayrshire Council, the islands of Arran, Great Cumbrae and Little Cumbrae; and
- (g) in the area of the Moray Council, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes;

“holding” has the same meaning as in regulation 2 of the Integrated Administration and Control System Regulations 1993;

“improved pasture” means eligible land declared by an applicant in accordance with regulation 6(1) and which, for the purposes of Commission Regulation 2419/2001 is classified as temporary grass, permanent grass, rape, turnips (swedes) or other crops for stock feed or cereal mix;

“less favoured area” means the land shown coloured in blue or in pink on the designated maps—

- (a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive 84/169/EEC concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (United Kingdom)(a); and
- (b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or any combination of, soil, relief, aspect or climate;

“livestock” means suckler cow, dairy cow, beef heifer, dairy heifer, sheep, goat, farmed deer and alpaca;

“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitute one livestock unit:—

- (a) one suckler cow;
- (b) 1.66 heifers over 8 months and up to 24 months;
- (c) 6.66 breeding ewes;
- (d) 6.66 breeding female goats;
- (e) 3.33 breeding female farmed deer 27 months and over;
- (f) 5 breeding farmed deer 6 months but less than 27 months;
- (g) 3.33 breeding female alpaca;
- (h) 5730 litres of milk quota;

“minimum stocking density” means the minimum number of livestock units per hectare of a class of holding and which are listed in Schedule 1;

“Moorland” has the meaning as attributed to it by regulation 8;

“Northern Upland” has the meaning as attributed to it by regulation 8;

“retirement pension” mean a category A or category B pension within the meaning of section 20(1)(f) of the Social Security Contributions and Benefits Act 1992(b), a category C or category D pension within the meaning of section 63(f) of that Act, or graduated retirement benefit as referred to in section 62 of that Act;

“SAPS” means the Sheep Annual Premium Regulations 1992(c);

“Scheme Year” means a calendar year commencing on 1st January;

“Scheme 2002 payment” means the sum which the applicant is entitled to in respect of the period from 1st January 2001 to 31st December 2001;

“Scheme 2003 payment” means the sum which the applicant is entitled to in respect of the period from 1st January 2002 to 31st December 2002;

(a) O.J. No. L 82, 26.3.84, p.67, as amended by Commission decision 91/25/EEC altering the limits of the less-favoured areas in the United Kingdom within the meaning of Council Directive 75/268/EEC (O.J. No. L 16, 22.1.91, p.25).

(b) 1992 c.4; section 62 was amended by the Pensions Act 1995 (c.26), section 131 and Schedule 4, paragraph 7.

(c) S.I. 1992/2677 amended by S.I. 1994/2741, 1995/2779, 1996/49, 1997/2500, 2000/2573 and S.S.I. 2000/418.

“SCPS” means the Suckler Cow Premium (Scotland) Regulations 2001(a);
“Southern Upland” has the meaning as attributed to it by regulation 8;
“stocking density” has the meaning as attributed to it by Schedule 2;
“suckler cow” means an adult female bovine animal kept in a regular breeding herd which is not maintained primarily for the production of milk;
“the 1996 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1996(b);
“the 1999 Regulation payment” means the payment which an applicant under these Regulations was eligible for and paid under and in accordance with the 1999 Regulations or, as the case may be, the sum fixed in accordance with regulations 10(6) or (7) or 11(3) or (4);
“the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(c);
“the 2001 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2001(d);
“usual good farming practices” means those practices undertaken on a holding as determined in accordance with Schedule 5 to the 2001 Regulations.

(2) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made.

(3) For the purposes of the saving provision at article 53.1 of Commission Regulation 2419/2001, references to articles of that Regulation shall so far as necessary be treated as references to the equivalent provision in Commission Regulation 3887/1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(e).

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or paragraph or to a Schedule is a reference to the regulation or paragraph of the regulation or the Schedule so numbered in these Regulations.

Applications for payment of less favoured area support

3.—(1) An application for less favoured area support shall be in such form and shall contain such particulars relating to that application as the Scottish Ministers may reasonably require.

(2) An applicant shall submit the application for less favoured area support in respect of the Scheme Year in question to the Scottish Ministers on or after a date each year which the Scottish Ministers will determine from time to time.

(3) If an applicant submits an application for less favoured area support in respect of the relevant Scheme Year later than the date determined by Scottish Ministers, the Scottish Ministers must reduce, or as the case may be exclude the applicant from, payment of less favoured area support in accordance with Article 13 of Commission Regulation 2419/2001.

Eligibility for payment of less favoured area support

4.—(1) Payment of less favoured area support may be made to an applicant in respect of a Scheme Year only if—

- (a) subject to paragraphs (2) and (3), that applicant has given an undertaking, in such form as the Scottish Ministers may reasonably require, to continue to use eligible land for eligible agricultural activities for a period of not less than five years from the first payment made under—
 - (i) these Regulations;
 - (ii) the 2001 Regulations;
 - (iii) the 1999 Regulations; or

(a) S.S.I. 2001/225.

(b) S.I. 1996/1500, amended by S.I. 1997/33, 1998/206 and 1999/375, and revoked by S.S.I. 1999/187, regulation 23.

(c) S.S.I. 1999/187; revoked by S.S.I. 2001/50, regulation 23.

(d) S.S.I. 2001/50.

(e) O.J. No. L 391, 31.12.92, p.36, amended by Commission Regulation (EC) No. 229/95 (O.J. L 27, 4.2.95, p.3), Commission Regulation (EC) No. 1648/95 (O.J. L 156, 7.7.95, p.27) Commission Regulation (EC) No. 2015/95 (O.J. L 197, 22.8.95, p.2), Commission Regulation (EC) No. 1678/98 (O.J. L 212, 30.7.98, p.23) and Commission Regulation (EC) No. 2801/1999 (O.J. L 340, 31.12.99, p.29).

- (iv) the 1996 Regulations;
 - (b) subject to paragraph (4), that applicant applies usual good farming practices on the eligible land of the applicant; and
 - (c) that applicant does not use substances referred to in Article 14.2 of the Council Regulation 1257/1999.
- (2) Paragraph (1)(a) does not apply to an applicant who is in receipt of a retirement pension at the time when that undertaking requires (or was required) to be given.
- (3) An applicant is released from the undertaking referred to in paragraph (1)(a)–
- (a) at the moment that such an applicant receives a retirement pension;
 - (b) if that applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person; or
 - (c) if the applicant ceases farming and at least three hectares of the eligible land of the applicant continues to be used for carrying out an eligible agricultural activity.
- (4) For the purposes of paragraph (1)(b), an applicant applies usual good farming practices on the eligible land if the applicant complies in relation to the eligible land–
- (a) with provisions of environmental legislation set out in Part I of Schedule 5 to the 2001 Regulations; and
 - (b) with the verifiable standards set out in Part II of Schedule 5 to the 2001 Regulations.

Payment of less favoured area support

5. The Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land which is not less than 3 hectares.

Eligible land

6.—(1) Subject to paragraphs (3) and (4), eligible land comprises the number of hectares of forage area in a less favoured area–

- (a) as declared in an area aid application submitted to the Scottish Ministers, on or before 15th May in the Scheme Year for which payment is to be made, by the applicant in accordance with Article 6 of Council Regulation 3508/92; or
- (b) where the applicant has not previously claimed any subsidy dependent upon an area aid application, as declared by the applicant in a form which the Scottish Ministers may specify from time to time.

(2) Eligible land includes land in respect of which the applicant has a right of use pursuant to arrangements such as short term lets, seasonal grazing and common grazing.

(3) If the applicant does not achieve the minimum stocking density appropriate to the holding–

- (a) as at the start of the retention period where eligibility rests on livestock claimed under SAPS;
- (b) as at the start of the retention period where eligibility rests on livestock claimed under SCPS;
- (c) during the Scheme Year where eligibility rests on livestock declared separately in an application for less favoured area support; or
- (d) in the opinion of Scottish Ministers where eligibility must be determined from a combination of livestock described in sub-paragraphs (a) to (c), on the land determined in accordance with paragraph (1),

the area of the eligible land will be reduced to the number of hectares, which are deemed to support the livestock units which the applicant maintains, by way of calculation in accordance with the following formula:–

$$L/M=H,$$

where

L = Subject to paragraph (6), total number of livestock units;

M = Minimum stocking density; and

H = Hectares to be paid according to the class of holding.

(4) Any reduction in the area of eligible land resulting from the application of the calculation in paragraph (3) will be applied—

- (a) firstly to the number of hectares declared by the applicant as rough grazing; and
- (b) then to the number of hectares declared by the applicant as improved pasture.

(5) If an application made in accordance with regulation 3 relates to land upon which an activity is carried out which is not an eligible agricultural activity for the purposes of these Regulations, the Scottish Ministers shall determine the percentage of land which is to be attributed to the eligible agricultural activity.

(6) Where an applicant fails to achieve the minimum stocking density appropriate to the holding as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981(a) or in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983(b), the Scottish Ministers may determine the total number of livestock units to be used for the purpose of the calculation at paragraph (3).

Transfer of a holding

7.—(1) In determining eligible land under regulation 6(1), the decision of the Scottish Ministers shall be in accordance with Article 50 of Commission Regulation 2419/2001 as appropriate.

(2) For the purpose of paragraph 6 of Article 50 of Commission Regulation 2419/2001, the Scottish Ministers shall grant less favoured areas support to the transferor of a holding, if the transferor—

- (a) fulfils the conditions laid down by paragraphs 2 to 5 of Article 50 of Commission Regulation 2419/2001; and
- (b) has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned.

Rates of basic payment of less favoured area support

8.—(1) The basic payment of less favoured area support for eligible land shall be at the rates set out in Schedule 3 per hectare of eligible land for Moorland, Northern Upland and Southern Upland holdings.

(2) For the purposes of paragraph (1), the Scottish Ministers must classify a holding which has eligible land within one or more of the following three categories:—

- (a) Moorland;
- (b) Northern Upland; or
- (c) Southern Upland.

(3) For the purposes of this regulation—

- (a) “Moorland” means a holding with poor grazings, a short grazing season and a low stocking density due to poor or insufficient arable land;
- (b) “Northern Upland” means a holding situated within the Highlands and Islands area which is not classified as Moorland; and
- (c) “Southern Upland” means a holding situated outwith the Highlands and Islands area which is not classified as Moorland.

Additional payments for environmental measures

9.—(1) In addition to the basic payment pursuant to regulation 8, the Scottish Ministers may make additional payments of £5.50 per hectare of eligible land to the applicant if—

- (a) the applicant maintains 0.5 livestock units per hectare of eligible land or less; and
- (b) 10% or more of the total livestock units which the applicant maintains are cattle.

(2) In addition to the basic payment pursuant to regulation 8, the Scottish Ministers may make further additional payments at the rates set out in Schedule 4 per hectare of improved pasture, if—

(a) 1981 c.22.

(b) S.I. 1983/1950, as amended by S.I. 1993/3119, 1995/2922 and, as regards Scotland, by S.S.I. 2001/52, 55, 101 and 390.

- (a) the applicant maintains more than 0.5 livestock units per hectare of eligible land; and
- (b) 10% or more of the total livestock units which the applicant maintains are cattle.

(3) Where an applicant fails to achieve the necessary cattle livestock units for the purposes of this regulation as a result of not being able to re-stock following slaughter of livestock under the Animal Health Act 1981 in consequence of the service of a notice or an order being in place under the Foot-and-Mouth Disease Order 1983, the Scottish Ministers may determine the total number of cattle livestock units to be used for the purposes of the criteria set out at paragraphs (1)(b) and (2)(b).

Transitional payments

10.—(1) Subject to paragraph (7), this regulation applies to an applicant under these Regulations who was eligible for and was granted a payment under the 1999 Regulations.

(2) In respect of the Scheme 2002 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than 80% of the 1999 Regulation payment.

(3) In respect of the Scheme 2003 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be not less than—

- (a) a sum equal to the Scheme 2002 payment; or
- (b) a sum equal to the entitlement of the applicant in respect of Scheme 2003 payment together with 50% of the difference between that amount and the 1999 Regulation payment,

whichever is the lower.

(4) Where the forage area of the holding is reduced, as at the end of the Scheme Year relative to the Scheme 2002 payment, by more than 25%, when compared with the forage area declared by the applicant in 1999 for the purpose of the 1999 Regulation payment, the Scottish Ministers shall, in respect of that Scheme Year and each subsequent Scheme Year calculate the transitional payments described in paragraph (2) by reducing the 1999 Regulation payment by 1/75th for each percentage point above 25% that the forage area has been reduced.

(5) Where paragraph (4) above does not apply and where the forage area of the holding is reduced, as at the end of the Scheme Year relative to the Scheme 2003 payment, by more than 25%, when compared with the forage area declared by the applicant in 1999 for the purpose of the 1999 Regulation payment, the Scottish Ministers shall, in respect of that Scheme Year calculate the transitional payments described in paragraph (3) by reducing the 1999 Regulation payment by 1/75th for each percentage point above 25% that the forage area has been reduced.

(6) In respect of the Scheme 2002 payment, where an applicant has, as at 31st December 2001, permanently increased the amount of eligible land since the date on which the 1999 Regulation payment was made, the Scottish Ministers shall, for the purposes of paragraph (2), fix the 1999 Regulation payment which shall be used for the purposes of calculating the payment thereunder:

Provided that—

- (a) the applicant is the owner or tenant of the eligible land in question; and
- (b) the land was available and accessible for use in maintaining eligible livestock, and in doing so shall have regard to the sum which would have been payable under the 1999 Regulations had that person—

- (i) had the amount of eligible land held at 31st December 2001; and
 - (ii) met the conditions specified at sub-paragraph (a) and (b) in relation to that land,
- as at the date on which entitlement under those Regulations was ascertained.

(7) In respect of the Scheme 2002 payment, where an applicant did not receive a payment under the 2001 Regulations by virtue of being a person to whom regulation 10 of those Regulations did not apply, the Scottish Ministers shall, for the purposes of paragraph (2), fix the 1999 Regulation payment which shall be used for the purposes of calculating the payment thereunder and in doing so shall have regard to the sum which would have been payable under the 1999 Regulations had that person been eligible thereunder.

- (8) This regulation is subject to regulation 12.

Additional transitional payments - 2001 Scheme

11.—(1) Paragraph (5) applies to an applicant under these Regulations to whom a payment of less favoured area support was made under the 2001 Regulations (in this regulation referred to as the “2001 applicant”) and, in respect of whom, regulation 10 of the 2001 Regulations did not apply.

(2) Paragraph (5) applies to a 2001 applicant to whom regulation 10 of the 2001 Regulations applied, where—

- (a) that applicant has permanently increased the amount of eligible land in the period between the date on which the 1999 Regulation payment was made and 31st December 2001;
- (b) that applicant is the owner or tenant of the eligible land in question; and
- (c) the land was available and accessible for use in maintaining eligible livestock.

(3) The Scottish Ministers, within 100 days of an application being made to them under this regulation, shall in respect of a person to whom paragraph (1) applies fix an amount for the purposes of the calculation in paragraph (5) and in doing so shall have regard to the sum which would have been payable under the 1999 Regulations had that person been eligible thereunder.

(4) The Scottish Ministers, within 100 days of an application being made to them under this regulation, shall in respect of a person to whom paragraph (2) applies fix an amount for the purposes of the calculation in paragraph (5) and in doing so shall have regard to the sum which would have been payable under the 1999 Regulations had that person—

- (a) had the amount of eligible land held at 31st December 2001; and
- (b) met the conditions specified at paragraph (2)(b) and (c) in relation to that land, as at the date on which entitlement under those Regulations was ascertained.

(5) Where an amount is fixed under paragraph (3) or (4), the Scottish Ministers shall make a payment to the 2001 applicant of an amount based upon the following calculation:—

$$P = (90\% \times A) - B$$

where

P = the payment to be made under this paragraph;

A = the amount fixed by the Scottish Ministers under paragraph (3) or (4); and

B = the less favoured area support to which the 2001 applicant is entitled under the 2001 Regulations.

Maximum payment

12.—(1) In respect of the Scheme 2002 payment, the amount of less favoured area support paid by the Scottish Ministers under these Regulations shall be—

- (a) the entitlement of the applicant in respect of the Scheme 2002 payment; or
- (b) a sum equal to the applicant’s 1999 Regulation payment plus £2,500, whichever is the lower.

(2) Where an applicant has permanently increased the amount of eligible land since being paid the 1999 Regulation payment and the Scottish Ministers have not fixed the 1999 Regulation payment under regulation 10(6), the Scottish Ministers shall fix the 1999 Regulation payment for the purposes of calculating the maximum payment in respect of the Scheme 2002 payment providing—

- (a) the applicant is the owner or tenant of the eligible land in question; and
- (b) the land was available and accessible for use in maintaining eligible livestock.

Powers of authorised persons

13.—(1) An authorised person may, at all reasonable hours and on producing if so required a duly authenticated document showing the authority of that person, exercise the powers specified in this regulation for the purposes of—

- (a) verification of accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Article 47 of Commission Regulation 1750/1999; or

(b) ascertaining whether an offence under these Regulations has been or is being committed, and in doing so may be accompanied by a person assigned to assist the authorised person, for those purposes.

(2) An authorised person may enter any land or premises (other than dwelling houses not being used in connection with these Regulations).

(3) An authorised person who has entered any land or premises by virtue of this regulation may—

- (a) inspect and verify the total area of such land;
- (b) inspect and count livestock on such land and require the applicant to arrange for the collection of animals, penning and securing;
- (c) require production of and examine any records in whatever form, and take copies of those records;
- (d) remove and retain any document or other record referred to in sub-paragraph (c) above which may be required for use as evidence in proceedings under these Regulations;
- (e) inspect and verify that the applicant has complied with usual good farming practices.

(4) An authorised person may require, where any computer and any associated apparatus or material which is or has been used in connection with any such records mentioned in paragraph (3)(c), wherever situated, records which are kept by means of such computer or associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

Assistance to authorised persons

14. An applicant, any employee or agent of an applicant or any person having charge of animals on the land shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable that person to exercise any power conferred by regulation 13.

Withholding or recovery of less favoured area support

15. The Scottish Ministers may withhold or recover the whole or any part of any payment of less favoured area support payable or paid to an applicant in any of the following circumstances:—

- (a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to regulation 4(1)(a) from which the applicant has not been released under regulation 4(3);
- (b) where the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 13, or fails without reasonable excuse to comply with a requirement made by an authorised person under regulation 13 or 14;
- (c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with usual good farming practices on or in relation to eligible land.

Rate of interest

16. Where the Scottish Ministers intend to recover on demand the whole or any part of a payment of less favoured area support pursuant to regulation 15, unless the sum recovered is paid as a result of their own error, interest shall be charged thereon 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 from payment to recovery.

Cross-border holdings

17. Schedule 5 applies to cross-border holdings.

Offences

18.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person part of whole of the payment of less favoured area support under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, shall be guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 13) in the exercise of the powers conferred by regulation 13 shall be guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 13 shall be guilty of an offence.

Penalties

19.—(1) A person guilty of an offence under regulation 18(1) and (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 18(3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecutions

20.—(1) Summary proceedings for an offence under regulation 18 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995^(a) (date of commencement of proceedings) applies for the purposes of this regulation as it does for the purposes of that section.

Offences by bodies corporate

21.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity (or, in the case of a partnership, partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.

Appeal against decision to withhold or recover payment of less favoured area support

22.—(1) Where the Scottish Ministers withhold or recover any grant under regulation 15, the applicant may apply for a review of the decision by the Scottish Ministers.

(2) The review referred to in paragraph (1) must be applied for in accordance with the provisions of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000^(b).

Appeal against decision as to eligibility of holding

23.—(1) An applicant may apply to the Hill Farming Advisory Committee (“the Committee”) for a review of the decision of the Scottish Ministers of the eligibility of the holding under regulation 6(1).

(2) The applicant must apply to the Committee for review within 60 days of the date of the decision of the Scottish Ministers.

(3) The application for review must be in writing and accompanied by such information as the Committee consider necessary.

(4) The Committee shall determine the review of the decision and notify its determination to the Scottish Ministers and the applicant.

(5) Subject to regulation 24, the determination of the Committee shall be binding on the Scottish Ministers.

(a) 1995 c.46.

(b) S.S.I. 2000/347, amended by S.S.I. 2001/50, 226 and 300.

Review

24.—(1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 23(4).

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the date of the determination referred to in regulation 23(4).

(3) The review referred to in paragraph (1) shall be undertaken by a person appointed by the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors.

(4) The person appointed for the purpose of this regulation shall review the said determination and may—

- (a) consider any document or other evidence produced by the applicant or the Scottish Ministers;
- (b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and
- (c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.

(5) The person appointed shall review the said determination and shall make a decision confirming or refusing that determination.

(6) The person appointed shall be entitled to require the reasonable costs of the review to be paid by the unsuccessful party and the person appointed shall determine the amount of such costs.

Amendment of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000

25.—(1) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 shall be amended in accordance with this regulation.

(2) In regulation 3 (application)(a), for “and (c)” substitute “, (c) and (ca)”.

(3) In regulation 4 (decisions amenable to review and appeal), insert after paragraph (c)—
“(ca) a decision by the Scottish Ministers to withhold or recover (in whole or in part) payment of less favoured area support under regulation 15 of the Less Favoured Area Support Scheme (Scotland) Regulations 2002;”.

Revocation and savings provisions

26. Other than for the purposes of regulations 11 to 19, 20(1) and (2), 21 and 22 of the Less Favoured Area Support Scheme (Scotland) Regulations 2001 in relation to payments made thereunder, those Regulations (except regulations 20(3) and 23) are hereby revoked.

Pentland House,
Edinburgh
21st March 2002

ROSS FINNIE
A member of the Scottish Executive

(a) Regulation 3 was substituted by S.S.I. 2001/226, regulation 2(3).

SCHEDULE 1
MINIMUM STOCKING DENSITY

| | | |
|-------------------------|------|-------|
| Moorland Holding | 0.12 | LU/ha |
| Northern Upland Holding | 0.27 | LU/ha |
| Southern Upland Holding | 0.38 | LU/ha |

SCHEDULE 2
STOCKING DENSITY

PART I

CALCULATION OF LIVESTOCK UNITS (“LU”)

| | | |
|---|--|------------------|
| For all claimants, (excluding Ring-Fence Dairy Farmers) | | |
| Number of Suckler Cows claimed and eligible for SCPS | | X 1.0 = __A__LU |
| Number of heifers over 8 months and up to and including 24 months | | X 0.6 = __B__LU |
| For Ring-fenced daily farmers: | | |
| Litres of Milk Quota | | / 5730 = __C__LU |
| For all claimants | | |
| Number of Breeding Ewes claimed and eligible for SAPS | | X 0.15 = __D__LU |
| Number of Breeding Female Goats | | X 0.15 = __E__LU |
| Number of Breeding Female Alpaca | | X 0.3 = __F__LU |
| Number of Breeding Female Deer (hinds over 27 months) | | X 0.3 = __G__LU |
| Number of Breeding Deer (over 6 months but less than 27 months) | | X 0.2 = __H__LU |

PART II

CALCULATION OF STOCKING DENSITY

| | | |
|---|---|----------------|
| Total LFASS Livestock Units (A + B + C + D + E + F + G + H) | = | __I__LU |
| Total Forage Area | = | __J__Ha |
| Stocking Density (to two decimal places) | = | I divided by J |

SCHEDULE 3

RATES FOR PAYMENT OF LESS FAVOURED AREA SUPPORT

| <i>FARM TYPE</i> | <i>RATES PER HECTARE</i> | |
|--------------------------|--------------------------|---------------|
| | Improved Pasture | Rough Grazing |
| Moorland Holdings | £30.40 | £9.60 |
| Southern Upland Holdings | £39.40 | £11.40 |
| Northern Upland Holdings | £45.00 | £12.50 |

SCHEDULE 4

ADDITIONAL RATES OF PAYMENT FOR ENVIRONMENTAL MEASURES FOR
LESS-EXTENSIVE FARMS WITH MIXED STOCKING

| <i>FARM TYPE</i> | <i>RATES PER HECTARE</i> |
|--------------------------|--------------------------|
| Moorland Holdings | £20.00 |
| Southern Upland Holdings | £20.00 |
| Northern Upland Holdings | £20.00 |

SCHEDULE 5

AGENCY AND CROSS-BORDER HOLDINGS

Agency arrangements

1. The Scottish Ministers may, with the agreement of any competent authority (as defined for the purposes of the Integrated Administration and Control System Regulations 1993), arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.

2. The Scottish Ministers may also agree to exercise functions on behalf of another competent authority corresponding to those which are exercisable by the Scottish Ministers under these Regulations.

3. Any such arrangement shall be in writing and be signed by or on behalf of the Scottish Ministers and the competent authority and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

Set-off

4. Without prejudice to the amount of any sum payable by the Scottish Ministers to any other competent authority, the amount of any sum payable by the Scottish Ministers, whether as principal or agent, by way of a specified payment may be set-off against the amount of any sum recoverable by the Scottish Ministers, whether as principal or agent.

Calculation of payments in respect of cross-border holdings

5. Where any holding in respect of which a claim has been made is a cross-border holding, the Scottish Ministers may pay, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for carrying out eligible agricultural activity on eligible land, providing the applicant has declared the eligible land in an area aid application which has been treated as a valid application by the competent authority concerned.

6. Whether the eligible agricultural activity undertaken on the eligible land is an integral part of the management of the whole holding or independently managed, Scottish Ministers shall only pay less favoured area support in respect of the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.

7. Applicants in respect of cross-border holdings are required to supply such information as authorised persons may reasonably require to assess the eligible agricultural activity actually undertaken on eligible land defined as a less favoured area for the purposes of this instrument.

8. All conditions applying to applicants in respect of holdings lying wholly within the less favoured areas shall apply equally to applicants in respect of cross-border holdings.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which replace the Less Favoured Area Support Scheme (Scotland) Regulations 2001, make provision for the purposes of implementation of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund and Commission Regulation (EC) No. 1750/1999 laying down detailed rules for the application of Council Regulation No. 1257/1999.

They apply to holdings in respect of which the Scottish Ministers are the competent authority under the Integrated Administration and Control System Regulations 1993 (regulation 1(2)).

Applications for less favoured area support (“LFAS”) are to be made to the Scottish Ministers on a date which they shall determine each year. Failure to meet the deadline will result in reduction of the payment of support (regulation 3).

Eligibility for payment of LFAS is dependent upon the applicant meeting the criteria set out in regulation 4. It can only be paid to an applicant who carries out an eligible agricultural activity (defined in regulation 2(1)) on eligible land (defined in regulation 6). No payment will be made where the amount of eligible land is less than 3 hectares (regulation 5). There is provision at regulation 7 to determine to whom payment should be made where a holding is transferred during a Scheme Year.

LFAS is paid for eligible hectares on farms in Scottish less favoured areas at specified rates (regulations 8(1), 9(1), 9(2) and Schedule 3). The number of eligible hectares may be reduced because the applicant does not maintain minimum stocking densities, as appropriate (regulations 6(3) and 9(3)). Minimum stocking densities are defined in regulation 2(1) and Schedule 1. There is provision at regulation 6(6) to allow Scottish Ministers to determine the total number of livestock units where an applicant has not been able to achieve the minimum stocking density because of slaughter in consequence of foot and mouth disease.

There are transitional arrangements for payments in 2002 and 2003 (regulation 10). For those years LFAS may be increased if an applicant is due to receive less under these Regulations when compared with any payment paid or due under the 1999 Regulations. There is also provision to reduce the payment to be paid under the transitional provisions where the forage area of the holding is reduced by more than 25% during the course of the Scheme Years relevant to payments to be made in 2002 to 2003 (regulation 10(4)). For the 2002 payment, where an applicant has increased the amount of eligible land since being paid under the 1999 Regulations the Scottish Ministers will fix the amount of the 1999 payment for the purposes of calculations in regulation 10.

Regulation 11 makes transitional provision for applicants under the 2001 Regulations. Where an applicant under those Regulations either did not receive a payment under the 1999 Regulations (or received a reduced payment thereunder) or has increased the amount of eligible land since being paid under the 1999 Regulations, the Scottish Ministers shall fix the level of the 1999 Regulations payment for the purposes of determining a payment under that regulation.

Regulation 12 sets the maximum amount of less favoured area support to be paid by the Scottish Ministers in 2002.

Regulation 13 contains powers of enforcement. Regulation 15 provides for withholding or recovery of LFAS where there is a breach of the rules of the Scheme. Regulations 18 to 21 deal with offences and penalties.

Regulations 22 to 24 deal with an applicant’s right of appeal against decisions taken by the Scottish Ministers. Regulation 25 makes consequential amendments to the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000.

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