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SCOTTISH STATUTORY INSTRUMENTS

2005 No. 143

AGRICULTURE

**The Common Agricultural Policy Single Farm Payment
and Support Schemes (Scotland) Regulations 2005**

Made - - - - 9th March 2005
*Laid before the Scottish
Parliament* - - - - 10th March 2005
Coming into force - - 18th April 2005

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Regulations:

PROSPECTIVE

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005 and shall come into force on 18th April 2005.

(2) Subject to paragraph (3), these Regulations extend to Scotland only.

(3) In so far as this paragraph, regulations 2, 16(3) and 27 of, and Schedule 5 to, these Regulations extend beyond Scotland, they do so only as a matter of Scots law.

(1) 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. For the purposes of implementing Council Regulation (EC) No. 1782/2003 establishing common rules for direct support under the common agricultural policy and establishing certain support schemes for farmers (O.J. No. L 270, 21.10.2003, p.1) that competence was modified by the Scotland Act 1998 (Modification of Functions) Order 2004 (S.I. 2004/2980) and the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004 (S.I. 2004/3324).

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Commencement Information

II Reg. 1 in force at 18.4.2005, see [reg. 1\(1\)](#)

Interpretation

2.—(1) In these Regulations—

“the Act of Accession” means the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁽²⁾;

“the Cattle Tracing Regulations” means—

- (a) the Bovine Animals (Records, Identification and Movement) Order 1995⁽³⁾,
- (b) the Cattle Identification Regulations 1998⁽⁴⁾,
- (c) the Cattle Database Regulations 1998⁽⁵⁾, and
- (d) the Cattle (Identification of Older Animals) (Scotland) Regulations 2001⁽⁶⁾;

“Commission Regulation 795/2004” means Commission Regulation [\(EC\) No. 795/2004](#) laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation [\(EC\) No. 1782/2003](#) establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁽⁷⁾, as amended by Commission Regulation [\(EC\) No 1974/2004](#)⁽⁸⁾;

“Commission Regulation 796/2004” means Commission Regulation [\(EC\) No. 796/2004](#) laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation [1782/2003](#)⁽⁹⁾, as amended by Commission Regulation [\(EC\) No. 239/2005](#)⁽¹⁰⁾;

“Commission Regulation 1973/2004” means Commission Regulation [\(EC\) No. 1973/2004](#) laying down detailed rules for the application of Council Regulation [\(EC\) No. 1782/2003](#) as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials⁽¹¹⁾;

“Council Regulation 1257/1999” means Council Regulation [\(EC\) No. 1257/1999](#) on support for rural development from the European Agricultural Guidance and Guarantee Fund⁽¹²⁾, amended by Commission Regulation [\(EC\) No. 1783/2003](#)⁽¹³⁾, the Act of Accession⁽¹⁴⁾, Council Regulation [\(EC\) No. 567/2004](#)⁽¹⁵⁾ and Council Regulation [\(EC\) No. 583/2004](#)⁽¹⁶⁾;

“Council Regulation 1782/2003” means Council Regulation [\(EC\) No. 1782/2003](#) establishing common rules for direct support under the common agricultural policy and

⁽²⁾ O.J. L 236, 23.09.2003, p.33.

⁽³⁾ S.I. 1995/12, partially revoked by S.I. 1998/871.

⁽⁴⁾ S.I. 1998/871, amended by S.I. 1998/1796, 1998/2969 and 1999/1339.

⁽⁵⁾ S.I. 1998/1796, amended by S.S.I. 2002/22.

⁽⁶⁾ S.S.I. 2001/1 as amended by S.S.I. 2002/22.

⁽⁷⁾ O.J. No. L 141, 30.4.2004, p.1.

⁽⁸⁾ O.J. No. L 345, 20.11.2004, p.85.

⁽⁹⁾ O.J. No. L 141, 30.4.2004, p.18.

⁽¹⁰⁾ O.J. No. L 42, 12.2.2005, p.3.

⁽¹¹⁾ O.J. No. L 345, 20.1.2004, p.1.

⁽¹²⁾ O.J. No. L 160, 26.6.1999, p.80.

⁽¹³⁾ O.J. No. L 270, 21.10.2003, p.70.

⁽¹⁴⁾ See Annex II of the Act of Accession, part 6, paragraph 26.

⁽¹⁵⁾ O.J. No. L 90, 27.3.2004, p.1.

⁽¹⁶⁾ O.J. No. L 91, 30.3.2004, p.1.

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establishing certain support schemes for farmers(17), as amended by Council Regulation (EC) No. 21/2004(18), Council Regulation (EC) No. 583/2004(19) and Council Regulation (EC) No. 864/2004(20);

“Council Regulation 820/97” means Council Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products(21);

“Council Regulation 1251/1999” means Council Regulation (EC) No. 1251/1999 establishing a support system for producers of certain arable crops, as amended(22);

“the Cross-Compliance Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Cross-Compliance) (Scotland) Regulations 2004(23);

“direct payment” has the meaning given to it in Article 2(d) of Council Regulation 1782/2003;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(24);

“farmer” has the meaning given to it in 2(a) of Council Regulation 1782/2003;

“green cover” means a green cover established or, as the case may be, falling to be established in accordance with Schedule 1;

“IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005(25);

“land set aside for non-food purposes” means land set aside pursuant to Article 55(b) of Council Regulation 1782/2003 under the conditions laid down in Chapter 16 of Commission Regulation 1973/2004 for the provision of materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, and any reference to a farmer setting aside land for that purpose shall be construed accordingly;

“land set aside from production” means land set aside pursuant to Article 54(3) of Council Regulation 1782/2003 (other than land set aside for non-food purposes), and any reference to a farmer setting aside land from production shall be construed accordingly;

“organic waste” means waste material produced by or from animals or plants as a by product of agricultural production, including animal bedding;

“Regulation 1760/2000” means Regulation (EC) No. 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and requiring the labelling of beef and beef products and repealing Council Regulation (EC) No. 820/97(26);

“relevant competent authority” has the meaning given to it in regulation 5 of the IACS Regulations;

“set aside period” means the period from 15th January to 31st August (inclusive) in any given year;

(17) O.J. No. L 270, 21.20.2003, p.1.

(18) O.J. No. L 5, 9.1.04, p.8.

(19) O.J. No. L 91, 30.3.04, p.1.

(20) O.J. No. L 206, 9.6.04, p.20.

(21) O.J. No. L 117, 7.5.97, p.1, repealed by Regulation (EC) No. 1760/2000 of the European Parliament and of the Council (O.J. No. L 204, 11.8.00, p.1).

(22) O.J. No. L 160, 26.6.1999, p.1, as amended by Council Regulations (EC) No. 2704/1999 (O.J. No. L327, 21.12.1999, p.12), (EC) No. 1672/2000 (O.J. No. L 193, 29.7.2000, p.13), (EC) No. 1038/2003 (O.J. No. L 145, 31.5.2001, p.16) and (EC) No. 1782/2003 (O.J. No L 270, 21.10.2003, p.1).

(23) S.S.I. 2004/518.

(24) 2000 c. 7.

(25) S.I. 2005/218.

(26) O.J. No. L 204, 11.8.00, p.1.

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“single application” has the meaning given to it in Article 2(11) of Commission Regulation 796/2004;

“single farm payment scheme” means the single payment support scheme established under Title III of Council Regulation 1782/2003; and

“watercourse” includes a canal and field ditch.

(2) Except in Part 6 of, and Schedule 4 to, these Regulations, in these Regulations “holding” has the meaning given to it in Article 2(b) of Council Regulation 1782/2003.

(3) Except in regulation 27, in these Regulations “farmer” has the meaning given to it in Article 2(a) of Council Regulation 1782/2003, “collector” has the meaning given by Article 144(b) of Commission Regulation 1973/2004, and “processor” has the same meaning as in that Regulation.

(4) Expressions used in these Regulations which are not defined in these Regulations shall be construed in accordance with Council Regulation 1782/2003, Commission Regulation 795/2004, Commission Regulation 796/2004 and Commission Regulation 1973/2004.

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

(6) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.

Commencement Information

I2 Reg. 2 in force at 18.4.2005, see [reg. 1\(1\)](#)

PART 2

Single Farm Payment Scheme

Regional application

3. Scotland shall be a region for the purposes of Article 58 of Council Regulation 1782/2003.

Commencement Information

I3 Reg. 3 in force at 18.4.2005, see [reg. 1\(1\)](#)

Applications

4.—(1) The Scottish Ministers shall be the competent authority for the purposes of Article 34(1) of Council Regulation 1782/2003 (which requires the competent authority to send application forms to farmers).

(2) The deadline for the purposes of Article 40(3) of Council Regulation 1782/2003 (which requires the member State to fix a deadline for farmers notifying a case of force majeure or exceptional circumstances) shall be that notification is made to the relevant competent authority responsible for determining the particular single application in question before 16th May 2005.

(3) An application for a reference amount pursuant to Article 42 of Council Regulation 1782/2003 (which provides for the establishment of a national reserve) shall be made to the relevant competent authority responsible for determining the particular single application in question before

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16th May in respect of the IACS year (within the meaning of the IACS Regulations) commencing on that date.

Commencement Information

I4 Reg. 4 in force at 18.4.2005, see [reg. 1\(1\)](#)

Minimum size of holding

5. For the purposes of Article 12(6) of Commission Regulation 795/2004, the minimum size of a holding for which the establishment of payment entitlements may be requested shall be 0.3 hectare.

Commencement Information

I5 Reg. 5 in force at 18.4.2005, see [reg. 1\(1\)](#)

10 month period

6. For the purposes of Article 24(2) of Commission Regulation 795/2004, the period in which the beginning of the 10 month period referred to in Article 44(3) of Council Regulation 1782/2003 shall be fixed, shall be the period beginning on 1st October of the calendar year of the year preceding the year of lodging an application under the single farm payment scheme and ending on 30th April of the year of application.

Commencement Information

I6 Reg. 6 in force at 18.4.2005, see [reg. 1\(1\)](#)

Dairy premium and additional payments

7. In accordance with Article 62 of Council Regulation 1782/2003 the amounts resulting from dairy premium and additional payments, provided for in Articles 95 and 96 of that Regulation, shall be included, in full, in the single farm payment scheme starting from 2005.

Commencement Information

I7 Reg. 7 in force at 18.4.2005, see [reg. 1\(1\)](#)

Horticulture

8.—(1) Subject to paragraph (2), in accordance with Article 51(b) second paragraph of Council Regulation 1782/2003, secondary crops may be cultivated on the eligible hectares during a period of not more than 3 months beginning each year on 15th August.

(2) Paragraph (1) shall not apply to the year beginning on 1st January 2005.

Commencement Information

I8 Reg. 8 in force at 18.4.2005, see [reg. 1\(1\)](#)

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Transfers

9. For the purposes of Article 25(3) of Commission Regulation 795/2004, a transferor of a payment entitlement shall communicate the transfer to the relevant competent authority responsible for determining the particular single application in question and shall do so—

- (a) no later than 6 weeks before the transfer is to take place; and
- (b) no later than 6 weeks before the last day for submission of the single application.

Commencement Information

I9 Reg. 9 in force at 18.4.2005, see [reg. 1\(1\)](#)

PART 3

Modulation

Additional modulation

10.—(1) For the purposes of calculating the total amount of direct payments to be paid to a farmer for any year, under Article 1 of Commission Regulation (EC) No 1655/2004⁽²⁷⁾ the Scottish Ministers shall deduct a sum equal to the specified proportion of the relevant amount and shall apply the sum so deducted by way of funds for one or more of the relevant purposes.

(2) In this regulation—

“the relevant amount” means the amount which would have been granted to the farmer in respect of the year concerned before the application of Article 10(1) of Council Regulation 1782/2003;

“the relevant purposes” means the purposes of any payment made pursuant to any measure which implements any provisions of Articles 10 to 12 inclusive (early retirement), 13 to 21 inclusive (less-favoured areas and areas with environmental restrictions), Articles 21a to 21d inclusive (meeting standards), 22 to 24 (agri-environment and animal welfare), 24a to 24d inclusive (food quality) and 31 (afforestation) of Council Regulation 1257/1999; and

“the specified proportion” means—

- (a) in respect of 2005, 3.5%; and
- (b) in respect of 2006, 4.5%.

Commencement Information

I10 Reg. 10 in force at 18.4.2005, see [reg. 1\(1\)](#)

⁽²⁷⁾ O.J. No. L 298, 23.9.2004, p.3, which permits additional modulation in member States which applied reductions to direct payments under Article 4 of Council Regulation 1259/1999 (O.J. No. L 160, 26.6.1999, p.113). Such reductions were applied in Scotland from 2001 to 2004 under the Common Agricultural Policy Support Schemes (Modulation) (Scotland) Regulations 2000 (S.S.I. 2000/429, amended by S.S.I. 2001/390 and 2004/398).

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PART 4

Set-aside

Minimum area and dimensions of set aside parcels

11.—(1) For the purposes of the second sentence of Article 54(4) of Council Regulation 1782/2003, land may be set aside from production if—

- (a) it is eligible for set aside entitlement pursuant to Article 54(2) of Council Regulation 1782/2003; or counted as eligible for set aside entitlement as a result of an application granted under regulation 13;
- (b) it is at least 6 metres wide at all points;
- (c) it is at least 0.05 hectares in size; and
- (d) it borders—
 - (i) a hedgerow;
 - (ii) a drystone or flagstone dyke or wall;
 - (iii) woodland;
 - (iv) a permanent watercourse feature of the land;
 - (v) an area of land that has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981⁽²⁸⁾ or section 3(6) of the Nature Conservation (Scotland) Act 2004⁽²⁹⁾ as a site of special scientific interest; or
 - (vi) an area of land under an agri environment agreement in connection with support paid under Chapter VI of Title II of Council Regulation 1257/1999.

(2) For the purposes of paragraph (1)(d)(iv), the land can border the watercourse if separated from the watercourse by a fence, any wall, vegetation that has grown up from inside the watercourse, a bank or a belt of single trees.

Commencement Information

I11 Reg. 11 in force at 18.4.2005, see [reg. 1\(1\)](#)

Additional standards of good agricultural and environmental condition in relation to set aside land

12.—(1) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside from production are set out in Schedule 1.

(2) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside for non-food purposes are set out in Schedule 2.

(3) The standards of good agricultural and environmental condition referred to in paragraphs (1) and (2) shall apply to land set aside from production and land set aside for non-food purposes respectively in addition to the standards of good agricultural and environment condition that apply to the land by virtue of regulation 4 of the Cross Compliance Regulations.

⁽²⁸⁾ 1981 c. 69.

⁽²⁹⁾ Section 28 of the Wildlife and Countryside Act 1981 (c. 69) is revoked by paragraph 4 of schedule 7 to the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#) as a consequence of the coming into force on 29th November 2004 of Part 2 of that Act, subject to transitional arrangements contained in schedule 5 to that Act.

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(4) The provisions of paragraphs (1) and (2) shall not apply to land—

- (a) set aside or afforested pursuant to Articles 22 to 24 or 31 of Council Regulation 1257/1999; and
- (b) counting as set aside for the purposes of Article 54 of Council Regulation 1782/2003, to the extent that the requirements of Schedule 1 and 2 are incompatible with the environmental or afforestation requirements laid down pursuant to those Articles.

(5) A farmer shall be exempt from any given requirement of Schedule 1 or 2 in relation to particular set aside land if, on an application being made to the Scottish Ministers regarding that requirement, the Scottish Ministers are satisfied that the farmer should be exempted from it—

- (a) to facilitate research into the effect of employing particular methods of managing set-aside land;
- (b) in the interests of environmental protection;
- (c) where the farmer is an educational establishment, to facilitate the fulfilment of its educational purpose;
- (d) because during the set-aside period—
 - (i) by virtue of any power or authorisation conferred by or under any enactment, a pipeline, cable or pylon is being or will be laid through, or constructed on or across, the land, the laying or construction of which was not a proposal of which the farmer had been notified more than 5 months before the date on which the land was set aside;
 - (ii) maintenance of a pipeline, cable or pylon which the farmer cannot reasonably prevent is being or will be carried out under statutory authority on the particular set-aside land; or
 - (iii) an archaeological excavation is to be carried out on the land;
- (e) for reasons of human or animal health or safety;
- (f) because such exemption is necessary, either to enable a serious cause of harm to plant health, serious weed infestation or serious pest infestation to be treated or to permit measures to be taken to prevent the development of such a problem or infestation; or
- (g) in order to benefit a charity (as defined in section 96(1) of the Charities Act 1993⁽³⁰⁾) or a recognised body within the meaning of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽³¹⁾.

(6) The Scottish Ministers may specify that any exemption granted pursuant to paragraph (5) shall be effective only until a date, or the occurrence of a particular event, specified in that exemption.

(7) For the purposes of this regulation, a “serious weed infestation” means an infestation with one or more of the injurious weeds listed in section 1(2) of the Weeds Act 1959⁽³²⁾, *Rhododendron ponticum*, Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) or Himalayan balsam (*Impatiens glandulifera*).

Commencement Information

I12 Reg. 12 in force at 18.4.2005, see [reg. 1\(1\)](#)

⁽³⁰⁾ 1993 c. 10.

⁽³¹⁾ 1990 c. 40.

⁽³²⁾ 1959 c. 54.

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Exchange of eligible and ineligible land

13.—(1) In a situation specified in sub-paragraph (a), (b) or (c) of the first paragraph of Article 33 of Commission Regulation 795/2004, a farmer may apply to the Scottish Ministers for land not otherwise eligible for set-aside entitlement to be counted as eligible for set aside entitlement.

(2) Subject to paragraph (3), the application shall be in such form as the Scottish Ministers may reasonably require, and, where the farmer intends to exchange the land in respect of which the application is made for other land which is eligible for set-aside entitlement, that application shall include particulars of that land, as well as the land in respect of which the application is made.

(3) Where a farmer holds any of the land in respect of which such an application is made, or any land that the farmer intends to exchange for that land, as a tenant the farmer shall obtain the written consent of the landlord to the exchange, and the application shall include a declaration by the applicant that such consent has been obtained.

(4) The Scottish Ministers may approve the application made under paragraph (1) if they are satisfied—

- (a) that the relevant sub-paragraph of the first paragraph of Article 33 of Commission Regulation 795/2004 specified in the farmer’s application applies in relation to the land in respect of which the application has been made;
- (b) where the application has been made on the basis of sub-paragraph (c) of the first paragraph of Article 33 of Commission Regulation, with the reasons given by the farmer for wanting to exchange ineligible land for eligible land on the holding; and
- (c) that—
 - (i) where the land in respect of which the application is made is to be exchanged for other eligible land, the area of land in respect of which the application is made does not exceed the area of the land which is to be exchanged by more than 5%; or
 - (ii) where there is to be no exchange of land, the approval of the application will not result in a significant increase in the total area of land eligible for set aside entitlements.

(5) Where approval is given under paragraph (4) but any declaration included in, or information given by the farmer in connection with, the application was false in any material particular, the Scottish Ministers may revoke such approval.

(6) In this regulation, “eligible for set-aside entitlement”, in relation to land, has the meaning given by the first paragraph of Article 54(2) of Council Regulation 1782/2003.

Commencement Information

I13 Reg. 13 in force at 18.4.2005, see [reg. 1\(1\)](#)

Provisions relating to raw materials produced for non-food purposes

14.—(1) The Scottish Ministers are designated as the competent authority for the purposes of Chapter 16 of Commission Regulation 1973/2004 (use of land set aside for the production of raw materials for non-food purposes).

(2) Raw materials to which Article 146(2)(b) of Commission Regulation 1973/2004 applies shall be weighed by an operator of public weighing equipment holding a certificate issued under section 18 of the Weights and Measures Act 1985(33).

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(3) For the purposes of Article 146(4) of Commission Regulation 1973/2004, cereals and oilseeds to which that paragraph applies shall be denatured by dyeing them with a brightly coloured dye.

(4) For the purposes of Article 157(1) of Commission Regulation 1973/2004, the last day on which a contract to which that paragraph applies may be deposited with the Scottish Ministers, which may be sent to such person as they may specify in writing, shall be by the last date for the submission of the single application in the year in which the relevant claim for the associated set-aside entitlement is made.

(5) For the purposes of Article 157(3) of Commission Regulation 1973/2004, the last day on which a collector or first processor to whom that paragraph applies may provide the information to the Scottish Ministers, which may be sent to such person as they may specify in writing, specified in that paragraph shall be 31st January of the year following the year in which the relevant claim for the associated set-aside entitlement is made.

(6) In this regulation—

“the associated set-aside entitlement” means the set-aside entitlement which is being claimed on the land which has been set aside to produce the raw materials to which the contract referred to in paragraph (4), and the information referred to in paragraph (5), relates; and

“first processor” has the meaning given by Article 144(c) of Commission Regulation 1973/2004.

Commencement Information

I14 Reg. 14 in force at 18.4.2005, see [reg. 1\(1\)](#)

Keeping and retention of records by a collector and by a processor

15.—(1) This regulation applies where a farmer sets aside land for non-food purposes and in paragraphs (2) to (5) references to “raw materials” are to such materials produced on that land.

(2) During any month when a collector purchases or sells any raw materials, that collector shall make a record of the quantity of all raw materials which that collector has purchased or sold during that month, and the names and addresses of the subsequent buyers or processors to whom those raw materials have been sold.

(3) A collector shall retain the records referred to in paragraph (2) until the earlier of—

- (a) the end of the third calendar year following the year in which the collector delivers to a processor the raw materials to which those records relate; or
- (b) the seventh anniversary of the date of their creation.

(4) On any day during which a processor purchases, processes, destroys, sells or otherwise disposes of any raw materials, or sells or otherwise disposes of any products obtained from the processing of such raw materials, the processor shall make a record showing—

- (a) the quantities of the different raw materials purchased for processing;
- (b) the quantity of the raw materials processed together with the quantity and type of end products, co-products and by-products obtained from the processing;
- (c) the wastage of the raw materials during the processing;
- (d) the quantity of the raw materials destroyed, if any, together with the reason for such destruction;
- (e) the quantity and type of products sold or otherwise disposed of and the price obtained; and

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- (f) the names and addresses of any subsequent buyers or processors to whom such raw materials or products of processing are sold.
- (5) A processor shall retain the records referred to in paragraph (4) for 2 years from—
 - (a) where the records relate to the purchasing, processing, wastage, destruction, sale or other disposal of the raw materials, the date on which the purchase, processing, wastage, destruction, sale or other disposal of the raw materials occurs, as the case may be; and
 - (b) where the records relate to the sale or other disposal of products obtained from the processing of such raw materials, the date on which such products were sold or otherwise disposed of, as the case may be.

Commencement Information

I15 Reg. 15 in force at 18.4.2005, see [reg. 1\(1\)](#)

PART 5

Support Schemes under Title IV of Council Regulation 1782/2003

Aid for energy crops

16.—(1) Regulations 17 and 18 apply where an applicant uses areas covered by the aid provided for in Article 88 of Council Regulation 1782/2003 for the growing of agricultural raw materials under Article 24 of Commission Regulation 1973/2004 and references to raw materials shall be construed accordingly.

(2) Subject to paragraph (3), the Scottish Ministers are the competent authority for the purposes of Chapter 8 of Commission Regulation 1973/2004 (Aid for energy crops).

(3) In the case of an applicant, the competent authority shall be the relevant competent authority responsible for determining the particular single application in question.

(4) In this regulation, “applicant” has the meaning given to it in Article 23 of Commission Regulation 1973/2004.

Commencement Information

I16 Reg. 16 in force at 18.4.2005, see [reg. 1\(1\)](#)

Provisions relating to raw material

17.—(1) In accordance with Article 43(2) of Commission Regulation 1973/2004, the minimum cultivated area for any raw material referred to in Article 24 of that Regulation shall be 0.1 hectare.

(2) Where the Scottish Ministers exclude any agricultural raw material from aid for energy crops in accordance with Article 43(1) of Commission Regulation 1973/2004, they must notify the farmers concerned stating, with reasons, the details and duration of the exclusion.

(3) Raw materials to which Article 25(2)(b) of Commission Regulation 1973/2004 applies shall be weighed by an operator of public weighing equipment holding a certificate issued under section 18 of the Weights and Measures Act 1985(34).

Status: This version of this Instrument contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(4) For the purposes of Article 25(4) of Commission Regulation 1973/2004, cereals and oilseeds to which that paragraph applies shall be denatured by dyeing them with a brightly coloured dye.

(5) For the purposes of Article 34(1) of Commission Regulation 1973/2004, the last day on which a contract to which that paragraph applies may be deposited with the Scottish Ministers, which may be sent to such person as they may specify in writing, shall be the last day for submission of the relevant single application.

(6) For the purposes of Article 34(3) of Commission Regulation 1973/2004, the last day on which a first processor to whom that paragraph applies may provide the information specified in that paragraph to the Scottish Ministers, which may be sent to such person as they may specify in writing, shall be the 9th February of the year following the year in which the relevant single application is made.

(7) In this regulation—

“first processor” has the meaning given to it in Article 23 of Commission Regulation 1973/2004; and

“relevant single application” means the single application in which aid for energy crops is being claimed on the areas used for the growing of agricultural raw materials to which the contract referred to in paragraph (5), or the information referred to in paragraph (6), relates (as the case may be).

Commencement Information

I17 Reg. 17 in force at 18.4.2005, see [reg. 1\(1\)](#)

Keeping and retention of records

18.—(1) Pursuant to Article 39 of Commission Regulation 1973/2004 on any day during which a processor purchases, processes, destroys, sells or otherwise disposes of any raw materials the processor shall make a record showing—

- (a) the quantities of the different raw materials purchased for processing;
- (b) the quantities of raw materials processed together with the quantity and type of end products, co-products and by-products obtained from the processing;
- (c) the quantities of wastage of raw materials during the processing;
- (d) the quantities of raw materials destroyed, if any, together with the reason for such destruction;
- (e) the quantities and type of products sold or otherwise disposed of and the price obtained; and
- (f) the names and addresses of any subsequent buyers or processors to whom the processor sells such raw materials or products of processing.

(2) A processor shall retain the records referred to in paragraph (1) for 4 years from—

- (a) where the records relate to the purchasing, processing, wastage, destruction, sale or other disposal of raw materials, the date on which the purchase, processing, waste, destruction, sale or other disposal of the raw materials occurs, as the case may be; and
- (b) where the records relate to the sale or other disposal of products obtained from the processing of such raw materials, the date on which such products were sold or otherwise disposed of, as the case may be.

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Commencement Information

I18 Reg. 18 in force at 18.4.2005, see [reg. 1\(1\)](#)

PART 6

The Scottish Beef Calf Scheme

Interpretation of Part 6

19. In this Part of, and Schedule 4 to, these Regulations—

“animal” means, in respect of a particular Scheme year, a bovine animal in respect of which an application for a Scheme payment has been or will be made;

“applicant” means a farmer producing beef or veal at the time of lodging an application for a Scheme payment under regulation 20 whose IACS holding is wholly or partly in Scotland;

“cattle passport” has the same meaning as in the Cattle Identification Regulations 1998⁽³⁵⁾;

“eartag number” means the unique identification code for the purposes of Article 4(1) of Regulation 1760/2000 under Part II of the Cattle Identification Regulations 1998;

“keeper’s holding” means a holding within the meaning of Regulation 1760/2000;

“IACS holding” means a holding as defined in Article 2(b) of Council Regulation 1782/2003;

“keeper” means any person responsible for an animal in respect of which an application for a Scheme payment is made or will be made, whether on a permanent or a temporary basis, including during transportation or at a market;

“the Scheme” means the Scottish Beef Calf Scheme established by this Part of, and Schedule 4 to, these Regulations;

“Scheme payment” means an additional payment under Article 69(2) of Council Regulation 1782/2003 in any Scheme year in accordance with the Scheme under this Part of, and Schedule 4 to, these Regulations; and

“Scheme year” means the calendar year in which a particular application under regulation 20 for a Scheme payment is made.

Commencement Information

I19 Reg. 19 in force at 18.4.2005, see [reg. 1\(1\)](#)

Applications for Scheme payments

20.—(1) An applicant is entitled to submit applications in respect of any number of animals claimed to be eligible under regulation 21 during a calendar year to the Scottish Ministers for a Scheme payment.

⁽³⁵⁾ (“the 1998 Regulations”); S.I. 1998/871, amended by S.I. 1998/1796, 1998/2969, 1999/1339 and S.S.I. 2001/231, 2002/1 and 22. The definition of “cattle passport” in regulation 2(1) of the 1998 Regulations refers to Article 6.1 of Commission Regulation (EC) No. 2629/97 (O.J. No. L 354, 30.12.1997, p.9) which was repealed and replaced by Article 6.1 of Commission Regulation (EC) No 911/2004 implementing Regulation (EC) No. 1760/2000 as regards eartags, passports and holding registers (O.J. No. L 163, 30.4.2004, p. 65). See Article 11(2) of, and Annex II to, that Commission Regulation.

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(2) For the purpose of Article 69(2) of Council Regulation 1782/2003, the Scheme payment for a particular Scheme year shall be made in respect of the applications for Scheme payment received in that calendar year, and an application received after 31st December will count as an application for the following Scheme year.

(3) An application must include the eartag number of any animal in respect of which the application is made in the form of—

- (a) a movement card from the animal's cattle passport;
- (b) a signed and dated printout from farm software showing the eartag numbers in a barcode which is the same as that on the movement card from the animal's cattle passport; or
- (c) a signed and dated written list of the eartag numbers of each animal.

(4) The application must be in writing in such a form and containing such particulars as may be specified by the Scottish Ministers.

(5) An application for a Scheme payment can be withdrawn in writing in respect of any animal included in that application unless the applicant or keeper has been notified by the Scottish Ministers of an inspection under the Cross Compliance Regulations, the Cattle Tracing Regulations or this Part of, or Schedule 4 to, these Regulations or of any errors in the application.

(6) For the purposes of Article 11(1) of Commission Regulation 796/2004, applicants must have submitted a single application in accordance with the IACS Regulations in the year of the application for the Scheme payment.

Commencement Information

I20 Reg. 20 in force at 18.4.2005, see [reg. 1\(1\)](#)

Eligible animals

21.—(1) Any application to the Scheme must be in respect of an animal which is eligible in terms of the requirements of paragraphs (2) to (7).

(2) An eligible animal must be genetically at least 75% of a breed of cattle other than a breed listed in Schedule 3 to these Regulations.

(3) An eligible animal must have been born on or after 2nd December 2004 on an applicant's IACS holding.

(4) An eligible animal must have been kept on that IACS holding of birth for a continuous period of 30 days.

(5) An eligible animal must have been registered in accordance with Article 13 of the Cattle Identification Regulations 1998.

(6) An eligible animal must be accurately recorded in the register of cattle on the keeper's holding under regulation 29 of the Cattle Identification Regulations 1998.

(7) The appropriate Minister within the meaning of the Cattle Database Regulations 1998⁽³⁶⁾ must have been informed about any movements of an eligible animal which the keeper is required to intimate to them under Articles 4 and 7 of those Regulations.

Commencement Information

I21 Reg. 21 in force at 18.4.2005, see [reg. 1\(1\)](#)

(36) S.I. 1998/1796, amended by S.S.I. 2002/22.

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Payments

22.—(1) Subject to regulation 23, the Scheme payment to be made in respect of each eligible animal shall be determined by the Scottish Ministers to be funded from any retention pursuant to Article 69(1) of Council Regulation 1782/2003 and Article 48(5) of Commission Regulation 795/2004 for that Scheme year on the basis of the number of eligible animals in respect of which a Scheme payment has been claimed in applications received for that Scheme year.

(2) A higher payment may be determined by the Scottish Ministers to be made in respect of the first 10 eligible animals claimed by each applicant than for the remainder of the eligible animals claimed by that applicant.

Commencement Information

I22 Reg. 22 in force at 18.4.2005, see [reg. 1\(1\)](#)

Scheme penalties

23.—(1) Subject to regulation 24, where, in respect of an application for a Scheme payment, a difference is found between the number of animals claimed as eligible by the applicant and the number of animals which are eligible in accordance with regulation 21 in any Scheme year, the total amount of the Scheme payment to which the applicant is entitled shall be reduced in accordance with this regulation.

(2) Where paragraph (1) applies, a percentage shall be calculated from the number of animals claimed during the Scheme year concerned and found to be ineligible divided by the number animals determined to be eligible for the Scheme year concerned.

(3) Where 3 or fewer claimed animals are found to be ineligible, the total amount of the Scheme payment to which the applicant is entitled for the Scheme year concerned shall be reduced by that percentage.

(4) Where more than 3 animals are found to be ineligible, the total amount of the Scheme payment to which the applicant is entitled for the Scheme year concerned shall be—

- (a) reduced by the percentage established under paragraph (2), if it is not more than 10%; or
- (b) reduced by twice the percentage established under paragraph (2), if it is more than 10% but not more than 20% or
- (c) refused entirely, if the percentage established under paragraph (2) is more than 20%.

(5) Where an applicant knowingly or recklessly makes a statement or furnishes any information in respect of an application which is false or misleading in a material particular—

- (a) the Scheme payment to which the applicant would have been entitled shall be refused for the Scheme year concerned; and
- (b) the applicant shall be excluded from receiving Scheme payments in respect of an additional amount of the same amount as the amount refused under sub paragraph (a), which amount shall be off-set (or the Scheme payment withheld if the amount cannot be fully off-set) in any Scheme year against Scheme payments to which the farmer would otherwise be entitled as a result of applications made in any Scheme year following the Scheme year concerned, until that amount is off-set.

Commencement Information

I23 Reg. 23 in force at 18.4.2005, see [reg. 1\(1\)](#)

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Exceptions from scheme penalties

24.—(1) Except in respect of ineligibility under regulation 21(7), the penalties applied under regulation 23 shall not apply—

- (a) where the applicant submitted factually correct information or can show otherwise that the applicant is not at fault; and
- (b) subject to paragraph (2), to the parts of an application for a Scheme payment in relation to which—
 - (i) the applicant informs the Scottish Ministers in writing that the application for Scheme payment is incorrect or has become incorrect since it was submitted; or
 - (ii) the keeper notifies the appropriate Minister within the meaning of the Cattle Database Regulations 1998 under regulation 4 or 7 of those Regulations, or either the applicant or keeper supply information to the Scottish Ministers or that appropriate Minister in writing about the animals or the IACS holding or keeper’s holding which are the subjects of that application which would have the effect described in paragraph (i).

(2) An applicant cannot take advantage of paragraph (1)(b) if the Scottish Ministers or that appropriate Minister has already informed that applicant of—

- (a) that authority’s intention to inspect the applicant’s animals or IACS holding or keeper’s holding; or
- (b) the fact that an animal or the application is ineligible.

(3) Where an applicant has informed the Scottish Minister or that appropriate Minister or supplied them with information under paragraph (1)(b), that applicant’s application shall be deemed to be adjusted so as to incorporate that information.

Commencement Information

I24 Reg. 24 in force at 18.4.2005, see [reg. 1\(1\)](#)

Administration and enforcement of the Scottish Beef Calf Scheme

25. Schedule 4 to these Regulations, which provides for the administration and enforcement of the Scheme, shall have effect.

Commencement Information

I25 Reg. 25 in force at 18.4.2005, see [reg. 1\(1\)](#)

PART 7

Amendments, Revocations and Savings

Amendment of the Cross-Compliance Regulations

26.—(1) The Cross-Compliance Regulations are amended in accordance with paragraphs (2) to (4).

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(2) At the end of the definition of “authorised person” in regulation 2(1), add “, or under Article 32(2) of Commission Regulation (EC) No. 795/2004 as amended(37) (which requires additional standards of good agricultural and environmental condition to be established as conditions for set-aside)”.

(3) After regulation 4, insert–

“Permanent pasture

4A.—(1) If it is established that the ratio in Article 3(1) of the Commission Regulation is decreasing, the Scottish Ministers must prohibit a farmer from converting land under permanent pasture, in accordance with Article 4(1) of the Commission Regulation.

(2) If it is established that the obligation in Article 3(2) of the Commission Regulation cannot be met, the Scottish Ministers must oblige a farmer to re-convert land to permanent pasture in accordance with Article 4(2) of the Commission Regulation.

(3) In this regulation, “permanent pasture” has the meaning given to it in Article 2(2) of the Commission Regulation.”.

(4) In paragraph 1(2)(b) of the Schedule, for “indicate” substitute “allow”.

Commencement Information

I26 Reg. 26 in force at 18.4.2005, see [reg. 1\(1\)](#)

Revocations and savings

27.—(1) Subject to the savings referred to in the remaining provisions of this regulation, the Regulations specified in column 1 of Schedule 5 to these Regulations are revoked to the extent specified in column 3 of that Schedule.

(2) The Regulations revoked by paragraph (1) and Schedule 5 to these Regulations (other than those specified in paragraph (3)) shall continue to apply in respect of applications for direct payments in respect of calendar years preceding 2005.

(3) The CAP Support Schemes (Modulation) (Scotland) Regulations 2000(38), regulation 13(3) of the Abolition of the Intervention Board for Agricultural Produce (Consequential Provisions) (Scotland) Regulations 2001(39) and the CAP Support Schemes (Modulation) (Scotland) Amendment Regulations 2004(40) shall continue to apply to direct payments in respect of scheme years which began before 2005.

(4) Regulation 12 of the Arable Area Payments Regulations 1996(41) (delivery notifications for non-food raw materials) shall continue to apply in respect of farmers, collectors and first processors who make the declaration or provide the information mentioned in that regulation (as the case may be) after the coming into force of these Regulations.

(5) Paragraphs (1), (4) and (5) of regulation 14 of the Arable Area Payments Regulations 1996 (keeping and retention of records by a collector and a processor) shall continue to apply in respect of processors who purchased, after the coming into force of these Regulations, Annex I raw materials.

(6) In this regulation “Annex I raw materials”, “farmer” and “processor” have the meanings given to them in the Arable Area Payments Regulations 1996.

(37) O.J. No. L 141, 30.4.2004, p.1, amended by Commission Regulation (EC) No 1974/2004 (O.J. No. L 345, 20.11.2004, p.85).

(38) S.S.I. 2000/429, amended by S.S.I. 2001/390 and 2004/398.

(39) S.S.I. 2001/390.

(40) S.S.I. 2004/398.

(41) S.I. 1996/3142 as amended by S.I. 1997/2969, S.I. 1998/3169 and S.I. 1999/8.

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Commencement Information

I27 Reg. 27 in force at 18.4.2005, see [reg. 1\(1\)](#)

St Andrew's House, Edinburgh
9th March 2005

ROSS FINNIE
A member of the Scottish Executive

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PROSPECTIVE

SCHEDULE 1

Regulations 2(1) and 12(1), (4) and (5)

Additional standards of good agricultural and environmental condition that apply to land set aside from production

PART A

Management options for land set aside from production

Management options for land set aside from production

1.—(1) Subject to sub-paragraph (2), in respect of each field or part of a field which is set aside from production in a particular calendar year, a farmer shall, during that year, comply with the conditions applicable to one of the following management options—

- (a) the Green Cover Option (the applicable conditions are set out in paragraph 2);
- (b) the Natural Regeneration Option (the applicable conditions are set out in paragraph 3); or
- (c) the Wild Bird Cover Option (the applicable conditions are set out in paragraph 4).

(2) Where—

- (a) a farmer has applied in writing to the Scottish Ministers for permission to manage land set aside from production in accordance with a management plan set out in that application; and
- (b) has obtained the written consent of the Scottish Ministers to that plan,

the farmer need not comply with the conditions set out in the following paragraphs of this Schedule, but shall instead manage the land in accordance with that management plan.

(3) In this Schedule—

- “the current scheme year” means the particular year referred to in sub-paragraph (1);
- “the current set-aside period” means the set-aside period during the current scheme year; and expressions such as “the previous scheme year” and “the following scheme year” shall be construed accordingly.

(4) In paragraphs 2(1)(b), 3(1)(b) and 4(1)(c), “the relevant period” in relation to a field or part of a field (as the case may be) set aside from production means—

- (a) where the farmer does not intend to set aside the field or part of a field (as the case may be) from production in the following year or intends to set it aside for a non-food purpose in the following year, the current scheme year; and
- (b) where the farmer intends to set aside the field or part of a field (as the case may be) from production in the following year (but does not intend to set it aside for a non-food purpose), the current set-aside period.

Commencement Information

I28 Sch. 1 para. 1 in force at 18.4.2005, see [reg. 1\(1\)](#)

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The Green Cover Option

2.—(1) In respect of each field or part of a field to be managed in accordance with the Green Cover Option, a farmer shall—

- (a) subject to sub-paragraph (2) and paragraph 6, establish a green cover by the start of the current set-aside period by sowing—
 - (i) grass seed;
 - (ii) a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production (which mixture shall not contain more than 50 per cent by weight of legumes);
 - (iii) mustard seed; or
 - (iv) phacelia seed;
- (b) subject to paragraphs 7, 11 and 12, maintain the green cover thereafter until the end of the relevant period; and
- (c) cut or destroy the green cover in accordance with paragraph 5.

(2) The requirement to establish a green cover in accordance with paragraph (1)(a) shall not apply where—

- (a) in 2005—
 - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999;
 - (ii) the field or part of a field was managed during that year in accordance with the grassland option set out in paragraph 2 of Schedule 2 to the Arable Area Payments Regulations 1996; and
 - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year; and
- (b) in 2006 and thereafter—
 - (i) the field or part of a field was set aside in the previous year;
 - (ii) the field or part of a field was managed during that year in accordance with the sown green cover option; and
 - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year.

Commencement Information

I29 Sch. 1 para. 2 in force at 18.4.2005, see [reg. 1\(1\)](#)

The Natural Regeneration Option

3.—(1) In each field or part of a field to be managed in accordance with the Natural Regeneration Option, a farmer shall—

- (a) subject to sub-paragraph (2) and paragraph 6, establish a green cover by the beginning of the current Scheme year by allowing natural regeneration of a herbage seed crop or combinable crop (other than a crop including maize or legumes) produced in that field or part of a field;
- (b) subject to paragraphs 7, 11 and 12, maintain the green cover thereafter until the end of the relevant period; and

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(c) cut or destroy the green cover in accordance with paragraph 5.

(2) The requirement to establish a green cover in accordance with paragraph (1)(a) shall not apply where—

(a) in 2005—

(i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999;

(ii) the field or part of a field was managed during that year in accordance with the natural regeneration option set out in paragraph 3 of Schedule 2 to the Arable Area Payments Regulations 1996; and

(iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year; and

(b) in 2006 and thereafter—

(i) the field or part of a field was set aside in the previous year;

(ii) the field or part of a field was managed during that year in accordance with the natural regeneration option; and

(iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year.

Commencement Information

I30 Sch. 1 para. 3 in force at 18.4.2005, see [reg. 1\(1\)](#)

The Wild Bird Cover Option

4.—(1) In each field or part of a field to be managed in accordance with the wild bird cover option, a farmer—

(a) shall, subject to sub-paragraph (3) and paragraph 6, either—

(i) establish a green cover by the start of the current scheme year by allowing natural regeneration of the herbage seed crop or combinable crop (other than a crop including maize or legumes) produced in that field or part field in the previous scheme year; or

(ii) establish a green cover by the start of the current scheme year by sowing a cover comprising a mixture of crops of different types which—

(aa) is a mixture of crops that it would not be practicable to harvest separately;

(bb) is not a mixture only of different types of cereal or of different types of brassica; and

(cc) is not a mixture only of one type of crop and legumes, a mixture only of cereals and legumes, or a mixture only of brassicas and legumes,

unless the field or part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Wild Bird Cover Option, and the green cover established in accordance with the requirements of the Green Cover Option has been maintained until the beginning of the current scheme year;

(b) shall, where a green cover was established by the start of the current scheme year in accordance with sub-paragraph (a)(i)—

(i) maintain that green cover until it is replaced in accordance with sub-paragraph (ii); and

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- (ii) replace that green cover by sowing a new green cover in accordance with paragraph (a)(ii) as early as is practicable after the start of the current scheme year;
 - (c) subject to sub-paragraph (d) and paragraphs 7, 11 and 12, maintain the green cover established under paragraph (a)(ii) or (b)(ii) until the end of the relevant period; and
 - (d) shall cut or destroy the cover in accordance with paragraph 5, unless—
 - (i) the field is to be set aside from production in the following year; and
 - (ii) the farmer has not harvested any of the green cover, or permitted any of it to be harvested or grazed, in the current scheme year.
- (2) A farmer shall ensure, when replacing the green cover pursuant to sub-paragraph (1)(d), that the requirements of paragraph 12(1) are satisfied.
- (3) The requirement to establish a green cover in accordance with sub paragraph (1)(a) shall not apply where—
- (a) in 2005—
 - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999;
 - (ii) the field or part of a field was managed during that year in accordance with the wild bird cover option set out in paragraph 4 of Schedule 2 to the Arable Area Payments Regulations 1996; and
 - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year; and
 - (b) in 2006 and thereafter—
 - (i) the field or part of a field was set aside in the previous year;
 - (ii) the field or part of a field was managed during that year in accordance with the wild bird cover option; and
 - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year.

Commencement Information

I31 Sch. 1 para. 4 in force at 18.4.2005, see [reg. 1\(1\)](#)

Cutting or destruction of the green cover

5.—(1) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer shall either—

- (a) subject to sub-paragraph (2), cut the green cover to an average length of no more than 10 centimetres between 15th July and 15th August during the current set-aside period; or
- (b) destroy the green cover between 15th July and 31st August during the current set aside period.

(2) A farmer may (where the farmer cuts the green cover in a field or part of a field in accordance with sub paragraph (1)(a))—

- (a) leave uncut a strip of green cover up to 2 metres wide adjacent to any hedgerow, woodland or watercourse; and
- (b) in the case of a field which is to be set aside in the following scheme year, leave uncut a further 25% of the area set aside in that field, provided that any area left uncut in

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accordance with this paragraph which has also been left uncut in the previous two years in accordance with this paragraph (or paragraph 7(2)(b) of Schedule 2 to the Arable Area Payments Regulations 1996(42)) is cut in accordance with sub-paragraph (1) in the following year.

Commencement Information

I32 Sch. 1 para. 5 in force at 18.4.2005, see [reg. 1\(1\)](#)

Exemptions from the requirement to establish a green cover on set-aside land

6.—(1) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer is not required to establish a green cover by the start of the current scheme year where the farmer satisfies the Scottish Ministers that for climatic reasons it was not practicable for there to be such a green cover by that time, in which case the farmer shall establish a green cover as soon as reasonably possible thereafter.

(2) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer need not establish a green cover on—

- (a) a strip of land up to 1 metre wide forming part of the land set aside and bordering its edge, where the strip of land set aside adjoins land planted with a crop other than a seed crop;
- (b) a strip of land up to 2 metres wide forming part of the land set aside and bordering its edge, where the strip of land set aside adjoins land planted with a seed crop; or
- (c) a strip of land up to 5 metres wide forming part of the land set aside and bordering its edge in any place where vehicular access to that land from a road or track adjacent to that land may be possible, provided that the strip is ploughed and left as bare fallow.

Commencement Information

I33 Sch. 1 para. 6 in force at 18.4.2005, see [reg. 1\(1\)](#)

Exemptions from the requirement to maintain a green cover on the land set aside from production

7.—(1) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer is not required to maintain a green cover on the land set aside from production where that green cover is destroyed following the application of herbicide to the land on or after 15th April in the current scheme year, which exemption shall run from the time of the application until (where the land is to be set aside in the following scheme year but is not to be used as land set aside for the production of raw materials) the commencement of the following Scheme year.

(2) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer shall by virtue of this provision be treated as exempt from a requirement to maintain a green cover where the farmer satisfies the Scottish Ministers that the green cover which the farmer established failed and the farmer could not reasonably have prevented such failure, such exemption lasting from the time of the failure to the end of the current scheme year.

(3) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 5, and where a farmer has chosen not to establish a green cover on a strip of land pursuant

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to paragraph 6(2), the farmer need not maintain any green cover which nevertheless subsequently becomes established on that strip.

Commencement Information

I34 Sch. 1 para. 7 in force at 18.4.2005, see [reg. 1\(1\)](#)

PART B

General standards applying to all land set aside from production

Application of conditions to all land set aside from production

8. The provisions in paragraphs 9 to 14 shall apply to all land set aside from production that is managed by a farmer in accordance with any of the provisions of paragraphs 1 to 7.

Commencement Information

I35 Sch. 1 para. 8 in force at 18.4.2005, see [reg. 1\(1\)](#)

Prohibition on sowing and preparation for sowing a crop on, and the cultivation of, the land set aside from production

9. Subject to paragraphs 10 and 11, prior to the end of the current set-aside period, a farmer shall not sow or carry out any preparation for sowing a crop on the land set aside from production or otherwise cultivate that land.

Commencement Information

I36 Sch. 1 para. 9 in force at 18.4.2005, see [reg. 1\(1\)](#)

Exemptions from the prohibition on sowing and preparation for sowing a crop on the land set aside from production

10.—(1) A farmer may make preparations for sowing on or after 15th July.

(2) Subject to sub-paragraph (3), a farmer may sow any seed on or after 15th July prior to the end of the current set-aside period where the seed sown is sown in order to produce a crop for harvesting in the following year.

(3) Where a farmer sows a grass ley on land set-aside from production pursuant to the exemption in sub-paragraph (2), the farmer shall not graze any animals on that land during the remainder of the current year.

Commencement Information

I37 Sch. 1 para. 10 in force at 18.4.2005, see [reg. 1\(1\)](#)

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Exemption from prohibition on cultivation of land set aside from production for the purpose of weed control

11.—(1) A farmer may cultivate the land set aside from production for the purposes of controlling weeds—

- (a) where the farmer is not an accepted organic farmer, at any time on or after 15th July prior to the end of the current set aside period; and
 - (b) where the farmer is an accepted organic farmer, at any time on or after 1st May prior to the end of the current set-aside period.
- (2) In this paragraph, “accepted organic farmer” means a farmer who—
- (a) satisfies the Scottish Ministers that such a farmer farms the land by organic means or is converting to so farming the land; and
 - (b) has notified the Secretary of State, as designated by the Organic Products Regulations 2004⁽⁴³⁾, under Article 8(1)(a) of Council Regulation (EC) No. 2092/91 as amended⁽⁴⁴⁾ that by so farming the land or converting it products of a kind specified in Article 1 of that Council Regulation are produced and that the farmer has submitted to the inspection system referred to in Article 9 of that Council Regulation.

Commencement Information

I38 Sch. 1 para. 11 in force at 18.4.2005, see [reg. 1\(1\)](#)

Replacement of the green cover and changing management options

12.—(1) Subject to sub-paragraphs (2) and (3), in any period during which a farmer is required to maintain a green cover in a field or part of a field, the farmer may nevertheless replace that green cover with another provided that the seed is sown as soon as is practicable after the destruction of the existing green cover.

(2) Where the cover is to be replaced in part only of a field, the farmer may nevertheless replace the green cover with another provided that the seed to be sown to establish a replacement green cover shall be seed of a type listed in paragraph 2(1)(a).

(3) A farmer shall, in respect of the field or part of a field where the green cover has been replaced, comply with such of the conditions set out in Part A of this Schedule as they relate to one of the following management options—

- (a) where the seed sown complies with the requirements of paragraph 2(1)(a), the Green Cover Option referred to in paragraph 2;
- (b) where the seed sown complies with the requirements of paragraph 4(1)(a)(ii), the Wild Bird Cover Option referred to in paragraph 4; or
- (c) where the provisions of paragraph 1(3) apply, the provisions of the management plan referred to in that paragraph,

except that the farmer shall not be required to establish a green cover (as required by paragraph 2(1)(a) or 4(1)(a)) different from the replacement green cover sown in accordance with the provisions of this paragraph.

(4) Where a farmer is exempted from a requirement to maintain a green cover pursuant to regulation 11, the farmer shall (unless also exempted from the requirements of this sub-paragraph

⁽⁴³⁾ S.I. 2004/1604.

⁽⁴⁴⁾ O.J. No. L 198, 22.7.1991, p.1, relevantly amended by Council Regulations (EC) No. 1804/1999 (O.J. No. L 222, 24.8.1999, p.1) and (EC) No. 746/2004 (O.J. No L 65, 26.4.2004, p.10).

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pursuant to that regulation) replace the green cover once destroyed in accordance with sub-paragraphs (1) to (3) above.

Commencement Information

I39 Sch. 1 para. 12 in force at 18.4.2005, see [reg. 1\(1\)](#)

Use of the green cover

13.—(1) A farmer shall ensure that, subject to sub-paragraph (2), no green cover or cuttings from any green cover are used for seed production or any other commercial or agricultural purpose in the current scheme year.

(2) A farmer may use any such green cover or cuttings—

- (a) for any agricultural purposes after 31st August; and
- (b) to place on the market any cuttings or crops that are produced after 15th January in the following scheme year.

(3) A farmer shall ensure that no cuttings produced by cutting the green cover are removed from the set-aside land concerned except in accordance with sub-paragraph (2) or with the prior consent of the Scottish Ministers.

Commencement Information

I40 Sch. 1 para. 13 in force at 18.4.2005, see [reg. 1\(1\)](#)

Application of fertiliser, waste, lime and gypsum to the land set-aside from production

14.—(1) A farmer shall not apply any fertiliser, waste, lime or gypsum to the land set aside from production except in accordance with the following sub-paragraphs.

(2) A farmer may apply fertilisers to the land set aside from production if prior to such application the farmer satisfies the Scottish Ministers that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as such an area.

(3) Throughout the set-aside period a farmer may apply organic waste to the land set aside from production provided that it—

- (a) is applied only where there is an existing green cover on the set-aside land;
- (b) is applied in amounts which will not destroy that green cover; and
- (c) in the case of manure and slurry, is not applied—
 - (i) within 10 metres of any watercourse; or
 - (ii) within 50 metres of any boreholes.

(4) A farmer may apply fertiliser to any agricultural parcel of land managed in accordance with paragraph 4 during the current scheme year where a new green cover is being established in that scheme year, provided that the total nitrogen content of that fertiliser is not more than 30 kilograms per hectare of the land to which it is applied.

(5) A farmer shall not store, dump or otherwise dispose of any waste on the land set aside from production, except that the farmer may store organic waste in a field which forms all or part of the set-aside land where that organic waste is to be applied by that farmer to that field in accordance with sub-paragraph (3).

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(6) A farmer may apply lime or gypsum to the land set aside from production where that land is to be cropped in the following year.

Commencement Information

I41 Sch. 1 para. 14 in force at 18.4.2005, see [reg. 1\(1\)](#)

SCHEDULE 2

Regulations 2(1) and 12(2), (4) and (5)

Additional standards of good agricultural and environmental condition
that apply to land set aside for the provision of non-food crops

Application of fertilisers and waste to land set aside for the provision of non-food crops

1. Subject to paragraph 2, a farmer shall not apply any fertiliser or waste to land set aside for the provision of non-food crops.

Commencement Information

I42 Sch. 2 para. 1 in force at 18.4.2005, see [reg. 1\(1\)](#)

2. A farmer may apply fertiliser or waste to the set-aside land for the provision of non-food crops only to the extent that—

- (a) if it is necessary to do so in order to ensure the proper growth of the non-food crops being produced on it; and
- (b) in a manner which is consistent with the Code of Good Practice for the Protection of Environmental Pollution from Agricultural Activity, approved by the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005⁽⁴⁵⁾.

Commencement Information

I43 Sch. 2 para. 2 in force at 18.4.2005, see [reg. 1\(1\)](#)

Commencement Information

I42 Sch. 2 para. 1 in force at 18.4.2005, see [reg. 1\(1\)](#)

I43 Sch. 2 para. 2 in force at 18.4.2005, see [reg. 1\(1\)](#)

SCHEDULE 3

Regulation 21(2)

Beef Calf Scheme ineligible breeds

1. Angler Rotvieh (Angeln) Rød dansk mælkerace (RDM).

⁽⁴⁵⁾ S.S.I. 2005/63.

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Commencement Information

I44 Sch. 3 para. 1 in force at 18.4.2005, see [reg. 1\(1\)](#)

2. Ayrshire.

Commencement Information

I45 Sch. 3 para. 2 in force at 18.4.2005, see [reg. 1\(1\)](#)

3. Armoricaine.

Commencement Information

I46 Sch. 3 para. 3 in force at 18.4.2005, see [reg. 1\(1\)](#)

4. Bretonne Pie-Noire.

Commencement Information

I47 Sch. 3 para. 4 in force at 18.4.2005, see [reg. 1\(1\)](#)

5. Friesian, including Fries Holland (FH); Francaise frisonne pie noire (FFPN); British Friesian; Friesian-Holstein; Holstein; Black and White Friesian; Red and White Friesian; Frisona Italiana; Frisona Espanola; Zwartbonten van Belgie/Pie-noire de Belgique; Sørtbrøget dansk mælkerace (SDM); Deutsche Schwarzbunte and Swartzbunte Milchrasse (SMR).

Commencement Information

I48 Sch. 3 para. 5 in force at 18.4.2005, see [reg. 1\(1\)](#)

6. Groninger Blaarkop.

Commencement Information

I49 Sch. 3 para. 6 in force at 18.4.2005, see [reg. 1\(1\)](#)

7. Guernsey.

Commencement Information

I50 Sch. 3 para. 7 in force at 18.4.2005, see [reg. 1\(1\)](#)

8. Jersey.

Commencement Information

I51 Sch. 3 para. 8 in force at 18.4.2005, see [reg. 1\(1\)](#)

9. Malkeborhorn.

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Commencement Information

I52 Sch. 3 para. 9 in force at 18.4.2005, see [reg. 1\(1\)](#)

10. Reggiana.

.....
Commencement Information

I53 Sch. 3 para. 10 in force at 18.4.2005, see [reg. 1\(1\)](#)

11. Valdostana Nera.

.....
Commencement Information

I54 Sch. 3 para. 11 in force at 18.4.2005, see [reg. 1\(1\)](#)

12. Itäsuomenkarja.

.....
Commencement Information

I55 Sch. 3 para. 12 in force at 18.4.2005, see [reg. 1\(1\)](#)

13. Länsisuomenkarja.

.....
Commencement Information

I56 Sch. 3 para. 13 in force at 18.4.2005, see [reg. 1\(1\)](#)

14. Pohjoissuomenkarja.

.....
Commencement Information

I57 Sch. 3 para. 14 in force at 18.4.2005, see [reg. 1\(1\)](#)

SCHEDULE 4

Regulation 25

Scottish Beef Calf Scheme administration and enforcement

Interpretation

1. In this Schedule—

“authorised person” means a person (whether or not an officer of the Scottish Ministers) who is authorised by the Scottish Ministers, either generally or specifically, to act in matters arising under Part 6 and this Schedule;

“LIBOR” means the sterling three month London interbank offered rate;

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“specified control measure” means any check which a member State is required to carry out in relation to a claim under the Scheme, or by Council Regulation 1782/2003 or Commission Regulation 796/2004 in relation to the Scheme;

“specified record” means any record which a keeper is required (or has been required) to retain by virtue of—

- (a) Article 9(1) of the Bovine Animals (Identification, Marking and Breeding Records) Order 1990(46);
- (b) Article 5(1) of the Bovine Animals (Records, Identification and Movement) Order 1995(47);
- (c) Articles 7(1) and 7(4) of Council Regulation 820/97 and the Cattle Identification (Enforcement) Regulations 1997(48);
- (d) Articles 7(1) and 7(4) of Council Regulation 820/97 and the Cattle Identification Regulations 1998(49);
- (e) Articles 7(1) and 7(4) of Regulation (EC) No. 760/2000 and the Cattle Identification Regulations 1998; or
- (f) regulation 5 of the Cattle (Identification of Older Animals) (Scotland) Regulations 2001(50).

Commencement Information

I58 Sch. 4 para. 1 in force at 18.4.2005, see [reg. 1\(1\)](#)

Powers of authorised persons

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

- (a) carrying out any specified control measure; or
- (b) ascertaining whether an offence under paragraph 7(d) has been or is being committed.

(2) An authorised person may enter any land, other than land used only as a dwelling, which is, or which such person has reasonable cause to believe to be, an IACS holding or keeper’s holding occupied by, or in the possession of, an applicant or any employee, agent, contractor or tenant of an applicant or keeper.

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

- (a) inspect and verify the total area of land farmed by an applicant or used by a keeper;
- (b) inspect and count any cattle on that land; and
- (c) carry out any other activity which is a specified control measure.

(4) An authorised person may—

- (a) require an applicant or keeper or any employee or agent of an applicant or keeper to produce any specified record and to supply such additional information in the possession or under the control of that person relating to an application for premium as the authorised person may reasonably request;

(46) S.I. 1990/1867, as amended by S.I. 1993/503 and revoked by S.I. 1995/12.

(47) S.S.I. 1995/12, partially revoked by S.I. 1998/871.

(48) S.I. 1997/1901, revoked by S.I. 1998/871.

(49) S.I. 1998/871, as amended by S.I. 1998/1796, 1998/2969 and 1999/1339.

(50) S.S.I. 2001/1 as amended by S.S.I. 2002/22.

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- (b) inspect any such specified record and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that specified record;
 - (c) require that copies of, or extracts from, any specified record be produced;
 - (d) seize and retain any such specified record which that authorised person has reason to believe may be required as evidence in proceedings under Part 6 and this Schedule and, where any such record is kept by means of a computer, require it to be produced in a form in which it may be taken away;
 - (e) carry out any inquiries, checks, examinations and tests;
 - (f) take samples;
 - (g) inspect all or any part of the land whether it is farmed or is withdrawn from agricultural production, including land set aside pursuant to Articles 54 and 55(b) of Council Regulation 1782/2003;
 - (h) mark any animal or other thing for identification purposes;
 - (i) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the authorised person may reasonably expect.
- (5) An authorised person entering any premises by virtue of this regulation may be accompanied by—
- (a) such other persons as that person considers necessary to exercise the powers specified in this regulation; and
 - (b) any representative of the European Commission acting for the purpose of Article 27 of Council Regulation 1782/2003.
- (6) If an authorised person enters any unoccupied premises that person shall leave those premises at least as effectively secured against unauthorised entry as when that person took entry.

Commencement Information

I59 Sch. 4 para. 2 in force at 18.4.2005, see [reg. 1\(1\)](#)

Assistance to authorised persons

3. An applicant or keeper or any employee or agent of an applicant or keeper shall give to an authorised person such assistance as such person may reasonably request so as to enable that authorised person to exercise any power conferred by regulation and in particular, in relation to any cattle, shall arrange for the collection, penning and securing of such cattle, if so requested.

Commencement Information

I60 Sch. 4 para. 3 in force at 18.4.2005, see [reg. 1\(1\)](#)

Withholding and recovery of payments

4.—(1) Where—

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- (a) an applicant; or
- (b) a person (other than an applicant) who was at that time an employee or agent of an applicant or a keeper,

intentionally obstructs an authorised person, or a person accompanying such authorised person and acting under the instructions of such person, from exercising a power under paragraph 2, or fails without reasonable excuse to comply with a request made by an authorised person when carrying out a specified control measure, the Scottish Ministers shall be entitled to recover on demand as a debt from that applicant the whole of any Scheme payment to that applicant.

(2) Where an applicant is liable to repay all or part of a Scheme payment in accordance with Article 73 of Commission Regulation 796/2004, the amount of the repayment, together with the interest on that amount calculated in accordance with paragraph 6, shall be recoverable as a debt on demand to Scottish Ministers.

(3) In any legal proceedings brought pursuant to sub-paragraph (2), a certificate of the relevant competent authority which—

- (a) sets out the LIBOR applicable during a specified period; and
- (b) includes a statement that the Bank of England or the coordinating body notified the Scottish Ministers of that rate for that period,

shall be evidence of the rate applicable during that period.

(4) In sub-paragraph (3), “the coordinating body” means the coordinating body referred to in Article 4(1) of Council Regulation (EC) No. 1258/1999 on the financing of the common agricultural policy⁽⁵¹⁾.

Commencement Information

I61 Sch. 4 para. 4 in force at 18.4.2005, see [reg. 1\(1\)](#)

Set off

5.—(1) Without prejudice to the amount of any sum payable by a competent authority to the Scottish Ministers, the amount of any sum payable by the Scottish Ministers under these Regulations or by a competent authority, whether as principal or agent, or by way of a specified payment within the meaning of the IACS Regulations, may be set-off against the amount of any such sum recoverable by the Scottish Ministers or by a competent authority.

(2) In this regulation, “competent authority” has the meaning given in regulation 5 of the IACS Regulations.

Commencement Information

I62 Sch. 4 para. 5 in force at 18.4.2005, see [reg. 1\(1\)](#)

Rate of interest

6.—(1) Interest shall be charged in respect of each day of the period referred to in Article 73(3) of Commission Regulation 796/2004.

(2) For the purposes of Article 73(3) of Commission Regulation 796/2004 the rate of interest applicable on any day shall be one percentage point above the LIBOR on that day.

⁽⁵¹⁾ O.J. No. L 160, 26.6.99, p.103.

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Commencement Information

I63 Sch. 4 para. 6 in force at 18.4.2005, see [reg. 1\(1\)](#)

Offences

7. It shall be an offence for a person—

- (a) intentionally to obstruct an authorised person in the exercise of a power conferred by paragraph 2;
- (b) without reasonable excuse, to fail to comply with a request made under paragraph 3; or
- (c) knowingly or recklessly to make a statement or furnish any information which is false or misleading in a material particular where the statement is made or the information is furnished for the purposes of obtaining for that or any other person the whole or any part of any Scheme payment.

Commencement Information

I64 Sch. 4 para. 7 in force at 18.4.2005, see [reg. 1\(1\)](#)

Penalties

8.—(1) A person guilty of an offence under paragraph 7(a) or (b) 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 paragraph 7(c) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I65 Sch. 4 para. 8 in force at 18.4.2005, see [reg. 1\(1\)](#)

Time limit for prosecutions

9.—(1) Proceedings for an offence under the Scheme may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Section 136(3) of the Criminal Procedure (Scotland) Act 1995([52](#)) (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

Commencement Information

I66 Sch. 4 para. 9 in force at 18.4.2005, see [reg. 1\(1\)](#)

Offences by bodies corporate

10.—(1) Where an offence under the Scheme 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

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any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a 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, the provisions of sub paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

Commencement Information

I67 Sch. 4 para. 10 in force at 18.4.2005, see [reg. 1\(1\)](#)

SCHEDULE 5

Regulation 27

Revocations

Commencement Information

I68 Sch. 5 in force at 18.4.2005, see [reg. 1\(1\)](#)

<i>Column 1 – Regulations revoked</i>	<i>Column 2 – References</i>	<i>Column 3 – extent of revocation</i>
The Sheep Annual Premium Regulations 1992	S.I.1992/2677	The whole Regulations in so far as the Scottish Ministers are the relevant competent authority in relation to the holding for the purposes of the IACS Regulations.
The Sheep Annual Premium (Amendment) Regulations 1994	S.I. 1994/2741	The whole Regulations in so far as the Scottish Ministers are the relevant competent authority in relation to the holding for the purposes of the IACS Regulations.
The Sheep Annual Premium (Amendment) Regulations 1995	S.I. 1995/2779	The whole Regulations in so far as the Scottish Ministers are the relevant competent authority in relation to the holding for the purposes of the IACS Regulations.
The Sheep Annual Premium (Amendment) Regulations 1996	S.I. 1996/49	The whole Regulations in so far as the Scottish Ministers are the relevant competent authority in relation to the holding for the purposes of the IACS Regulations.

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<i>Column 1 – Regulations revoked</i>	<i>Column 2 – References</i>	<i>Column 3 – extent of revocation</i>
The Arable Area Payments Regulations 1996	S.I. 1996/3142	The whole Regulations so far as they extend to Scotland.
The Sheep Annual Premium (Amendment) Regulations 1997	S.I. 1997/2500	The whole Regulations in so far as the Scottish Ministers are the relevant competent authority in relation to the holding for the purposes of the IACS Regulations.
The Arable Area Payments (Amendment) Regulations 1997	S.I. 1997/2969	The whole Regulations so far as they extend to Scotland.
The Arable Area Payments (Amendment) Regulations 1998	S.I. 1998/3169	The whole Regulations so far as they extend to Scotland.
The Arable Area Payments (Amendment) Regulations 1999	S.I. 1999/8	The whole Regulations so far as they extend to Scotland.
The Common Agricultural Policy Support Schemes (Modulation) (Scotland) Regulations 2000	S.S.I. 2000/429	The whole Regulations.
The Sheep Annual Premium (Amendment) Regulations 2001	S.I. 2001/281	The whole Regulations in so far as the Scottish Ministers are the relevant competent authority in relation to the holding for the purposes of the IACS Regulations.
The Suckler Cow Premium (Scotland) Regulations 2001	S.S.I. 2001/225	The whole Regulations.
The Beef Special Premium (Scotland) Regulations 2001	S.S.I. 2001/445	The whole Regulations.
Abolition of the Intervention Board for Agricultural Produce (Consequential Provisions) (Scotland) Regulations 2001	S.S.I. 2000/390	Regulation 3(13).
The Extensification Payment (Scotland) Regulations 2001	S.S.I. 2002/278	The whole Regulations.
The Sheep Annual Premium and Suckler Cow Quotas Regulations 2003	S.I. 2003/2261	The whole Regulations so far as they extend to Scotland.
The Common Agricultural Policy Support Schemes	S.S.I. 2000/398	The whole Regulations.

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<i>Column 1 – Regulations revoked</i>	<i>Column 2 – References</i>	<i>Column 3 – extent of revocation</i>
(Modulation) (Scotland) Amendment Regulations 2004		

PROSPECTIVE

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in Scotland for the administration of Council Regulation (EC) No. 1782/2003 (O.J. No. L 270, 21.10.2003, p.1; “the Council Regulation”), Commission Regulation (EC) No. 795/2004 (O.J. No. L 141, 30.4.2004, p.1; “Regulation 795/2004”) and Commission Regulation (EC) No 796/2004 (O.J. No. L 141, 30.4.2004, p.18; “Regulation 796/2004”) in relation to establishing a new system of direct support schemes (including the Single Farm Payment Scheme) which came into force on 1st January 2005 under the Common Agricultural Policy.

They also make provision in Scotland for the administration of Commission Regulation (EC) No. 1973/2004 (O.J. No. L 345, 20.11.2004, p.1; “Regulation 1973/2004”) and implement Chapter 16 of that Regulation in relation to the obligation to set aside land under the new Single Farm Payment Scheme. These provisions also implement part of Regulation 795/2004.

In addition, the Regulations establish the Scottish Beef Calf Scheme (“the Beef Calf Scheme”), which is an additional payment under Article 69 of the Council Regulation and Article 48 of Regulation 795/2004 which is to be funded from a retention from the regional ceiling for Scotland in respect of the beef sector of the Single Farm Payment.

In relation to the Single Farm Payment Scheme these Regulations–

- (a) define Scotland as a region for the purposes of Article 58 of the Council Regulation (regulation 3);
- (b) designate the Scottish Ministers as the competent authority for the purposes of sending out in the first year of application of the single payment scheme an application form to farmers, and provide for deadlines in relation to hardship applications and the national reserve under Articles 40 and 42 of the Council Regulation respectively (regulation 4);
- (c) prescribe the minimum size of a holding in respect of which the establishment of entitlements may be requested (regulation 5);
- (d) fix the beginning and end of the period in which the parcels declared corresponding to the eligible hectares shall be at the farmers disposal for a period of at least 10 months (regulation 6);
- (e) exercise the derogation in Article 62 of the Council Regulation to include the amounts resulting from the dairy premium and the additional premium at a regional level, in full, in the single payment scheme starting from 2005 (regulation 7);

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- (f) provide that secondary crops may be cultivated on eligible hectares during a maximum period of three months beginning each year on 15th August (regulation 8);
- (g) provide that transfers of payment entitlements must be communicated to the transferor to the relevant competent authority no later than 6 weeks before the transfer is to take place and no later than 6 weeks before the last day for submission of the single application (regulation 9).

Regulation 10 enables the Scottish Ministers to deduct a sum equal to a specified proportion (3.5% in the year 2005, and 4.5% in the year 2006) from the total amount which would have been granted to the farmer under the income support schemes in Annex I to the Council Regulation, to implement Commission Regulation (EC) No 1655/2004(O.J. No. L 298, 23.9.2004, p.3). The amounts deducted are applied for the relevant purposes as additional support for rural development measures.

Part 4 (regulations 11 to 15) and Schedules 1 and 2 concern the obligation to set aside land under the new Single Farm Payment Scheme.

Regulation 11 derogates from the provisions of Article 54(4) of the Council Regulation that provide for set aside areas to be not less than 0.1 hectares in size and 10 metres wide. It adds a category which can be only 0.05 hectares in size and 6 metres wide provided certain conditions are met as stated in regulation 11.

Regulation 12, as read with Schedules 1 and 2, lays down the good agricultural and environmental conditions that apply to land set aside under the Scheme. These apply in addition to the good agricultural and environmental conditions that apply by virtue of the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Scotland) Regulations 2004 (S.S.I. 2004/518; “the Cross-Compliance Regulations”).

Regulation 13 allows farmers to apply for land that cannot be set aside under the Single Farm Payment Scheme to be counted as land that can be set aside under that scheme. Article 33 of Regulation 795/2004 lays down the cases in which this may be permitted. In some cases, this may involve an exchange of land.

Regulation 14 lays down provisions relating to raw materials grown on land which is set aside for the provision of materials for the manufacture within the European Community of products not primarily intended for human or animal consumption (“raw materials produced for non-food purposes”)–

- (a) it lays down provisions relating to the weighing of certain raw materials produced for non-food purposes where they are to be used as fuel for heating, or are to be used for producing power, biofuels or biogas, on the holding on which they are grown;
- (b) it lays down the method of denaturing to be applied to cereals and oilseeds where they are to be used as fuel for heating, or are to be used for producing power or biofuels, on the holding on which they are grown;
- (c) it lays down the last date for submission of the single application in the year of application as the last day by which contracts made between farmer and collectors or processors in respect of raw materials produced for non-food purposes must be deposited and the date of 31st January of the following year as the last day by which certain information relating to those materials must be supplied.

Regulation 15 lays down the records that must be kept by collectors and first processors in respect of any raw materials produced for non-food purposes purchased by them and the period during which such records should be kept.

Part 5 (regulations 16 to 18) applies where an applicant uses areas covered by the aid provided for in Article 88 of the Council Regulation (aid for energy crops) for the growing of agricultural raw materials under Article 24 of Regulation 1973/2004 and provide that–

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- (a) the Scottish Ministers are the competent authority for the purposes of Chapter 8 of Commission Regulation 1873/2004 (Aid for energy crops) (regulation 16(2));
- (b) the minimum cultivated area for such raw material shall be 0.1 hectare (regulation 17(1));
- (c) that the Scottish Ministers must notify the farmers concerned where they exclude any agricultural raw material from aid for energy crops (regulation 17(2)).
- (d) for the requirements for the weighing of such raw materials to which Article 25(2)(b) of Regulation 1973/2004 applies (regulation 17(3));
- (e) for the method of denaturing to be applied to cereals, oilseeds and oil produced by processing oilseeds where they are to be used for any of the purposes specified in Article 25(4) of Regulation 1973/2004 (regulation 17(4));
- (f) for the last date on which a contract may be deposited, to be the last day for submitting the relevant single application and for 9th February of the following year to be the last day by which certain information may be provided (regulation 17(5) and (6)).

Regulation 18 lays down the records that must be kept by processors in respect of any such raw materials purchased by them and the period for which records should be kept.

Part 6 (regulations 19 to 25) and Schedules 3 and 4 establish the Scottish Beef Calf Scheme (“the Beef Calf Scheme”). They provide for the conditions for payment under, and for the administration of, the Beef Calf Scheme, including submission of applications for Beef Calf Scheme payments (regulation 20). The rules set out the conditions of eligibility for an animal which can be claimed under that scheme (regulation 21) and the basis on which the Scottish Ministers may determine payments under that scheme (regulation 22).

The Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005 (S.I. [2005/218](#)) do not apply to the Beef Calf Scheme. The Regulations accordingly provide, in relation to the Beef Calf Scheme, for scheme penalties for claiming ineligible animals (regulation 23), exceptions from those penalties (regulation 24) and administration and enforcement provisions (Schedule 4). Those provisions comprise powers of entry, inspection and collection of evidence conferred on authorised persons, the withholding or recovery of payments where there is a breach of scheme rules, including provision for setting off debts and interest on overpayments and recoveries, and for offences and penalties.

Regulation 26 amends the Cross-Compliance Regulations. The amendments clarify the enforcement powers under those Regulations in relation to land set aside from production. They insert provisions to give the Scottish Ministers the power to prohibit farmers from converting land under permanent pasture (and to oblige farmers to reconvert land to permanent pasture) where the exercise of powers there is necessary in order for the United Kingdom to meet the requirements of Article 5(2) of the Council Regulation and Articles 3 and 4 of the Commission Regulation. The amendments also correct a provision of the Schedule to those Regulations.

Regulation 27 revokes the provisions specified in Schedule 5, subject to the savings provisions set out in regulation 27(2) to (6).

Payments under all of the Schemes for which provision is made in these Regulations are subject to penalties for non-compliance with the requirements of good agricultural and environmental condition and the statutory management requirements set out in Annex III of the Council Regulation under the Cross Compliance Regulations, the Council Regulation and Regulation 796/2004 as direct subsidy payments under the Common Agricultural Policy listed in Annex I to the Council Regulation.

Regulatory Impact Assessments have been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TY.

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Changes and effects yet to be applied to :

- Sch. 1 para. 1 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 2 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 3 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 4 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 5 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 6 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 7 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 8 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 9 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 10 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 11 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 12 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 13 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 para. 14 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 1 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- Sch. 2 para. 1 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 2 para. 2 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 2 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- Sch. 3 para. 1 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 2 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 3 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 4 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 5 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 6 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 7 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 8 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 9 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 10 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 11 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 12 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 13 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 3 para. 14 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 1 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 2 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 3 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 4 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 5 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 6 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 7 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 8 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 9 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 10 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Sch. 4 para. 2(4)(g) words omitted by [S.S.I. 2009/391 reg. 12\(3\)](#)
- Sch. 4 para. 1 words substituted by [S.S.I. 2009/391 reg. 12\(2\)](#)
- Sch. 4 para. 2(5)(b) words substituted by [S.S.I. 2009/391 reg. 12\(4\)](#)

- Sch 5 am by [S.S.I. 2005/257 reg 2\(1\)\(4\)](#)
- Sch. 5 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- Regulations revoked by [S.S.I. 2011/416 Sch. 3](#)
- reg. 1 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg 2 defn(s) am by [S.S.I. 2005/257 reg 2\(1\)reg 2\(2\)\(a\)\(ii\)\(iii\)](#)
- reg 2 am by [S.S.I. 2007/414 regs 23](#)
- reg 2 am by [S.S.I. 2008/184 reg 2sch 1](#)
- reg. 2 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg 2 defn(s) rev by [S.S.I. 2005/257 reg 2\(1\)reg 2\(2\)\(a\)\(i\)](#)
- reg 2 rev in pt by [S.S.I. 2005/257 reg 2\(1\)reg 2\(2\)\(b\)](#)
- reg 2 rev in pt by [S.S.I. 2008/184 reg 2sch 1](#)
- reg. 2(1) words inserted by [S.S.I. 2009/391 reg. 3\(g\)](#)
- reg. 2(1) words omitted by [S.S.I. 2009/391 reg. 3\(f\)\(i\)](#)
- reg. 2(1) words omitted by [S.S.I. 2009/391 reg. 3\(f\)\(ii\)](#)
- reg. 2(1) words omitted by [S.S.I. 2009/391 reg. 3\(f\)\(iii\)](#)
- reg. 2(1) words substituted by [S.S.I. 2009/391 reg. 3\(a\)](#)
- reg. 2(1) words substituted by [S.S.I. 2009/391 reg. 3\(b\)](#)
- reg. 2(1) words substituted by [S.S.I. 2009/391 reg. 3\(c\)](#)
- reg. 2(1) words substituted by [S.S.I. 2009/391 reg. 3\(d\)](#)
- reg. 2(1) words substituted by [S.S.I. 2009/391 reg. 3\(e\)](#)
- reg. 2(2) words substituted by [S.S.I. 2009/391 reg. 4\(1\)](#)
- reg. 2(3) words omitted by [S.S.I. 2009/391 reg. 4\(2\)\(b\)](#)
- reg. 2(3) words substituted by [S.S.I. 2009/391 reg. 4\(2\)\(a\)](#)
- reg. 3 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 3 words substituted by [S.S.I. 2009/391 reg. 5](#)
- reg. 4 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 4(2)(3) revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 5 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 5 substituted by [S.S.I. 2009/391 reg. 6](#)
- reg. 6 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 6 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg 6 subst by [S.S.I. 2005/257 reg 2\(1\)\(3\)](#)
- reg 6 subst by [S.S.I. 2008/184 reg 2sch 1](#)
- reg. 7 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 7 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 8 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 8 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 9 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 9 words substituted by [S.S.I. 2009/391 reg. 7](#)
- reg 10 am by [S.S.I. 2007/414 regs 24](#)
- reg. 10 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 10(2) semicolon substituted for word by [S.S.I. 2009/391 reg. 8\(2\)\(a\)](#)
- reg. 10(2) words substituted by [S.S.I. 2009/391 reg. 8\(1\)](#)
- reg. 10(2) words substituted by [S.S.I. 2009/391 reg. 8\(2\)\(b\)](#)
- reg. 11 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 11 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 12 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 12 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 13 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 13 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 14 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 14 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 15 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 15 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 16 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 16 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)
- reg. 17 coming into force by [S.S.I. 2005/143 reg. 1\(1\)](#)
- reg. 17 revoked by [S.S.I. 2009/391 reg. 13\(1\)](#)

- reg. 18 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 18 revoked by S.S.I. 2009/391 reg. 13(1)
- reg. 19 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 19 words substituted by S.S.I. 2009/391 reg. 9(a)
- reg. 19 words substituted by S.S.I. 2009/391 reg. 9(b)
- reg. 20 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 20(2) words substituted by S.S.I. 2009/391 reg. 10
- reg. 21 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 22 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 22(1) words substituted by S.S.I. 2009/391 reg. 11(1)
- reg. 23 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 24 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 25 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 26 coming into force by S.S.I. 2005/143 reg. 1(1)
- reg. 26 revoked by S.S.I. 2011/415 reg. 12(b)
- reg. 27 coming into force by S.S.I. 2005/143 reg. 1(1)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 6 inserted by S.S.I. 2009/391 reg. 14
- reg. 22(1A) inserted by S.S.I. 2009/391 reg. 11(2)