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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 439**

**AGRICULTURE**

**The Less Favoured Area Support  
Scheme (Scotland) Regulations 2007**

*Made* - - - - 27th September 2007  
*Laid before the Scottish  
Parliament* - - - - 27th September 2007  
*Coming into force* - - 28th September 2007

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2007 and come into force on 28th September 2007.

(2) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005<sup>(2)</sup>.

**Interpretation**

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

“actively farm” means—

- (a) to undertake a continuous activity which is, in the opinion of the Scottish Ministers, an agricultural activity; and
- (b) to undertake that agricultural activity for a period or periods totalling not less than 183 days in the Scheme Year for which payment is to be made;

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

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

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(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.

(2) S.I.2005/218.

“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 (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers(3);

“Commission Regulation 817/2004” means Commission Regulation (EC) No. 817/2004 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(4);

“Commission Regulation 1698/2005” means Commission Regulation (EC) No. 1698/2005 on support for rural development from the European Agricultural Fund for Rural Development(5);

“Commission Regulation 1974/2006” means Commission Regulation (EC) No. 1974/2006 laying down detailed rules for the application of Council Regulation No. 1698/2005(6);

“Commission Regulation 1975/2006” means Commission Regulation (EC) No. 1975/2006 laying down detailed rules for the implementation of Council Regulation No. 1698/2005(7);

“common grazing” has the same meaning as it has for the purpose of Article 11 of Commission Regulation 817/2004;

“competent authority” has the same meaning as in regulation 5 of the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005;

“Council Regulation 1782/2003” means 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(8);

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations(9);

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

“cross compliance” has the same meaning as it has for the purposes of Articles 4 and 5 and annexes III and IV of Council Regulation 1782/2003;

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

“eligible land” has the same meaning as in regulation 6;

(3) O.J. No. L 141, 30.4.04, p.18 as amended by Commission Regulation (EC) No. 239/2005, O.J. No. L 42, 12.2.05, p.3.

(4) O.J. No. L 153, 30.4.04, p.30 as corrected by Corrigendum O.J. No. L 231, 29.4.2004, p.24.

(5) O.J. No. L 277, 21.10.05, p.1, as amended by Council Regulation (EC) 1944/2006, O.J. No. L 367, 22.12.06, p.23 and Council Regulation 2012/2006, O.J. No. L 384, 29.12.06, p.8.

(6) O.J. No. L 368, 23.12.06, p.15.

(7) O.J. No. L 368, 23.12.06, p.74.

(8) O.J. No. L 270, 21.10.03, p.1, as corrected by Corrigendum, O.J. No. L 94, 31.3.04, p.70 and as amended by Council Regulation (EC) No 583/2004, L 91 30.3.04, p.1, Council Regulation (EC) No. 864/2004, O.J. No. L 161, 30.4.04, p.48, Council Regulation (EC) No. 2217/2004, O.J. No. L 375 23.12.04, p.1, Commission Regulation (EC) No. 118/2005, O.J. No. L 24, 27.1.05, p.15, Commission Regulation (EC) No. 2183/2005, O.J. No. L 347, 30.12.05, p.56, Council Regulation (EC) No. 247/2006, O.J. No. L 42, 14.2.06, p.1 and Council Regulation (EC) No. 319/2006, O.J. No. L 58, 28.2.06, p.32.

(9) O.J. No. L 160, 26.6.99, p.80 as corrected by Corrigendum to Commission Regulation 1257/1999, O.J. No. L 302, 1.12.00, p.72 and Corrigendum to Commission Regulation 1783/2003, O.J. No. L 94, 31.3.04, p.71 and as amended by Council Regulation (EC) No. 1783/2003, O.J. No. L 270, 21.10.03, p.70, Council Regulation (EC) No. 567/2004, O.J. No. L 90 27.3.04, p.1 and Council Regulation (EC) No 583/2004, O.J. No. L 91 30.3.04, p.1, Council Regulation (EC) No. 2223/2004, O.J. No. L 379, 24.12.04, p.1 and Council Regulation (EC) No. 1698/2005, O.J. No. L 277, 21.10.05, p.1.

“forage area” has the same meaning as in Article 131(2)(b) of Council Regulation 1782/2003;

“holding” has the same meaning as in Article 2(b) of Council Regulation 1782/2003;

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

(a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive [84/169/EEC](#)(**10**) concerning the Community list of less-favoured farming areas within the meaning of Article 21 of Council Regulation ([EC](#)) [No. 950/97](#)(**11**); and

(b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or any combination of, soil, relief, aspect or climate;

“maximum stocking density” means 1.40 livestock units per hectare;

“minimum stocking density” means 0.12 livestock units per hectare;

“payable area” means the adjusted area of land on which less favoured area support is to be paid, calculated in accordance with regulation 9 and, where appropriate, regulation 11;

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

“Scheme 2005 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2004 to 31st December 2004;

“Scheme 2006 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2005 to 31st December 2005;

“Scheme 2007 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2007 to 31st December 2007;

“Scheme 2008 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2007 to 31st December 2008;

“Scheme 2009 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2008 to 31st December 2009;

“shared grazing” means land used for grazing within a field used by two or more producers;

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

“the 2001 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2001(**12**);

“the 2002 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2002(**13**);

“the 2003 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2003(**14**);

“the 2004 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2004(**15**); and

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(10) O.J. No. L 82, 26.03.04, p.67.

(11) Council Regulation ([EC](#)) [No. 950/97](#) on improving the efficiency of agricultural structures (O.J. No. L 142, 2.6.97, p.1) was repealed by Council Regulation ([EC](#)) [No. 1257/1999](#) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), subject to Article 55(4) which provided that Directives adopting lists of less favoured areas or amending such lists in accordance with Article 21 of Regulation No. 950/97 shall remain in force.

(12) [S.S.I. 2001/50](#); revoked by [S.S.I. 2002/139](#), regulation 26, subject to the savings provision contained in that regulation.

(13) [S.S.I. 2002/139](#); revoked by [S.S.I. 2003/129](#), regulation 28, subject to the savings provision contained in that regulation.

(14) [S.S.I. 2003/129](#); revoked by [S.S.I. 2004/70](#), regulation 27, subject to the savings provision contained in that regulation.

(15) [S.S.I. 2004/70](#), as amended by [S.S.I. 2004/128](#) and [S.S.I. 2005/64](#).

“the 2005 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2005 (16).

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

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000(17), which has been recorded and is consequently capable of being reproduced.

### **Applications for payment of less favoured area support**

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

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

(3) If an applicant submits an application for less favoured area support in respect of the relevant Scheme Year later than the date determined by the Scottish Ministers, the Scottish Ministers must reduce, or as the case may be exclude the applicant from, payment of less favoured area support in accordance with Article 21 of Commission Regulation 796/2004.

### **Eligibility for payment of less favoured area support**

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

- (a) subject to paragraphs (2) and (3), that applicant has given an undertaking, in such form as the Scottish Ministers may reasonably require, to continue to use eligible land for a period of not less than five years from the first payment made under—
    - (i) these Regulations;
    - (ii) the 2005 Regulations;
    - (iii) the 2004 Regulations;
    - (iv) the 2003 Regulations;
    - (v) the 2002 Regulations; or
    - (vi) the 2001 Regulations; and
  - (b) that applicant meets the requirements of cross compliance.
- (2) An applicant may be released from the undertaking referred to in paragraph (1)(a)—
- (a) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to another person and that person agrees to take over the undertaking;
  - (b) if, where the applicant has ceased farming during the period for which the undertaking was given, the applicant’s successor agrees to take over the undertaking; or
  - (c) if, in the opinion of the Scottish Ministers, the applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person.

(16) S.S.I. 2005/569, as amended by S.S.I. 2005/64, S.S.I. 2005624 and S.S.I. 2006/601.

(17) 2000 c. 7.

(3) In the event that the applicant has ceased farming and the applicant's successor does not agree to be bound by the undertaking referred to in paragraph (1), the Scottish Ministers may, if satisfied that the applicant has, at the time of the cessation of farming, honoured a significant proportion of the undertaking, release the applicant from that undertaking.

### **Payment of less favoured area support**

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

### **Eligible land**

6.—(1) Subject to paragraphs (2) and (3), eligible land comprises the number of hectares of forage area in a less favoured area with a less favoured area support grazing category value attributed to it by 31st December 2006, as declared by the applicant in a single application submitted by the applicant in accordance with article 11 of Council Regulation 796/2007 to the Scottish Ministers on or before 15th May in the Scheme Year for which the payment is to be made.

(2) Where an applicant has not received a Scheme 2005 payment and a Scheme 2006 payment of less favoured area support, to be eligible, not less than 3 hectares of the land declared must also have been declared in a single application submitted to the Scottish Ministers on or before 15th May 2005, by an applicant under the 2006 Scheme who received a Scheme 2006 payment in respect of the land in question.

(3) Only land which has been declared in a single application in the Scheme Year to which the payment relates as having one of the land use codes in Schedule 1 qualifies as eligible land.

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

(5) Subject to paragraph (6) where the Scottish Ministers determined for the purposes of the Scheme 2006 payment the number of eligible forage hectares in accordance with regulation 6(4) of the 2005 Regulations, in respect of land also declared in accordance with paragraph (1), the area deemed ineligible under the 2005 Regulations shall also be deducted from the area of eligible land determined in accordance with paragraph (1).

(6) If the ineligible area referred to in paragraph (5) related to a holding for the purposes of the 2005 Regulations which was subsequently sub-divided and is declared in accordance with paragraph (1) by more than one applicant, the Scottish Ministers shall determine the share of the ineligible area to be deducted from the eligible hectares of each applicant who did not receive a Scheme 2006 payment.

### **Transfer of a holding**

7.—(1) In determining eligible land under regulation 6(1), the decision of the Scottish Ministers shall be in accordance with Article 74 of Commission Regulation 796/2004.

(2) For the purpose of paragraph 6 of Article 74 of Commission Regulation 796/2004, the Scottish Ministers must grant less favoured area support to the transferor of a holding, if the transferor—

- (a) fulfils the conditions laid down by paragraphs 2 to 5 of Article 74 of Commission Regulation 796/2004; and
- (b) has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned.

**Amount of less favoured area support**

8.—(1) Subject to paragraph (2) and regulation 13 (minimum payment), the amount of less favoured area support is calculated in accordance with the following formula:—

$$\text{LFAS}=\text{P}\times\text{R}$$

Where—

LFAS is the amount of less favoured area support payable;

P is the payable area calculated in accordance with regulation 9 and, where appropriate, adjusted in accordance with regulation 11; and

R is the rate of payment determined in accordance with regulation 12.

(2) Where an applicant has eligible land in more than one grazing category (as determined for the purposes of regulation 9) then—

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

(i) P is the payable area of land in each grazing category calculated in accordance with regulation 9 and, where appropriate, adjusted in accordance with regulation 11; and

(ii) R is the rate of payment for each type of grazing category determined in accordance with regulation 12; and

(b) the total amount of less favoured area support payable is the sum of each of those calculations.

**Determination of Payable Area**

9.—(1) Subject to regulation 10, the payable area is the total of the areas of eligible land of the applicant in each grazing category, adjusted in accordance with the following formula:—

$$\text{P}=\text{E}\times\text{V}$$

Where—

P is the payable area;

E is the area of eligible land in each field or shared grazing in the Scheme Year for which payment is to be made; and

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

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

(3) For the purposes of this regulation the grazing category of each field or shared grazing of the applicant is the entry in the second column of Schedule 2 corresponding to the entry in the first column of that Schedule relating to the stocking density of the applicant who declared the field or shared grazing in an area aid application<sup>(18)</sup> submitted in 2001 on or before 15th May 2001.

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

(a) the stocking density that was determined for that field or shared grazing by regulation 9 of the 2003 Regulations following upon an application for less favoured area support under those Regulations; or

<sup>(18)</sup> Area aid application has the same meaning as in Article 6 of Council Regulation (EC) 3508/1992 establishing an integrated administration and control system for certain Community aid schemes (O.J. No. L 355, 05.12.1992, p.1.)

- (b) where no stocking density was determined under regulation 9 of the 2003 Regulations for a field or shared grazing the stocking density figure determined by the Scottish Ministers under regulation 9(5) of the 2005 Regulations for that part of the land of the applicant on or before 31st December 2006.

### **Stocking density outwith maximum and minimum parameters**

**10.**—(1) Subject to paragraphs (4), (5) and (6), where the applicant was also the applicant for the purposes of the Scheme 2006 payment, the following provisions of this regulation apply where the stocking density calculated in accordance with regulation 10(4) of and Parts I and II of Schedule 1 to the 2005 Regulations for the purposes of the 2006 Scheme payment, was either less than the minimum stocking density or greater than the maximum stocking density.

(2) Where the stocking density calculated in accordance with regulation 10(4) of and Parts I and II of Schedule 1 to the 2005 Regulations for the purposes of the Scheme 2006 payment is less than the minimum stocking density, the eligible land for the purposes of the calculation at regulation 9(1) is the number of hectares calculated in accordance with the following formula:—

$$E_1 = (F \times S) \div M$$

Where—

$E_1$  is the area of eligible land adjusted in accordance with this regulation;

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

S is, subject to paragraphs (4), (5) and (6), the stocking density calculated for the applicant in accordance with regulation 10(4) of and Parts I and II of Schedule 1 to the 2005 Regulations for the purposes of the 2006 Scheme payment; and

M is the minimum stocking density.

(3) Where the stocking density calculated in accordance with regulation 10(4) of and Parts I and II of Schedule 1 to the 2005 Regulations for the purposes of the Scheme 2006 payment is greater than the maximum stocking density, the eligible land for the purposes of the calculation at regulation 9(1) is the number of hectares calculated in accordance with the following formula:—

$$E_2 = (F \times M) \div S$$

Where—

$E_2$  is the area of eligible land adjusted in accordance with this regulation;

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

M is the maximum stocking density; and

S is, subject to paragraphs (4), (5) and (6), the stocking density calculated for the applicant in accordance with regulation 10(4) of Parts I and II of Schedule 1 to the 2005 Regulations for the purposes of the 2006 Scheme payment.

(4) Where—

(a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 9); and

(b) where eligible land, for the purpose of the calculation in regulation 9(1), for that applicant has been reduced under paragraph (2) or (3),

the Scottish Ministers must apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 9(1).

(5) Where an applicant has not received a Scheme 2005 payment and a Scheme 2006 payment of less favoured area support, the stocking density for the purposes of the formulae at paragraphs (2) and (3) is the stocking density calculated in accordance with regulation 10(4) of and Parts I and II

of Schedule 1 to the 2005 Regulations, for the purposes of the Scheme 2006 payment of the person who was the applicant in respect of the land in question, under the 2005 Regulations.

(6) Where an applicant received a Scheme 2005 payment but did not receive a Scheme 2006 payment, the stocking density for the purposes of the formulae at paragraphs (2) and (3) is the stocking density calculated in accordance with regulation 10(4) of and Parts I and II of Schedule 1 to the 2005 Regulations, for the purposes of the Scheme 2005 payment of the applicant.

(7) Where the stocking density for the purposes of the Scheme 2006 payment of either—

- (a) the applicant under these Regulations; or
- (b) where paragraph (5) applies, the person who was the applicant in respect of the land in question under the 2005 Regulations,

was less than the minimum stocking density, due to the culling of the stock on the land in question in the context of the control of an outbreak of an epizootic disease during or prior to 2004, the applicant may request that Scottish Ministers make a decision determining the stocking density to be used for the purposes of the formulae at paragraph (2).

### **Enterprise mix**

**11.**—(1) Subject to paragraphs (2), (3) and (4), where one of the hectare multipliers contained in the second column of Schedule 6 to the 2005 Regulations, under regulation 11 of those Regulations, applied to the Scheme 2006 payment of the applicant, the payable area calculated in accordance with regulation 9 is adjusted in accordance with the following formula:—

$$P_1 = P_2 \times Z$$

Where—

$P_1$  is the payable area adjusted in accordance with this regulation;

$P_2$  is the payable area calculated in accordance with regulation 9; and

$Z$  is the multiplier contained in the second column of Schedule 6 to the 2005 Regulations, under regulation 11 of those Regulations which applied to the Scheme 2006 payment of the applicant.

(2) Where an applicant has not received a Scheme 2005 payment and a Scheme 2006 payment of less favoured area support, the hectare multiplier for the purposes of the formulae at paragraph (1) is the hectare multiplier contained in the second column of Schedule 6 to the 2005 Regulations, under regulation 11 of those Regulations, which applied for the purposes of the Scheme 2006 payment of the person who was the applicant in respect of the land in question, under the 2005 Regulations.

(3) Where an applicant received a Scheme 2005 payment, but did not receive a Scheme 2006 payment, the hectare multiplier for the purposes of the formulae at paragraph (1) is the multiplier contained in the second column of Schedule 2 to the 2004 Regulations, under regulation 11 of those Regulations, which applied for the purposes of the Scheme 2005 payment of the applicant.

(4) Where the hectare multiplier for the purposes of the Scheme 2006 payment of either—

- (a) the applicant under these Regulations; or
- (b) where paragraph (2) applies, the person who was the applicant in respect of the land in question under the 2005 Regulations,

was unrepresentative of the usual enterprise mix of the applicant, due to the culling of stock on the land in question in the context of the control of an outbreak of an epizootic disease during or prior to 2004, the applicant may request that Scottish Ministers make a decision determining the hectare multiplier contained in second column of Schedule 6 to the 2005 Regulations to be used for the purposes of the formula at paragraph (1).



### **Rate of Payment of less favoured area support**

12.—(1) For the purposes of regulation 8, the rate of payment of less favoured area support is determined in accordance with this regulation.

(2) Where, for the purposes of regulation 9, the grazing category of land, as specified in Schedule 2, is A or B, the rate of payment is the rate per hectare of the payable area set out in the entry in the second column in Part I (More Disadvantaged Land) of Schedule 3 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (4).

(3) Where, for the purposes of regulation 9, the grazing category of land, as specified in Schedule 2, is C or D, the rate of payment is the rate per hectare of the payable area set out in the entry in the second column in Part II (Less Disadvantaged Land) of Schedule 3 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (4).

(4) For the purposes of paragraphs (2) and (3), the fragility category applicable to the applicant is determined according to the fragility category of the parish in which the main farm of the applicant lies as set out in Schedule 4.

(5) For the purpose of paragraph (4), the main farm of the applicant is the farm identified as the main farm in the application for less favoured area support submitted by the applicant in accordance with regulation 3.

### **Minimum payment**

13. The amount of less favoured area support paid by the Scottish Ministers under these Regulations must not be less than £385—

- (a) in respect of a Scheme 2007 payment;
- (b) in respect of a Scheme 2008 payment; and
- (c) in respect of a Scheme 2009 payment.

### **Powers of authorised persons**

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

- (a) verification of the accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Articles 11, 12 and 20 of Commission Regulation 1975/2006; or
- (b) ascertaining whether an offence under these Regulations has been or is being committed, and in doing so may be accompanied by a person assigned to assist the authorised person for those purposes.

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

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

- (a) inspect and verify the total area of such land;
- (b) inspect and count livestock on such land and require the applicant to arrange for the collection of animals, penning and securing;
- (c) require production of and examine any records in whatever form, and take copies of those records;

- (d) remove and retain any document or other record referred to in sub-paragraph (c) above which may be required for use as evidence in proceedings under these Regulations; and
- (e) inspect and verify that the applicant has complied with the requirements of cross compliance.

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

#### **Assistance to authorised persons**

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

#### **Withholding or recovery of less favoured area support**

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

- (a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to regulation 4(1)(a) from which the applicant has not been released under regulation 4(2) or 4(3);
- (b) where the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 14, or fails without reasonable excuse to comply with a requirement or request made by an authorised person under regulation 14 or 15;
- (c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with cross compliance on or in relation to the holding;
- (d) where, in the opinion of the Scottish Ministers, the applicant has failed to comply with the requirement in regulation 5 to actively farm eligible land.

#### **Rate of interest**

17. For the purpose of Article 73 of Commission Regulation 796/2004, interest shall be charged thereon at the rate of one percentage point above the sterling three month London Interbank Offered Rate on a day-to-day basis for the period specified in that Article.

#### **Cross-border holdings**

18. Schedule 5 applies to agency arrangements and to cross-border holdings.

#### **Offences**

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

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 15) in the exercise of the powers conferred by regulation 14 is guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 14 or request under regulation 15 is guilty of an offence.

### **Penalties**

**20.**—(1) A person guilty of an offence under regulation 19(1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 19(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Time limit for prosecutions**

**21.**—(1) Summary proceedings for an offence under regulation 19 may be commenced within the period of 12 months from the date on which the offence was committed.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995<sup>(19)</sup> (date of commencement of proceedings) applies for the purposes of this regulation as it does for the purposes of that section.

### **Offences by bodies corporate**

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

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

### **Appeal against decision as to eligibility of holding**

**23.**—(1) An applicant may, no later than 60 days following the date of intimation of the Scottish Ministers' decision as to the eligibility of the holding under regulation 6(1), make an application in writing to the Scottish Ministers to have that decision reviewed by persons appointed by the Scottish Ministers for that purpose.

(2) An application under this regulation is to be treated as made if it is received by the Scottish Ministers.

(3) The application must be accompanied by such information as the persons appointed consider necessary.

(4) Such persons appointed under paragraph (1) must review the decision and notify their determination to the Scottish Ministers, and by recorded delivery mail to the applicant, within 10 days of reaching that determination.

(5) Subject to regulation 24, the determination of such persons appointed is binding on the Scottish Ministers.

(6) The Scottish Ministers may make such payment, by way of fee or reimbursement of expenses, to any such persons appointed under paragraph (1), as appears to them to be appropriate.

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<sup>(19)</sup> 1995 c. 46.

**Review**

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

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

(3) On an application for a review under this regulation, the Scottish Ministers must refer the matter to a person appointed by the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors.

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

- (a) consider any document or other evidence produced by the applicant or the Scottish Ministers (whether or not that document or other evidence was available at the time of the said determination);
- (b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and
- (c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.

(5) The person appointed to review the determination makes a decision confirming or refusing that determination, and intimates that decision to the Scottish Ministers and to the applicant in writing.

(6) The person appointed is entitled to require the reasonable costs of the review to be paid by such party as that person may direct, and the person appointed determines the amount of such costs.

**Amendment of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004**

**25.**—(1) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004(**20**) are amended in accordance with this regulation.

(2) In regulation 3 (Application in relation to IACS matters) for “(ga)” substitute “(g)”.

(3) In regulation 4 (decisions amenable to review and appeal), for paragraphs (g) and (ga) substitute—

- “(g) a decision by the Scottish Ministers under regulation 4(1)(b), 5, 7(1), 9(4)(b), 10(7) and 11(4) of the Less Favoured Area Support Scheme (Scotland) Regulations 2007;”.

**Revocation and savings provisions**

**26.**—(1) Subject to the savings referred to in paragraph (2), the Less Favoured Area Support Scheme (Scotland) Regulations 2005(**21**), the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005(**22**), the Less Favoured Area Support Scheme (Scotland) Amendment (No. 2) Regulations 2005(**23**) and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2006(**24**) are revoked.

(2) Notwithstanding paragraph (1), in respect of a Scheme 2005 payment or a Scheme 2006 payment, within the meaning of the 2005 Regulations, the 2005 Regulations shall continue to have effect as if those Regulations had not been revoked.

(20) S.S.I. 2004/381, amended by S.S.I. 2005/117, S.S.I. 2005/225 and S.S.I. 2005/569.

(21) S.S.I. 2005/569 amended by S.S.I. 2005/64, S.S.I. 2005/624 and S.S.I. 2006/601.

(22) S.S.I. 2005/64.

(23) S.S.I. 2005/624.

(24) S.S.I. 2006/601.

St Andrew's House,  
Edinburgh  
27th September 2007

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

*Status: This is the original version (as it was originally made).*

## SCHEDULE 1

Regulation 6(3)

## LAND USE CODES ELIGIBLE FOR LESS FAVOURED AREA SUPPORT SCHEME

<i>CROPS</i>	<i>CODE</i>
Other crops for stock feed	OCS
Grass over 5 years	PGRS
Rape for stock feed	RAST
Rough Grazing	RGR
Grass under 5 years	TGRS
Turnips, swedes for stock feed	TSWS
Open woodland (grazed)	WDG
Arable silage for stock feed	CMIX
Agri-environment areas under the Organic Aid Scheme, the Rural Stewardship Scheme, Environmentally Sensitive Areas, the Habitats Scheme or the Countryside Premium Scheme	AGRI

## SCHEDULE 2

Regulations 9(2) and 12

## GRAZING CATEGORY: HECTARE VALUES

<i>STOCKING DENSITY</i>	<i>GRAZING CATEGORY</i>	<i>HECTARE VALUE</i>
Up to and including 0.19 LU/ha	A	0.167
0.2 to 0.39 LU/ha	B	0.333
0.4 to 0.59 LU/ha	C	0.667
0.6 or more LU/ha	D	0.8

## SCHEDULE 3

Regulation 12

## RATES OF PAYMENT FOR LESS FAVOURED AREA SUPPORT

## PART I

## MORE DISADVANTAGED LAND

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
Very Fragile (Islands)	£51.70
Fragile (Mainland)	£45.00

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
Standard	£37.80

**PART II**  
**LESS DISADVANTAGED LAND**

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
Very Fragile (Islands)	£45.65
Fragile (Mainland)	£39.50
Standard	£32.50

SCHEDULE 4

Regulation 12(4)

**FRAGILITY CATEGORIES**  
**FRAGILITY MARKERS FOR PARISH CODE NUMBERS**

**Standard**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
22	23	24	28	30	31	32	35	36	38	39	40	41	42	43	44	45	46	47	48	49
50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91
92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112
113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133
134	135	136	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193
194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214
215	216	217	218	219	220	221	242	243	244	245	246	247	248	249	250	251	252	253	254	255
256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	290	291	292
293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313
314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334
335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355
356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376
377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397
398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418
419	420	421	422	423	424	425	426	427	428	429	430	431	432	445	449	451	466	467	468	469
470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490

**Status:** This is the original version (as it was originally made).

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**Fragile**

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764 765 766 767 768 828 829 830 831 832 833 834 835 836 837 838 839 840 852 857 858  
862 867

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**Very Fragile**

147 148 149 150 151 153 164 165 166 167 168 274 275 276 277 278 279 443 444 456 457  
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623 624 625 626 627 628 629 630 631 632 633 634 753 754 755 756 869 870 871 872 873  
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## SCHEDULE 5

Regulation 18

### AGENCY ARRANGEMENTS AND CROSS BORDER HOLDINGS

#### **Agency arrangements**

1. The Scottish Ministers may, with the agreement of any competent authority, arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.

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

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

#### **Set off**

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

#### **Calculation of payments in respect of cross border holdings**

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

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

7. For cross-border holdings where the applicant has submitted a declaration of eligible land to another competent authority, the Scottish Ministers will apply the standard rate of payment.

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

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

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## EXPLANATORY NOTE

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

These Regulations, which replace the Less Favoured Area Support Scheme (Scotland) Regulations 2005 (“the 2005 Regulations”), make provision for the purposes of implementation of Council Regulation (EC) No. 1698/2005 on support for rural development from the European Agricultural Fund for Rural Development and Commission Regulations (EC) Nos. 1974/2006 and 1975/2006 laying down detailed rules for the application of Council Regulation No. 1698/2005. Regulation 1689/2005 will preserve, until 2010, elements of Regulation (EC) 1257/1999 which apply to Less Favoured Area Support.

They apply to holdings in respect of which the Scottish Ministers are the competent authority under the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005 (regulation 1(2)).

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

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

LFAS is paid for eligible hectares on farms in Scottish less favoured areas at specified rates (regulations 8 and 12). The rate is fixed according to the grazing category (regulation 9 and Schedule 2) and the fragility of the parish in which the main farm of the applicant lies (regulation 12 and Schedule 4).

The area of land on which LFAS is paid is normally the area of eligible land which the applicant has, adjusted in accordance with a formula set out in regulation 9(1). The manner in which the area of eligible land is adjusted will depend on the grazing category of that land (regulation 9(2)). The grazing category is allocated according to the historical stocking density of the applicant’s land (regulation 9(3)).

In previous years a separate stocking density was calculated annually, and was based upon eligible land and eligible agricultural activity in the previous year. For the 2007 scheme and beyond, historic stocking density values, calculated in accordance with the 2005 Regulations, will be used. Where the applicant has a stocking density which is above the maximum stocking density or below the minimum stocking density, then the area of land on which LFAS is to be paid is instead calculated in accordance with formulae set out in regulation 10. The maximum and minimum stocking densities are laid out in regulation 2(1). There are alternative arrangements at regulations 10(4) and 10(5) for those who are actively farming eligible land but did not receive a payment under the 2005 Regulations. There is provision at regulation 10(6) to allow the Scottish Ministers to determine the stocking density where an applicant has not been able to achieve the minimum stocking density because of slaughter in consequence of foot and mouth disease.

Where more than 10% of the livestock maintained by the applicant under the 2005 Regulations was made up of cattle, the area of land on which LFAS will be paid to the applicant under the 2007 Scheme

will be increased in accordance with the adjustment set out in regulation 11 read with Schedule 6 of the 2005 Regulations.

Regulation 13 fixes a minimum payment of £385. Regulation 14 contains powers of enforcement. Regulation 16 provides for withholding or recovery of LFAS where there is a breach of the rules of the LFAS Scheme for the years 2007, 2008 and 2009. Regulations 19 to 22 deal with offences and penalties.

Regulations 23 and 24 deal with an applicant's right of appeal against decisions taken by the Scottish Ministers as regards eligibility of the holding. Regulation 25 makes amendments to the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 to provide for an applicant's right of appeal against decisions taken by the Scottish Ministers on other specified grounds.

Regulation 26 revokes the 2005 Regulations (and also those instruments which amended the 2005 Regulations) (regulation 26(1)). Regulation 26 also makes a saving provision to ensure that the 2005 Regulations continue to apply to Scheme 2005 payments and Scheme 2006 payments made under the 2005 Regulations (regulation 26(2)).

No Regulatory Impact Assessment has been prepared in respect of these Regulations.