

2011 No. 73

AGRICULTURE

**The Less Favoured Area Support Scheme (Scotland)
Amendment Regulations 2011**

Made - - - - *9th February 2011*
Laid before the Scottish Parliament *11th February 2011*
Coming into force - - *14th March 2011*

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

Citation and commencement

1. These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2011 and come into force on 14th March 2011.

Amendment of the Less Favoured Area Support Scheme (Scotland) Regulations 2010

2. The Less Favoured Area Support Scheme (Scotland) Regulations 2010(b) are amended in accordance with regulations 3 to 12.

Amendment of regulation 2

3. In regulation 2(1) (interpretation)—

- (a) omit the definition of “Commission Regulation 1975/2006”;
- (b) after the definition of “Commission Regulation 1122/2009” insert—

““Commission Regulation 65/2011” means Commission Regulation (EU) No. 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(c);” and

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2010/273.

(c) O.J. L 25, 28.1.11, p.8.

- (c) for the definition of “minimum stocking density” substitute—
““minimum stocking density” has the meaning given in regulation 9(1A), (1B) and (1C) and Part III of Schedule 4;”.

Amendment of regulation 5

4. For regulation 5(1) (eligible land) substitute—

“(1) Eligible land comprises the number of hectares of forage area in a less favoured area, as declared by the applicant in a single application in respect of the Scheme Year to which payment relates, with—

- (a) a less favoured area grazing category—
(i) attributed to it by the Scottish Ministers prior to 1st January 2007; or
(ii) if no grazing category was attributed by the Scottish Ministers prior to 1st January 2007, a grazing category attributed by the Scottish Ministers by reference to the stocking density calculated in accordance with regulation 9(4) and Parts I and II of Schedule 4; and
(b) one of the land use codes specified in column 2 of Schedule 2 corresponding to the entry in column 1 of Schedule 2 relating to the use of land.”.

Amendment of regulation 8

5. In regulation 8(4) (determination of unadjusted payable area), insert at the end—

“; or

- (c) where no stocking density was determined for a field or shared grazing under regulation 9 of the 2003 Regulations or under regulation 9(5) of the 2005 Regulations, the stocking density figure determined for the applicant in accordance with regulation 9(4) and Parts I and II of Schedule 4”.

Amendment of regulation 9

6. In regulation 9 (stocking density outwith the minimum and maximum stocking density parameters)—

- (a) after paragraph (1) insert—

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

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

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

- (b) in paragraph (4), after “For the purpose of” insert “regulation 5(1)(a)(ii), regulation 8(4)(c) and”; and
(c) in paragraph (8)(a), for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment of regulation 10

7. In regulation 10 (enterprise mix)—

- (a) in paragraph (1) for “Subject to paragraphs (2) and (3)” substitute “Subject to paragraphs (2), (3), (4) and (5)”;
- (b) for paragraph (3) substitute—

“(3) Where the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1) is, in the opinion of the applicant, unrepresentative of the usual enterprise mix of the applicant, as a result of the culling of cattle on the land in question in the context of the control of an outbreak of an epizootic disease—

- (a) during 2009; or
- (b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers determine that either of the hectare multipliers contained in the second column of Schedule 8 be used for the purposes of the formula in paragraph (1).”; and

- (c) after paragraph (3) insert—

“(4) Where less than 10% of the livestock units of the applicant calculated in accordance with regulation 9(4) and Parts I and II of Schedule 4 are cattle but that is, in the opinion of the applicant, the result of the culling of cattle on the land in question in the context of the control of an outbreak of epizootic disease—

- (a) during 2009; or
- (b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers treat the application as if paragraph (1) applied.

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

- (a) treat the application as if paragraph (1) applied; and
- (b) determine that either of the hectare multipliers contained in the second column of Schedule 8 be used for the purposes of the formula in paragraph (1).”.

Amendment of regulation 12

8. For regulation 12 (minimum payment) substitute—

“Minimum payment

12. The minimum amount of less favoured area support payable by the Scottish Ministers under these Regulations (prior to the deduction of any penalty under Commission Regulation 65/2011) is £385 in respect of a Scheme Year.”.

Amendment of regulation 13

9. In regulation 13(1)(a) (powers of authorised persons), for “Articles 11, 12 and 20 of Commission Regulation 1975/2006”, substitute “Articles 11, 12 and 20 of Commission Regulation 65/2011”.

Amendment of Schedule 2

10. In Schedule 2 (land use codes eligible for less favoured area support scheme) insert at the end of the table—

“Arable silage for stock feed	ASSF”
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Amendment of Schedule 4

11. In Schedule 4 (livestock units and stocking density)—

- (a) in the heading, for “Regulations 9(1)”, substitute “Regulations 2(1), 9(1), 9(1A), 9(1C)”; and
- (b) after Part II (calculation of stocking density) insert—

“PART III

MINIMUM STOCKING DENSITY

Grazing Category	Minimum stocking density per hectare
A	0.09 Livestock units
B	0.15 Livestock units
C	0.30 Livestock units
D	0.45 Livestock units”

Amendment of Schedule 5

12. In Schedule 5 (rates of payment for less favoured area support), for Parts I and II substitute—

“PART I

MORE DISADVANTAGED LAND

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
	<i>Scheme 2011 payment, Scheme 2012 payment, Scheme 2013 payment</i>
<i>Very Fragile (Islands)</i>	£71.35
<i>Fragile (Mainland)</i>	£62.10
<i>Standard</i>	£52.16

PART II
LESS DISADVANTAGED LAND

<i>FRAGILITY CATEGORY</i>	<i>RATE</i>
	<i>Scheme 2011 payment, Scheme 2012 payment, Scheme 2013 payment</i>
<i>Very Fragile (Islands)</i>	£63.00
<i>Fragile (Mainland)</i>	£54.51
<i>Standard</i>	£34.12”

St Andrew's House,
Edinburgh
9th February 2011

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (“the 2010 Regulations”). The 2010 Regulations make provision for the purposes of the implementation of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (O.J. L 277, 21.10.2005, p.1), Commission Regulation (EC) No. 1974/2006 (O.J. L 368, 23.12.2006, p.15) and Commission Regulation (EU) 65/2011 (O.J. L 25, 28.1.2011, p.8), both laying down detailed rules for the application of Council Regulation 1698/2005.

Regulation 3 amends regulation 2 of the 2010 Regulations to insert a new definition of “minimum stocking density”, by reference to the new regulation 9(1A), (1B) and (1C) of, and Part III of Schedule 4 to, the 2010 Regulations as inserted by regulations 6 and 11 of these Regulations. From 2011 the minimum stocking density will depend on the relevant grazing category applicable to land eligible for payment or less favoured area support.

Regulation 3 also amends the 2010 Regulations by inserting a definition of Commission Regulation 65/2011 which repealed Commission Regulation 1975/2006 (O.J. L 368, 23.12.2006, p.74). Regulations 6(c), 8 and 9 amend the 2010 Regulations to take account of the provisions of Commission Regulation 65/2011.

Regulation 4 amends regulation 5 of the 2010 Regulations to allow further areas of less favoured area land to be eligible for less favoured area support for the Scheme Years 2011-2013. The new regulation 5(1)(a)(ii) allows less favoured area land which has not previously been allocated a grazing category to be eligible for those Scheme Years in addition to previously eligible land. A grazing category is to be allocated by the Scottish Ministers having regard to the stocking density calculated in accordance with regulation 9(4) of, and Parts I and II of Schedule 4 to, the 2010 Regulations.

Regulation 5 makes a change consequential on the changes made by regulation 4 by allowing a hectare value to be calculated (on the basis of grazing category) for the further areas of land being brought into the Scheme.

Regulation 7 amends regulation 10 of the 2010 Regulations to substitute a new paragraph (3), to insert new paragraphs (4) and (5) and consequentially amend paragraph (1) in order to clarify the drafting.

Regulation 10 amends Schedule 2 to the 2010 Regulations to insert a new land use code for arable silage for stock feed (ASSF) for the purpose of the definition of “eligible land” in regulation 5(1) of the 2010 Regulations.

Regulation 12 (which substitutes Parts I and II of Schedule 5 to the 2010 Regulations) specifies new rates of payment for less favoured area support in accordance with regulations 7 and 11 of the 2010 Regulations.

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

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