***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 Less Favoured Area Support Scheme (Scotland) Amendment 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*

SCOTTISH STATUTORY INSTRUMENTS

# 2005 No. 64

# AGRICULTURE

## The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005

| | |
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| *Made - - - -* | *8th February 2005* |
| *Laid before the Scottish Parliament - - - -* | *9th February 2005* |
| *Coming into force - -* | *12th March 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

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005 and shall come into force on 12th March 2005.

(2) In these Regulations "principal Regulations" means the Less Favoured Area Support Scheme (Scotland) Regulations 2004(**2**).

**Commencement Information**
**I1** Reg. 1 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of the Less Favoured Area Support Scheme (Scotland) Regulations 2004

**2.** The principal Regulations are amended in accordance with regulations 3 to 16.

(**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.S.I. 2004/70 as amended by S.S.I. 2004/128.

**Commencement Information**

**I2** Reg. 2 in force at 12.3.2005, see **reg. 1(1)**

## Amendment of regulation 2

**3.** In regulation 2 (interpretation)–

(a) in paragraph (1)–

(i) omit the definitions of "agri environment scheme", "Commission"(**3**) Regulation 445/2002" and "retirement pension" are omitted;

(ii) after the definition of "alpaca" insert ""animal" means any animal (including fish, reptiles or amphibians) bred or kept for the production of food, wool, skin or fur or for other farming purposes;";

(iii) after the definition of "Commission Regulation 2419/2001"(**4**) insert ""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)(**5**);";

(iv) in the definition of "common grazing" for "Commission Regulation 445/2002" substitute "Commission Regulation 817/2004";

(v) in the definition of "less favoured area" for "Directive 75/268/EEC (United Kingdom)(**6**) substitute "Article 21 of Council Regulation (EC) No. 950/97(**7**)"

(vi) after the definition of "Scheme 2004 payment" insert ""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;";

(vii) after the definition of "shared grazing" insert ""Sheep Annual Premium Scheme" means the Sheep Annual Premium Regulations 1992(**8**);"; and

(viii) after the definition of "suckler cow" insert ""Suckler Cow Premium Scheme" means the Suckler Cow Premium (Scotland) Regulations 2001(**9**);"; and

(b) in paragraph (3) after "as defined in" insert "section 15 of".

**Commencement Information**

**I3** Reg. 3 in force at 12.3.2005, see **reg. 1(1)**

(**3**) Commission Regulation 445/2002 (O.J. No. L 74, 15.3.02, p.1) was repealed by Article 74(1) of Commission Regulation 817/2004 (O.J. L 153, 30.4.2004, p.30).

(**4**) Commission Regulation 2419/2001 was repealed by Article 80(1) of Commission Regulation (EC) No. 796/2004 (O.J. No. L 141, 30.4.2004, p.18) 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, but by virtue of that Article Commission Regulation 2419/2001 shall continue to apply in respect of aid applications relating to marketing years or premium periods which start before 1st January 2005.

(**5**) O.J. L 153, 30.4.2004, p.30.

(**6**) Directive 75/268/EEC (O.J. No L 128, 19.5.75, p.1) was repealed by Article 41(1) of Council Regulation 9EC) No. 950/97 (O.J. L 42, 2.6.97, p.1).

(**7**) Council Regulation (EC) No. 950/97 on improving the efficiency of agricultural structures (O.J. No. L 42, 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.

(**8**) S.I.1992/2677 as amended by S.I. 1994/2471, 1995/2779, 1996/491997/2500, 2000/2335, 2000/2573, 2001/281, 2003/151 and S.S.I, 2000/418.

(**9**) S.S.I. 2001/225.

**Amendment of regulation 4**

**4.** In regulation 4 (eligibility for payment of less favoured area support)–

(a) in paragraph (1), in each of sub paragraphs (b), (c) and (d) for "eligible land" substitute "holding";

(b) for paragraph (2) substitute–

"(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."; and

(c) for paragraph (3) substitute–

"(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.".

**Commencement Information**

**I4** Reg. 4 in force at 12.3.2005, see **reg. 1(1)**

**Amendment of regulation 9**

**5.** In regulation 9 (determination of payable area) in paragraph (1) for "2003" substitute "2004".

**Commencement Information**

**I5** Reg. 5 in force at 12.3.2005, see **reg. 1(1)**

**Amendment of regulation 10**

**6.** In regulation 10 (stocking density outwith maximum and minimum parameters)–

(a) for paragraph (1) substitute–

"The following provisions of this regulation shall apply for the purposes of the Scheme 2005 payment where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 1 based on eligible agricultural activity undertaken in the calendar year 2004 is either less than the minimum stocking density or greater than the maximum stocking density–

(a) at the start of the retention period where eligibility rests on livestock claimed under the Sheep Annual Premium Scheme;

(b) at the start of the retention period where eligibility rests on livestock claimed under the Suckler Cow Premium Scheme;

(c) during the calendar year 2004 where eligibility rests on livestock declared separately in an application for less favoured area support; or

(d) in the opinion of the Scottish Ministers where eligibility must be determined from a combination of livestock described in sub-paragraphs (a) to (c) above."; and

(b) in paragraphs (2) and (3) for "2003" wherever that year occurs, substitute "2004".

**Commencement Information**
**I6** Reg. 6 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 11

**7.** In regulation 11 (enterprise mix), in paragraph (1) for "2003" substitute "the calendar year 2004".

**Commencement Information**
**I7** Reg. 7 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 12

**8.** In regulation 12 (rate of payment of less favoured area support)–

(a) in paragraph (2) for "Part 1" substitute "Part I"; and

(b) in paragraph (3) for "Part 2" substitute "Part II".

**Commencement Information**
**I8** Reg. 8 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 13

**9.** In regulation 13 (minimum payment) for "Scheme 2004 payment" substitute "Scheme 2005 payment".

**Commencement Information**
**I9** Reg. 9 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 14

**10.** In regulation 14(1)(a) (powers of authorised persons) for "Articles 59 to 61 of Commission Regulation 445/2002" substitute "Articles 67 to 69 of Commission Regulation 817/2004".

**Commencement Information**
**I10** Reg. 10 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 15

**11.** In regulation 15 (assistance to authorised persons) after "having" insert ", or appearing to have,".

**Commencement Information**
**I11** Reg. 11 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 16

**12.** In regulation 16 (withholding or recovery of less favoured area support) in each of paragraphs (c) and (d) for "eligible land" substitute "the holding".

**Commencement Information**
**I12** Reg. 12 in force at 12.3.2005, see **reg. 1(1)**

### Amendment of regulation 24

**13.** For regulation 24 (appeal against decision as to eligibility of holding) substitute–

"**24.**—(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) shall review the decision and notify their determination to the Scottish Ministers and the applicant, by recorded delivery mail, within 10 days of reaching that determination.

(5) Subject to regulation 25, the determination of such persons appointed shall be 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.".

**Commencement Information**
**I13** Reg. 13 in force at 12.3.2005, see **reg. 1(1)**