SCOTTISH STATUTORY INSTRUMENTS

2004 No. 381

AGRICULTURE

The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004

Made - - - -	*8th September 2004*
Laid before the Scottish Parliament - - - -	*8th September 2004*
Coming into force - -	*1st October 2004*

The Scottish Ministers, in exercise of the powers conferred on them 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:

Citation and commencement

1. These Regulations may be cited as the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 and shall come into force on 1st October 2004.

Interpretation

2.—(1) In these Regulations–

"applicant" means the person to whom a decision referred to in regulation 4 below is directed;

"Commission Regulation 2419/2001" means Commission Regulation (EC) No. 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(**2**), amended by Commission Regulation (EC) No. 2550/2001(**3**) and Commission Regulation (EC) No. 118/2004(**4**);

"Commission Regulation 2237/2003" means Commission Regulation (EC) No. 2237/2003 laying down detailed rules for the application of certain support schemes provided for in Title IV of Council Regulation (EC) 1782/2003 establishing common rules for direct support

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown by section 2(2) were transferred, so far as within devolved competence, to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
(**2**) O.J. No. L 327, 12.12.2001, p.11.
(**3**) O.J. No. L 341, 22.12.2001, p.105.
(**4**) O.J. No. L 17, 24.1.2004, p.7.

schemes under the common agricultural policy and establishing certain support schemes for farmers(**5**);

"Council Regulation 3508/1992" means Council Regulation (EEC) No. 3508/1992 establishing an integrated administration and control system for certain Community aid schemes(**6**), amended by Council Regulation (EC) No. 165/1994(**7**), Council Regulation (EC) No. 3233/1994(**8**), Council Regulation (EC) No. 3235/1994(**9**), Council Regulation (EC) No. 3072/1995(**10**), Council Regulation (EC) No. 1577/1996(**11**), Council Regulation (EC) No. 2466/1996(**12**), Commission Regulation (EC) No. 613/1997(**13**), Council Regulation (EC) No. 820/1997(**14**), Council Regulation (EC) No. 1036/1999(**15**), Council Regulation (EC) No. 1593/2000(**16**) and Commission Regulation (EC) No. 495/2001(**17**);

"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 and amending Regulations (EEC) No. 2019/1993, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/1994, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/1971 and (EC) No. 2529/2001(**18**), amended by Council Regulation (EC) No. 21/2004(**19**), Council Regulation (EC) No. 583/2004(**20**), and Council Regulation (EC) No. 864/2004(**21**);

"date of notification of the decision" means the date of the letter from the Scottish Ministers to the applicant notifying the applicant of the decision which the applicant is seeking to have reviewed;

"ESA Orders" means–

(a) the Environmentally Sensitive Areas (Loch Lomond) Designation Order 1992(**22**);

(b) the Environmentally Sensitive Areas (Breadalbane) Designation Order 1992(**23**);

(c) the Environmentally Sensitive Areas (Central Southern Uplands) Designation Order 1993(**24**);

(d) the Environmentally Sensitive Areas (Western Southern Uplands) Designation Order 1993(**25**);

(e) the Environmentally Sensitive Areas (Cairngorms Straths) Designation Order 1993(**26**);

(f) the Environmentally Sensitive Areas (Central Borders) Designation Order 1993(**27**);

(**5**) O.J. No. L 339, 24.12.2003, p.52.
(**6**) O.J. No. L 355, 5.12.1992, p.1.
(**7**) O.J. No. L 24, 29.1.1994, p.6.
(**8**) O.J. No. L 338, 28.12.1994, p.13.
(**9**) O.J. No. L 338, 28.12.1994, p.16.
(**10**) O.J. No. L 329, 30.12.1995, p.18.
(**11**) O.J. No. L 206, 16.8.1996, p.4.
(**12**) O.J. No. L 335, 24.12.1996, p.1.
(**13**) O.J. No. L 94, 9.4.1997, p.1.
(**14**) O.J. No. L 117, 7.5.1997, p.1.
(**15**) O.J. No. L 127, 21.5.1999, p.4.
(**16**) O.J. No. L 182, 21.7.2000, p.4.
(**17**) O.J. No. L 72, 14.3.2001, p.6.
(**18**) O.J. No. L 270, 21.10.2003, p.1.
(**19**) O.J. No. L 5, 9.1.2004, p.8.
(**20**) O.J. No. L 091, 30.3.2004, p.1.
(**21**) O.J. No. L 161, 30.4.2004, p.48.
(**22**) S.I. 1992/1919; amended by S.I. 1992/2062, 1994/3067, 1995/3097, 1996/3082 and S.S.I. 2001/34 and 226.
(**23**) S.I. 1992/1920; amended by S.I. 1992/2063, 1994/3067, 1995/3096, 1996/738 and 3082 and S.S.I. 2001/30 and 226.
(**24**) S.I. 1993/996; amended by S.I. 1994/3067, 1996/1969 and 3082 and S.S.I. 2001/32 and 226.
(**25**) S.I. 1993/997; amended by S.I. 1994/3067, 1996/1968 and 3082 and S.S.I. 2001/31 and 226.
(**26**) S.I. 1993/2345; amended by S.I. 1994/3067, 1996/1963 and 3082 and S.S.I. 2001/33 and 226.
(**27**) S.I. 1993/2767; amended by S.I. 1994/3067, 1996/1964 and 3082 and S.S.I. 2001/25 and 226.

(g) the Environmentally Sensitive Areas (Stewartry) Designation Order 1993(**28**);

(h) the Environmentally Sensitive Areas (Argyll Islands) Designation Order 1993(**29**);

(i) the Environmentally Sensitive Areas (Machair of the Uists and Benbecula, Barra and Vatersay) Designation Order 1993(**30**);

(j) the Environmentally Sensitive Areas (Shetland Islands) Designation Order 1993(**31**);

"holding" has the same meaning as in Council Regulation No. 1782/2003;

"IACS scheme" means–

(a) one of the Community schemes set out in Article 1.1 of Council Regulation 3508/1992; and

(b) one of the Community schemes set out in Chapters 2,4,5 and 7 of Title IV of Council Regulation 1782/2003; and

"IACS year" means a period of 12 months commencing on 16th May.

(2) Any reference in these Regulations to a person to whom a decision is directed, an applicant for review or a person appealing to the Scottish Land Court includes a reference to any successor, executor, trustee in bankruptcy, receiver or liquidator of such a person or applicant.

Application in relation to IACS matters

3. In relation to decisions of the Scottish Ministers of the kinds referred to in regulation 4(a) to (g) below, these Regulations apply in relation to holdings which are administered by them in accordance with the Integrated Administration and Control System Regulations 1993(**32**).

Decisions amenable to review and appeal

4. The following decisions may be reviewed and appealed in accordance with the following provisions of these Regulations:–

(a) a decision, under or in accordance with Commission Regulation 2419/2001 (including anything done in accordance with Article 47.2 of that Regulation), by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment under an IACS scheme for any IACS year;

(b) a decision, under or in accordance with Commission Regulation 2237/2003, by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment under an IACS scheme for any IACS year;

(c) a decision by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment of compensatory allowance under regulation 12, 17 or 18 of the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(**33**);

(d) a decision by the Scottish Ministers under regulations 4, 6, 8 and 12 of the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 2003(**34**);

(e) a decision by the Scottish Ministers to withhold or recover (in whole or in part) payment of less favoured area support under regulation 13 of the Less Favoured Area Support Scheme (Scotland) Regulations 2001(**35**) or under regulation 15 of the Less Favoured Area Support

(**28**) S.I. 1993/2768; amended by S.I. 1994/3067, 1996/1967 and 3082 and S.S.I. 2001/26 and 226.
(**29**) S.I. 1993/3136; amended by S.I. 1994/3067, 1996/1966 and 3082 and S.S.I. 2001/27 and 226.
(**30**) S.I. 1993/3149; amended by S.I. 1994/3067, 1996/1962 and 3082 and S.S.I. 2001/28 and 226.
(**31**) S.I. 1993/3150; amended by S.I. 1994/3067, 1996/1965 and 3082 and S.S.I. 2001/29 and 226.
(**32**) S.I. 1993/1317 amended by S.I. 1994/1134, 1997/1148, 1999/1820, 2000/2573 and 2004/189.
(**33**) S.S.I. 1999/187.
(**34**) S.I. 2003/2261.
(**35**) S.S.I. 2001/50, partially revoked subject to savings by S.S.I. 2002/139.

Scheme (Scotland) Regulations 2002(**36**) or under regulation 17 of the Less Favoured Area Support Scheme (Scotland) Regulations 2003(**37**) or under regulation 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2004(**38**);

(f) a decision by the Scottish Ministers under regulation 9(9)(c), (10), (12), 10(4), 11(2) or 13(3) to (6) of the Less Favoured Area Support Scheme (Scotland) Regulations 2003;

(g) a decision by the Scottish Ministers under regulation 7(2), 9(5) 10(4), 10(6) or 11(2) of the Less Favoured Area Support Scheme (Scotland) Regulations 2004;

(h) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Scheme 1988(**39**), in terms of paragraph 14 of that Scheme;

(i) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Premium Scheme 1992(**40**), in terms of paragraph 14 of that Scheme;

(j) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the Farm Woodland Premium Scheme 1997(**41**), in terms of paragraph 14 of that Scheme;

(k) a decision by the Scottish Ministers–

(i) made under article 5D of any one of the ESA Orders that there has been a breach of any of the requirements of article 4 or 4A of the ESA Order to which that decision relates; or

(ii) to withhold (in whole or in part), or require the making of, payment under article 5(a) or under article 5A of one of the ESA Orders(**42**);

(l) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of penalty under the Organic Aid (Scotland) Regulations 1994(**43**), in terms of regulation 12 of those Regulations;

(m) a decision by the Scottish Ministers to withhold or recover (in whole or in part) any payment under the Organic Aid (Scotland) Regulations 2004, in terms of regulation 20 of those Regulations(**44**);

(n) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of penalty under the Habitats (Scotland) Regulations 1994(**45**), in terms of regulation 12 of those Regulations;

(o) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum imposed by way of

(**36**) S.S.I. 2002/139, partially revoked subject to savings by S.S.I. 2003/129.
(**37**) S.S.I. 2003/129 partially revoked subject to savings by S.S.I. 2004/70.
(**38**) S.S.I. 2004/70 amended by S.S.I. 2004/128.
(**39**) S.I. 1988/1291, amended by S.I. 1991/1631, 1992/905 and 1997/828.
(**40**) S.I. 1992/905, amended by S.I. 1997/829, S.S.I. 2003/209.
(**41**) S.I. 1997/829, amended by S.S.I. 2000/290 and 2003/209.
(**42**) Article 4A was inserted into the ESA Orders by S.I. 1994/3067, article 5A was inserted by S.I. 1996/3082 and article 5D was inserted by S.S.I. 2001/226.
(**43**) S.I. 1994/1701, amended by S.I. 1996/3083 and S.S.I. 1999/107 and 2004/143.
(**44**) S.S.I. 2004/143, amended by S.S.I. 2004/174.
(**45**) S.I. 1994/2710, amended by S.I. 1996/3035.

penalty under the Heather Moorland (Livestock Extensification) (Scotland) Regulations 1995(**46**), in terms of regulation 13 of those Regulations;

(p) a decision by the Scottish Ministers to withhold (in whole or in part) any grant due or recover (in whole or in part) any grant paid or require payment of a sum under the Countryside Premium Scheme (Scotland) Regulations 1997(**47**), in terms of regulation 12 of those Regulations;

(q) a decision by the Scottish Ministers to withhold (in whole or in part) any aid due or recover (in whole or in part) any aid paid or require payment of a sum under the Rural Stewardship Scheme (Scotland) Regulations 2001(**48**), in terms of those Regulations;

(r) a decision by the Scottish Ministers to postpone, reduce or withhold (in whole or in part) any payment of grant under, or recover (in whole or in part) any payment under or terminate participation in, the SFGS Farmland Premium Scheme 2003(**49**), in terms of paragraph 14 of that Scheme.

First stage review of decisions

5.—(1) An application for review may be made no later than 60 days following the date of notification of the decision to be reviewed, to the Scottish Ministers for a review of that decision.

(2) An application for review must be in writing and specify–

(a) the name and address of the applicant, and where that person is not the person named in the decision referred to in regulation 4 the basis upon which that person is seeking review;

(b) the subsidy scheme in relation to which the review is sought and, in relation to an IACS scheme, the IACS year to which the decision referred;

(c) the decision of the Scottish Ministers which is to be reviewed and its date;

(d) full details of the grounds upon which review is sought; and

(e) the change sought to the decision.

(3) An application under this regulation is to be treated as made if it is received by the Scottish Ministers at their offices at Pentland House, Robb's Loan, Edinburgh marked "for the attention of the EU Agricultural Subsidies Appeals Secretariat" within the period of time specified in paragraph (1) above.

Procedure at first stage review

6.—(1) Where an application is made under regulation 5 above, the Scottish Ministers shall review the decision which is specified in it.

(2) In reviewing a decision the Scottish Ministers may–

(a) consider any document or other evidence produced by the applicant (whether or not that document or evidence was available at the time of the decision);

(b) invite the applicant to provide such further information relevant to the review as they consider appropriate; and

(c) invite the applicant to give evidence and to make representations in person or through a representative.

(**46**) S.I. 1995/891, amended by S.I. 1996/3036.
(**47**) S.I. 1997/330 amended by S.S.I. 2004/113.
(**48**) S.S.I. 2001/300 amended by S.S.I. 2003/177 and 303 and 2004/109.
(**49**) S.S.I. 2003/209.