SCOTTISH STATUTORY INSTRUMENTS

2004 No. 278

AGRICULTURE

The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004

Made - - - -	*9th June 2004*
Laid before the Scottish Parliament - - - -	*10th June 2004*
Coming into force - -	*3rd July 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1], and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 1972 c. 68. Section 2(2) was amended by the Scotland Act (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.

Citation and commencement

1. These Regulations may be cited as the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 and come into force on 3rd July 2004.

Interpretation

2.—(1) In these Regulations–

"applicant" means the person to whom a decision referred to in regulation 3 below is directed; [F2]...

"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 [F3]... **[**[F4]; and

"the SCMO Regulations" means the Regulations listed in the Schedule, as amended from time to time.**]**

(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.

F5(3) . . . . . .

F2 Word in reg. 2(1) omitted (25.5.2015) by virtue of The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/167), regs. 1(1), **3(a)(i)**

F3 Full stop in reg. 2(1) omitted (25.5.2015) by virtue of The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/167), regs. 1(1), **3(a)(ii)**

F4 Words in reg. 2(1) inserted (25.5.2015) by The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/167), regs. 1(1), **3(a)(ii)**

F5 Reg. 2(3) omitted (25.5.2015) by virtue of The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/167), regs. 1(1), **3(b)**

Application

3.—**[**F6(1) These Regulations apply in relation to decisions made by or on behalf the Scottish Ministers under any of the SCMO Regulations, and directed to applicants whose principal trading address was in Scotland at the date of the decision to be reviewed.**]**

(2) Any such decision may be reviewed, and any decision on a review may be appealed, in accordance with the following provisions of these Regulations.

F6 Reg. 3(1) substituted (25.5.2015) by The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/167), regs. 1(1), **4**

First stage review of decisions

4.—(1) An application may be made no later than 6 months from 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 the basis upon which that person is seeking review;

(b) the subsidy scheme in relation to which the review is sought;

(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 made under this regulation, or under regulation 7, may be made by fax or other means of electronic communication which is capable of reproduction.

(4) An application under this regulation, or under regulation 7, is to be treated as made if it is received by the Scottish Ministers, at the address specified by them for receipt of such applications.

(5) In relation to decisions amenable to review made on or after 1st April 2004 but before 3rd July 2004 an application may be made no later than 3rd January 2005 and any such application for review must satisfy the conditions of paragraph (2) above.

Procedure at first stage review

5.—(1) Where an application is made under regulation 4 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) give the applicant an opportunity to give evidence and to make representations in person or through a representative.

Decision following first stage review

6.—(1) Following review of a decision in accordance with regulation 5 above the Scottish Ministers may–

(a) confirm their decision;

(b) amend or alter their decision in any respect which they consider appropriate; or

(c) revoke their decision in its entirety and substitute a new decision.

(2) The Scottish Ministers must give their decision under paragraph (1) above in writing, setting out the facts upon which their decision is based and the reasons for their decision.

(3) The Scottish Ministers must, in the case of a decision which does not provide any remedy specified by the applicant in accordance with regulation 4(2)(e) above, offer the applicant an opportunity to have their decision under this regulation reviewed by persons appointed by them and must in such a case advise the applicant of the right of a second stage review provided by regulation 7(1) below.

Second stage review by persons appointed

7.—(1) An applicant to whom regulation 6(3) above applies may, no later than 60 days following the date of notification of the decision under regulation 6 above, make an application in writing to the Scottish Ministers to have that decision reviewed by persons appointed by the Scottish Ministers.

(2) Where the decision to be reviewed is a decision of a kind referred to in regulation 6(1)(b) or (c) above the applicant may supplement the original application made by the applicant under regulation 4(2) above as the nature of that decision may require.

(3) A fee of £100 is payable for all applications for review under this regulation.

(4) The fee referred to in paragraph (3) above is payable to Scottish Ministers and recoverable by them, in the event of default, as a debt.

Power of persons appointed

8.—(1) Where an application is made under regulation 7 above, the Scottish Ministers shall appoint such persons (who may include a member of the staff of the Scottish Ministers) as they consider appropriate to review the decision and the Scottish Ministers shall provide those persons with a copy of–

(a) the application;

(b) the decision under regulation 6 above; and

(c) any document or note of evidence produced or taken in relation to a review under regulation 6 above.

(2) The persons appointed under this regulation shall review the decision and may–

(a) consider any document or other evidence produced by the applicant or the Scottish Ministers (whether or not that document or evidence was available at the time of taking the decision under regulation 6 above);

(b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the persons appointed consider appropriate; and

(c) at the applicant's request, invite the applicant and the Scottish Ministers to give evidence and to make representations, to the persons appointed under this regulation, in person or through a representative.

(3) Following their review of the matter the persons appointed shall report–

(a) their findings in fact and law on the matter; and

(b) their recommendations as to the determination of the application, to the Scottish Ministers.

(4) Having considered the matters reported to them under paragraph (3) above, the Scottish Ministers may–

(a) confirm their decision;

(b) amend or alter their decision in any respect which they consider appropriate; or

(c) revoke their decision in its entirety and substitute a new decision.

(5) In coming to their decision in accordance with paragraph (4) above, the Scottish Ministers must have regard to the findings and recommendations reported to them by the persons appointed under this regulation but are not bound to follow all or any part of such findings or recommendations.

(6) The Scottish Ministers must give their decision under this regulation in writing and where they do not adopt the findings and recommendations reported to them shall set out–

(a) the relevant facts upon which their decision is based;

(b) the reasons for their decision;

(c) their reasons for not following in whole or in part the findings or recommendations of the persons appointed; and

(d) the effect of their decision on the payment or non-payment of subsidy.

(7) Where the Scottish Ministers decide in accordance with paragraph (4)(b) or (c) above, the fee referred to in regulation 7(3) above must be refunded to the applicant.

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

Notification of decisions

9.—(1) A decision under regulations 6 and 8 above must be notified to the applicant as soon as practicable after it is made by recorded delivery post to the address shown on the application for review.

(2) In the case of a decision under regulation 8, the findings and recommendations of the persons appointed (along with intimation of the right of appeal under regulation 10(1) below) shall be notified along with the decision.

Appeal to the Scottish Land Court

10.—(1) Where an applicant is dissatisfied by a decision under regulation 8 above, that applicant may make an appeal against that decision on any issue of fact or law to the Scottish Land Court, in accordance with the following provisions.

(2) An appeal may be made no later than 60 days following the date of notification of the decision under regulation 8.

(3) An appeal shall be in such form as may be prescribed from time to time by the Rules of the Scottish Land Court.

(4) An appeal shall specify–

(a) what finding of fact, if any, is sought in substitution for any of the findings set out in the decision;

(b) what, if any, additional finding of fact is sought;

(c) the documents or witnesses to be relied on in relation to the matters set out in sub paragraphs (a) and (b) above;

(d) the findings or propositions of law contained in the decision which are to be challenged;

(e) the propositions of law relied on in support of the appeal; and

(f) the legislative provisions and judicial authorities to be referred to in relation to the appeal.

Procedure in the Scottish Land Court

11.—(1) The Scottish Land Court may hear evidence or submissions on matters of fact or law not specified in accordance with regulation 10 above on such terms and conditions as to expenses or otherwise as it considers appropriate but shall not do so in respect of any matter referred to in regulation 10(4)(a) to (c) above unless it is satisfied that there are special circumstances to justify doing so.

(2) The Chairman of the Scottish Land Court may make appropriate arrangements for the hearing of appeals under these Regulations.

(3) The arrangements referred to in paragraph (2) above shall include the delegation, to the Chairman or any member of the Court, of the power to determine the whole or any part of an appeal.

(4) In determining an appeal, the Scottish Land Court may–

(a) confirm the decision of the Scottish Ministers under regulation 8 above;

(b) amend or alter that decision in any respect which it considers appropriate; or

(c) substitute for that decision any decision which it considers appropriate, and any such determination of the Scottish Land Court is, subject to any case stated in accordance with section 1(7) of the Scottish Land Court Act 1993 [F7], binding upon the Scottish Ministers and the applicant.

F7 1993 c. 45.

Reimbursement of fee following successful appeal

12. In the event that, as a result of an appeal under regulation 10 above, the Scottish Land Court determines in accordance with regulation 11(4)(b) or (c) above, the Scottish Ministers must reimburse the fee paid in accordance with regulation 7(3) above.

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