SCOTTISH STATUTORY INSTRUMENTS

2003 No. 209

AGRICULTURE

The SFGS Farmland Premium Scheme 2003

Made - - - - 19th March 2003

Coming into force in accordance with paragraph 1

The Scottish Ministers, in exercise of the powers conferred by section 2 of the Farm Land and Rural Development Act 1988(**1**) and of all other powers enabling them in that behalf, hereby make the following Scheme, a draft of which has, in accordance with section 2(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) This Scheme may be cited as the SFGS Farmland Premium Scheme 2003 and shall come into force on the day after the day on which it is made or 1st April 2003 if later.

(2) This Scheme extends to Scotland only.

Interpretation

2. In this Scheme–

"agricultural" shall be construed in accordance with section 86 of the Agriculture (Scotland) Act 1948(**2**), except that the expression "agricultural use" shall have the same meaning as in section 2(6) of the Farm Land and Rural Development Act 1988;

"agricultural business" means a business consisting in, or such part of a business as consists in, the pursuit of eligible agricultural activities and includes a business consisting in, or such part of a business as consists in entitling another person by lease for a term of less than 12 months to use the land for eligible agricultural activities where the Scottish Ministers are satisfied that the landlord carries out or is to carry out, whether personally or by a manager, during the

(**1**) 1988 c. 16. The expression the "appropriate authority" upon whom the powers of section 2 are conferred is defined in section 2(6) and 1(5) of the Farm Land and Rural Development Act 1988 and is to be read with the definition of the "appropriate Minister" in those sections. In relation to Scotland the definition of "the appropriate authority" was modified by section 1(6), which was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820 "the 1999 Order"), Schedule 2, paragraph 88(2). Section 2 was amended, in relation to Scotland, by section 3(2) of the Crofter Forestry (Scotland) Act 1991 (c. 18) and the 1999 Order, Schedule 2, paragraph 88(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). The requirement to obtain Treasury consent was removed by section 55 of that Act.

(**2**) 1948 c. 45.

period of 12 months commencing on the date the lease commences, a significant degree of management of that land;

"application" means application for grant under this Scheme and "applicant" shall be construed accordingly;

"arable land" means–

(i) land on which an arable crop is growing or has been planted;

(ii) land which is lying fallow as part of a normal crop rotation (including short term leys); or

(iii) set-aside land which has been land within the meaning of (i) and (ii);

"broadleaved trees" does not include trees which are likely to be harvested within 30 years of planting;

"conversion plan" means a plan for the conversion of eligible land to woodlands by planting or natural regeneration;

"converted land" means eligible land converted from agricultural use to use for woodlands in accordance with a conversion plan;

"Council Regulation 3508/92" means Council Regulation (EEC) No. 3508/92 establishing an integrated administration and control system for certain Community aid schemes(**3**);

"Council Regulation 1257/99" means Council Regulation (EC) No. 1257/1999 of 17th May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations(**4**);

"designated maps" means the 4 maps numbered 1 to 4, each such map being marked "Map of less favoured farming areas in Scotland" with the number of the map, dated 15th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Executive, Environment and Rural Affairs Department of Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY;

"disadvantaged land" (except in the expression "severely disadvantaged land") means land shown coloured blue or coloured pink on the designated maps, and–

(i) 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

(ii) whose agricultural production is in the opinion of the Scottish Ministers restricted (but not severely restricted) in its range by, or by any combination of, soil, relief, aspect or climate;

"eligible agricultural activity" does not include the use of land for the grazing of creatures which are not livestock;

"eligible land", in relation to an application, means land which has been used for eligible agricultural activities for at least the three years before the date of the application;

"eligible Scots Pine" means native Scots Pine planted within any area of Scotland where the presence of native Scots pine once occurred naturally;

(**3**) O.J. No. L 355, 5.12.92, p.1, as amended by Council Regulation (EC) No. 165/1994 (O.J. No. L 24, 29.1.94, p.6), Council Regulation (EC) No. 3233/1994 (O.J. No. L 338, 28.12.94, p.13), Council Regulation (EC) No. 3235/1994 (O.J. No. L 338, 28.12.94, p.16), Council Regulation (EC) No. 3072/1995 (O.J. No. L 329, 30.12.95, p.18), Council Regulation (EC) No. 1577/1996 (O.J. No. L 206, 16.8.96, p.4), Council Regulation (EC) No. 2466/1996 (O.J. No. L 335, 24.12.96, p.1), Commission Regulation (EC) No. 613/1997 (O.J. No. L 94, 9.4.97, p.1), Council Regulation (EC) No. 820/1997 (O.J. No. L 117, 7.5.97, p.1), Council Regulation (EC) No. 1036/1999 (O.J. No. L 127, 21.5.99, p.4), Council Regulation (EC) No. 1593/00 (O.J. No. L 182, 21.7.00, p.4) and Council Regulation (EC) No. 495/2001 (O.J. No. L 72, 14.3.01, p.6).

(**4**) O.J. No. L 160, 26.6.99, p.80.

"grazings committee" means a committee appointed under section 47(1) or (3) of the Crofters (Scotland) Act 1993(**5**) and includes a grazings constable;

"holding" has the same meaning as it has in Article 1 of Council Regulation 3508/92, save that where–

(a) an applicant entitles another person by lease for a term of less than twelve months to use land for eligible agricultural activities; and

(b) the Scottish Ministers are satisfied that the applicant carries out or is to carry out, whether personally or by a manager, during the term of the lease or in the period of 12 months commencing on the date the lease commences, as the case may be, a significant degree of management of that land,

any such land shall be deemed to form part of that applicant's holding;

"improved land", means eligible land (other than arable land) which consists of land used for grazing where over one third of the sward comprises, singly or in mixture, ryegrass, cocksfoot or timothy, or land that has been improved by management practices such as liming and top dressing, where there is not a significant presence of sensitive plant species indicative of native unimproved grassland;

"initial entrant" means a person whose application is approved under paragraph 3(1);

"livestock" has the same meaning as in section 86 of the Agriculture (Scotland) Act 1948;

"nurse tree" means a coniferous tree which is planted to provide protection to tree seedlings and which is removed from the land within 10 years of planting;

"occupier" means–

(a) a person who occupies land–

(i) as proprietor of the *dominium utile*; or

(ii) as tenant; or

(b) in relation to a common grazing, the grazings committee for that common grazing,

and references to "occupies" and "occupation" shall be construed accordingly;

"the Plan" means the rural development plan drawn up in relation to Scotland and submitted in accordance with Article 41 of Council Regulation 1257/1999;

"planting" includes the sowing of tree seeds;

"the Scottish Forestry Grants Scheme" means the scheme under which the Forestry Commissioners may enter into agreements to make grants pursuant to section 1 of the Forestry Act 1979(**6**) for and in connection with the use and management of land for forestry purposes;

"set-aside land" has the same meaning as it has for the purposes of Council Regulation 1251/99(**7**) establishing a support system for producers of certain arable crops;

"severely disadvantaged land" means land shown coloured pink on the designated maps and–

(i) 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

(ii) whose agricultural production is in the opinion of the Scottish Ministers severely restricted in its range by, or by any combination of, soil, relief, aspect or climate;

(**5**) 1993 c. 44.
(**6**) 1979 c. 21. Section 1 was amended by the Crofter Forestry (Scotland) Act 1991, section 3(1). The Forestry Commissioners were continued in existence by the Forestry Act 1967 (c. 10), s1(1), and are constituted under s.2 of that Act.
(**7**) O.J. No. L 160, 26.6.99, p.1. Council Regulation 1251/99 was amended by Council Regulations 2704/99 (O.J. No. L 327, 21.12.99, p.12), 1672/00 (O.J. No. L 193, 29.7.00, p.13) and 1038/01 (O.J. No. L 145, 31.5.01, p.16).

"successor" means a person whose application is approved under paragraph 3(2);

"unimproved land" means eligible land other than arable land and improved land.

Approval of applications

3.—(1) Subject to the provisions of this Scheme, the Scottish Ministers may approve an application in relation to any eligible land if the applicant–

(a) enters into a written agreement with the Forestry Commissioners for the conversion of the land to woodlands, under the Scottish Forestry Grants Scheme;

(b) submits to the Scottish Ministers a conversion plan with respect to the land that is consistent with that agreement;

(c) either–

(i) occupies the land, and carries on, whether personally or by a manager, an agricultural business on a holding which includes that land; or

(ii) is, where the land comprises a common grazing, the grazings committee for that common grazing; and

(d) enters into the undertakings specified in paragraph 8.

(2) Subject to the provisions of this Scheme, the Scottish Ministers may approve an application in respect of land comprising converted land, or eligible land in relation to which a conversion plan remains to be carried out, if the applicant–

(a) occupies the land in succession to a previous occupier who was, in relation to that land, an initial entrant or successor; and

(b) has submitted the application within 12 months after the termination of occupation of that previous occupier.

(3) An application shall not be taken to be approved unless either–

(a) the Scottish Ministers have given approval of it in writing to the Forestry Commissioners and the Forestry Commissioners have informed the applicant in writing of that approval; or

(b) the Scottish Ministers have given approval of it in writing to the applicant.

Application for grant

4. Every application shall be made in such form as the Scottish Ministers may require.

Restrictions on approval of application: general

5.—(1) The Scottish Ministers shall not approve an application which relates to land which–

(a) is occupied by a tenant unless the owner of that land has given consent in writing to the occupier's application in such form as the Scottish Ministers may require; or

(b) is occupied by a grazings committee unless that committee, pursuant to section 50 of the Crofters (Scotland) Act 1993, has obtained the approval of the Crofters Commission and the consent of the landlord, and that consent has been entered in the Register of Crofts referred to therein.

(2) For the purposes of sub-paragraph (1)(a) above, "owner" means proprietor of the dominium utile, and where land is occupied by a sub-tenant, includes a superior tenant.

(3) The Scottish Ministers shall not approve an application under paragraph 3(1) which relates to land which, in their opinion, has been converted to woodlands or had carried out on it any operations relating to such conversion, whether or not such conversion or operations were carried

out in pursuance of a written agreement made with the Forestry Commissioners under the Scottish Forestry Grants Scheme.

(4) The Scottish Ministers shall not approve an application which relates to land–

(a) which is to be planted with trees as a condition of a felling licence granted by the Forestry Commissioners under section 10 of the Forestry Act 1967(**8**);

(b) on which trees have been felled without the authority of a felling licence granted under Part II of the Forestry Act 1967 in circumstances where section 9(1) of that Act applies so as to require such a licence;

(c) which is to be planted with trees pursuant to a restocking notice served by the Forestry Commissioners under section 17A of the Forestry Act 1967(**9**); or

(d) which is to be planted with trees pursuant to a notice served by the Forestry Commissioners under section 24(2) of the Forestry Act 1967.

(5) The Scottish Ministers shall not approve an application which relates to any land which is to be converted to woodlands–

(a) where the converted land is also intended for agricultural use, other than the harvesting of an agricultural crop growth as a result of planting woodland by sowing a mixture of tree seeds and seeds of an agricultural crop;

(b) intended to be managed as coppice; or

(c) where the trees, other than nurse trees, are intended to be used as Christmas trees.

(6) The Scottish Ministers shall refuse to approve an application which relates to any land if it appears to them that the conversion to woodlands of that land would frustrate the purpose of any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community, or that the payment of grant under this Scheme in respect of that land would duplicate any such assistance.

Restriction on approval of applications: resumed land

6. The Scottish Ministers shall not approve an application which relates to land, possession of which was obtained from a tenant of that land by means of–

(a) a notice to quit to which section 22(2)(b) of the Agricultural Holdings (Scotland) Act 1991(**10**) applied;

(b) a notice to quit in respect of which a counter notice could have been served under section 22(1) of the Agricultural Holdings (Scotland) Act 1991 unless–

(i) no such counter notice was served; or

(ii) the Scottish Land Court consented to the operation of the notice to quit on the grounds set out in section 24(1)(d) of that Act (with or without other grounds);

(c) an authorisation given by the Scottish Land Court under section 20(1) of the Crofters (Scotland) Act 1993 to resume a croft or part of a croft;

(d) an authorisation given by the Scottish Land Court under section 20(4) of the Crofters (Scotland) Act 1993 to resume any land forming part of a common grazing; or

(e) a notice served pursuant to a resumption clause in a lease.

(**8**) 1967 c. 10.
(**9**) Inserted by section 1(a) of the Forestry Act 1986 (c. 30).
(**10**) 1991 c. 55.