Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Rural Stewardship Scheme (Scotland) Regulations 2001. 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

2001 No. 300

AGRICULTURE

The Rural Stewardship Scheme (Scotland) Regulations 2001

Made - - - -	*7th September 2001*
Laid before the Scottish Parliament - - - -	*7th September 2001*
Coming into force - -	*28th September 2001*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972[F1] and section 98(1) and (2) of the Environment Act 1995[F2] 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 1998 (c.46) Schedule 8, paragraph 15. 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.

F2 1995 c.25. See definition of "appropriate Minister" in section 98(5). The functions of the Secretary of State were transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The requirement to obtain the consent of the Treasury was removed by section 55 of the Scotland Act 1998.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Rural Stewardship Scheme (Scotland) Regulations 2001 and shall come into force on 28th September 2001.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"1991 Act" means the Agricultural Holdings (Scotland) Act 1991 [F3];

"activities" means the activities referred to in regulation 3(3) and "activity" shall be construed accordingly;

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding or keeping, the use of land as grazing land, meadowland, osier land, reed beds, market gardens and nursery grounds;

"applicant" means a person who has made an application for aid under these Regulations and in regulations 11 to 14 includes a person whose application for aid has been accepted and a person who takes on an undertaking on a change of occupation as provided in regulation 10;

"application for aid" means an application for aid under these Regulations;

"authorised person" means a person who is authorised by the Scottish Ministers, either generally or specifically, to act in relation to matters arising under these Regulations;

"Commission Regulation" means Commission Regulation (EC) No. 1750/1999/ [F4], (as amended by Commission Regulation (EC) No. 2075/2000[F5]), laying down detailed rules for the application of the Council Regulation;

"Council Regulation" means Council Regulation (EC) No. 1257/1999[F6] on support for rural development from the European Agricultural Guidance and Guarantee Fund;

"eligible land" means land which is used for agriculture;

"environmental audit" means a report of a survey of eligible land which identifies the extent and location of features of environmental interest (including flora and fauna, landscape and water features and features of archaeological interest), the opportunities for enhancement of such features and a written statement which outlines proposals (if any) for the management of eligible land, including permanent grassland and waste management;

"grazings committee" means a committee appointed under section 47(1) or (3) of the Crofters (Scotland) Act 1993 [F7] and includes a grazings constable;

"landlord" means–

(a) in the case of an agricultural holding to which the 1991 Act applies, the landlord within the meaning of section 85 of that Act;

(b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the landlord within the meaning of section 61(1) of that Act;

(c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 [F8] to which the 1991 Act does not apply, the same as it means in the 1911 Act,

and, where appropriate, includes a head tenant;

"moorland" means land with predominantly semi-natural upland vegetation or comprising predominantly rock outcrops and semi-natural upland vegetation used primarily for rough grazing;

"relevant period" means a period of not less than 5 years;

"tenant" means–

(a) in the case of an agricultural holding to which the 1991 Act applies, the tenant within the meaning of section 85 of that Act;

(b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the crofter within the meaning of section 3(3) of that Act;

(c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 to which the 1991 Act does not apply, the tenant within the meaning of section 2(2) of the 1911 Act,

and, where appropriate, includes a sub-tenant;

"undertaking" means an undertaking mentioned in regulation 3(2).

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000 [F9] which has been recorded and is consequently capable of being reproduced.

(3) Any reference in these Regulations to a numbered regulation or numbered Schedule, shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

(4) Any reference in these Regulations to a numbered paragraph, shall be construed as a reference to the paragraph so numbered in the regulation in which the reference occurs.

(5) Words and phrases used in Schedules 1 to 4 and not defined in paragraph (1) shall be construed in accordance with Schedule 5.

F3 1991 c.55.
F4 O.J. No. L 214, 13.08.99, p.31.
F5 O.J. No. L 246, 30.09.01, p.46.
F6 O.J. No. L 160, 26.06.99, p.80.
F7 1993 c.44.
F8 1911 c.49.
F9 2000 c.7.

Payments of aid to enhance the environment

3.—(1) Subject to the provisions of these Regulations, the Scottish Ministers may make payments of aid in respect of an undertaking to which these Regulations apply, to an applicant who–

(a) is the owner or tenant of the eligible land to which such undertaking relates and is in lawful occupation of that land; and

(b) has made an application for aid which has been accepted by the Scottish Ministers.

(2) These Regulations apply to an undertaking in writing by the applicant, for the relevant period–

(a) to comply with, in relation to the whole of the eligible land to which the undertaking relates, the general environmental requirements set out in Part I and Part II of Schedule 1; and

(b) to carry out, or as the case may be, to carry out and maintain, at least one of the activities referred to in paragraph (3).

(3) The activities mentioned in paragraph (2) are–

(a) the management activities set out in column 1 of Schedule 2 to be undertaken on any part of the eligible land to which the undertaking relates in accordance with the requirements specified in column 2 and column 3 of that Schedule in relation to that activity; and

(b) the capital activities set out in column 1 of Schedule 3 to be undertaken and maintained on any part of the eligible land to which the undertaking relates in accordance with the requirements specified in column 2 of that Schedule in relation to that activity.

(4) The Scottish Ministers may contribute towards the cost of preparing an environmental audit and a moorland management plan included in an application for aid where such audit and, as the case may be, such plan have been prepared in accordance with any requirements made by the Scottish Ministers as to the form or content of such audit or plan.

Applications for aid

4.—(1) An application for aid shall be made in writing at such time and in such form and shall contain such information as the Scottish Ministers may require.

(2) An application for aid under paragraph (1) shall include–

(a) a copy of an environmental audit carried out in relation to the eligible land to which the application relates;

(b) a map which shows all of that land and which identifies all flora and fauna, landscape and water features and archaeological features;

(c) a map which shows any flora and fauna, landscape and water features and archaeological features relevant to the activities which the applicant proposes to undertake;

(d) a description of those activities and the flora and fauna which are expected to benefit;

(e) where the environmental audit identifies moorland which would benefit from management and the applicant proposes to undertake any activities to benefit all or any part of the identified moorland, a moorland management plan for the relevant period in relation to all or any part of the identified moorland;

(f) an estimate of the aid to be sought for such activities for each year of the proposed undertaking;

(g) the proposed date of commencement of the undertaking; and

(h) where an application is made by a grazings committee–

(i) the written consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing the subject of the application;

(ii) evidence that notice has been given in accordance with regulation 5(4); and

(iii) confirmation from the Crofters Commission that it has approved the application or, as the case may be, has received no representation under regulation 5(5).

(3) The Scottish Ministers may at any time suspend the operation of the scheme provided for by these Regulations and, while so suspended, no application under paragraph (1) may be submitted to them.

Crofters common grazings

5.—(1) Subject to paragraph (4), a grazings committee, may with the consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing, make an application for aid in relation to that common grazing.

(2) Where an undertaking is given by a grazings committee, such undertaking shall include an obligation upon the committee to bind their successors in office to the undertaking.

(3) Subject to paragraph (4), payments of aid to a grazings committee shall be made to the clerk of the grazings committee and the clerk shall divide the aid among the eligible crofters in such proportion as determined by the grazings committee.

(4) Prior to making an application, a grazings committee shall give notice of their intention to do so and of their proposed division of the aid under paragraph (3), by serving notice in writing of the proposals on all crofters sharing in that common grazing.

(5) Any such crofter as is mentioned in paragraph (4) may within one month of the date of the notice under that paragraph make representation in respect of the proposals to the Crofters Commission who may approve the proposals with or without modification or reject them.

Restrictions on acceptance of applications for aid

6.—(1) The Scottish Ministers shall not accept an application for aid–

(a) in relation to any eligible land which is occupied by a tenant unless they are satisfied that the tenant has notified the landlord, and in the case of a sub-tenant, the owner of the eligible land and the mid-landlord, of the intention of that tenant to make an application;

(b) if they are satisfied that the use of the land in accordance with the proposals contained in the application would frustrate the purposes of any assistance previously given or to

be given out of money provided by or under any statutory provision or by the European Community;

(c) if they are satisfied that any payment under these Regulations would duplicate any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community;

(d) where the applicant is prohibited from giving the undertaking under these Regulations by application of a penalty consequent upon Article 48(2) of the Commission Regulation (which requires Member States to determine a system of penalties for breaches of the obligations entered into and of regulatory provisions applicable to the case);

(e) where the applicant is excluded from all aid under Chapter VI of Title II of the Council Regulation by virtue of Article 48(3) of the Commission Regulation (which requires a person who, intentionally or by reason of serious negligence, makes a false declaration to be excluded from all rural development measures falling under the relevant chapter of the Council Regulation) and the payment of aid in respect of the proposed undertaking would include such aid.

(2) The Scottish Ministers shall not accept an application for aid without first having agreed with the applicant the date of commencement of the undertaking, which shall in no circumstances be earlier than the date on which the application was accepted.

Determination of applications for aid

7.—(1) The Scottish Ministers may approve (in whole or in part) or may reject an application for aid and in determining whether an application should be so approved or rejected, they shall have regard to–

(a) the environmental benefits expected to be derived from the carrying out of the activities described in the application;

(b) the aid likely to be required and how that value compares with other applications; and

(c) the value for money which the undertaking represents having regard to sub paragraphs (a) and (b).

(2) Approval of an application may be subject to such conditions as the Scottish Ministers think fit.

(3) The Scottish Ministers may vary an approval of an application for aid as they think fit including any conditions subject to which it was given.

(4) Before varying an approval or amending conditions attached to an approval in accordance with paragraph (3) above, the Scottish Ministers shall–

(a) give to the person to whom the application has been granted written notification of the action proposed to be taken;

(b) give that person an opportunity to make representations about the action proposed to be taken within such time and in such form as the Scottish Ministers may require; and

(c) consider any such representations.

Rates of payment

8.—(1) The amount of aid payable under regulation 3(1) shall, subject to the provisions of this regulation, be calculated with reference to the activity undertaken, and the rate of payment in respect of each activity described in column 1 of Schedule 4 shall be the rate shown opposite the entry for that activity in column 2 of that Schedule.