SCOTTISH STATUTORY INSTRUMENTS

2000 No. 347

AGRICULTURE

The Agricultural Subsidies (Appeals) (Scotland) Regulations 2000

Made - - - -	*3rd October 2000*
Laid before the Scottish Parliament - - - -	*3rd October 2000*
Coming into force - -	*9th November 2000*

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, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 and come into force on 9th November 2000.

Interpretation

2.—(1) In these Regulations–

"Commission Regulation 3887/92" means Commission Regulation (EEC) No. 3887/92 laying down rules for applying the integrated administration and control system for certain Community aid schemes(**2**) as amended by Commission Regulation (EC) No. 229/95(**3**), Commission Regulation (EC) No. 1648/95(**4**), Commission Regulation (EC) No. 2015/95(**5**), Commission Regulation (EC) No. 1678/98(**6**) and Commission Regulation (EC) No. 2801/1999(**7**);

(**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, by section 53 of the Scotland Act 1998 to the Scottish Ministers.
(**2**) O.J. L 391, 31.12.1992, p.36.
(**3**) O.J. L 27, 4.2.1995, p.3.
(**4**) O.J. L 156, 7.7.1995, p.27.
(**5**) O.J. L 197, 22.8.1995, p.2.
(**6**) O.J. L 212, 30.7.1998, p.23.
(**7**) O.J. L 340, 31.12.1999, p.29.

"Council Regulation 3508/92" means Council Regulation (EEC) No. 3508/92 establishing an integrated administration and control system for certain Community aid schemes(**8**) as amended by Council Regulation (EC) No. 165/94(**9**), Council Regulation (EC) No. 3233/94(**10**) Council Regulation (EC) No. 3235/1994(**11**), Council Regulation (EC) No. 3072/1995(**12**), Council Regulation (EC) No. 1577/96(**13**), Council Regulation (EC) No. 2466/96(**14**),

Commission Regulation (EC) No. 613/97(**15**), Council Regulation (EC) No. 820/97(**16**), Council Regulation (EC) No. 1036/1999(**17**) and Council Regulation (EC) No. 1593/2000(**18**);

"holding" has the same meaning as in Council Regulation No. 3508/92;

"IACS scheme" means one of the Community schemes set out in Article 1.1 of Council Regulation 3508/92; and

"IACS year" means a period of 12 months commencing on 16th May and "IACS year 2000" means such a period commencing on 16th May 2000.

(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

3. These Regulations apply to decisions of the Scottish Ministers of the kind referred to in regulation 4 belowin relation to holdings which are administered by the Scottish Ministers in accordance with the Integrated Administration and Control System Regulations 1993(**19**).

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 3887/92 (including anything done in accordance with Article 11.1 of the Regulations), by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment under an IACS scheme for the IACS year 2000 or any IACS year thereafter; and

(b) a decision by the Scottish Ministers to refuse, reduce or recover (in whole or in part) payment of compensatory allowance under regulations 12, 17 or 18 of the Hill Livestock (Compensatory Allowances) (Scotland) Regulations 1999(**20**).

Review of decisions

5.—(1) A person to whom a decision referred to in regulation 4 above is directed, may apply, no later than 60 days following the date of the decision to be reviewed, to the Scottish Ministers for a review of that decision.

(**8**) O.J. L 355, 5.12.1992, p.1.
(**9**) O.J. L 24, 29.1.1994, p.6.
(**10**) O.J. L 338, 28.12.1994, p.13.
(**11**) O.J. L 338, 28.12.1994, p.16.
(**12**) O.J. L 329, 30.12.1995, p.18.
(**13**) O.J. L 206, 16.8.1996, p.4.
(**14**) O.J. L 335, 24.12.1996, p.1.
(**15**) O.J. L 94, 9.4.1997, p.1.
(**16**) O.J. L 117, 7.5.1997, p.1.
(**17**) O.J. L 127, 21.5.1999, p.4.
(**18**) O.J. L 182, 21.7.2000, p.4.
(**19**) S.I.1993/1317 as amended by S.I. 1994/1134, S.I. 1997/1148, S.I. 1999/1820 and S.I. 2000/2573.
(**20**) S.S.I. 1999/187.

(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 applicant the basis upon which review is sought;

(b) the subsidy scheme in relation to which the review is sought and 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".

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) give the applicant an opportunity to give evidence to make representations in person or through a representative.

Decision following review

7.—(1) Following review of a decision in accordance with regulation 6 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 the remedy specified by the applicant in accordance with regulation 5(2)(e) above, offer the applicant an opportunity to have their decision under this regulation reviewed by persons appointed by them.

Further review by persons appointed

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

(2) Where the decision to be reviewed is a decision of a kind referred to in regulation 7(1)(b) or (c) the applicant may supplement his original application under regulation 5(2) above as the nature of that decision may require.

(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 EU Agricultural Subsidies Appeals Secretariat" and is accompanied by a fee of £100.

(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

9.—(1) Where an application is made under regulation 8, 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 provide those persons with a copy of–

(a) the application;

(b) the decision under regulation 7 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 7 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) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations 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 decisions 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 8(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.