EXECUTIVE NOTE

THE COMMON AGRICULTURAL POLICY (SINGLE FARM PAYMENT AND SUPPORT SCHEMES AND CROSS-COMPLIANCE) (SCOTLAND) AMENDMENT REGULATIONS 2009
(SSI 2009/391)

Introduction

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure. It was laid before the Scottish Parliament on 6 November 2009 and will come into force on 1 December 2009.

Background

2. This instrument primarily makes provision in Scotland for the administration of Council Regulation (EC) No. 73/2009, Commission Regulation (EC) No. 795/2004 and Commission Regulation (EC) No 796/2004 in relation to the changes to the system of direct support schemes, including the Single Farm Payment Scheme, as part of the reforms of the Common Agricultural Policy (CAP).

3. The instrument also implements changes introduced by Annex III of Council Regulation (EC) No. 73/2009 in relation to the obligations on farmers in return for direct payments to observe conditions for maintaining land in good agricultural and environmental conditions. Implementation is achieved by an amendment to The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI No. 518)

Policy Objectives and Stakeholder Engagement

4. The reform of the CAP, agreed in June 2003, aimed to improve the competitiveness and sustainability of European agriculture, promote food quality and environmental standards; simplify the system of support to farmers; and strengthen rural development policy. The current system of direct payments runs from 2005 to 2012 but the European Commission undertook a mid-point review to assess the implementation of the 2003 reforms and to make any necessary adjustments to simplify the policy, grasp new market opportunities and to prepare for new challenges (such as climate change and water management). This review took place between November 2007 and May 2008.

5. Following publication of the European Commission's draft legislative proposals, Scottish Ministers undertook a public consultation exercise and the responses to this and other stakeholder engagement via correspondence or in meetings with Ministers and officials, informed the decisions now implemented.

Amending regulations regarding direct payments (The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005)

6. In summary, the instrument includes provisions that:

6.1 prescribe the minimum size of a holding in respect of which direct payments may be claimed;

6.2 provide the date on which eligible land must be at the farmer's disposal for the purpose of claiming direct payments.;

6.3 provide the rates of Member State Modulation for the period 2009 to 2012

6.4 provides for the continuation of The Scottish Beef Calf Scheme

These features are explained further in the following paragraphs.

Amendment to regulation 5 – minimum requirements for direct payment

7. Member States are obligated to set a minimum threshold below which farmers are excluded from the direct payment arrangements. The European Commission's rationale for this requirement as set out in Article 28 of Council Regulation 73/2009 is to reduce the administrative burden on Member States. Setting the threshold is a matter for individual UK administrations who can decide within a maximum limit of €200 or 5ha: the Cabinet Secretary for the Environment and Rural Affairs has decided on 3ha. This minimum threshold area is effective before the application of any reductions or exclusions arising from non-compliance with eligibility requirements.

Insertion of new regulation 6 (date for eligible land)

8. The date on which eligible land declared by a farmer for the purposes of direct payment support must be at his disposal is at the discretion of Scottish Ministers as provided for by Article 35(1) of Council Regulation (EC) 73/2009. This regulation makes clear that the date concerned is 15 May in the relevant scheme year.

Amendment to regulation 10 (additional Modulation)

9. "Modulation" is the deduction applied to direct payment direct payments i.e. Single Farm Payment, Energy Crops Payment, Protein Crops Scheme, Nuts Aid, and Scottish Beef Calf Scheme. The amounts deducted are applied for the relevant purposes meaning as additional support for rural development measures. These "…relevant purposes…" were defined in SSI 2005/143[1] and amended by SSI 2007/414.

10. The deduction takes two forms: European Modulation as covered by Article 7 (Council Regulation (EC) 73/2009) and Member State Modulation as covered by Commission Regulation (EC) 1655/2004[2].

[1] The Common Agricultural Policy Single Farm Payment and Support Scheme (Scotland) Regulations 2005

[2] Commission Regulation (EC) No 1655/2004 of 22 September 2004 laying down rules for the transition from the optional Modulation system established by Article 4 of Council Regulation (EC) No 1259/1999 to the mandatory Modulation system established by Council Regulation (EC) No 1782/2003

11. The main purpose of this SSI is to set the rates of Member State Modulation to be applied in Scotland for the period 2009 to 2012. There is, however, a significant change to the way in which Modulation is applied: under the previous arrangement, Modulation was a flat rate deduction whereas now, it becomes a variable rate applied in chronological order of payment and on a cumulative basis. In addition, increases in European Modulation are reflected as decreases in Member State Modulation as illustrated by the following tables:-

11.1 The rates of European Modulation are as follows:

	Amount of Direct Payments		
	€00.01 to €5,000.00	€5,000.01 to €300,000.00	€300,000.01 and above
2009	0%	7.0%	11.0%
2010	0%	8.0%	12.0%
2011	0%	9.0%	13.0%
2012	0%	10.0%	14.0%

11.2 The rates Member State Modulation are as follows:

	Amount of Direct Payments		
	€00.01 to €5,000.00	€5,000.01 to €300,000.00	€300,000.01 and above
2009	8.5%	6.5%	2.5%
2010	9.0%	6.0%	2.0%
2011	9.0%	5.0%	1.0%
2012	9.0%	4.0%	Nil

NB – The increases in European Modulation and decreases in Member State Modulation are in relation to rates of deduction already planned. This means that these changes have no financial impact on individual farmers: the overall deduction for modulation under these new arrangements will be the same as provided for under the previous arrangements.

12. The amount of direct payment is calculated cumulatively so, for example, once a producer reaches a total of direct payments of €300,000, any payment, regardless of scheme, thereafter will be reduced by 11% in respect of European Modulation and 2.5% in respect of Member State Modulation. At the opposite end of the scale, the first €5,000 of direct payments, regardless of whether one scheme or a combination of schemes, are exempt from European Modulation but are reduced by 8.5% Member State Modulation.

13. Note: "…Direct Payment…" is defined in Article 2(d) of Council Regulation 73/2009 as any payment granted under any of the schemes listed in Annex I of the regulation.

New Regulations 22(3), 22(4) and 22(5)

14. Council Regulation (EC) No 1782/2003 introduced additional support measures, which were adopted in Scotland as The Scottish Beef Calf Scheme. Council Regulation (EC) No 73/2009, however, significantly revised the arrangements for additional support measures but allowed member states to continue with previous arrangements until 2012 providing notification of the intention was made to the European Commission. Taking account of views expressed through the public consultation exercise and other avenues, Scottish Ministers

decided to implement this derogation and continue with The Scottish Beef Calf Scheme in its current form. The European Commission has been informed.

Amending regulations regarding cross compliance (Amendments to the Common Agricultural Policy Schemes (Cross Compliance) (Scotland) Regulations 2004)

15. The purpose of the amendment is two fold:

15.1 Firstly, Council Regulation (EC) No 1782/2003 required Member States to define minimum requirements for good agricultural and environmental condition on the basis of the framework provided at Annex IV of the same. At the domestic level the good agricultural and environmental condition requirements are specified in the Schedule to The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004/518).

15.2 Following reform of the Common Agricultural Policy the framework for good agricultural and environmental condition framework was amended to include a new compulsory standard "Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures". The amended framework is provided at Annex III of Council Regulation (EC) No 73/2009 (which repeals Council Regulation (EC) No 1782/2003) and which specifies that the new compulsory standard is to come into force on 1 January 2010.

15.3 In Scotland authorisation procedures for the abstraction of water are already in place and are set out in Part 2 of The Water Environment (Controlled Activities) (Scotland) Regulation 2005. However, an amendment to The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004/518) is required to implement changes to the good agricultural and environmental condition framework.

15.4 Secondly, the exemptions at 18 (2) (a) (i) (ii) and (iii), Part IV of the Schedule to The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004/518) favours an increase in the environmental value of land. Good agricultural and environmental condition should provide protection in equal measure and an amendment is required to address the balance.

Appeals and Non-Compliance with GAEC and Statutory Management Conditions

16. In relation to the support schemes covered by these Regulations, The Rural Payments (Appeals) (Scotland) Regulations 2009 (laid on 29 October 2009) include provision for decisions amenable to review and appeal made under Council Regulations (EC) No. 1782/2003 and 73/2009, Commission Regulation (EC) No. 2237/2003, Commission Regulation (EC) No. 795/2004, Commission Regulation (EC) No. 796/2004 and other legislation implementing those Regulations.

17. Payments under all the support schemes covered by these Regulations are subject to penalties for non-compliance with the requirements of good agricultural and environmental condition and the statutory management requirements set out in Annex III of the Council Regulations under the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (S.S.I 2004/518), the Council Regulation and Commission Regulation (EC)

796/2004 as direct subsidy payments under the Common Agricultural Policy listed in Annex I to the Council Regulation.

Cross-Border Producers

18. There are claimants under the scheme who farm both in Scotland and in other parts of the United Kingdom. There are relatively few of these, but the Regulations have to cover those businesses in relation to Scottish land. The other UK Departments are implementing their own Single Payment Scheme arrangements for land in their own territories. In short, the Scottish scheme applies only in Scotland to Scottish eligible land. There is provision in S.I. 2005/218, in the EC legislation and orders made under sections 30(3) and 106 of the Scotland Act 1998, to allow for the administration of cross-border holdings.

Financial Effects

19. The Schemes covered by this instrument will enable the Scottish Government to pay around £420 million per annum. Regulatory Impact Assessments for the Single Farm Payment and Support Schemes, etc were undertaken at the time of implementation. These amendments have no financial effect on farmers (modulation), reduce administration (minimum size of a holding) and extend pre-existing regulatory requirements (cross compliance): a renewed RIA has not, therefore, been undertaken.

Scottish Government Rural Payments and Inspections Directorate

5 November 2009