STATUTORY INSTRUMENTS

1973 No. 866 (S.70)

AGRICULTURE

HILL LANDS

The Hill Cattle (Scotland) Scheme 1973

Made - - -	*2nd May* 1973
Laid before Parliament	*11th May* 1973
Coming into Operation	*1st June* 1973

In exercise of the powers conferred on me by sections 13, 14 and 15 of the Hill Farming Act 1946(**a**), as extended by section 43 of the Agriculture Act 1967(**b**), and of all other powers enabling me in that behalf, and with the approval of the Treasury, I hereby make the following scheme:—

Citation and commencement

1. This scheme may be cited as the Hill Cattle (Scotland) Scheme 1973 and shall come into operation on 1st June 1973.

Interpretation

2.—(1) In this scheme, unless the context otherwise requires—

"agricultural unit", except as provided by paragraph 4(2) of this scheme, means land which is occupied as a unit for agricultural purposes, together with any other land, including land held in common, used in connection with such land for the purpose of grazing;

"applicant" means a person who makes application for a subsidy payment, and "application" shall be construed accordingly;

"breeding cow" means a female bovine animal which has borne a calf;

"crofter" means a crofter within the meaning of the Crofters (Scotland) Acts 1955 and 1961(**c**);

"eligible occupier" means a person who is for the time being an eligible occupier within the meaning of the Crofting Counties Agricultural Grants (Scotland) Scheme 1961(**d**), the Crofting Counties Agricultural Grants (Scotland) Scheme 1963(**e**), the Crofting Counties Agricultural Grants (Scotland) Scheme 1965(**f**) or the Crofting Counties Agricultural Grants (Scotland) Scheme 1972(**g**) and, except in the case of a person who is a subtenant as is mentioned in section 14(1)(*c*) of the Crofters (Scotland) Act 1961, who has been offered a grant under any of the said schemes;

"in-calf heifer" means a female bovine animal which is with calf for the first time;

(**a**) 1946 c. 73.
(**b**) 1967 c. 22.
(**c**) 1955 c. 21; 1961 c. 58.
(**d**) S.I. 1961/2266 (1961 III, p. 3973).
(**e**) S.I. 1963/1294 (1963 II, p. 2240).
(**f**) S.I. 1965/1519 (1965 II, p. 4399).
(**g**) S.I. 1972/407 (1972 I, p. 1499).

"June Return" means the return of information required by the Secretary of State in exercise of the powers conferred on him by the Agriculture Act 1947(**a**) as amended by the Agriculture (Miscellaneous Provisions) Act 1972(**b**) to be made by occupiers of land used for agriculture with respect to a date in June;

"qualifying day" in relation to any of the relevant years, means the day which coincides with the date of the June Return in that year;

"regular breeding herd" means a herd of cattle maintained and managed in accordance with sound herd management practice by the occupier of hill land for the production and rearing of calves and consisting mainly of breeding cows, being cows which have been grazed on hill land throughout the relevant period;

"relevant period" in relation to any of the relevant years, means the period from 1st October in the year immediately preceding that relevant year to 30th September in the relevant year or, where there occurs on or after the qualifying day in the relevant year and not later than the said 30th September a change of occupancy of the hill land (being the hill land specified in the application), the period from the said 1st October to the date of the occurrence of that change;

"relevant years" means the year 1973 and the four next succeeding years;

"subsidy payment" means a payment falling to be made in accordance with the provisions of this scheme.

(2) In this scheme:—

"hill land" means, subject to the following provisions of this sub-paragraph, land which is livestock rearing land as defined in section 1(3) of the Livestock Rearing Act 1951(**c**) that is to say, land situated in an area consisting predominantly of mountains, hills or heath, being land which is, or by improvement could be made, suitable for use for the breeding, rearing and maintenance of sheep or cattle but not for the carrying on, to any material extent, of dairy farming, the production, to any material extent, of fat sheep or fat cattle, or the production of crops in quantity materially greater than that necessary to feed the number of sheep or cattle capable of being maintained on the land:

Provided that in any case where an agricultural unit consists in part only of such land, such land shall be deemed not to be hill land unless, in the opinion of the Secretary of State, it comprises an area suitable to be dealt with as a unit and is capable, taking into account the numbers of any other livestock normally grazed thereon, of carrying a regular breeding herd.

(3) Where at any time after 2nd July 1968 land is hill land as defined in sub-paragraph (2) of this paragraph, the effect of any subsequent improvement to that land shall be disregarded in determining for the purposes of this scheme whether it is hill land.

(4) Any reference in this scheme to any other scheme shall be construed as a reference to such scheme as amended by any subsequent scheme, and if any scheme referred to in this scheme is replaced by any subsequent scheme, the reference shall be construed as a reference to such subsequent scheme.

(5) The Interpretation Act 1889(**d**) shall apply for the interpretation of this scheme as it applies for the interpretation of an Act of Parliament.

(**a**) 1947 c. 48.
(**b**) 1972 c. 62.
(**c**) 1951 c. 18.
(**d**) 1889 c. 63.

Subsidy payment

3. Subject to the provisions of this scheme, the Secretary of State may, in respect of each of the relevant years, make a subsidy payment in respect of any cow in the case of which the provisions of this scheme have been complied with.

Amount of subsidy payment and reduction in certain circumstances

4.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, a subsidy payment in respect of a cow shall be of such amount as may be prescribed by order made by the Secretary of State under section 14(3) of the Hill Farming Act 1946.

(2) There shall be reduced by the sum of £5·75 the amount of a subsidy payment as so prescribed which may be paid in respect of any of the relevant years in respect of any cow grazed and maintained on hill land—

(*a*) being land comprising or forming part of an agricultural unit in which is comprised any land in respect of which (i) an application for grant for the year commencing with 1st January of that year has been submitted under the Winter Keep (Scotland) Scheme 1969(**a**), and (ii) grant for the year commencing as aforesaid has been paid or in the opinion of the Secretary of State is payable under that scheme, or would, but for the provisions of paragraph 4 or 7 thereof, have been payable thereunder, or

(*b*) being land occupied by any person as a crofter or as an eligible occupier including, in relation to a cow grazed and maintained by any such person, any pasture or grazing land in which that person has any right, whether alone or in common with others, being a right which is deemed to form part of, or is held along with, the croft or holding of which he is the occupier.

In this sub-paragraph the expression "agricultural unit" means land, other than land occupied by any person as a crofter or as an eligible occupier, which is occupied as a unit for agricultural purposes, together with any other land, including land held in common, used in connection with such land for the purpose of grazing.

Persons eligible for subsidy payment

5.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, a subsidy payment shall be made only to the person who is the occupier as at the beginning of the qualifying day of the hill land specified in his application.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph where, in accordance with paragraph 6(2) of this scheme, an application is made as therein mentioned by the Clerk to a committee appointed for the management of a common grazings or common pasture or by such other person as may be authorised, the subsidy payment falling to be made by virtue of the application shall be made to the Clerk or, as the case may be, to that other person, and the Clerk or that other person shall forthwith make payment of the subsidy payment to the person referred to in sub-paragraph (1) of this paragraph.

(**a**) S.I. 1969/1845 (1969 III, p. 5769).

Application for subsidy payment

6.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, a subsidy payment in respect of a cow in respect in any of the relevant years shall not be made by the Secretary of State unless an application therefor has been:—

(*a*) made, in such manner as the Secretary of State may require, by the person who is the occupier of the hill land specified in the application as at the beginning of the qualifying day in that year; and

(*b*) received by the Secretary of State by such date as he may require;

Provided that the Secretary of State may, in the case of any such application as is not received by the date required but in regard to which it appears to him that the circumstances are exceptional and that the application should be entertained, treat the application as having been received by that date.

(2) An application made in respect of a cow belonging to the occupier of a holding to which the Small Landholders (Scotland) Acts 1886 to 1931(**a**) or the Crofters (Scotland) Acts 1955 and 1961 apply, being a holding comprised in a township having common grazings or a common pasture, may, if not made by the occupier, be made in accordance with the following provisions of this sub-paragraph, that is to say—

(*a*) where a committee has been appointed for the management of the common grazings or common pasture, and there is in office a Clerk to that committee, by the Clerk;

(*b*) in any other case, by a person who has been duly authorised by the occupiers of the holdings in that township, in a manner satisfactory to the Secretary of State, to make the application.

Description of cattle in respect of which subsidy payments may be made

7.—(1) Subject to the provisions of this scheme, a subsidy payment may be made in respect of any of the relevant years in respect of a cow which is a breeding cow on the qualifying day, is of a type and quality approved by the Secretary of State and in the case of which he is satisfied that it—

(*a*) has been grazed and maintained for the production and rearing of calves in accordance with sound herd management practice by the occupier of the hill land specified in the application made by him for that year in respect of it;

(*b*) has been so grazed and maintained on hill land throughout the relevant period; and

(*c*) will continue to be grazed on hill land for a substantial part of its breeding life.

(2) Where a breeding cow is included in a regular breeding herd, head (*c*) of sub-paragraph (1) of this paragraph shall be deemed to be complied with in the case of that cow in any relevant year if the Secretary of State is satisfied that the said occupier intends to continue to maintain a regular breeding herd on hill land.

(a) 1886 c. 29; 1887 c. 24; 1891 c. 41; 1908 c. 50; 1911 c. 49; 1919 c. 97; 1931 c. 44.

Management of cattle

8.—(1) This paragraph shall have effect for the purpose of determining whether the provisions of paragraph 7(1)(*b*) have, in any of the relevant years, been complied with in the case of any cow in respect of which an application is made in respect of that year—that is to say for determining whether the cow has been grazed and maintained for the production and rearing of calves in accordance with sound herd management practice on hill land throughout the relevant period.

(2) Where the cow is owned by the occupier of a holding to which the Small Landholders (Scotland) Acts 1886 to 1931 or, as the case may be, the Crofters (Scotland) Acts 1955 and 1961 apply, being a holding comprised in a township, and has been grazed and maintained for the production and rearing of calves in accordance with sound herd management practice throughout the relevant period either on the common grazings or common pasture of the township or on that holding or partly on the common grazings or common pasture and partly on the holding, and those grazings or that pasture or holding, or both those grazings or that pasture and that holding, as the case may be, are hill land, the provisions of paragraph 7(1)(*b*) shall be deemed to have been complied with.

(3) The cow, if it is included in a regular breeding herd, shall be deemed to have been grazed and maintained on hill land throughout any period (hereafter in this paragraph referred to as "the wintering period") during which the cow has in the winter months occurring in the relevant period been grazed and maintained on land other than hill land if the Secretary of State is satisfied that—

(*a*) in all the circumstances it was necessary, other than on account of excessive stocking, to maintain all or some of the breeding cows or in-calf heifers included in the herd during the wintering period on land other than hill land during that period;

(*b*) the maintenance of the breeding cows or in-calf heifers during the wintering period conformed to sound herd management practice; and

(*c*) the wintering period was not longer than was in all the circumstances necessary.

(4) Where the cow was not being grazed and maintained at the commencement of the relevant period on hill land but was, on a date not later than 4th December in that period or by such later date as the Secretary of State may in exceptional circumstances allow, brought on to such land for the first time, the cow shall be deemed to have been grazed and maintained on that land during the period between the date of commencement of the relevant period and the date when it was brought on to that land.

(5) Where—

(*a*) a cow being grazed and maintained on hill land dies or in accordance with sound herd management practice ceases to be so grazed and maintained; and

(*b*) a suitable replacement is brought on to that land,

the provisions of paragraph 7(1)(*b*) shall be deemed to have been complied with in respect of the cow if, subject to the provisions of this scheme, at every part of the relevant period there was being grazed and maintained on the said land for the production and rearing of calves in accordance with sound herd management practice either the cow or its replacement, there being disregarded

for the purposes of this sub-paragraph any interval which in the opinion of the Secretary of State was not unreasonably long between the date the cow died or ceased to be so grazed and maintained and the date its replacement was brought on to the said land.

(6) If during any period between the commencement of the relevant period and the date of the June Return made in the relevant period, the cow was an in-calf heifer, references in paragraph 7 to a breeding cow shall, in their application to that cow in respect of that period, include references to it as if it had then been a breeding cow.

Number of cows qualifying for subsidy payments

9. Subject to the provisions of this and the two next succeeding paragraphs, the number of cows in respect of which subsidy payments may be made to an occupier of hill land in respect of any of the relevant years shall be equal to—

(*a*) the number of breeding cows grazed and maintained on hill land (being the land specified in his application or in the application made on his behalf) on the qualifying day in that year and included in the June Return required to be made as at that day in respect of that land, or

(*b*) the number of breeding cows and in-calf heifers so grazed and maintained on the 4th day in the immediately preceding December,

whichever is the less:

Provided that where the Secretary of State is satisfied that—

(i) no such June Return has been made, or

(ii) any such Return which has been made is inaccurate in respect of the number of breeding cows included therein or is inappropriate for the computation of the number of cows in respect of which subsidy payments fall to be made, or

(iii) the number of breeding cows or in-calf heifers on the qualifying day or on the 4th day in the immediately preceding December is less, having regard to the provisions of paragraph 8 of this scheme, than the number of breeding cows or in-calf heifers grazed and maintained by the occupier on hill land throughout the relevant period;

the number of cows in respect of which subsidy payments may be made as aforesaid shall be equal to such number as the Secretary of State, having regard to all the circumstances, deems to be the number of cows in respect of which subsidy payments should be made.

Reduction of number of cows in respect of which subsidy payments may be made

10.—(1) Where the Secretary of State is satisfied that the number of cows in respect of which subsidy payments would otherwise fall to be made to an applicant in respect of any of the relevant years exceeds the number of cows, being cows to which his application for that year relates, which have been grazed and maintained throughout the relevant period in accordance with the provisions of this scheme, the number of cows in respect of which subsidy payments may be made shall be such lesser number as the Secretary of State may determine but not exceeding the number of cows grazed and maintained as aforesaid.

In making a determination for the purposes of this sub-paragraph in relation to any application, the Secretary of State may have regard to the number of cows and in-calf heifers found to be grazed and maintained on the hill land specified in the application at any inspection of such cows and in-calf heifers in relation to the relevant period carried out by a person authorised by the Secretary of State in that behalf.

(2) Where the Secretary of State is of the opinion that the number of cows in respect of which subsidy payments would otherwise fall to be made to an applicant in respect of any of the relevant years exceeds the number of cows which the hill land on which the cows to which his application for that year relates were grazed and maintained during the relevant period was, taking into account the numbers of any other livestock normally grazed on that land, capable of carrying, or that the cows to which an application for any of the relevant years relates produced an unsatisfactory number of calves during the relevant period, the Secretary of State may make subsidy payments in respect of such lesser number of cows as he may determine.

Disqualification

11. A subsidy payment shall not be made in respect of any cow in respect of any of the relevant years if the Secretary of State is satisfied that—

(*a*) it was kept during the relevant period for production of milk for sale, for the making of milk products for sale or for a domestic milk supply; or

(*b*) the management of the cow, including the selection of the bull used to produce a calf, was not in accordance with sound herd management practice.

Recovery of subsidy payments

12. Where, in the opinion of the Secretary of State, any subsidy payment made to any person in respect of a cow should not have been made because the provisions of this scheme had not been complied with by that person either before or after the receipt by him of such payment, the Secretary of State may recover the subsidy payment so made and (without prejudice to any other mode of recovery available to him) may recover that payment by withholding payment of any subsequent subsidy payment which would otherwise fall to be made to that person.

Count and inspection

13. A person authorised by the Secretary of State in that behalf may require an applicant for subsidy payments to gather or cause to be gathered the cows to which his application relates for the purpose of the counting or inspection on behalf of the Secretary of State of the cows, and to give all reasonable assistance and information for the purposes of any such authority as aforesaid, and failure by the applicant to gather the cows or cause them to be gathered or to give such assistance or information as aforesaid shall be a ground upon which the Secretary of State may withhold all or any of the subsidy payments which would otherwise be payable to the applicant.

Prohibition of assignation of subsidy payments

14. Any subsidy payment in respect of any of the relevant years may be made to a person who, if such payment had been a debt which at the beginning

of the qualifying day in that year accrued due to the person who then occupied the hill land specified in the application for the payment, would have been entitled to claim the payment otherwise than by virtue of an assignation.

Gordon Campbell,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.
30th April 1973.

We approve.

Tim Fortescue,
Oscar Murton,
Two of the Lords Commissioners of Her Majesty's Treasury.

2nd May 1973.

EXPLANATORY NOTE

(This Note is not part of the Scheme.)

The Hill Farming Act 1946 as extended by Section 43 of the Agriculture Act 1967 provides that schemes may be made for the payment of subsidy in respect of cattle grazed and maintained on hill land, such schemes being restricted to a period not exceeding five years.

This Scheme made by the Secretary of State with the approval of the Treasury applies to Scotland and makes provision for subsidy payments from 1973 to 1977. It defines hill land and the descriptions of cattle to which it applies. It also specifies the conditions under which the cattle must be grazed and maintained and contains provisions against over-stocking. It provides for the making of applications, for determining to whom payment may be made, for the computation of the number of cattle qualifying for subsidy, for reducing the amount of payment in certain circumstances, for eligible land not being rendered ineligible by improvements, and for other matters.

The principal difference in this Scheme from the Hill Cattle (Scotland) Scheme 1968 (S.I. 1968/981) as amended, (which governed the payment of hill cattle subsidy until 1972), is that the Scheme no longer provides for the payment of brucellosis incentives which are now made in respect of beef animals under the Brucellosis (Beef Incentives) Payments Scheme 1972 (S.I. 1972/1329).

The Scheme does not fix the amount of subsidy payment as the Hill Farming Act 1946 requires the Secretary of State to prescribe this by separate order; the Order for that purpose is the Hill Cattle Subsidy Payment (Scotland Order 1973 (S.I. 1973/867).

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