EXECUTIVE NOTE

THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2008 SSI/2008/294

1. This note explains the need for the above SSI which was made in exercise of the powers conferred by Section 2(2) of the European Communities Act 1972, and laid before Parliament on 4 September 2008. The instrument is subject to negative resolution procedure and will come into force on 24 September 2008. The Regulations (hereafter 'the amendment regulations') amend Scottish SI 2007 No. 439 (hereafter 'the principal regulations') which came into force on 28 September 2007, and the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 (hereafter the appeals regulations), Scottish SI 2004 No. 381, as amended.

Policy Objectives

2. The purpose of the SSI is to insert certain minor amendments to the principal regulations.

Background

3. EC rural development legislation makes provision for a scheme of area based support for LFA farmers in recognition that they suffer from a permanent natural disadvantage such as, for example, poor soil, adverse climate or difficult topography, that makes it difficult for them to compete on level terms with other areas. The provision is implemented in Scotland, where 85% of agricultural land is classified as being within an LFA, as the Less Favoured Area Support Scheme (hereafter 'LFASS').

4. LFASS is part of the Scotland Rural Development Programme (hereafter the SRDP) which was approved by the Rural Development Committee of the EC on 19 February 2008. The Principal regulations came into force prior to EC approval, last September, to allow LFASS to open to applications

SSI 2007/439 Regulation 2 (1)

LFASS is an annual payment which is paid on the basis of the number of (adjusted) hectares of acitively farmed land declared in the Single Application Form (SAF). In previous years, payment was made for land declared in the previous year's SAF, but from 2007 LFASS was paid for land declared in the SAF in the same year. It is envisaged that the principal regulations will make provision for LFAS for three scheme years, up to and including the 2009 scheme. For this reason, the Interpretation includes definitions which define the period with which each scheme year payment is associated, e.g.:

""Scheme 2007 payment" means the sum to which the applicant is entitled in respect of the period from 1 January 2007 to 31 December 2007;"

Errors made in defining the terms "Scheme 2008 payment" and "Scheme 2009 payment" are corrected by amendment regulation 3.

SSI 2007/439 Regulation 6

Amendment regulation 4 removes text which is already subject to a term – "single application" – defined in regulation 2 (1).

SSI 2007/439 Regulation 16

Article 18 of Commission Regulation (EC) No 1975/2006, laying down the rules for implementing the EC Rural Deveopment regulation, requires Member States to establish a system of penalties for breaches of scheme conditions (for land based schemes, other than those concerned with size of area) that takes account of the consequences of the breach, its severity and permanence.

Most of the LFASS scheme conditions are not capable of breach by degree – e.g. a farmer either has 3 ha of land, or he has not – and the one scheme feature envisaged as being affected by this requirement may, in certain circumstances, be the payment requirement at regulation 5 to actively farm eligible land.

The term "actively farm" is defined at regulation 2 (1) of the principal regulations as a continuous activity which is, in the opinion of Scottish Ministers, an agricultural activity. The nature of the activity is effectively controlled via the land use codes set out in Schedule 1 which are a condition of land eligibility set out in regulation 6.

However, determining whether the level of activity is acceptable requires SGRPID's professional and technical staff (on behalf of Scottish Ministers) taking a subjective view, and there may be situations where the degree of active farming calls for a partial payment rather than full or non-payment (as would happen when there has been no farming activity at all). For this reason, regulation 16 (d) of the principal regulations permits full or partial withholding or recovery of payment where, in the opinion of Scottish Minsters, the applicant has failed to comply with the requirement in regulation 5 to actively farm the land.

Amendment regulation 5 inserts a new regulation – 16A – after regulation 16. The purpose of this new regulation is to allow Scottish Ministers to publish penalty guidance indicating reduction levels and to oblige Scottish Ministers to refer to that guidance when appropriate.

SSI 2004/381 Regulation 4

An LFASS applicant may appeal certain decisions within the principal regulations under the appeals regulations. Amendment regulation 6 adds references to regulations 16 and 16 A of the principal regulations, to those LFASS decisions deemed amenable to appeal and already referred to in regulation 4 of the appeals regulations. This will ensure that decisions by Scottish Ministers to withhold or recover all or part of any LFAS payment, and the level of any penalty applied, are amenable to appeal.

Effects of the Instrument

5. As can be seen, the effect of this instrument is to correct some minor defects in the principal SSI and regulate the application of penalties where the active farming requirement has been breached.

Consultation

6. Due to the minor nature of the changes included in the amending SSI, no consultation took place outwith SEERAD.

Compliance with Parliamentary Procedures

7. Article 10(2) of The Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 is being complied with.

8. **Periodicity of the Instrument**

It is envisaged that this Instrument will remain in force for the lifetime of the principal regulations

Scottish Executive Rural Affairs Department
3 September 2008