POLICY NOTE

THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2013

SSI 2013/9

This note explains the purpose of the above SSI which is 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. The SSI amends the Less Favoured Area Support Scheme (Scotland) Regulations 2010 No. 273 ('the principal Regulations') which came into force on 2 July 2010.

Policy Objectives

The purpose of the SSI is to amend the principal Regulations to allow Ministers a general power to determine what constitutes active farming for the purposes of payment of LFASS support, thus bringing the principal Regulations in line with the original policy intention.

Background

The EU's Rural Development Regulation (1698/2005) provides for an area based support scheme for LFA farmers in recognition of the permanent natural disadvantage they face due to, for example, poor soil, adverse climate or difficult topography, that make it difficult for them to compete on level terms with other areas. In Scotland 85% of agricultural land is classified as being within an LFA. LFASS has a high profile and will be worth in the region of £66 million per year to around 12,000 farmers and crofters for the period 2011 - 2013. The terms of the LFASS have been approved by the EU and are reflected in the current Scotland Rural Development Programme.

Description of LFASS 2010 – 2013

Key features of the 2010 – 2013 scheme implemented in the principal Regulations are that:

- an applicant must actively farm eligible land for the majority of the qualifying year;
- it is historically based using values, including stocking densities, derived from area and livestock data declared by farmers in 2009;
- payments are made per hectare of eligible land, adjusted for LFASS grazing category and any minimum or maximum stocking density restrictions;
- Payment rates are varied according to LFASS Fragility area, i.e., Very Fragile, Fragile or Standard, according to the location of the applicant's main farm.

Active farming requirement

The active farming requirement was introduced in 2007 following the end of the EU livestock schemes which had previously provided assurance of activity for LFASS purposes. From the outset, to accomodate the diversity of farming potential across the

Scottish LFA, it was recognised that a degree of flexibility was needed in assessing what constituted active farming. Underpinning legislation was designed to provide for this with similar provisions appearing, both in the 2007 and the Principal Regulations. However, a Land Court decision last year (W&J Henderson v the Scottish Ministers) highlighted that the principal Regulations as they stood, in this respect, did not reflect the original policy intention as "actively farm" had been defined exhaustively in regulation 2(1) of the principal Regulations.

Main changes made by these Regulations

The SSI (regulation 3) omits the exhaustive definition of the term "actively farm" from regulation 2(1) of the principal Regulations, and regulation 4 substitutes a revised version of principal Regulation 4, "Payment of less favoured area support." Together, these changes replace "actively farm" as a defined term, with a general power for Ministers to decide whether an applicant is actively farming eligible land which is not less than 3 hectares and for a period or periods totalling not less than 183 days during the Scheme Year. In exercising that power, Ministers will continue to take into account the existing LFASS scheme guidance, as made under Regulation 16 of the principal Regulations, in line with the original policy intention.

The changes introduced to principal Regulation 15 and Schedule 7, by regulations 5 and 6, are a consequence of the omission from principal regulation 2(1) of the "actively farm" definition. They are intended to reinforce those provisions of the principal Regulations that refer to active farming, thereby aiding transparency.

Timing of the 2013 SSI

Payments under the current round of applications will be made during the period March to May 2013.

Financial Effects

The change affected by the amendment SSI has no impact on the existing budget.

Consultation

Stakeholders have been consulted about the change through the LFASS Technical Working Group to ensure they are aware both of the reasoning and the intention of the amendment regulation. No concerns have been raised.

Scottish Government Rural Agriculture, Food and Rural Communities Directorate