POLICY NOTE

THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2019

SSI 2019/98

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 procedure*.

Purpose of the instrument. To change the Less Favoured Area Support Scheme so it agrees with changes to European Union law. These changes will allow the scheme to continue for years 2019 and 2020 at the maximum rate permissible.

Policy Objectives

The policy objective for the Less Favoured Area is to maintain funding for 2019 and 2020, at least at 80% of the current funding levels, with a desire to reach 100% of current levels if possible. The policy objective of this amending regulation is to have the legal powers to deliver the maximum amount possible through the Less Favoured Area Support Scheme (LFASS). Any balance of funding will be delivered separately to LFASS.

Regulation (EU) No 1305/2013 ("the Rural Development Regulation") provides for an area based support scheme for Areas Facing Natural Constraint (ANC). If Member States do not move to an ANC scheme they are permitted to continue Less Favoured Area (LFA) support for 2019 and 2020 but with reduced payment rates. Article 31(4) of the Rural Development Regulation also requires the introduction of degressivity where payments are reduced above an area threshold.

The purpose of this legislation is to amend the Less Favoured Area Support scheme (LFASS) to ensure compliance to allow for the continuation of LFASS for payment years 2019 and 2020 at the maximum rate permissible.

All eligible applicants will continue to receive a minimum payment of £385, as this is not being reduced. The minimum payment would apply to around 1,480, or 13%, of applicants.

Changes made by this regulation

1. Payment Rates

Scheme year 2019 at a maximum payment rate of 80% of the 2018 rates
Scheme year 2020 at a maximum payment rate of 40% of the 2018 rates, or €25/hectare

The Rural Development Regulation sets a minimum payment rate of €25/hectare. The SRDP uses a set exchange rate of £1 = €1.20. For 2020, when payment rates are reduced to 40%, one rate (of £13.64) falls below €25/hectare. To meet the Rural Development Regulation minimum payment rate this would increase to £20.83 (€25).

The introduction of the €25/hectare minimum payment would affect approximately 4,000 applicants with land of standard quality and grazing category C+D, reducing the impact of payment reductions in 2020.

No applicant would be impacted negatively by the introduction of the €25/hectare minimum payment and the application of it does not have a redistribution effect as no money is taken from one group to give to another. However the overall share of LFASS spend by category would change as a result.

It is noted the minimum payment change will only support the better quality LFA land. The overall policy intent and the Cabinet Secretary for the Rural Economy's aim is to achieve 80% of LFASS funding in 2020. Utilising the minimum payment will help to mitigate the funding cut and will be used in combination with other measures to help achieve the overall aim.

2. Degressivity

EU regulations stipulate that "Member States shall provide for degressivity of payments above a threshold level of area per holding" from scheme year 2019. The intent is to avoid over-compensation and to address extreme cases linked to very large holdings by reducing payments based on the size of the eligible area. Therefore, this will only apply to holdings over 4,000 and will be calculated by determining the eligible area as adjusted for stocking density and then applying degressivity to it based on the area thresholds to reduce the eligible area for payment. The thresholds are:

- Less than 4,000 hectares payment on 100% of eligible hectares *then*
- 4,000-10,000 hectares payment on 90% eligible hectares *then*
- More than 10,000 hectares payments on 75% of eligible hectares.

Guidance on this is available on the scheme website. The individual LFASS recipients who will be impacted by degressivity (less than 1%) will be individually contacted once they have been identified following their claim submission for 2019.

Consultation

Full details of the consultation process can be found in the Business and Regulatory Impact Assessment.

There was an extensive consultation process in 2013 and 2014 as part of the development of the Scottish Rural Development Programme (SRDP) 2014-2020, of which LFASS is one component. Since then there has been continued engagement with stakeholders and businesses, specifically on the options for the future of LFASS, through informal discussions, public engagement, a public consultation, and through their involvement in the following groups:

- Agriculture and Rural Development (ARD) Stakeholder Group
- Rural Development Operational Committee (RDOC)
- Joint Programme Monitoring Committee (JPMC)

The ARD Stakeholder Group has been regularly updated on, and consulted with, about support for the Less Favoured Areas including options for LFASS and consideration of Areas facing Natural Constraint (ANC). Extensive analysis and consultation was undertaken on the option to change to the ANC Scheme in 2015 and 2016. This included stakeholder liaison on evidence, key principles and options development through an ANC Working Group. A range of options were then considered at a stakeholder workshop in June 2016. The Cabinet Secretary for the Rural Economy met key stakeholders in October 2016 to discuss the options, with the majority preferring to retain LFASS despite the proposed reduction in payment rates. This was due to the uncertainty caused by the UK referendum on EU exit.

A public consultation on "Stability and Simplicity: proposals for a rural funding transition period" took place in 2018 with a total of 135 direct responses. The LFASS section included the reduced payment rates for scheme years 2019 and 2020 and the introduction of a "reducing financial scale" (degressivity). LFA support was considered important and should be retained. Respondents suggested possible improvements including in relation to improved targeting and an outcome based approach. However the majority of respondents were in favour of the overall approach to stability and simplicity.

Views were sought for the modification 5 of the SRDP 2014-2020 from the stakeholder RDOC and the JPMC in 2018. For LFASS this involved the reduction of payments for scheme years 2019 and the introduction of degressivity. Formal responses were received from the National Farmers Union of Scotland, Scottish Land & Estates, and Orkney Islands Council. There was support for the retention of LFASS, an understanding of the requirement to change to comply with EU law, and a desire to look for solutions to meet the funding gap.

Officials and the Cabinet Secretary for the Rural Economy have also engaged with individual businesses through the NFU Scotland Less Favoured Area Committee and other key stakeholder organisations. This includes representation from farmers across all regions of Scotland.

As a result of this consultation, the Cabinet Secretary for the Rural Economy has announced that the payment levels for the 2020 scheme year will not fall below 80%, with a commitment to consider how this can be increased to 100%. It should be noted that the legislation underpinning LFASS must be delivered in line with EU rules for maximum LFASS payments, and delivery of the balance of funds will be done in a complementary manner.

Impact Assessments

An Equality Impact Assessment (EQIA) has been completed on The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2019 and is attached. This builds upon the findings from the EQIA that was undertaken on the Scottish Rural Development Programme 2014-2020. It was concluded that there are no equality issues which arise as a result of the proposed approach.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. It is acknowledged that there will be a financial impact on farmers and crofters who apply for LFASS funding due to the payment rate changes and the inclusion of degressivity. However, if this revision was not made then LFASS would not be compliant with EU law and would mean that no LFASS payments could be made for 2019 or 2020. An unexpected end to LFASS would have an significant impact on applicants which could result in business volatility which would run the risk of land abandonment, socio-economic and environmental impacts in the less favoured areas of rural Scotland.

Work will continue with stakeholders to develop options to mitigate this financial impact which will need to be delivered out with the powers in this regulation.

Scottish Government
Agriculture and Rural Economy Directorate

13 March 2019