

**Final
Business and Regulatory Impact Assessment**

**The Less Favoured Area
Support Scheme (Scotland)
Amendment Regulations 2019**

March 2019

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Title of Proposal

The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2019

Purpose and intended effect

- **Background**

Under European Union Rural Development Regulations, people farming in areas facing natural or other specific constraints may be eligible for an annual income support payment. LFASS provides this in Scotland. This funding:

- allows farmers and crofters to continue to run viable businesses
- avoids the risk of land abandonment
- helps maintain the countryside by ensuring continued agricultural land use
- maintains and promotes sustainable farming systems

LFASS is part of the Scottish Rural Development Programme (SRDP), which is part-funded by the EU under Pillar 2 of the Common Agricultural Policy. The SRDP 2014-2020 was subject to consultation and as part of the [development process](#) a Business and Regulatory Impact Assessment, Strategic Environmental Assessment and Equalities Impact Assessment were prepared.

- **Objective**

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 and the introduction of degressivity.

The purpose 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.

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.

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.

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.

To achieve this the eligible land an applicant has over 4,000 hectares will be reduced by 10% for the purpose of calculating LFA support. The eligible land an applicant has over 10,000 hectares will be reduced by 25%. The relevant reduction is apportioned across each grazing category. The threshold is calculated with reference to eligible land as adjusted for the stocking density restriction.

- 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.

- **Rationale for Government intervention**

If the revision to the policy was not made the scheme would not be compliant with EU law.

An unexpected end to LFASS would have an impact on applicants which could cause business volatility which would run the risk of land abandonment, socio-economic and environmental impacts in the less favoured areas of rural Scotland.

Support for rural businesses and communities is crucial in helping these fragile areas survive. This has been supported by a SWOT that was prepared for the full SRDP which recognised that a weakness is that 85% of Scotland's agricultural area is designated as Less Favoured Areas with lack of viable alternative enterprise.

The SRDP operates under a broad strategic framework agreed by the European Union (EU), termed the EU 2020 strategy. This outlines thematic objectives to focus the strategic interventions. Linked to these are Scotland's National Performance Framework outcomes. Recent revisions have been made to Scotland's National Performance Framework, which is now mapped to the United Nations Sustainable Development Goals. LFASS will support the following National Outcomes:

[Communities](#) - We live in communities that are inclusive, empowered, resilient and safe.

[Culture](#) - We are creative and our vibrant and diverse cultures are expressed and enjoyed widely.

[Economy](#) - We have a globally competitive, entrepreneurial, inclusive and sustainable economy.

[Environment](#) - We value, enjoy, protect and enhance our environment.

[Fair Work and Business](#) - We have thriving and innovative businesses, with quality jobs and fair work for everyone.

[Poverty](#) - We tackle poverty by sharing opportunities, wealth and power more equally.

Consultation

There was an extensive [consultation process](#) in 2013 and 2014 as part of the development for the SRDP 2014-2020 programme to consider policy priorities and delivery implications. Following this, there has been consultation with stakeholders specifically on the options for the future of LFASS since 2015. The Cabinet Secretary for the Rural Economy announced the change to the LFASS payment rates in June 2018. The proposed changes to LFASS were then included in Modification 5 of the SRDP 2014-2020, which was adopted by the European Commission in December 2018.

- **Within Government**

Consultation on the proposed changes to LFASS involved engagement with the European Commission and the following parts of government:

[Directorate for Agriculture and Rural Economy](#)

- Agriculture Policy Division
- Agriculture Delivery
- Agriculture Policy Implementation

[Directorate for Environment and Forestry](#)

- Rural and Environmental Science and Analytical Services

The engagement was to assess the options for LFASS in 2019 and 2020 and proposed changes to LFASS to ensure the impact of compliance with the amendments to EU law was understood and to determine the appropriate and proportionate method to introduce degressivity to the payment calculation, from both a policy and delivery perspective.

Other public agencies and bodies were involved in their capacity as members of the following groups:

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

- **Public Consultation**

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). In the analysis of consultation responses the overall summary stated:

“LFA was considered important and should be retained, with the many saying it needed to be revised to ensure support was targeted appropriately. The possibility of transferring to P1 was considered to be attractive by some, but more work was required to ascertain how

effective and simple this would be in practice. Stocking densities and self-declarations were raised as specific areas to improve going forward, in addition to the targeting of support.”

Scottish Government officials and the Cabinet Secretary for the Rural Economy Fergus Ewing has regularly engaged with stakeholders and the public with updates on LFASS during 2018 and 2019.

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 must 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 complimentary manner.

- **Business**

Stakeholders and businesses have been involved throughout the process through informal discussions, the prior consultation, public engagement and through their involvement of the following groups:

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.

Views were sought for modification 5 of the SRDP 2014-2020 from the stakeholder [Rural Development Operational Committee](#) (RDOC) and the [Joint Programme Monitoring Committee](#) (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.

In a survey conducted by National Farmers Union of Scotland. The body surveyed members who received LFA support in 2018 when the case was made for a derogation from Council Regulation (EU) No 1305/2013. Respondents expressed concern about the potential loss of direct LFA support and the impact it could have on businesses, particularly those with sheep and cattle. Those respondents also mentioned the potential for stock reduction in an effort to retain business viability.

Options

Option 1 – do nothing

Under this option LFASS would not be compliant with EU regulations for scheme years 2019 onwards and would cease. The primary power for the LFASS Scottish Statutory Instrument (SSI) is the European Communities Act so in the event of a no deal Brexit Scottish Ministers would have no power to amend the SSI after 29 March 2019 until new primary legislation is in place.

Option 2 – amend LFASS to ensure compliance

Under this option LFASS would be amended to ensure it was compliant with EU regulations and would continue for scheme years 2019 and 2020 but with reduced payment rates and degressivity based on area thresholds as outlined in the objectives section.

Option 3 – introduce an Areas Facing Natural Constraint (ANC) scheme

Under CAP rules, EU Member States have the option from 2019 of either continuing to operate an LFASS scheme on a reducing financial scale or replacing LFASS with an Area of Natural Constraint (ANC) designation and scheme.

Sectors and groups affected

LFASS supports around 11,300 farming and crofting businesses in less favoured areas of Scotland. 85% of agricultural land in Scotland is classified as being less favoured area with support currently worth in the region of £65.5 million per year.

Benefits

Option 1 – do nothing

There are no benefits to affected businesses of the sudden cessation of LFASS. Budgets have already been adjusted to reflect the known change in EU law and therefore there is no funding available to be redirected within SRDP.

Option 2 – amend LFASS to ensure compliance

This ensures the continuation of the LFASS scheme for years 2019 and 2020. It provides stability and continued funding to LFA areas in rural Scotland to help support the aims outlined in the background section.

Option 3 – introduce Areas Facing Natural Constraint (ANC)

This would ensure compliance with EU regulations and remove the requirement for reduced payment rates. This would therefore allow the full budget level, subject to Scottish Government spending reviews, to be paid to eligible farmers and crofters in the ANC area.

Costs

Option 1 – do nothing

If the revision to the policy was not made the scheme would not be compliant with EU law. An unexpected end to LFASS would have an impact on applicants which could cause business volatility which would run the risk of land abandonment, socio-economic and environmental impacts in the less favoured areas of rural Scotland.

LFASS provides support to around 11,300 farming businesses.¹

In some cases LFASS is a significant proportion of their subsidy:

- For around 14% of farming businesses who receive LFASS, LFASS makes up 50% or more of their subsidy (including Pillar One payments)²
 - This has a particular impact on those with the status “Very Fragile”, for 20% of whom LFASS makes up 50% or more of their subsidy²
 - Shetland is the most impacted region, where for nearly 30% of farming businesses, 50% or more of their subsidy is LFASS²
 - For Enterprise Mix, the most affected group is 1.35 at 21%. This may suggest that mixed cattle and sheep farming would be the most affected by loss of LFASS²
- The average farm in Scotland has a Farm Business Income (FBI)³ of around £33,000 (above rural Scottish average), of which LFASS makes up around £4,500⁴
 - LFA Sheep farms would be impacted more than most – the average LFA Sheep farm has a Farm Business Income of around £23,000, of which around £14,000 is LFASS³

¹ 2017 LFASS Overspend - RPID

² 2017 LFASS Overspend and 2017 Pillar One Payments

³ The FBI figures are different from the published document because they are not weighted to the population

⁴ Farm Business Survey 2016-17 - RESAS

For some, this may even lead to farming businesses becoming unviable, or reduce incomes:

- Considering LFASS as proportion of FBI, farms at risk could be LFA Sheep (62%), LFA Cattle (31%) and LFA Cattle and Sheep (33%)⁵
- Considering FBI, farms at risk could be Sheep and Cattle in North Eastern and West Central Scotland⁴

Because LFASS is based on hectares of LFA land, it is likely to have more impact on farmers working on less productive land – and in Scotland this is a larger proportion of land than in most UK regions.

Other costs of doing nothing relate to the potential negative impact on the intended scheme aims, the intended contribution to Scotland's National Performance Framework outcomes and any wider associated costs due to the loss of LFA funding to rural Scotland.

Option 2 – amend LFASS to ensure compliance

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. 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 farmers, or 13%, of applicants.

There are also around 50% of LFASS recipients who will have seen an uplift on their Basic Payment Scheme payments since 2015, due to internal convergence, which will help offset the reduction in LFASS.

The introduction of the Rural Development Regulation €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. The equates to approximately £4.5 million.

The impact on the delivery of the scheme would be minimal as the application process and IT systems would not change. There would be a requirement to apply degressivity manually which would have a cost to staff time but it has been calculated that this approach is the most efficient based on the limited number of recipients involved. Less than 1% of LFASS recipients will be impacted by degressivity.

Option 3 – introduce Areas Facing Natural Constraint (ANC)

ANC would result in re-designation, and change to which areas of Scotland would and would not be eligible for support. The methodology required to designate ANC would result in some businesses farming on constrained land no longer being eligible

⁵ Farm Business Survey 2016-17 - RESAS

for support, while some other farms that have never received LFASS would become eligible. Further to this [analysis](#) has demonstrated that it would also result in redistribution of the funding, potentially impacting on the viability of some individual businesses. Finally, there would be a significant impact on delivery, with new IT systems and processes needing to be designed for a scheme that would run for potentially only one or two years before the relevant EU regulations no longer apply. Therefore, this option has the greatest cost attached to it.

Scottish Firms Impact Test

There is no regulatory impact on Scottish businesses. Where a business or organisation chooses to apply for a grant they will have to comply with grant conditions.

Competition Assessment

The amendment to LFASS and the overall scheme provides, under the European Union Rural Development Regulations, for an annual income support payment for eligible LFA land. The eligibility criteria is non-discriminatory. One of the main objectives of the EU Rural Development Programme is to “enhance the viability and competitiveness of all types of agriculture”. LFASS is intended to support farmers and crofters to continue to run viable businesses. The scheme provides parity with support provided across the European Union. The BRIA for the full SRDP identified no issues with competition and this remains the case.

LFASS does not restrict competition and the answers to the BRIA toolkit questions are all negative. There is no requirement for a more in-depth assessment as this policy does not impact on competition.

Consumer Assessment

The Scottish Government definition of a consumer is "anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future".

The amendment to LFASS and the overall scheme provides, under the European Union Rural Development Regulations, for an annual income support payment for eligible LFA land. It does not provide support for goods or services and the answers to the BRIA toolkit questions are all negative.

There is no requirement for a more in-depth assessment as this policy does not impact on consumers.

Test run of business forms

No new forms will be introduced.

Digital Impact Test

The changes amend an existing policy and are designed to operate using the same application process and internal systems to ensure continuity of delivery and no change for applicants.

Legal Aid Impact Test

The Access to Justice Team have confirmed there will be no significant impact.

Enforcement, sanctions and monitoring

Grants are delivered, enforced and monitored by the Agricultural Policy Delivery partners with sanction for non-compliance dictated by European regulations and clearly laid out in guidance.

There will be on-going monitoring of the scheme with the Scottish Government required to provide Annual Implementation Reports to the European Commission.

Implementation and delivery plan

The scheme is already in operation and this amendment will not change how it is implemented or delivered with the exception of the additional step to calculate degressivity. There will be no change to the process from the perspective of the applicant and a minor change on the delivery side to calculate degressivity, were required. The amendment will ensure the scheme is compliant with EU law when the application process opens for scheme year 2019.

- **Post-implementation review**
LFASS will remain under review and consideration will be given, in conjunction with stakeholders, of the long term options for LFA support following the expected departure from EU CAP Pillar 2 rules post a Brexit transition period. Under the SRDP which is due to run until the end of 2020, LFASS will be included in Annual Implementation Reports and a full evaluation of the entire Scottish Rural Development Programme 2014-2020 is expected.

Summary and recommendation

Option 2 – amend LFASS to ensure compliance

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 impact on applicants which could cause business volatility which would run the risk of land abandonment, socio-economic and environmental impacts in the less favoured areas of rural Scotland.

This option is in line with the proposals outlined in the Stability and Simplicity consultation which was broadly supported by respondents. It will provide stability by continuing to provide support to around 11,300 farming businesses.

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.

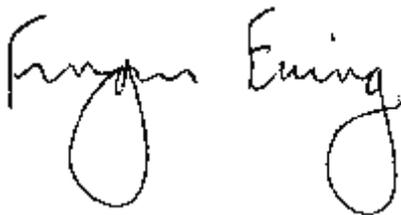
Declaration and publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- **Sign-off for Final BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Fergus Ewing

A handwritten signature in black ink that reads "Fergus Ewing". The signature is written in a cursive style with a large loop at the end of the last name.

Date: 14/03/19

Minister's name FERGUS EWING
Minister's title CABINET SECRETARY FOR THE RURAL ECONOMY

Scottish Government Contact point: Kirsten Beddows



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