

Fraser v Scottish Ministers



No Substantial Judicial Treatment

Court

Land Court

Judgment Date

13 March 2026

Where Reported

[2026] SLC 5

[2026] 3 WLUK 361

2026 G.W.D. 17-142

[Judgment](#)

Subject

Agriculture

Keywords

Agricultural holdings; Common agricultural policy; Grazing; Payments; Scotland

Judge

[Lord Duthie](#)

Counsel

For the applicant: Johnston (Lay Representative).

For the respondent: Young.

Solicitor

For the respondent: Scottish Government Legal Directorate.

Case Digest

Summary

The Land Court refused a farmer's appeal against the Scottish Ministers' decision refusing him basic payment scheme eligibility for region 3 land under the [Common Agricultural Policy \(Direct Payments etc.\) \(Scotland\) Regulations 2015](#) for failing to meet the minimum activity requirement because he had not demonstrated that lower stocking density was appropriate by reference to historic records kept in respect of the carrying capacity of the holding.

Abstract

A farmer appealed to the Land Court under the [Rural Payments \(Appeals\) \(Scotland\) Regulations 2015](#) against the Scottish Ministers' decision refusing him basic payment scheme eligibility for region 3 land because he had failed to meet the minimum activity requirement.

The minimum activity requirement was set by the [Common Agricultural Policy \(Direct Payments etc.\) \(Scotland\) Regulations 2015 reg. 11](#) and [Sch. 1 Pt 2](#). Minimum activity could only be met for region 3 land by (i) stocking the land for periods totalling not less than 183 days at a stocking density of at least 0.05 livestock units per hectare (LU/ha); or (ii) stocking at a density of less than 0.05 LU/ha, but only where the farmer demonstrated that such lower density was appropriate by reference to either historic records kept in respect of the carrying capacity of

the holding or an environmental management agreement or agri#environment commitment; or (iii) carrying out an annual environmental assessment.

The appellant conceded that (i) the region 3 parcels were stocked at less than 0.05 LU/ha; (ii) no flock or herd record existed prior to 2024; (iii) he was not party to any relevant environmental management agreement; and (iv) no annual environmental assessment was carried out, but he submitted that a lower stocking density was appropriate for the land's carrying capacity by reference to (i) the inspection officer's observations; (ii) photographs; (iii) land capability classifications, altitude and environmental description; and (iv) a 2012 stocking-rate analysis carried out by the James Hutton Institute for comparable land capability for agriculture classes and regions.

Held

Appeal refused.

The only route open to the appellant was to demonstrate that the lower density was appropriate by reference to historic records kept in respect of the carrying capacity of the holding, but the materials relied upon were not habile to satisfy that requirement. Further, the appellant's reliance on guidance language that spoke of "other evidence" was of no assistance: the statutory eligibility criteria required demonstration by reference to historic carrying capacity records of the holding or to an environmental agreement, and guidance could not amend, enlarge or dilute the statutory test (see paras 9-13 of judgment).