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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 135**

**FORESTRY**

**The Forestry Challenge Funds (Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>26th March 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>28th March 2008</i>
<i>Coming into force</i>	- -	<i>7th May 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Forestry Challenge Funds (Scotland) Regulations 2008 and shall come into force on 7th May 2008.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“applicant” means a person who applies for grant under these Regulations and includes the beneficiary of a grant paid under these Regulations;

“application” means application for grant under these Regulations ;

“approved expenditure” means the costs of a project which the Forestry Commissioners have approved for the purpose of calculating grant under these Regulations;

“authorised person” means a person appointed by the Forestry Commissioners or the Scottish Ministers for the purpose of enforcement of these Regulations;

“the Community legislation” means—

(a) the Control Regulation;

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(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46) Schedule 8, paragraph 15(3) and by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

- (b) the Council Regulation as amended by Council Regulation (EC) No. 1463/2006(17);
- (c) Commission Regulation (EC) No. 1974/2006, as amended by Commission Regulations (EC) No. 434/2007(2) and (EC) No. 1236/2007(3), laying down detailed rules for the application of the Council Regulation(4);

“the Control Regulation” means Commission Regulation (EC) No. 1975/2006(5), as corrected by Commission Regulation (EC) No. 1396/2007(6) laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005 as regards the implementation of control procedures in respect of rural development support measures;

“the Council Regulation” means Council Regulation (EC) No. 1698/2005 of 20th September 2005(7), as amended by Council Regulations (EC) No. 1944/2006(8) and (EC) No. 2012/2006(9), laying down general rules governing Community support for rural development, financed by the European Agricultural Fund for Rural Development established by Council Regulation (EC) No. 1290/2005(10) as read with Commission Regulation (EC) No. 1974/2006 of 15th December 2006(11) laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);

“grant” means a payment under these Regulations;

“project” means a project or an investment; and

“UK Forestry Standard” means the UK Forestry Standard, 2nd Edition, 2004(12).

(2) A reference in these Regulations to the Community legislation means a reference to the Community legislation as amended from time to time.

(3) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000(13), which has been recorded and is consequently capable of being reproduced.

### **Projects which may be considered for grant**

3.—(1) A project may be considered for grant under these Regulations if the conditions in paragraphs (2) and (3) are satisfied and the Forestry Commissioners think that the grant would fulfil one or more of the purposes provided for in—

- (a) Article 36(b)(i) as read with Article 43 of the Council Regulation (sustainable use of forestry land through first afforestation of agricultural land);
- (b) Article 36(b)(iii) as read with Article 45 of the Council Regulation (sustainable use of forestry land through first afforestation of non-agricultural land);
- (c) Article 36(b)(v) as read with Article 47 of the Council Regulation (sustainable use of forestry land through forest environment payments);

(17) O.J. L 277, 9.10.2006, p.1

(2) O.J. No. L 104, 21.4.2007, p.8.

(3) O.J. No. L 280, 24.10.2007, p.3.

(4) O.J. No. L 368, 23.12.2006, p.15.

(5) O.J. No. L 368, 23.12.2006, p.74.

(6) O.J. No. L 311, 29.11.2007, p.3.

(7) O.J. No. L 277, 21.10.2005, p.1.

(8) O.J. No. L 367, 22.12.2006, p.23.

(9) O.J. No. L 384, 29.12.2006, p.8.

(10) O.J. No. L 209, 11.8.2005, p.1.

(11) O.J. No. L 368, 23.12.2006, p.15.

(12) Produced by the Forestry Commission; ISBN 0-85538-626-6.

(13) 2000 c. 7.

- (d) Article 36(b)(vii) as read with Article 49 of the Council Regulation (sustainable use of forestry land through support for non-productive investments);
- (e) Article 52(a)(i) as read with Article 54 of the Council Regulation (diversification of the rural economy, comprising diversification into non-agricultural activities);
- (f) Article 52(a)(ii) as read with Article 54 of the Council Regulation (diversification of the rural economy, comprising support for the creation and development of micro-enterprises);
- (g) Article 52(a)(iii) as read with Article 55 of the Council Regulation (diversification of the rural economy, comprising encouragement of tourism activities);
- (h) Article 52(b)(i) as read with Article 56 of the Council Regulation (improvement of the quality of life in the rural areas, comprising basic services for the economy and rural population).

(2) The project which is the subject of the application relates, directly or indirectly, to woodland situated in Scotland.

(3) The project which is the subject of the application, and the manner in which it is proposed to carry it out, are consistent with the UK Forestry Standard.

#### **Application for grant**

4. Every application shall be made in such form and contain such information as the Forestry Commissioners may require.

#### **Determination of applications**

5.—(1) Paragraph (2) applies where—

- (i) an application is made for grant towards a project; and
- (ii) the project may be considered for grant under regulation 3.

(2) Where this paragraph applies, the Forestry Commissioners may approve an application for grant in whole or in part, or they may reject it.

(3) Before approving an application, the Forestry Commissioners must have regard to—

- (a) the total amount of grant monies available;
- (b) the benefits of the project which is the subject of the application;
- (c) the level of grant which is either necessary or appropriate to enable the project to proceed; and
- (d) the value for money which the project represents and the level of grant likely to be required and how that value compares with other applications.

(4) Applicants must provide any information the Forestry Commissioners reasonably require in order to consider an application.

(5) Where the Forestry Commissioners approve an application, they—

- (a) must determine the approved expenditure and the amount of grant payable by the Scottish Ministers to the applicant;
- (b) may impose such conditions on the approval as they think fit (including conditions as to the manner and date of completion of the project); and
- (c) may vary their approval of the application at the request of, or with the consent of, the applicant.

(6) The Forestry Commissioners must notify the applicant of their decision under paragraph (2) in writing and where the application is approved, the Forestry Commissioners must include in the notice the matters referred to in paragraph (5).

### **Claims for payment of grant**

6. Every claim for payment under these Regulations shall be made in such form and at such times as the Forestry Commissioners may require.

### **Payment of grant**

- 7.—(1) The Scottish Ministers need not make any payment of grant unless—
- (a) the Forestry Commissioners have approved an application for grant under regulation 5(2);
  - (b) they receive a claim for payment made by the applicant in the required form; and
  - (c) the project has been completed (or a stage of the project has been completed).
- (2) The Scottish Ministers may make payments of grant—
- (a) by lump sum or by instalments as determined by the Forestry Commissioners; and
  - (b) subject to any conditions (including conditions as to the manner and date of completion of the project and its continuation) the Forestry Commissioners consider appropriate.
- (3) The Scottish Ministers must comply with the Community legislation in paying any grant.

### **Guidance**

- 8.—(1) The Forestry Commissioners may publish guidance from time to time on—
- (a) applying for grant;
  - (b) the costs (including the proportion of costs) which may be supported by grant under these Regulations; and
  - (c) generally, how the Forestry Commissioners intend to perform their functions under these Regulations.
- (2) The Forestry Commissioners must have regard to any guidance which they publish under paragraph (1).
- (3) Where the Forestry Commissioners publish guidance under paragraph (1)(b), they must have regard to that guidance in determining the amount of approved expenditure under regulation 5(5)(a).

### **Financial limits**

- 9.—(1) Where by reason of the total of applications already approved or received, the Forestry Commissioners are at any time of the opinion that the financial resources which are available for payment of grant under these Regulations during any period are insufficient to satisfy the payment during that period, which would result from the approval of any further application, they may decide—
- (a) that they will not accept for consideration any further application, or request to vary a project, until a time subsequently specified by them; or
  - (b) that they will cease to approve, or postpone approval of, any such application or request submitted to them.
- (2) A decision under paragraph (1)(a) not to accept further applications and to specify a time when further applications may be accepted shall be published by notice in the Edinburgh Gazette.

## **Information and records**

**10.**—(1) An applicant must—

- (a) retain all invoices, accounts and other relevant documents in relation to the application and produce them for inspection if required to do so by the Forestry Commissioners or the Scottish Ministers; and
- (b) provide such additional information in relation to the project or the grant monies paid in pursuance of that project as the Forestry Commissioners or the Scottish Ministers may require.

(2) The duties in paragraph (1) apply—

- (a) in the case of a grant for the purchase of heritable property, for a period of ten years;
- (b) in any other case, for a period of five years,

(in either case) following the last payment of grant under these Regulations.

(3) If the applicant transfers the original of any document referred to in paragraph (1) to another person in the normal course of business, the duty under paragraph (1) is treated as fulfilled if the applicant keeps a copy of that document for the applicable period.

(4) Paragraph (1) above does not apply to any document held by an authorised person which has been removed under regulation 11(4)(d).

## **Powers of authorised persons**

**11.**—(1) An authorised person may, at any reasonable time, enter upon any land to—

- (a) verify the accuracy of any information contained in an application or a claim for payment under these Regulations or any other information provided by the applicant relating to the project;
- (b) ascertain whether any grant is payable or recoverable under these Regulations, or the amount that is payable or recoverable;
- (c) ascertain whether an offence under these Regulations has been or is being committed.

(2) Paragraph (1) applies to land—

- (a) which is the subject of, or connected with the carrying out of, a project in respect of which an application has been made under these Regulations; and
- (b) which an authorised person has reasonable grounds to believe may be a place in which documents or other information which may require to be produced under these Regulations are kept.

(3) Where land is used for the purposes of a dwelling-house, an authorised person may only enter it under paragraph (1) where reasonable notice of the intention to exercise that right has been given to all residents of the dwelling-house.

(4) An authorised person—

- (a) may inspect the land and any premises, document, plant, machinery or equipment which that person reasonably believes relates to the grant or the project;
- (b) may require the applicant or any employee or agent of the applicant—
  - (i) to produce, or secure the production of, any document relating to the grant or project; and
  - (ii) to supply any additional information relating to the grant or the project in the possession or under the control of that person;

- (c) where any document or other record relating to the grant or project is kept by means of a computer, must be afforded access to any computer and any associated apparatus or facility which is or has been used in connection with that document or record;
  - (d) may require copies of or extracts from any such documents or other record to be produced and may retain them and take them away;
  - (e) may remove and retain for a reasonable period any document or other record which that person reasonably believes may be required as evidence in any proceedings and, if it is recorded otherwise than in legible form, require it to be produced in a form in which it is legible or in which it can be taken away.
- (5) An applicant or any employee or agent of the applicant must give an authorised person all reasonable assistance in relation to the matters mentioned in paragraphs (1) and (4).
- (6) An authorised person entering upon any land under paragraph (1) may be accompanied by such other person as the Forestry Commissioners or the Scottish Ministers consider necessary, in which case paragraphs (4), (5) and (7) also apply to that other person when acting under the instructions of an authorised person.
- (7) An authorised person shall not be liable in any proceedings for anything done in purported exercise of the powers conferred on an authorised person by these Regulations if the court hearing such proceedings is satisfied that—
- (a) the act was done in good faith;
  - (b) there were reasonable grounds for doing it; and
  - (c) it was done with reasonable skill and care.
- (8) An authorised person seeking admission to any land under this regulation must, if so required, produce proof of appointment as an authorised person for these purposes.

### **Revocation or variation of approval and withholding or recovery of grant**

- 12.**—(1) Paragraph (2) applies where the Forestry Commissioners have approved an application (in whole or in part) for grant under regulation 5(2) and they think—
- (a) the applicant has given information on any matter relevant to the giving of approval or the making of payment of grant under these Regulations, which is false or misleading in a material particular;
  - (b) any condition subject to which the approval was given, or the grant has been paid, has not been complied with;
  - (c) the project in respect of which the approval was given, or the grant was paid, has not been carried out or has not been carried out in accordance with the application approved by the Forestry Commissioners;
  - (d) the applicant has failed to comply with any of the following compliance requirements—
    - (i) the statutory management requirements established by Article 4 of, and Annex III to, Council Regulation (EC) No 1782/2003<sup>(14)</sup>;
    - (ii) the good agricultural and environmental conditions specified in regulation 4 of, and the Schedule to, the Common Agricultural Policy Schemes (Cross Compliance) (Scotland) Regulations 2004<sup>(15)</sup>;
    - (iii) that damage or destruction of any historic or archaeological features or areas must be avoided and guidance approved by the Scottish Ministers must be followed for the protection of such features or areas;

<sup>(14)</sup> O.J. No. L 270, 21.10.2003, p.1.

<sup>(15)</sup> S.S.I. 2004/518, as amended by S.S.I. 2005/143 and 2007/99.

- (e) the project has been or is being unreasonably delayed beyond the time limits contained in any condition subject to which approval has been given, or grant paid, under these Regulations, or is unlikely to be completed;
  - (f) the project was commenced before the date on which the Forestry Commissioners gave written permission to do so;
  - (g) the European Commission has decided that the grant paid, or to be paid, does not comply with the Community legislation;
  - (h) public funds in excess of those permitted under these Regulations have been applied to the project; or
  - (i) the applicant or any employee, servant or agent of the applicant has—
    - (i) intentionally obstructed any authorised person in exercise of the powers under regulation 11; or
    - (ii) failed to comply with a requirement imposed under regulation 11(4)(b) or (d).
- (2) Where this paragraph applies, the Forestry Commissioners may—
- (a) revoke or vary (including any conditions subject to which it was given) the approval in respect of the whole or any part of the approved expenditure;
  - (b) inform the Scottish Ministers who may—
    - (i) apply a reduction to any payment made, or to be made to the applicant;
    - (ii) withhold payment of grant in whole or in part; and
    - (iii) recover as a debt the whole or any part of the grant which has been paid.
- (3) Where paragraph (2) applies, and the Forestry Commissioners also think that the applicant acted recklessly or intentionally—
- (a) the Scottish Ministers may require the applicant to pay an additional sum equal to 10% of the sums paid or payable to the applicant under these Regulations; and
  - (b) the Forestry Commissioners may prohibit the applicant from applying for grant under these Regulations for such period (not exceeding two years) from the date of the revocation of approval of any payment under these Regulations as the Forestry Commissioners may specify.
- (4) Before the Forestry Commissioners or the Scottish Ministers do anything under paragraphs (2) or (3), they must—
- (a) give the applicant in respect of whom such a step is proposed to be taken, written notification of that step, and if appropriate the amount by which it is proposed that the grant be reduced or the amount of such grant which it is proposed be withheld or recovered;
  - (b) give that applicant an opportunity to make representations about the proposed step, within such time and in such form as they think fit; and
  - (c) consider such representations.
- (5) A reduction under paragraph (2)(b)(i) must be applied in accordance with the Control Regulation.

### **Interest**

**13.—**(1) Where the Scottish Ministers intend to recover grant (in whole or in part) in accordance with regulation 12(2)(b)(iii), they may also recover interest on that amount at the rate in paragraph (2).

(2) The rate is one per cent above the sterling three month London interbank offered rate on a day to day basis, from the date of demand of repayment until the date of recovery.

(3) In any proceedings for recovery under these Regulations, a certificate issued by the Forestry Commissioners or the Scottish Ministers showing the rate or rates of interest, the amount of such interest recoverable and the period for which interest is calculated shall, unless the contrary is shown, be conclusive of those matters.

### **Set off**

**14.** The amount of any payment payable by the Scottish Ministers to an applicant, whether as principal or agent, may be set off against the amount of any sum recoverable by them under these Regulations.

### **Offences**

**15.—(1)** Any person who knowingly or recklessly makes a false statement for the purposes of obtaining any grant under these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person who intentionally obstructs an authorised person (or a person taken with and acting under the instructions of that authorised person in accordance with regulation 11(6)) in the exercise of the powers under regulation 11 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Proceedings for an offence under these Regulations may be commenced within the period of twelve months from the date on which the offence was committed.

(4) Section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(16)</sup> (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

### **Offences by bodies corporate**

**16.—(1)** A person is guilty of an offence if conditions A and B are met.

(2) Condition A is met if an offence under regulation 15 is committed by—

- (a) a body corporate; or
- (b) a Scottish partnership.

(3) Condition B is met if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

- (a) a relevant person; or
- (b) a person purporting to act in the capacity of a relevant person,

(4) In paragraph (3), “relevant person” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member; and
- (b) in relation to a Scottish partnership, a partner.

(5) Where paragraph (3) applies, that person as well as the body corporate or partnership (as the case may be) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, the provisions of this regulation apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

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(16) 1995 c. 46.



St Andrew's House,  
Edinburgh  
26th March 2008

*MICHAEL RUSSELL*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the implementation of Council Regulation (EC) No. 1698/2005 on support for rural development from the European Agricultural Fund for Rural Development and Commission Regulations (EC) Nos. 1974/2006 and 1975/2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005. The Regulations provide for funding being made available by the Forestry Commissioners from the Scotland Rural Development Programme 2007–13 for purposes related to forestry.

Regulation 3 sets out the purposes of projects for which grant assistance may be made available. Regulation 4 provides the Forestry Commissioners with power to specify the form and content of applications, whilst regulation 5 makes provision as to the determination of applications, including matters to which the Forestry Commissioners must have regard.

Regulations 6 and 7 make provision as to claims for payment of grant and payment. Regulation 8 provides that the Forestry Commissioners may issue guidance, and where they do so, must have regard to that guidance. Regulation 9 provides that where there are insufficient resources to meet claims for grant under a grant scheme the Forestry Commissioners may suspend the consideration of applications, or postpone or cease approving applications.

Regulations 10 to 16 deal with enforcement of grant conditions generally. Regulation 10 imposes a duty on applicants to retain records and provide information. Regulation 11 confers powers of entry and inspection on authorised persons to enforce the Regulations. Regulation 12 makes provision for the revocation or variation of approval and the withholding of grants where breaches of obligations have occurred. Regulation 13 makes provision as to interest on grant to be recovered, whilst regulation 14 makes provision as to set off. Regulations 15 and 16 make provision as to offences and offences by bodies corporate, respectively.