

2020 No. 219

FINANCIAL ASSISTANCE

The Ornamental Horticulture Industry (Coronavirus, Financial Assistance) Scheme Regulations (Northern Ireland) 2020

Made - - - - 13th October 2020

Coming into operation - 14th October 2020

The First Minister and deputy First Minister, acting jointly, made on 29th September 2020 a determination under section 1(1) of the Financial Assistance Act (Northern Ireland) 2009 (1) (“the Act”) and, jointly, they have designated the Department of Agriculture, Environment and Rural Affairs (**a**) as the relevant Department under section 1(3)(a) of that Act.

Accordingly the Department of Agriculture, Environment and Rural Affairs makes the following regulations in exercise of the powers conferred by sections 1(2), 3 and 4 of that Act.

The Executive Office (**b**) approves the Regulations in accordance with section 1(4) of the Act.

Citation and commencement

1. These regulations may be cited as the Ornamental Horticulture Industry (Coronavirus, Financial Assistance) Scheme Regulations (Northern Ireland) 2020 and shall come into operation on 14th October 2020.

Scheme

2. The Department of Agriculture, Environment and Rural Affairs makes the Scheme set out in Schedules 1 and 2.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 13th October 2020



Steven Millar

A senior officer of the Department of Agriculture, Environment and Rural Affairs

(a) Formerly the Department of Agriculture and Rural Development, see the Departments Act (Northern Ireland) 2016 c5 (NI) section 1(2)
(b) Formerly the Office of the First Minister and deputy First Minister is renamed the Executive Office see the Departments Act (Northern Ireland) 2018 c5 (NI) section 1(1)

The Executive Office approves these Regulations

Sealed with the Official Seal of the Executive Office on 13th October 2020



Neill Jackson
A senior officer of the Executive Office

The Ornamental Horticulture Industry (Coronavirus, Financial Assistance) Scheme (Northern Ireland) 2020

Citation

1. This Scheme may be cited as the Ornamental Horticulture Industry (Coronavirus, Financial Assistance) Scheme (Northern Ireland) 2020.

Interpretation

2.—(1) In this Scheme—

“application” means an application for a financial assistance payment made in accordance with Article 5;

“the Commission Communication” means Commission Communication 2020/C 1863 on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak; Commission Regulation (EU) No. 1408/2013;

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“determination” means the determination of the First Minister and deputy First Minister; acting jointly and made on 29th September 2020 that exceptional circumstances exist, namely the closure of markets due to public health restrictions as a result of the Coronavirus pandemic. The subsequent financial difficulties experienced by the Northern Ireland ornamental horticulture sector primary producers were as a consequence of the severe and prolonged market disturbance and the perishability of the sector’s product. It is desirable to provide financial assistance to prevent, control or mitigate the effect of these circumstances and that such assistance ought to be provided in accordance with a Scheme made under section 1 of the Financial Assistance Act (Northern Ireland) 2009;

“eligible period” means 1st March 2020 to 30th June 2020 (both dates inclusive)

“eligible person” means a person who during the eligible period was engaged in the production of eligible stock and either:

- (a) by 1st April 2020 was registered with the Department’s Forest Service Plant Health Inspection Branch as a Registered Authorised Professional Operator; or
- (b) during the reference periods has produced fresh cut flowers; and

in either case,

- (c) has not received from the Department for the Economy £10,000 under the Small Business Support Grant Scheme or £25,000 under the Retail, Hospitality, Tourism and Leisure Grant Scheme;

“eligible stock” means young bedding plants, cut flowers, herbaceous perennials, alpines, ‘Grow your own’ edible plants for private gardening, and container grown shrubs (not exceeding 3 litre pot size) referred to in Schedule 2;

“financial assistance payment” means a payment by the Department under the purposes of Article 3;

“reference periods” means the period beginning on 1st March 2017 and ending on 30th June 2017, the period beginning on 1st March 2018 and ending on 30th June 2018 and the period beginning on 1st March 2019 and ending on 30th June 2019.

(2) A reference in this Scheme to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.

Purpose of financial assistance

3. The purpose of financial assistance is the prevention, control and mitigation of the effect of the exceptional circumstances referred to in the determination made by the First Minister and deputy First Minister, acting jointly, made on 29th September 2020.

Provision of financial assistance

4.—(1) The Department may, for the purposes referred to in Article 3, in accordance with the following provisions, provide financial assistance by way of grant to any eligible person who suffered loss of sales of eligible stock as a consequence of Coronavirus public safety restrictions during the eligible period.

(2) That financial assistance—

- (a) shall not exceed the lesser of EUR 120,000 or $80\% \times (A \text{ minus } B)$ where:
 - (i) A is the average amount of sales of eligible stock during the three reference periods; and
 - (ii) B is the amount of sales of eligible stock during the eligible period;
- (b) shall not be payable in any case or to any extent except in compliance with the requirements of Commission Regulation (EU) No. 1408/2013 (a) and Commission Communication (b); and
- (c) shall not cover losses that have otherwise been covered by insurance.

(3) Payments of financial assistance to an eligible person shall be on such other terms and conditions as the Department may specify including terms and conditions about withholding payments or requiring repayment in specified circumstances.

Application for payment of financial assistance

5.—(1) The Department shall publish a notice inviting applications in such manner as will ensure that it is reasonably likely to be seen by eligible persons.

(2) A notice published under paragraph (1) shall specify—

- (a) the closing date for making an application;
- (b) the information which an applicant is required to provide in support of the application; and
- (c) the form of any application.

(3) An eligible person may make an application in accordance with the requirements of the notice published under paragraph (1).

(4) The Department may, however, accept an application received after the closing date specified under paragraph (2)(a) if it is satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect the application to have been made by the closing date; and
- (b) the date on which the application was received is as early as can be reasonably be expected in those circumstances.

(a) Commission Regulation (EU) No. 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector

(b) Communication from the Commission of 19th March 2020, C(2020)1863 (OJ C 911, 20.3.2020, p. 1). Communication from the Commission Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 112 I/01 C/2020/2215 OJ C 112I, 4.4.2020, p. 1-9, Communication from the Commission Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 164/03 OJ C 164, 13.5.2020, p. 3-15 and Communication from the Commission Third amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 218/03 OJ C 218, 2.7.2020, p. 3-8):

(5) The Department shall reject an application if it is satisfied that the applicant is not an eligible person or does not meet the requirements of Article 4.

(6) The Department shall notify the applicant of its decision in relation to any application as soon as is reasonably practicable.

Payment of Financial Assistance

6.—(1) Where the Department has received an application it must determine whether that application satisfies Articles 4 and 5, and provides the information required in the notice published in accordance with Article 5(1) and if it does, the Department may make a payment to the applicant.

(2) The Department shall notify the applicant in writing of its decision to approve or reject an application; and—

- (a) if an application is approved, the amount of the grant to be paid; or
- (b) if an application is rejected, the reasons for the rejection and the right of review under Article 7.

Reviews

7.—(1) Where the Department makes a decision in relation to an application, a person aggrieved by that decision may request the Department to review it in accordance with this Article.

(2) A request for a review shall be made to the Department no later than 21 days from the date of the notification under Article 6(2) of the decision to be reviewed.

(3) A request for a review shall be in writing and shall—

- (a) specify the decision of the Department in respect of which the request is made; and
- (b) give full particulars of the grounds upon which the review of the decision is sought.

(4) Upon receipt of a request under paragraph (2), the Department shall review the decision which is specified in it.

(5) Following a review of a decision under paragraph (4) the Department may—

- (a) confirm the decision; or
- (b) substitute a new decision.

(6) As soon as reasonably practicable after reviewing a decision under paragraph (5), the Department shall notify the result of the review in writing to the person making the request for it and shall give the reasons for the result.

SCHEDULE 2

Regulation 2

Table 1

List of eligible stock including definitions and examples

<i>Category</i>	<i>Examples</i>
<p>Bedding plants</p> <p>‘A seed or cutting raised plant which is grown for an outdoor single season display in flower beds, containers or hanging baskets’.</p>	<p>Ageratum Alyssum Antirrhinum Begonia Dahlia Dianthus Fuchsia Geranium Impatiens Lobelia Marigolds/tagetes Nemesia Nicotiana Pansy Petunia Primula Salvia Sweet pea</p>
<p>Cut Flower</p> <p>‘A bloom and/or flowering stem cut from a plant for use in floral arrangements and displays’.</p>	<p>Peonies Stock (matthiola) Lillies Tulips Daffodils Dianthus Chrysanthemum Dahlia</p>
<p>Herbaceous perennial</p> <p>‘A non-woody plant that grows year after year which can overwinter via dormant underground structures (including, but not limited to, bulbs, rhizomes and tubers)’.</p>	<p>Anemone Aster Dianthus Digitalis Geranium Helenium Heuchera Hellebore Hosta Rudbeckia Lavender Lupin Penstemon Phlox Salvia Sedum</p>
<p>Grow your own edible plants for private gardening</p>	<p>Tomato Cucumber</p>

‘A plant grown primarily as a source of food’.	Chilli Pepper Peas Beans Vegetable Plants
Container grown shrubs (not exceeding 3 Litre pot size)	Aucuba Berberis Buxus Ceanothus Choisya Cistus Cornus Cotoneaster Euonymus Hebe Hypericum Lonicera Phormium Photinia Prunus Rosa Skimmia Spiraea Viburnum Vinca
‘Woody perennials, usually well branched from or near the base grown for their foliage and/or floral display’.	Armeria Anemone Aubretia Crocus Campanula Delosperma Dianthus Gentiana Lewisia Narcissus Phlox Primula Saxifraga Sedum Sempervivum Silene Thymus
Alpines	
‘Low growing/ dwarf perennials native to or associated with cool, rocky growing environments’	

EXPLANATORY NOTE

(This note is not part of the Order)

The First Minister and deputy First Minister acting jointly have made a determination that exceptional circumstances exist, namely as a result of public health restrictions during the COVID-19 pandemic major disruption to the ornamental horticulture market in Northern Ireland.

The Scheme (Schedule 1) provides for financial assistance payments to be made by the Department of Agriculture, Environment and Rural Affairs to applicants who have suffered a financial loss as a consequence of a disturbance to the agricultural markets caused by the COVID-

19 coronavirus pandemic. The Scheme further provides for the eligibility criteria and administration of payments and the terms and conditions under which payments shall be made.

Schedule 2 sets out a list of eligible stock.

The Scheme—

- (a) specifies the eligibility criteria and calculation of payment (Article 3 and 4);
- (b) specifies the manner in which applications are to be made (Article 5);
- (c) provides for the Department to, approve, or reject applications, make payments of financial assistance, and advise applicants of its decision regarding payment (Article 6);
- (d) provides for a review of the decision by the Department to reject any applications (Article 7).

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£6.90

NI202010131032 10/2020 19585

<http://www.legislation.gov.uk/id/nisr/2020/219>

ISBN 978-0-33-801380-4



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