
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 448

**The Agricultural Business Development
Scheme (Scotland) Regulations 2000**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Agricultural Business Development Scheme (Scotland) Regulations 2000 and shall come into force on 29th January 2001.

(2) These Regulations shall extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

“agricultural holding” means an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991⁽¹⁾;

“agricultural unit” means a croft, agricultural holding or smallholding (and includes a common grazing) which is located within the scheme area, or which is partly located within the scheme area and is deemed to be located within the scheme area by the Scottish Ministers if they think fit;

“application” means an application for financial assistance under the scheme made in accordance with regulations 4 or 5 and “applicant” and “apply” shall be construed accordingly;

“approved” means approved by the Scottish Ministers in writing and “approve” and “approval” shall be construed accordingly;

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

“Community legislation” means—

- (a) Council Regulation (EC) No 1257/1999 of 17th May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations⁽²⁾;
- (b) Council Regulation (EC) No 1260/1999 of 21st June 1999 laying down general provisions on the Structural Funds⁽³⁾; and
- (c) Commission Regulation (EC) No 1750/1999 of 23rd July 1999 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for

(1) 1991 c. 55.

(2) O.J. No. L 160, 26.6.99, p.80.

(3) O.J. No. L 161, 26.6.99, p.1.

rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(4);

“croft” means a croft within the meaning of section 3 of the Crofters (Scotland) Act 1993(5);

“collaborative venture” means a venture in respect of which an application for financial assistance under these Regulations is jointly submitted by three or more eligible persons in relation to three or more eligible businesses;

“designated maps” means the four maps numbered 1 to 4, each such map being marked “map of less-favoured farming areas in Scotland” and with the number of the map, dated 5th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Executive Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TW;

“eligible business” means a business which has been engaged in agriculture on an agricultural unit for a continuous period of two years ending with the date of the application;

“eligible expenditure” means expenditure (including reasonable professional fees and charges) approved in relation to measures to be undertaken under the scheme;

“eligible person” means—

(a) in relation to any measure—

(i) a person who is a legal occupier of an agricultural unit and who operates an eligible business on that unit; or

(ii) a person authorised to act on behalf of such legal occupier; and

(b) in relation to a measure specified in Part II or III of the Schedule, any member of the immediate family of such legal occupier who resides on or adjacent to the agricultural unit and is acting with such legal occupier’s consent;

“financial assistance” means a payment made under these Regulations, and may include a payment from the Guidance Section of the European Agricultural Guidance and Guarantee Fund payable under the Community legislation;

“immediate family” means wife, husband, partner, son, stepson, daughter, stepdaughter, mother, father, brother, sister;

“less favoured area” means the land shown coloured in blue or in pink on the designated maps—

(a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive 84/169/EEC concerning the Community list of less favoured farming areas within the meaning of Directive 75/268/EEC (United Kingdom) as amended(6); and

(b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or any combination of, soil, relief, aspect or climate;

“measure” means a measure specified in the Schedule;

“scheme” means the measures to assist rural communities described at Priority 4, Sub Priority (a), Measures 1, 3, Sub-Measure (i), and 5 (Agriculture only) of the Highlands and Islands Special Transitional Programme approved by Commission Decision of 8th August 2000 on the adoption of the Single Programming Document for the Highlands and Islands Special

(4) O.J. No. L 214, 13.8.99, p.31.

(5) 1993 c. 44.

(6) O.J. No. L 82, 26.3.84, p.67, as amended by Commission Decision 91/25/EEC altering the limits of the less favoured areas in the United Kingdom within the meaning of Council Directive 75/268/EEC (O.J. No. L 16, 22.1.91, p.25).

Transitional Programme and entitled, for the purposes of these Regulations, the Agricultural Business Development Scheme;

“scheme area” means the area of Scotland comprising—

- (a) the area of the Argyll and Bute Council, excluding the Parishes of Arrochar, Cardross, Luss, Rhu and Roseneath;
- (b) the area of the Highland Council;
- (c) the area of the Orkney Islands Council;
- (d) the area of the Shetland Islands Council;
- (e) the area of the Western Isles Council;
- (f) in the area of the North Ayrshire Council, the islands of Arran, Great Cumbrae and Little Cumbrae; and
- (g) in the area of the Moray Council, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes;

“smallholding” means any holding within the meaning of sections 2 and 32 of the Small Landholders (Scotland) Act 1911(7).

(2) 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 the Electronic Communications Act 2000(8), which has been recorded and is consequently capable of being reproduced.

(3) References in these Regulations to a numbered regulation or to the Schedule shall be construed as a reference to the regulation so numbered in or to the Schedule to these Regulations.

Objectives

3. Subject to the provisions of these Regulations, the Scottish Ministers may in accordance with the Community legislation make payments of financial assistance under the scheme where they are satisfied that the payments will help to achieve one or more of the following objectives—

- (a) re structuring of an eligible business or re-orientation of its agricultural production;
- (b) diversification of farm incomes by creating new or improving existing agricultural activities;
- (c) diversification outwith agricultural activities to provide alternative sources of income; or
- (d) improvement of co-operation and collaboration by encouraging collaborative ventures.

Business Plans

4.—(1) The Scottish Ministers may require that an eligible person, who intends to make an application under regulation 5, prepares a business plan in accordance with the following paragraphs of this regulation.

(2) The business plan shall be in writing in such form as the Scottish Ministers reasonably may require and shall include statements of—

- (a) the assets and liabilities of the eligible business;
- (b) the current viability of the eligible business and proposals for enhancing its current viability; and

(7) 1911 c. 49; section 2 was extended by the Small Landholders and Agricultural Holdings Act 1931 (c. 44), section 14 and both sections 2 and 32 were restricted by the Crofters (Scotland) Act 1955 (c. 21), Schedule 6, Part I.

(8) 2000 c. 7.

(c) the skills and training requirements for the eligible business.

(3) The Scottish Ministers may approve a business plan submitted in accordance with this regulation.

(4) The Scottish Ministers may pay to an eligible person financial assistance towards the costs of an approved business plan—

- (a) if the business plan has been prepared by an independent adviser, at the rate of 50% subject to a maximum payment of £400; or
- (b) in any other case, at a fixed amount of £100.

Applications

5.—(1) Subject to paragraph (6) below, an eligible person who wishes to obtain financial assistance towards the cost of any measure to be undertaken under the scheme may submit an application to the Scottish Ministers for approval which shall be in accordance with the following provisions of this regulation.

(2) An application shall be made in writing in such form as the Scottish Ministers reasonably may require and shall include—

- (a) sufficient information to show that the measure is being undertaken by an eligible person;
- (b) confirmation that the measure is located within the scheme area;
- (c) a description of the measure proposed;
- (d) a business plan approved under regulation 4, if such a plan was required by the Scottish Ministers under regulation 4;
- (e) a statement that the measure could not proceed without financial assistance under the scheme;
- (f) sufficient information to show that the measure is likely to meet at least one of the objectives specified in regulation 3; and
- (g) confirmation that public funding towards the cost of the measure has not been sought otherwise than under these Regulations and that it is not intended to seek such funding.

(3) The applicant shall furnish to the Scottish Ministers such further information and evidence in relation to the application as the Scottish Ministers reasonably may require in order to allow proper consideration of the application.

(4) An eligible person may submit more than one application under this regulation.

(5) An application shall not be submitted in respect of more than one eligible business unless it is an application in respect of a collaborative venture.

(6) The Scottish Ministers may at any time suspend the operation of the scheme and, while so suspended, no application under paragraph (1) above may be submitted to them.

Determination of applications

6.—(1) Subject to the provisions of these Regulations, the Scottish Ministers as they think fit may in accordance with the Community legislation—

- (a) refuse to approve an application or approve it in whole or in part;
- (b) cause such approval to be given, and any payments by way of financial assistance to be made, subject to such conditions as they may impose; or
- (c) at any time on giving reasonable notice vary the approval or amend such conditions attached to the approval.

- (2) The Scottish Ministers shall in writing—
- (a) notify the applicant of their decision in respect of that application; and
 - (b) notify the applicant whose application has been approved under this regulation of any conditions, relating to such approval, which they have imposed or amended under paragraph (1) above.
- (3) The Scottish Ministers shall not approve an application for financial assistance in relation to a measure unless they are satisfied that—
- (a) the measure is to be carried out by the eligible person;
 - (b) completion of the measure is likely to meet at least one of the objectives of the scheme specified in regulation 3;
 - (c) the application relates to one or more of the measures set out in the Schedule;
 - (d) in relation to applications for measures in Parts I and II of the Schedule—
 - (i) the economic viability of the eligible business is demonstrated;
 - (ii) the eligible business complies with the minimum standards regarding the environment, hygiene and animal welfare; and
 - (iii) the eligible person possesses adequate agricultural skill and competence;
 - (e) other public funding towards the cost of the measure has not been or will not be sought in respect of the measure, other than under these Regulations; and
 - (f) the provision of such a measure is appropriate having regard to the need for, and existing provision of, measures of that type in the scheme area.
- (4) Before approving an application (in whole or in part), the Scottish Ministers may consult such persons as they consider appropriate.

Financial assistance

7.—(1) The Scottish Ministers may give to an eligible person, whose application has been approved under regulation 6, such financial assistance under the scheme towards eligible expenditure on the approved measures as they may consider appropriate.

(2) Subject to paragraphs (4) and (6) below, the amount of financial assistance payable in respect of any measure in Parts I and II of the Schedule shall—

- (a) in the case of an eligible business wholly located in a less-favoured area, be up to 50% of eligible expenditure;
- (b) in the case of an eligible business located wholly outwith a less-favoured area, be up to 40% of eligible expenditure; or
- (c) in the case of an eligible business partly located within and partly located outwith a less-favoured area, be at the rate of up to 40% or up to 50% as the Scottish Ministers may determine as they think fit.

(3) Subject to paragraphs (4) and (6) below, the amount of financial assistance payable in respect of any measure in Part III of the Schedule shall be up to 50% of eligible expenditure.

(4) The total amount of financial assistance payable to one or more eligible persons in respect of one eligible business shall not exceed the sum of £40,000.

(5) In paragraph (4) above, for the purposes of calculating the total amount of financial assistance, no regard shall be had to any amount payable in respect of an approved business plan under regulation 4 or in respect of any training costs which form part of the eligible expenditure.

(6) Where an application for financial assistance is made in relation to a collaborative venture—

- (a) such assistance shall not be given unless each eligible person and eligible business is actively involved in the collaborative venture; and
- (b) the total amount of financial assistance payable in respect of each eligible business (whether in consequence of the application made in relation to the collaborative venture or in consequence of any other application made in relation to such eligible business) shall not exceed £40,000.

Claims for financial assistance

8. A claim for financial assistance under these Regulations shall be made in such form and manner and at such time as the Scottish Ministers may from time to time require, and the eligible person shall furnish all particulars and information relating to such claim and copies of such documents and records relating thereto as the Scottish Ministers reasonably may require, including in particular—

- (a) evidence that the amount of eligible expenditure for which financial assistance is claimed has been incurred including details of any discount received by the eligible person; and
- (b) documentary evidence that the approved measure has been carried out in accordance with the application approved by the Scottish Ministers.

Payment of assistance

9. The Scottish Ministers may determine the manner and timing of the payment of financial assistance under these Regulations.

Information and Records

10.—(1) Subject to paragraphs (2) and (3) below, an eligible person shall, for a period of five years, or seven years in the case of financial assistance payable for housing for rent, following the last payment of financial assistance under these Regulations—

- (i) retain all invoices, accounts and other relevant documents in relation to an approved measure and produce them for inspection if required to do so by the Scottish Ministers; and
- (ii) provide the Scottish Ministers with such additional information in relation to the approved measure or the financial assistance paid in pursuance of that measure as they may require.

(2) If the eligible person transfers the original of any such document to another person in the normal course of business, the duty under paragraph (1) above shall be treated as having been fulfilled if there is kept a copy of that document for the said period.

(3) Paragraph (1) above shall not apply if, and for as long as, the document has been removed by an authorised person under regulation 11(3)(d).

Powers of authorised persons

11.—(1) For the purposes set out in paragraph (2) below, an authorised person may at any reasonable time enter any land or premises—

- (a) which is the subject of a measure in respect of which an application has been made under these Regulations; or
- (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.

(2) The purposes referred to in paragraph (1) above are—

- (a) verifying the accuracy of any information contained in an application or a claim for financial assistance under these Regulations or any other information provided by the eligible person relating to the measure;
 - (b) ascertaining whether any financial assistance is payable or recoverable under these Regulations, or the amount that is payable or recoverable; and
 - (c) ascertaining whether an offence under these Regulations has been or is being committed.
- (3) An authorised person who has entered any land under paragraph (1) above—
- (a) may inspect the land and any premises, plant, machinery, equipment, livestock, document or record which that person reasonably believes relates to the financial assistance or the measure;
 - (b) may require the eligible person or any employee, servant or agent of the eligible person to produce, or secure the production of, any document or supply any additional information in the possession or under the control of that eligible person relating to the financial assistance or the measure;
 - (c) where any document or other record relating to the financial assistance or the measure is kept by means of a computer, shall be afforded access to any computer and any associated apparatus or material 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.
- (4) An eligible person or any employee, servant or agent of the eligible person shall give an authorised person all reasonable assistance in relation to the matters mentioned in paragraphs (1) and (3) above.
- (5) An authorised person entering any land under paragraph (1) above may be accompanied by such other persons as considered necessary, and paragraphs (3) and (4) above shall apply to such persons when acting under the instructions of an authorised person as they apply to authorised persons.
- (6) An authorised person shall not be liable in any proceedings for anything done in purported exercise of the powers conferred on authorised persons 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.
- (7) Paragraph (1) above shall apply to any land used for the purposes of a dwelling house only where reasonable notice of its intended exercise has been given to all residents of that dwelling-house.
- (8) An authorised person seeking admission to any land under this regulation shall, if so required, produce proof of appointment as an authorised person for these purposes.

Revocation of approval and reduction, withholding or recovery of financial assistance

12.—(1) Subject to paragraph (2) below, if at any time after the Scottish Ministers have approved an application in whole or in part or have paid financial assistance under these Regulations, it appears to them that—

- (a) any condition on which the approval was given or the financial assistance has been paid has not been complied with, or the expected benefits have not been achieved for reasons other than circumstances outwith the control of the eligible person;
- (b) any measure, in respect of which approval was given or financial assistance has been paid, has not been carried out in accordance with the application approved by the Scottish Ministers, or has been or is being unreasonably delayed or is unlikely to be completed;
- (c) the carrying out of the measure, in respect of which such financial assistance is claimed, is contrary to the purposes served by assistance previously given out of money provided by the United Kingdom Parliament, the Scottish Parliament or the European Community;
- (d) the carrying out of the measure, in respect of which such financial assistance is claimed, has been effected in a way which has destroyed or damaged the natural heritage of the countryside to an extent which cannot be justified by the purpose for which financial assistance is claimed;
- (e) public funding in respect of expenditure towards which such financial assistance is claimed has been or may be given otherwise than under these Regulations;
- (f) the expenditure towards which such financial assistance is claimed is excessive, having regard to the measure carried out and to which the claim relates;
- (g) the eligible person 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(3)(b);
- (h) information was given by the eligible person on any matter relevant to the giving of the approval or the making of the payment which was false or misleading in a material respect;
- (i) the eligible person has not retained the measure in respect of which financial assistance has been paid within the eligible business existing at the time of application for a period of five years, or seven years in the case of financial assistance for housing for rent, after payment of the financial assistance; or
- (j) the European Commission has decided that the grant paid, or to be paid, does not comply with the Community legislation,

the Scottish Ministers may revoke the approval, in whole or in part, or may reduce or withhold any financial assistance under these Regulations and, where any such financial assistance has been paid, may recover on demand and as a debt an amount equal to the financial assistance which has been so paid or such part thereof as they may determine.

(2) Before revoking an approval in whole or in part or reducing or withholding any financial assistance or making a demand by virtue of paragraph (1) above, the Scottish Ministers shall—

- (a) give to the person from whom any such amount is sought written notification of the step proposed to be taken and, if appropriate, the amount by which it is proposed that financial assistance be reduced or the amount of such assistance which it is proposed be withheld;
- (b) give that person an opportunity to make representations about the action proposed to be taken by them within such time and in such form as they think fit; and
- (c) consider any such representations.

Interest

13.—(1) Where the Scottish Ministers intend to recover on demand financial assistance in whole or in part in accordance with regulation 12, they may, in addition, recover interest on that amount at a rate of one per cent above the sterling three month London interbank offered rate on a day to day basis, from the date of payment of financial assistance until the date of recovery.

(2) In any proceedings for recovery under these Regulations, a certificate issued by 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.

Offences

14.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person any financial assistance under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, shall be guilty of an offence and shall be 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(5)) in the exercise of the powers under regulation 11 shall be guilty of an offence and shall be 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 at any time within the period of 12 months from the date on which the offence was committed.

(4) Section 136(3) of the Criminal Procedure (Scotland) Act 1995⁽⁹⁾ (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

15.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

Revocations and saving provision

16.—(1) Subject to paragraph (2) below, the Highlands and Islands Agricultural Programme Regulations 1994⁽¹⁰⁾ ("the 1994 Regulations") and the Highlands and Islands Agricultural Programme Amendment Regulations 1999⁽¹¹⁾ are hereby revoked.

(2) Notwithstanding the revocation of the 1994 Regulations by virtue of paragraph (1) above, regulations 7 to 13 of the 1994 Regulations shall continue to apply in respect of financial assistance paid under the 1994 Regulations.

⁽⁹⁾ 1995 c. 46.

⁽¹⁰⁾ S.I.1994/3096, amended by S.I. 1999/647.

⁽¹¹⁾ S.I. 1999/647.

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