

2001 No. 40

AGRICULTURE

**The Highland and Islands Agricultural Processing and
Marketing Grants Etc. (Scotland) Regulations 2001**

Made 15th February 2001

Laid before the Scottish Parliament 16th February 2001

Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Highland and Islands Agricultural Processing and Marketing Grants Etc. (Scotland) Regulations 2001.

(2) Regulation 14 of these Regulations shall come into force on 19th February 2001 and, other than regulation 14, these Regulations shall come into force on 19th March 2001.

(3) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“approved expenditure” means the costs of an investment or project which the Scottish Ministers have approved for the purpose of calculating grant under these Regulations;

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

“Commission Regulation” means 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 rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(b);

“Community legislation” means—

- (a) Council Regulation (EC) No 1257/1999;
- (b) Council Regulation (EC) No 1260/1999 of 21st June 1999 laying down general provisions on the Structural Funds(c); and
- (c) the Commission Regulation;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). 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.

(b) O.J. No. L 214, 13.8.99, p.31, as corrected by Corrigendum to Commission Regulation (EC) No 1750/1999 (O.J. No. L 37, 30.12.99, p.75), and amended by Commission Regulation (EC) No 2075/2000 (O.J. No. L 246, 30.9.00 p.46).

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

“Council Regulation (EC) No 1257/1999” means 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^(a);

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

“Highland and Islands area” means that part of Scotland comprising—

- (a) the area of the Argyll and Bute Council, excluding the Parishes of Arrochar, Rhu, Roseneath, Cardross and Luss;
- (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; and

“quality agricultural products” means products covered from time to time by Annex I to the Treaty establishing the European Economic Community, except fishery products, which in the opinion of the Scottish Ministers are above average quality.

(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^(b), which has been recorded and is consequently capable of being reproduced.

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

Grants

3.—(1) The Scottish Ministers may pay to an applicant a grant towards approved expenditure incurred in relation to an investment or project in the Highland and Islands area which, in the opinion of the Scottish Ministers—

- (a) in accordance therewith, would fulfil the purposes of—
 - (i) Articles 25 to 28 of Council Regulation (EC) No 1257/1999; and
 - (ii) Articles 21 to 23 of the Commission Regulation; or
- (b) where the investment or project relates to the marketing of quality agricultural products, falls within any of the purposes set out in Schedule 1 to these Regulations.

(2) Subject to paragraph (3) below, the amount of grant payable under these Regulations shall be such sum as the Scottish Ministers consider appropriate having regard to the matters set out in regulation 5 but shall not exceed 50 per cent of approved expenditure.

(3) No grant may be paid in relation to an investment or project whose approved expenditure is less than £1,000.

Applications

4.—(1) The Scottish Ministers may from time to time invite applications for grant under these Regulations.

(2) An application shall be delivered to the Scottish Ministers on or before such closing date as they may from time to time determine.

(3) The Scottish Ministers shall publish in such manner as they consider appropriate a notice inviting applications and specifying the closing date.

(4) An application shall be in writing and shall be made in such form and manner as the Scottish Ministers may require.

(a) O.J. No. L 160, 26.9.99, p.80.

(b) 2000 c.7.

(5) An applicant shall provide such information relating to the application as the Scottish Ministers may require in order to allow for proper consideration of the application.

Determination of applications

5.—(1) The Scottish Ministers may approve (in whole or in part) or may reject an application and in determining whether an application should be so approved or rejected, they shall have regard to—

- (a) the total amount of grant monies available for payment;
- (b) whether the investment or project is eligible for grant in accordance with regulation 3;
- (c) the extent to which the application meets the criteria set out in Schedule 2 to these Regulations;
- (d) the level of grant which is either necessary or appropriate to enable the investment or project to proceed;
- (e) the value for money which the investment or project represents having regard to sub-paragraph (c) above and the level of grant likely to be required and how that value compares with other applications; and
- (f) the benefits of such an investment or project to small or medium-sized businesses.

(2) Approval of an application may be made subject to such conditions as the Scottish Ministers think fit (including, without prejudice to that generality, conditions as to the manner and date of completion of the investment or project).

(3) Where the Scottish Ministers approve an application (in whole or in part) they shall determine the approved expenditure and the amount of grant payable to the applicant.

(4) The Scottish Ministers shall notify the applicant of their decision in such manner as they consider appropriate after the application has been determined and, where the application is approved, shall notify the applicant of any conditions imposed and of the matters referred to in paragraph (3) above.

(5) The Scottish Ministers may vary an approval of an application (including any conditions subject to which it was given) or of the matters referred to in paragraph (3) above at the request of, or with the consent of, the applicant.

Payment of grant

6.—(1) Payment of grant shall be made only on receipt of a claim for payment made by the applicant in such form and manner and at such time as the Scottish Ministers may from time to time determine.

(2) No grant shall be paid until the investment or project has been completed or any stage of investment or of the project has been completed.

(3) Payment of grant may be made by lump sum or by instalments as the Scottish Ministers think fit.

(4) The Scottish Ministers may make payment (in whole or in part) of grant subject to the such conditions as they think fit (including, without prejudice to that generality, conditions as to the manner and date of completion of the investment or project and its continuation).

Information and Records

7.—(1) Subject to paragraphs (2) and (3) below, an applicant—

- (a) in the case of a grant for the purchase of heritable property, for a period of ten years; and
- (b) in any other case, for a period of five years, following the last payment of grant under these Regulations,

shall—

- (i) 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 Scottish Ministers; and
- (ii) provide such additional information in relation to the investment or project or the grant monies paid in pursuance of that investment or project as the Scottish Ministers may require.

(2) If the applicant 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 applicable 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 8(3)(d).

Powers of authorised persons

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

- (a) which is the subject of an investment or project 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 payment under these Regulations or any other information provided by the applicant relating to the investment or project;
- (b) ascertaining whether any grant 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 grant or the investment or project;
- (b) may require the applicant or any employee or agent of the applicant to produce, or secure the production of, any document or supply any additional information in the possession or under the control of that applicant relating to the grant or the investment or project;
- (c) where any document or other record relating to the grant or investment or project 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 applicant or any employee or agent of the applicant 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 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.

(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 or variation of approval and withholding or recovery of grant

9.—(1) Subject to paragraph (2) below, if at any time after the Scottish Ministers have approved an application (in whole or in part) for the purposes of a grant under these Regulations, it appears to them that—

- (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 was paid, has not been complied with;
- (c) the investment or 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 Scottish Ministers;
- (d) the investment or 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;
- (e) the investment or project was commenced before the date on which the Scottish Ministers gave written permission to do so;
- (f) the European Commission has decided that the grant paid, or to be paid, does not comply with the Community legislation;
- (g) public funds in excess of 50 per cent of approved expenditure have been applied to the investment or project; or
- (h) the applicant has—
 - (i) intentionally obstructed any authorised person in exercise of the powers under regulation 8; or
 - (ii) failed to comply with a requirement imposed under regulation 8(3)(b),

the Scottish Ministers may 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 and may withhold payment of grant in whole or in part and, where any grant has been paid under these Regulations, the Scottish Ministers may recover on demand and as a debt the whole or any part of the grant which has been paid.

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

- (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.

Interest

10.—(1) Where the Scottish Ministers intend to recover grant in whole or in part in accordance with regulation 9(1), they may, in addition, recover on demand 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 grant 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

11.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person any grant under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, 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 8(5)) in the exercise of the powers under regulation 8 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(a) (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

12.—(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 members' functions of management as if the member were a director of the body corporate.

Revocations and saving provision

13.—(1) Subject to paragraph (2) below, the Agricultural Processing and Marketing Grant Regulations 1995(b) (“the 1995 Regulations”) are hereby revoked.

(2) Notwithstanding the revocation of the 1995 Regulations by virtue of paragraph (1) above, regulations 4(3) and (4) and 5 to 8 of the 1995 Regulations shall continue to apply for the purposes of grant paid under those Regulations.

(3) Paragraph 157 of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999(c) is omitted.

Amendment of the Agricultural Business Development Scheme (Scotland) Regulations 2000

14.—(1) The Agricultural Business Development Scheme (Scotland) Regulations 2000(d) are amended as follows.

(2) For regulation 5(2)(g), there shall be substituted, as follows:—

“(g) confirmation—

- (i) as to what public funding (if any) towards the cost of the measure has been sought, otherwise than under these Regulations; and
- (ii) that it is not intended to seek any public funding towards such costs, otherwise than under these Regulations”.

(3) In regulation 6(3)(e), there shall be inserted before the words “other public funding”, the words “subject to paragraph (3A) below,”.

(a) 1995 c.46.

(b) S.I. 1995/362, amended by S.I. 1999/1820.

(c) S.I. 1999/1820.

(d) S.S.I. 2000/448.

(4) After regulation 6(3), there shall be inserted, as follows:–

“(3A) Where an applicant has sought public funding in respect of the measure concerned otherwise than under these Regulations, but the public funding so sought was not obtained, the duty of the Scottish Ministers to be satisfied as to the matters set out in paragraph (3)(e) above shall not apply in relation to such public funding so sought and not obtained.”.

St Andrew’s House,
Edinburgh
15th February 2001

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE 1

GRANTS FOR MARKETING OF QUALITY AGRICULTURAL PRODUCTS

The purposes for which grant may be paid in accordance with regulation 3(1)(b) of these Regulations are–

1. Marketing material

The origination and complete production costs of sales brochures, leaflets, labelling, point of sale material or promotional videos and advertising and distribution costs associated with marketing.

2. Trade shows and exhibitions

Attendance as an exhibitor at an approved trade show or exhibition including costs related to stand space and structure, carpeting, furniture hire, electrics, graphics, refrigeration, freight or carriage.

3. Market consultancy and market research

Consultant's fees, charges in respect of general marketing advice, market research and the production of marketing plans.

4. Marketing groups

Establishing new co-operatives, associations, limited companies or partnerships, preparation of a business plan.

5. Product development

Developing new, or improving existing, products or services, technical research and development, product testing, packaging and design.

6. Educational and sales visits

Visits aimed at increasing awareness of current trends and market opportunities.

SCHEDULE 2

CRITERIA FOR CONSIDERATION OF APPLICATIONS FOR GRANT

1. The proper extent to which the grant is required to enable the investment or project to proceed.
2. The extent to which the investment or project meets minimum standards regarding the environment, hygiene and animal welfare as appropriate.
3. The extent to which a lasting share of the benefits of the project will accrue to primary producers.
4. The economic viability of the investment or project.
5. Whether normal market outlets for the products concerned can be found.
6. Whether the investment or project–
 - (a) leads to the production of new products, new markets or innovation packaging or branding;
 - (b) involves the use of organic products;
 - (c) increases the value derived from by-products or waste;
 - (d) involves products designed for export markets;
 - (e) shortens the food chain, by linking producers with processors;
 - (f) involves collaborative marketing;
 - (g) will result in value being added to farm produce;
 - (h) creates or safeguards employment;
 - (i) makes a significant contribution to the local economy;
 - (j) results in healthier foods or products; or
 - (k) increases the consumption of healthy foods and improves the diet.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce measures to supplement–

- (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;
- (b) Council Regulation (EC) No 1260/1999 of 21st June 1999 laying down general provisions on the Structural Funds; 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 rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF).

The above Community legislation provides for payment of assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund for measures which promote rural development falling within the scope of Council Regulation 1257/1999. Measures relating to Objective 1 areas (which include the Highlands and Islands for transitional support under Objective 1) are subject to the provisions of Council Regulation 1260/1999.

These Regulations set up the Highlands and Islands Agricultural Processing and Marketing Grants scheme and enable the payment of grants under the Single Programming Document for the Highlands and Islands Special Transitional Programme which, in accordance with Council Regulation 1260/1999, was approved by the European Commission on 8th August 2000.

Grants under the Regulations can be provided for investments or projects fulfilling the requirements and the purposes of Articles 25 to 28 of Council Regulation 1257/1999 and Articles 21 to 23 of Commission Regulation 1750/1999 or, where the investment or project relates to the marketing of quality agricultural products, falls within any of the purposes set out in Schedule 1 to these Regulations (regulation 3).

The Regulations provide for the procedure for applications for grants. Applications must be submitted to the Scottish Ministers after applications have been invited (regulation 4).

The Regulations also–

- (a) make provision for the determination of applications by the Scottish Ministers (regulation 5);
- (b) provide for how grants may be claimed and for the Scottish Ministers to determine the manner and timing of payment of the approved grants (regulation 6);
- (c) provide for retention of information and records (regulation 7);
- (d) confer powers of entry and inspection for authorised persons to enforce the Regulations (regulation 8);
- (e) make provision for the revocation and variation of approval and the withholding or recovery of grants (regulation 9);
- (f) make provision for payment of interest on grants recovered under regulation 9 (regulation 10); and
- (g) create offences of knowingly or recklessly making a false statement to obtain grants or of obstructing authorised persons acting under the Regulations and make associated provision (regulations 11 and 12).

These Regulations also revoke, subject to a saving provision, the Agricultural Processing and Marketing Grant Regulations 1995 (S.I. 1995/362) and make a minor revocation consequential thereon.

A copy of the Commission Decision approving the Single Programming Document, together with a copy of the Single Programming Document, have been placed in the Scottish Parliament Information Centre. Copies of them may be inspected at the Scottish Executive Rural Affairs Department, Agriculture, Food and EU Co-ordination Branch, Room 257, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.

The Regulations also make minor amendments to the Agricultural Business Development Scheme (Scotland) Regulations 2000 to clarify provisions in those Regulations concerning applications for and determinations of applications for funding thereunder.

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£2.50

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superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament
300 03/01 19593

