

2008 No. 162

AGRICULTURE

**The Land Managers Skills Development Grants (Scotland)
Regulations 2008**

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| <i>Made</i> - - - - | <i>22nd April 2008</i> |
| <i>Laid before the Scottish Parliament</i> | <i>23rd April 2008</i> |
| <i>Coming into force</i> - - | <i>18th 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(a):

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Land Managers Skills Development Grants (Scotland) Regulations 2008 and shall come into force on 18th May 2008.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“approved expenditure” means the costs of a 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;

“the Community legislation” means—

(a) the Control Regulation;

(b) the Council Regulation;

(c) Commission Regulation (EC) No. 1974/2006(b), as amended by Commission Regulations (EC) Nos. 434/2007(c) and 1236/2007(d), laying down detailed rules for the application of the Council Regulation;

“the Control Regulation” means Commission Regulation (EC) No. 1975/2006(e), as corrected by Commission Regulation (EC) No. 1396/2007(f), laying down detailed rules for the

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a). 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. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

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

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

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

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

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

implementation of the Council Regulation 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 20 September 2005(a), as amended by Council Regulations (EC) Nos. 1944/2006(b) and 2012/2006(c), laying down general rules governing Community support for rural development, financed by the European Agricultural Fund for Rural Development (EAFRD);

“grant” means a payment under these Regulations;

“Ministers” means the Scottish Ministers; and

“project” means a project or an investment.

(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(d), 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 conditions A to E are met.

(2) Condition A is met if Ministers think the project would fulfil a purpose provided for in (either or both of) the following Articles of the Council Regulation—

- (a) Article 20(a)(i) (measures aimed at promoting knowledge and improving human potential through vocational training and information actions, including diffusion of scientific knowledge and innovative practices, in the agricultural, food and forestry sectors);
- (b) Article 52(c) (training and information measures for economic actors operating in the fields covered by axis 3 of the Council Regulation (quality of life in rural areas and diversification of the rural economy)).

(3) Condition B is met if the costs (or a proportion of the costs) of the project may be supported by grant.

(4) Condition C is met if the project will be undertaken by or on behalf of an eligible body.

(5) Condition D is met if Ministers think the project will directly benefit 10 or more individuals involved in forestry or the management or use of agricultural land in Scotland; (in this paragraph, “agricultural land” means land used for agriculture for the purposes of a trade or business).

(6) Condition E is met if Ministers think the project will be undertaken by suitably qualified personnel.

Supported project costs

4.—(1) For the purposes of regulation 3(3) (condition B), the following costs of a project may be supported by grant—

- (a) development costs;
- (b) fees, travel and subsistence costs of training providers;
- (c) event hosting costs (including venue and catering hire);
- (d) project management costs;
- (e) essential course materials; and
- (f) publicity.

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

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

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

(d) 2000 c.7. Section 15 has been amended by the Communications Act 2003, section 406 and Schedule 17, paragraph 158.

(2) But—

- (a) the level of grant must not exceed 75% of the costs of the project; and
- (b) the level of grant must not be such that the total level of public sector funding for the project would exceed 100% of the costs of the project.

Eligible bodies

5. In regulation 3(4) (condition C), “eligible body” means—

- (a) Quality Meat Scotland(a);
- (b) the Agriculture and Horticulture Development Board (“the Board”), or a company to whom the Board has delegated its functions under article 5(2) of the Agriculture and Horticulture Development Board Order 2008(b);
- (c) Scottish Enterprise or Highlands and Islands Enterprise(c);
- (d) a person responsible, by virtue of an agreement made under section 19 (delegation of certain functions and powers) of the Enterprise and New Towns (Scotland) Act 1990(d), for the discharge of any functions of Scottish Enterprise or Highlands and Islands Enterprise; or
- (e) a body which carries on its activities otherwise than for profit, but not—
 - (i) a local authority;
 - (ii) a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and Higher Education (Scotland) Act 2005(e);
 - (iii) an educational establishment for the provision of further education recognised as a central institution by regulations made by the Scottish Ministers under the Education (Scotland) Act 1980(f); or
 - (iv) a public authority (unless that authority falls within paragraphs (a) to (d)).

Determination of applications

6.—(1) Paragraph (2) applies where—

- (a) an application is made for grant towards a project; and
- (b) the project may be considered for grant under regulation 3(1).

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

(3) But, before approving an application, Ministers must have regard to—

- (a) the total amount of grant monies available;
- (b) the costs of the project which may be supported under regulation 4;
- (c) the benefits of the project;
- (d) the value for money which the project represents; and
- (e) the level of grant likely to be required.

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

(5) Where Ministers approve an application, they—

(a) Established by article 3(1) of the Quality Meat Scotland Order 2008 (S.S.I. 2008/ 77).
(b) S.I. 2008/ 576. The Agriculture and Horticulture Development Board is established by article 3(1) of the Order.
(c) Both bodies were established by section 1 of the Enterprise and New Towns (Scotland) Act 1990 (c.35). Section 1 of that Act was amended by the Trade Union Reform and Employment Rights Act 1993 (c.19) s. 47(3).
(d) 1990 c.35.
(e) 2005 asp 6. Schedule 2 has been amended by S.S.I.s 2005/660, 2006/480 and 2007/255.
(f) 1980 c.44. The relevant regulations are the Central Institutions (Recognition) (Scotland) (No. 2) Regulations 1990 (S.I. 1990/2386), as amended by S.I. 1992/1025.

- (a) must determine the approved expenditure and the amount of grant payable 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) Ministers must notify the applicant of their decision under paragraph (2) in such manner as they think appropriate; where the application is approved, Ministers must include in the notice the matters referred to in paragraph (5).

Payment of grant

7.—(1) Ministers need not make any payment of grant unless—

- (a) they have approved an application for grant under regulation 6(2) (in whole or in part);
- (b) they receive a claim for payment made by the applicant; and
- (c) the project has been completed (or a stage of the project has been completed).

(2) It is for Ministers to determine the form and manner for making a claim for payment.

(3) Ministers may make payments of grant—

- (a) by lump sum or by instalments; and
- (b) subject to any conditions (including conditions as to the manner and date of completion of the project and its continuation) as Ministers consider appropriate.

Guidance

8.—(1) Ministers may publish guidance from time to time on—

- (a) applying for grant;
- (b) the costs which may be supported by grant under regulation 4 of these Regulations; and
- (c) generally, how Ministers intend to perform their functions under these Regulations.

(2) Ministers must have regard to any guidance which they publish under paragraph (1).

(3) Where Ministers publish guidance under paragraph (1)(b) (supported project costs), they must have regard to that guidance in determining the amount of approved expenditure under regulation 6(5)(a).

Information and records

9.—(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 Ministers; and
- (b) provide such additional information in relation to the project or the grant monies paid in pursuance of that project as 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 10(4)(d) or (e).

Powers of authorised persons

- 10.—(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;
 - (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) But, 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, plant, machinery, equipment, livestock, document or record which that person reasonably believes relates to the grant or the project;
 - (b) may require the applicant or any employee, servant 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 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.
- (5) An applicant or any employee, servant 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 Ministers consider necessary, in which case paragraphs (4) and (5) 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

11.—(1) Paragraph (2) applies where Ministers have approved an application (in whole or in part) under regulation 6(2) and Ministers 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 Ministers;
- (d) 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;
- (e) the project was commenced before the date on which 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 those permitted under these Regulations have been applied to the project; or
- (h) the applicant, or an employee, agent or servant of the applicant, has—
 - (i) intentionally obstructed any authorised person in exercise of the powers under regulation 10;
 - (ii) failed to comply with a requirement imposed under regulation 10(4)(b) to (e); or
 - (iii) failed to give assistance under regulation 10(5).

(2) Where this paragraph applies, Ministers may—

- (a) apply a reduction to any payment made, or to be made, to the applicant;
- (b) 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;
- (c) withhold payment of grant in whole or in part;
- (d) on demand, recover as a debt the whole or any part of the grant which has been paid.

(3) Where paragraph (2) applies, and Ministers also think that the applicant acted recklessly or intentionally, they may also—

- (a) require the applicant to pay an additional sum equal to 10% of the sums paid or payable to the applicant under these Regulations;
- (b) 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 Ministers may specify.

(4) But, before 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)(a) must be applied in accordance with the Control Regulation.

Interest

12.—(1) Where Ministers intend to recover grant (in whole or in part) in accordance with regulation 11(2)(d), they may also recover (on demand) interest on that amount at the rate in paragraph (2).

(2) The rate is 1 per cent above the sterling 3 month London interbank offered rate on a day to day basis, from the date of payment of grant until the date of recovery.

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

13.—(1) Any person who knowingly or recklessly makes a false statement for the purposes of obtaining for the benefit of that or any other person 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 10(6)) in the exercise of the powers under regulation 10 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

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

(2) Condition A is met if an offence under these Regulations 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 subsection (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 (1) 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.

(a) 1995 c.46.

(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.

St Andrew's House,
Edinburgh
22nd April 2008

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish a framework for the payment in Scotland of grants towards training initiatives aimed at improving the skills of individuals involved in forestry or the management or use of agricultural land in Scotland.

They supplement Council Regulation (EC) No. 1698/2005 which lays 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 (O.J. No. L 209, 11.8.2005, p.1.). They also implement Article 74(1) of Council Regulation (EC) No. 1698/2005 and Article 9(1) of Council Regulation (EC) No. 1290/2005, which require Member States to adopt legislative and administrative provisions to ensure that the Community's financial interests in relation to expenditure on rural development are effectively protected.

Regulation 3 sets out the general conditions which must be satisfied before a project may be considered for grant under these Regulations.

Regulation 4 sets out what project costs a grant under these Regulations can support.

Regulation 5 sets out the list of eligible bodies who can apply for grant.

Regulation 6 makes provision for determining grant applications.

Regulation 7 gives the Scottish Ministers power to make payments of grant under the Regulations.

Regulation 8 gives the Scottish Ministers power to issue guidance on applying for grant, the costs which may be supported by grant under the Regulations, and generally how the Scottish Ministers intend to perform their functions under the Regulations.

Regulation 9 provides for the retention of information and records by applicants.

Regulation 10 confers powers of entry and inspection on authorised persons to enforce the Regulations.

Regulation 11 makes provision for the revocation and variation of approval and the withholding or recovery of grants.

Regulation 12 makes provision for the payment of interest on grants recovered under regulation 11.

Regulation 13 creates offences of knowingly or recklessly making a false statement to obtain grants or obstructing authorised persons acting under the Regulations.

Regulation 14 makes provision for offences under regulation 12 committed by bodies corporate.

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