

2008 No. 58

CROFTERS, COTTARS AND SMALL LANDHOLDERS

**The Crofting Counties Agricultural Grants (Scotland)
Amendment Scheme 2008**

Made - - - - - *21st February 2008*

Laid before the Scottish Parliament *22nd February 2008*

Coming into force - - - *17th March 2008*

The Scottish Ministers make the following Scheme in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1. This Scheme may be cited as the Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 2008 and comes into force on 17th March 2008.

Amendment of the Crofting Counties Agricultural Grants (Scotland) Scheme 2006

2.—(1) The Crofting Counties Agricultural Grants (Scotland) Scheme 2006(b) is amended in accordance with sub-paragraphs (2) to (6).

(2) In paragraph 2 (interpretation)—

(a) before “In this Scheme—”, insert “—(1)”;

(b) in sub-paragraph (1), insert in the appropriate place—

““authorised person” means a person who is authorised by the Scottish Ministers, either generally or specifically, to act in relation to matters arising under this Scheme;”;

(c) after sub-paragraph (1), insert—

“(2) A reference in this Scheme 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(c) which has been recorded and is consequently capable of being reproduced.”.

(3) At the end of paragraph 6 (restrictions on payment of grant), insert—

“(4) The Scottish Ministers shall not pay a grant where—

(a) they are satisfied that the use of the land in accordance with an operation or part of an operation would frustrate the purposes of any assistance previously given out of

(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 function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.S.I. 2006/24.

(c) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

money provided by, or under, any statutory provision or by the European Community;

- (b) they are satisfied that any payment under this Scheme would duplicate any assistance previously given, or to be given, out of money provided by, or under, any statutory provision or by the European Community; or
- (c) the crofter or eligible occupier is excluded from support under Council Regulation 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development^(a) pursuant to Article 31(2) of Commission Regulation 1975/2006^(b) (which requires a person who intentionally makes a false declaration to be excluded from support), and the making of a grant under this Scheme would include such support.

(5) Where the amount of grant a crofter or eligible occupier has claimed exceeds, by more than 3%, the amount of grant they are eligible to receive, the amount of grant payable shall be reduced by the difference in those two amounts, pursuant to Article 31(1) of Commission Regulation 1975/2006.

(6) The provisions of sub-paragraph (5) shall not apply where the Scottish Ministers are satisfied that the crofter or eligible occupier has not intentionally included any ineligible amount in the application.”.

(4) After paragraph 11 (Crofters Commission to be agent), insert—

“Power of authorised persons

11A.—(1) An authorised person may, at all reasonable hours and on producing if so required, their authorisation, enter on any land or premises—

- (a) in respect of which an application under paragraph 4 or Part 3, or a claim under paragraph 5, has been made; or
- (b) on which the authorised person has reasonable grounds to believe that documents relating to that application or claim are being kept for any of the purposes specified in sub-paragraph (2).

(2) The purposes in sub-paragraph (1) are—

- (a) inspecting the land to which the application under paragraph 4 or Part 3 or claim under paragraph 5 relates;
- (b) verifying the accuracy of any information provided by a crofter or eligible occupier or on their behalf, relating to such an application or claim; and
- (c) determining whether or not a crofter or eligible occupier has complied with any condition upon which an application has been approved or grant paid.

(3) An authorised person who has entered any land in terms of sub-paragraph (1) may—

- (a) inspect the land and any premises, plant, machinery, equipment, document or record on it which that person reasonably believes relates to an application or claim;
- (b) require the crofter or eligible occupier, or their employee or agent, to produce, or secure the production of, any document or supply any additional information in their possession or under their control relating to their application or claim, as the case may be;
- (c) where any information referred to in sub-paragraph (3)(b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information, and require that information to be reproduced in a visible and legible form in which it may be taken away;
- (d) require copies of, or extracts from, any such document or other record referred to in sub-paragraphs (3)(a) or (b) to be produced;

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

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

- (e) retain a copy of any document produced to the authorised person;
- (f) seize and retain any document or other record which an authorised person reasonably believes may be required as evidence in proceedings under this Scheme; and
- (g) in so far as may be necessary for the purposes of sub-paragraph (2)(b) or (c), inspect and count livestock on the land and may, for this purpose, require the applicant to arrange for the collection, penning and securing of such livestock.

(4) A crofter or eligible occupier and their employee or agent shall give an authorised person all reasonable assistance in relation to the matters mentioned in sub-paragraphs (1) and (3).

(5) An authorised person entering any land under sub-paragraph (1) may be accompanied by—

- (a) any official of the European Commission; and
- (b) such other person as the authorised person considers necessary,

and sub-paragraphs (3) and (4) shall apply to that person when acting under the instructions of an authorised person as they apply to an authorised person.

(6) The powers of an authorised person under sub-paragraph (1) apply to any land used for the purposes of a dwellinghouse only where reasonable notice of their intended exercise has been given to all residents of that dwellinghouse.

(7) Where a crofter or eligible occupier or their employee or agent intentionally obstructs an authorised person (or any person accompanying that person and acting under that person's instructions) in the exercise of the powers under sub-paragraphs (1) and (3), the Scottish Ministers may—

- (a) withhold the whole or any part of the grant payable to the crofter or eligible occupier;
- (b) recover from the crofter or eligible occupier the amount of grant, or any instalment of grant, paid to them, or such part thereof, as they consider reasonable, in like manner as if it were a debt due by the crofter or eligible occupier to them;
- (c) require the crofter or eligible occupier to pay to them an additional sum equal to no more than 10% of the grant paid or payable.”.

(5) In paragraph 13 (recovery of grant, etc.)—

(a) in sub-paragraph (1)—

- (i) omit from “recover” to end; and
- (ii) substitute—

“(aa) recover from the applicant the amount of grant, or any instalment of grant, paid to the applicant, or such part thereof, as they consider reasonable, in like manner as if it were a debt due by the applicant to them; or

(bb) where, in their view the conduct of the applicant was reckless or was carried out with the intention of breaching any condition imposed in the grant, require the applicant to pay to them an additional sum equal to no more than 10% of the grant paid or payable.”; and

(b) in sub-paragraph (4)(a)—

- (i) omit “payment”; and
- (ii) substitute “discovery of the non-compliance with, or breach of, any condition imposed on the applicant”.

(6) After paragraph 13 (recovery of grant, etc.), insert—

“Record keeping

13A.—(1) A crofter or eligible occupier must keep any invoice, account or other document relating to a claim for grant for a period of four years after the payment of any grant is made, or for such other period as the Scottish Ministers specify in the grant.

(2) If the crofter or eligible occupier transfers the original of any such document to another person in the normal course of business, the crofter or eligible occupier must instead keep a copy of that document for the period referred to in sub-paragraph (1).

(3) Sub-paragraph (1) shall not apply where the document has been removed by any person lawfully authorised to remove it.”.

Amendment of the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004

3.—(1) The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004(a) are amended in accordance with sub-paragraph (2).

(2) In regulation 4 (decisions amenable to review and appeal), after regulation 4(s), insert—

“(t) a decision by the Scottish Ministers—

(i) under paragraphs 8(2) or 12B of the Crofting Counties Agricultural Grants (Scotland) Scheme 1988(b) to withhold any grant payable, or to recover any grant paid, made on or after 17th March 2008 in relation to an application being administered on that date under that Scheme; and

(ii) under paragraphs 6(4) or (5), 11A(7) or 13(1) of the Crofting Counties Agricultural Grants (Scotland) Scheme 2006 not to pay a grant, to withhold any grant payable or to recover any grant paid (in whole or in part), or require payment of any sum, made on or after 17th March 2008 in connection with any application made under that Scheme.”.

MICHAEL RUSSELL

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
21st February 2008

(a) S.S.I. 2004/381 as amended by S.S.I. 2005/117, 225 and 569 and 2007/439.

(b) S.I. 1988/559 (“the 1988 Scheme”). The 1988 Scheme was amended by the Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 1992 (S.I. 1992/3291) and the Crofting Counties Agricultural Grants (Scotland) Amendment Scheme 1994 (S.I. 1994/1013). Those Schemes were revoked by paragraph 14 of the Crofting Counties Agricultural Grants (Scotland) Scheme 2006 (S.S.I. 2006/24) (“the 2006 Scheme”), but the 1988 Scheme, as amended, continues in force, by virtue of paragraph 15 of the 2006 Scheme, for the purpose of administering applications made under the 1988 Scheme before 1st April 2006.

EXPLANATORY NOTE

(This note is not part of the Scheme)

The Crofting Counties Agricultural Grants (Scotland) Scheme 2006 (S.S.I. 2006/24) (“the 2006 Scheme”) enables the Scottish Ministers to make grants to crofters and certain occupiers of land in the crofting counties–

- (a) in respect of specified operations carried out by them for the purpose of aiding and developing agricultural production on crofts or holdings (Part 2 of, and the Schedule to, the 2006 Scheme); and
- (b) in respect of contributions made by them under such agreements as are referred to in section 47 of the Roads (Scotland) Act 1984 towards the expenses of providing cattle grids for the aforementioned purpose (Part 3 of the 2006 Scheme).

This Scheme amends the 2006 Scheme by–

- (a) making provision for electronic communications, in particular in relation to the intimation of conditions under paragraph 9(2) of the Scheme (see paragraph 2(2)(c) which inserts a new sub-paragraph (2) into paragraph 2 (interpretation) of the 2006 Scheme);
- (b) prescribing the circumstances in which the Scottish Ministers shall not pay a grant (see paragraph 2(3) which inserts new sub-paragraphs (4) and (5) in paragraph 6 (restrictions on payment of grant) of the 2006 Scheme);
- (c) introducing provision in relation to “authorised persons”, their powers and the consequences of obstructing an authorised person (see paragraph 2(4) which inserts a new paragraph 11A (power of authorised persons) into the 2006 Scheme);
- (d) providing for the consequences of non-compliance with conditions imposed upon applicants (see paragraph 2(5)(a)(ii) which amends paragraph 13(1) of the 2006 Scheme); and
- (e) introducing a requirement on crofters and eligible occupiers to keep records for a specified period (see paragraph 2(6) which inserts a new paragraph 13A into the 2006 Scheme).

This Scheme also amends the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 (S.S.I. 2004/381) to provide for a right of appeal against specified decisions of the Scottish Ministers.

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