

2008 No. 64

AGRICULTURE

**The Agricultural Processing, Marketing and Co-operation
Grants (Scotland) Regulations 2008**

<i>Made</i> - - - -	<i>25th February 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>28th February 2008</i>
<i>Coming into force</i> - -	<i>24th March 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 Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008 and come into force on 24th March 2008.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

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

“authorised person” means a person appointed by 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, as amended by Commission Regulations (EC) No. 434/2007(b) and (EC) 1236/2007(c), laying down detailed rules for the application of the Council Regulation,

“the Control Regulation” means Commission Regulation (EC) No. 1975/2006(d), as corrected by Commission Regulation (EC) No. 1396/2007(e), 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 104, 21.4.2007, p.8.

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

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

(e) 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) No. 1944/2006(b) and (EC) No. 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 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. A project may be considered for grant under these Regulations if Ministers think the grant would fulfil an agricultural purpose provided for in—

- (a) Articles 20(b)(iii) and 28 of the Council Regulation (adding value to agricultural products);
- (b) Articles 20(b)(iv) and 29 of the Council Regulation (promoting cooperation for development of new products, processes and technologies in the agriculture and food sector); or
- (c) both paragraphs (a) and (b).

Supported project costs

4. Grant may support the following costs of a project—

- (a) product development;
- (b) development of facilities;
- (c) project management;
- (d) acquisition and hire of vehicles and equipment;
- (e) marketing and publicity;
- (f) market consultancy and market research;
- (g) contributing to, or encouraging, economic development; and
- (h) providing or improving training.

Determination of applications

5.—(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.

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

(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.

- (3) But, when considering an application, Ministers must have regard to—
- (a) the total amount of grant monies available;
 - (b) the benefits of the project;
 - (c) the level of grant which is either necessary or appropriate to enable the project to proceed; and
 - (d) the value for money which the project represents and the level of grant likely to be required and how that value compares with other applications.
- (4) Applicants must provide any information Ministers reasonably require in order to consider an application.
- (5) Where Ministers approve an application, they—
- (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

- 6.—(1) Ministers need not make any payment of grant unless—
- (a) they have approved an application for grant under regulation 5(2);
 - (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.
- (4) Ministers must comply with the Community legislation in paying any grant.

Guidance

- 7.—(1) Ministers may publish guidance from time to time on—
- (a) applying for grant;
 - (b) the costs (including the proportion of 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 5(5)(a).

Information and records

8.—(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 six 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 9(4)(d).

Powers of authorised persons

9.—(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; and
- (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, document, plant, machinery or equipment 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 facility 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;

- (f) inspect and count livestock on the land and may, for this purpose, require the applicant, or any employee, servant or agent of the applicant, to arrange for the collection, penning and securing of such livestock.

(5) An applicant, or any employee, agent or servant 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

10.—(1) Paragraph (2) applies where Ministers have approved an application (in whole or in part) under regulation 5(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 9;
 - (ii) failed to comply with a requirement imposed under regulation 9(4)(b) to (f); or
 - (iii) failed to give assistance under regulation 9(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 the 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

11.—(1) Where Ministers intend to recover grant (in whole or in part) in accordance with regulation 10(2)(d), they may also recover (on demand) interest on that amount at the rate in paragraph (2).

(2) The rate is one per cent above the sterling three month London interbank offered rate on a day to day basis, from the date of demand of repayment 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

12.—(1) Any person who knowingly or recklessly makes a false statement for the purposes of obtaining 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 9(6)) in the exercise of the powers under regulation 9 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

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

(2) Condition A is met if an offence under regulation 12 is committed by—

- (a) a body corporate; or

(a) 1995 c.46.

(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.

(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.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew's House,
Edinburgh
25th February 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce measures to supplement Council Regulation (EC) No. 1698/2005 (“the Council Regulation”) 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.

They also implement Article 74(1) of the Council Regulation and Article 9(1) of Council Regulation (EC) No. 1290/2005 (O.J. No. L 209, 11.8.2005, p.1.), 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.

These Regulations establish a framework for the payment in Scotland of grants towards projects associated with the processing and marketing of agricultural products. Grants under these Regulations must fulfil an agricultural purpose provided for in—

- (a) articles 20(b)(iii) and 28 of the Council Regulation (adding value to agricultural products);
 - (b) articles 20(b)(iv) and 29 of the Council Regulation (promoting cooperation for development of new products, processes and technologies in the agriculture and food sector); or
- both paragraphs (a) and (b).

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

Regulation 5 makes provision for determining grant applications.

Regulation 6 gives the Scottish Ministers power to make payments of grant under the Regulations.

Regulation 7 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 8 provides for the retention of information and records.

Regulation 9 confers powers of entry and inspection for authorised persons to enforce the Regulations.

Regulation 10 makes provision for the revocation and variation of approval and the withholding or recovery of grants.

Regulation 11 makes provision for the payment of interest on grants recovered under regulation 10.

Regulations 12 creates offences of knowingly or recklessly making a false statement to obtain grants or obstructing authorised persons acting under the Regulations.

Regulation 13 makes provision for offences under regulation 12 committed by bodies corporate.

£3.00

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under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland