
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 192

The Rural Development (Scotland) Regulations 2015

PART 4

ENFORCEMENT, OFFENCES AND RECOVERY OF GRANT

Powers of entry

11.—(1) An authorised person may exercise any of the powers specified in regulations 12 and 13 for the purpose of enforcing these Regulations or the EU Regulations.

(2) An authorised person, on producing if so required a duly authenticated document showing that person's authority, may at any reasonable hour enter any land or premises other than premises used wholly or mainly as a private dwelling.

(3) A sheriff, stipendiary magistrate or justice of the peace may by signed warrant permit an authorised person to enter any land or premises, if necessary by reasonable force, if satisfied on sworn information in writing that—

- (a) there are reasonable grounds for an authorised person to enter the land or premises for any purpose mentioned in paragraph (1); and
- (b) one or more of the conditions in paragraph (4) is or are met.

(4) The conditions are that—

- (a) entry to the land or premises has been refused, or is likely to be refused, and—
 - (i) notice of the intention to apply for a warrant has been served on the occupier; or
 - (ii) no such notice has been served on the occupier because serving such a notice would interfere with the purpose or effectiveness of the entry;
- (b) entry is required urgently;
- (c) the premises are unoccupied or the occupier is temporarily absent.

(5) A warrant under paragraph (3) is valid for one month.

(6) An authorised person entering any land or premises by virtue of this regulation may be accompanied by—

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

(7) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before those premises were entered.

Powers of inspection etc.

12.—(1) An authorised person who has entered any land or premises in exercise of a power conferred by regulation 11 may—

- (a) carry out any inquiries, checks, examinations, measurements or tests;

- (b) take samples;
- (c) inspect the land or premises;
- (d) inspect any livestock, crops, trees, woodland, machinery, equipment or any other thing;
- (e) have access to, inspect, copy and print any document or record (in whatever form it is held) or remove such a record or document to enable them to be copied, printed or retained as evidence;
- (f) have access to, inspect and check the operation of any computer and any associated apparatus, or material which is or has been in use in connection with a document or record; and for this purpose require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to give the authorised person such assistance as may reasonably be required and, where a document or record is kept by means of a computer, require the document or record to be produced in a form in which it can be taken away;
- (g) take a photograph, or any other digital record, of anything on the land or premises; or
- (h) seize and retain any document or record which that person reasonably believes may be required as evidence in proceedings under these Regulations.

(2) Nothing in this regulation confers power on an authorised person to seize an item which that person has reasonable grounds to believe would in legal proceedings be protected from disclosure on grounds of confidentiality of communications.

(3) An authorised person who enters any land or premises under a power under other legislation may exercise any of the powers specified in this regulation for the purpose of enforcing these Regulations or the EU Regulations.

(4) Paragraph (1) and regulation 13 apply in relation to a person referred to in regulation 11(6) (b) when that person is acting under the instructions of an authorised person, as if that person were an authorised person.

Assistance to authorised persons

13.—(1) An applicant or beneficiary or any employee, agent, contractor or tenant of an applicant or beneficiary must give an authorised person such assistance as may reasonably be required so as to enable the authorised person to exercise any power conferred by regulation 11 or 12.

(2) Such assistance may include the collection, penning and securing of any livestock and presenting the livestock for inspection in a safe and secure manner.

Offences

14.—(1) It is an offence for any person to—

- (a) obstruct an authorised person (or a person accompanying an authorised person and acting under the authorised person's instructions) in the exercise of a power conferred by regulation 11 or 12;
- (b) fail without reasonable excuse to comply with a request for assistance made under regulation 13; or
- (c) knowingly or recklessly supply to any person acting in execution of these Regulations any information that is false or misleading in any material particular.

(2) Nothing in paragraph (1)(b) is to be construed as requiring any person to answer any question if to do so might incriminate that person.

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences by bodies corporate etc.

15.—(1) Where—

- (a) an offence under regulation 14(1) has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” 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;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Breaches of conditions of grant/undertakings etc.

16.—(1) An appropriate body may determine, in relation to an approval or, as the case may be, claim for payment that—

- (a) the beneficiary has furnished false or misleading information to that body;
- (b) the beneficiary is in breach of the terms of an undertaking or any condition subject to which approval was given;
- (c) the beneficiary is in breach of any requirement to which that beneficiary is subject under—
 - (i) Regulation 1698/2005;
 - (ii) Regulation 1974/2006;
 - (iii) Regulation 65/2011;
 - (iv) the applicable Regulations;
 - (v) the EU Regulations; or
 - (vi) these Regulations;
- (d) the whole or any part of the sum paid or payable in relation to an approval duplicates assistance provided or to be provided out of monies made available by the European Union;
- (e) there has been a material change in the nature, scale, costs or timing of the project in relation to which an application was approved; or
- (f) the project in relation to which an application was approved has been, or is being, delayed or is unlikely to be completed.

(2) Before an appropriate body makes a determination under paragraph (1), it must give the beneficiary—

- (a) a written explanation of the reasons for proposing to make the determination; and
- (b) the opportunity of making written representations within such period as that body considers reasonable.

(3) If, on the expiry of the period referred to in paragraph (2)(b), an appropriate body has not received any written representations, it may make the determination as proposed.

(4) If an appropriate body has received written representations within the period referred to in paragraph (2)(b), it must consider any such representations in deciding whether to make the determination as proposed.

(5) In paragraph (1)(c)—

“Regulation 1974/2006” means [Commission Regulation \(EC\) No 1974/2006](#) laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(1); and

“Regulation 65/2011” means Commission Regulation (EU) No 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(2).

Powers of recovery etc.

17.—(1) Where an appropriate body makes a determination under regulation 16(1), it may—

- (a) withhold the whole or part of any grant payable to the beneficiary;
- (b) apply a reduction to any payment of grant made or to be made, to the beneficiary;
- (c) recover on demand the whole or part of any grant already paid to the beneficiary; or
- (d) revoke the approval in whole or in part.

(2) Where an appropriate body takes any step specified in paragraph (1), it may terminate an undertaking and any entitlement of the beneficiary to payment in respect of the unexpired period of that undertaking is consequently terminated.

(3) Where an appropriate body terminates an undertaking under paragraph (2), it may also prohibit the beneficiary from giving any new undertaking under the same measures, for such period (not exceeding two years) beginning with the date of the termination as it may specify.

Recovery of undue payments, interest and set-off

18.—(1) Where a beneficiary is liable to repay all or part of a payment of grant under these Regulations in accordance with Article 7(1) of the Horizontal Implementing Regulation, the amount of the repayment, together with the interest on that amount calculated in accordance with paragraph (3), is recoverable as a debt.

(2) In any legal proceedings brought pursuant to paragraph (1), a certificate of the Scottish Ministers which—

- (a) sets out the Bank of England base rate applicable during a specified period; and
- (b) includes a statement that the Bank of England or the coordinating body notified the Scottish Ministers of that rate for that period,

is evidence of the rate applicable during that period.

(3) Interest may be charged in respect of each day of the period referred to in Article 7(2) of the Horizontal Implementing Regulation and for this purpose the rate of interest applicable on any day is one percentage point above the Bank of England base rate on that day.

(1) OJ L 368, 23.12.2006, p.15, as last amended by Commission Implementing Regulation (EU) No 335/2013 (OJ L 105, 13.4.2013, p.1). Regulation 1974/2006 was repealed subject to savings by Article 19 of the Rural Development Delegated Regulation.

(2) OJ L 25, 28.1.2011, p.8, as last amended by Commission Implementing Regulation (EU) No 937/2012 (OJ L 280, 13.10.2012, p.1). Regulation 65/2011 was repealed subject to savings by Article 43 of the Horizontal Delegated Regulation.

(4) Any payment due in accordance with paragraph (1) may be set off against any amount due to a beneficiary under and in accordance with these Regulations, the EU Regulations, the applicable Regulations or Regulation 1698/2005.

(5) In this regulation—

“the Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998⁽³⁾ is in force, an equivalent determined by the Treasury under that section; and

“the coordinating body” means the coordinating body referred to in regulation 3 of the Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014⁽⁴⁾.

⁽³⁾ 1998 c.11.

⁽⁴⁾ S.I. 2014/3260.