

2015 No. 192

AGRICULTURE

The Rural Development (Scotland) Regulations 2015

Made - - - - *12th May 2015*

Laid before the Scottish Parliament *14th May 2015*

Coming into force - - *12th June 2015*

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) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Scottish Ministers that it is expedient for references to the EU Regulations (as defined in regulation 2(1)) to be construed as references to those Regulations as amended from time to time.

PART 1

INTRODUCTION

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Rural Development (Scotland) Regulations 2015 and come into force on 12th June 2015.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“accountable body” means the lead partner selected by a local action group as the administrative and financial lead actor as required by Article 34(2) of the Common Provisions Regulation;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (‘the 1998 Act’), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (‘the 2006 Act’)). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (‘the 2008 Act’), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1.

“the applicable Regulations” means—

- (a) the Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008(a);
- (b) the Leader Grants (Scotland) Regulations 2008(b);
- (c) the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(c);
- (d) the Forestry Challenge Funds (Scotland) Regulations 2008(d);
- (e) the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008(e); and
- (f) the Land Managers Skills Development Grants (Scotland) Regulations 2008(f);

“application” means an application for a grant under these Regulations, and “applicant” is to be construed accordingly;

“appropriate body” means—

- (a) in relation to an application for LEADER grant, a local action group; or
- (b) the Scottish Ministers;

“approval”, except in relation to regulation 22(2) (saving), means approval of an application and includes a variation of that approval or any conditions subject to which that approval has been given, and “approve” and “approved” are to be construed accordingly;

“approved expenditure” means the costs of a project which the appropriate body has approved for the purpose of calculating grant under these Regulations;

“authorised person” means a person authorised in writing by an appropriate body to act in matters arising under these Regulations or the EU Regulations;

“beneficiary” means a person whose application has been approved or in respect of whom, following a variation of the approval or a transfer of the land, an undertaking is accepted in accordance with regulation 5(3);

“claim for payment” means a claim for payment under regulation 6;

“Common Provisions Delegated Regulation” means Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund(g);

“Common Provisions Regulation” means Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund,

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- (a) S.S.I. 2008/64, as amended by S.S.I. 2011/260 and S.I. 2011/1043 and revoked subject to savings by regulation 22 and the Schedule to these Regulations.
 - (b) S.S.I. 2008/66, as amended by S.S.I. 2011/260, S.I. 2011/1043 and S.S.I. 2012/182 and revoked subject to savings by regulation 22 and the Schedule to these Regulations.
 - (c) S.S.I. 2008/100, as amended by S.S.I. 2008/233, S.S.I. 2009/1, S.S.I. 2009/233, S.S.I. 2009/335, S.S.I. 2009/411, S.S.I. 2010/87, S.S.I. 2011/106, S.S.I. 2011/228, S.S.I. 2011/260, S.I. 2011/1043, S.S.I. 2012/215, S.S.I. 2012/307, S.S.I. 2012/360 and the Crofting Reform (Scotland) Act 2010 (asp 14), section 1(4), and revoked subject to savings by regulation 22 and the Schedule to these Regulations.
 - (d) S.S.I. 2008/135, as amended by S.S.I. 2011/260 and S.I. 2011/1043 and revoked subject to savings by regulation 22 and the Schedule to these Regulations.
 - (e) S.S.I. 2008/159, as amended by S.S.I. 2009/155, S.S.I. 2011/85, S.S.I. 2011/228, S.S.I. 2011/260, S.I. 2011/1043, S.S.I. 2012/360, S.S.I. 2013/309 and the Crofting Reform (Scotland) Act 2010, section 1(4), and revoked subject to savings by regulation 22 and the Schedule to these Regulations.
 - (f) S.S.I. 2008/162, as amended by S.S.I. 2011/260, S.I. 2011/1043 and S.S.I. 2015/153 and revoked subject to savings by regulation 22 and the Schedule to these Regulations.
 - (g) OJ L 138, 13.5.2014, p.5.

the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006(a);

“EU Regulations” means the—

- (a) Common Provisions Delegated Regulation;
- (b) Common Provisions Regulation;
- (c) Horizontal Delegated Regulation;
- (d) Horizontal Finance Implementing Regulation;
- (e) Horizontal Implementing Regulation;
- (f) Horizontal Regulation;
- (g) Rural Development Delegated Regulation;
- (h) Rural Development Implementing Regulation; and
- (i) Rural Development Regulation;

“grant” means a payment under these Regulations;

“Horizontal Delegated Regulation” means Commission Delegated Regulation (EU) No 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance(b);

“Horizontal Finance Implementing Regulation” means Commission Implementing Regulation (EU) No 908/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency(c);

“Horizontal Implementing Regulation” means Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance(d);

“Horizontal Regulation” means Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008(e);

“LEADER grant” means a grant in respect of LEADER local development under Article 35 of the Common Provisions Regulation and Article 44 of the Rural Development Regulation;

“local action group” means a group which has been selected to implement a local development strategy in accordance with Article 34 of the Common Provisions Regulation;

“local development strategy” means a strategy prepared by a local action group and approved in accordance with Article 33 of the Common Provisions Regulation;

“measures”, except in relation to regulation 22(2), means measures under the Rural Development Regulation as set out in the SRDP and, in the case of LEADER grant, a local development strategy;

“Regulation 1698/2005” means Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(f);

(a) OJ L 347, 20.12.2013, p.320.

(b) OJ L 181, 20.6.2014, p.48.

(c) OJ L 255, 28.8.2014, p.59, as amended by Commission Implementing Regulation (EU) 2015/583 (OJ L, 14.4.2015, p.97).

(d) OJ L 227, 31.7.2014, p.69.

(e) OJ L 347, 20.12.2013, p.549, as amended by Regulation (EU) No 1310/2013 (OJ L 347, 20.12.2013, p.865).

(f) OJ L 277, 21.10.2005, p.1, as last amended by Regulation (EU) No 1303/2013 (OJ L 347, 20.12.2013, p.865), Articles 1 and 3 of which made further transitional provisions in respect of measures under Regulation 1698/2005. Regulation 1698/2005 was repealed subject to savings by Article 88 of the Rural Development Regulation.

“Rural Development Delegated Regulation” means Commission Delegated Regulation (EU) No 807/2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions(a);

“Rural Development Implementing Regulation” means Commission Implementing Regulation (EU) No 808/2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(b);

“Rural Development Regulation” means Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005(c);

“service level agreement”, except in relation to regulation 21(3) (agency arrangements), means an agreement between the Scottish Ministers and an accountable body for the purposes of Article 7(1) of the Horizontal Regulation and Article 1 of, and Annex I(1)(C) to, Commission Delegated Regulation (EU) No 907/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro(d);

“SRDP” means the Scottish Rural Development Programme, as may be approved by the European Commission in respect of Scotland in accordance with Article 10(2) of the Rural Development Regulation and Article 29(4) of the Common Provisions Regulation and as may from time to time be amended in accordance with Article 11 of the Rural Development Regulation and Article 30 of the Common Provisions Regulation;

“SRDP guidance” means the guidance published by the Scottish Ministers from time to time under regulation 20; and

“undertaking”, except in relation to regulation 22(2), means an undertaking given by a beneficiary or occupier of the land in accordance with regulation 5.

(2) A reference in these Regulations to the EU Regulations, or to any of the instruments referred to in the definition of the EU Regulations, means a reference to the EU Regulations, or that instrument as amended from time to time.

(3) Except where the context otherwise requires, other expressions used in these Regulations have the meaning they bear in the EU Regulations.

(4) A reference in these Regulations to anything done in writing includes an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000(e) which has been recorded and is consequently capable of being reproduced.

PART 2

APPLICATIONS, UNDERTAKINGS, CLAIMS AND PAYMENTS

Application

3. An application is to be made at such time, in such form and include such information as the appropriate body may from time to time require.

(a) OJ L 227, 31.7.2014, p.1.

(b) OJ L 227, 31.7.2014, p.18.

(c) OJ L 347, 20.12.2013, p.487, as last amended by Commission Delegated Regulation (EU) No 1378/2014 (OJ L 367, 23.12.2014, p.16).

(d) OJ L 255, 28.8.2014, p.18, as amended by Commission Delegated Regulation (EU) 2015/160 (OJ L 27, 3.2.2015, p.7).

(e) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

Determination and variation of an application

- 4.—(1) Where an application is made, the appropriate body may—
- (a) approve it in whole or in part and subject to such conditions as that body may determine; or
 - (b) refuse it.
- (2) An applicant must provide any further information or documents as the appropriate body may require.
- (3) Before approving an application under paragraph (1) or varying an approval under paragraph (7)—
- (a) the appropriate body must be satisfied that the application or the variation meets the relevant requirements of the EU Regulations and the SRDP, having regard to the SRDP guidance and the total amount of grant monies available; and
 - (b) in addition, in the case of LEADER grant, the local action group must be satisfied that the application or the variation meets the requirements of the local development strategy.
- (4) Where an application is approved or varied, the appropriate body must determine the approved expenditure and the amount of grant payable to the applicant.
- (5) In relation to an application for grant for support for measures under Article 28 of the Rural Development Regulation (agri-environment-climate), whether that application is approved or refused, the Scottish Ministers may, having regard to the SRDP guidance, reimburse the applicant in respect of part of the costs of any plans which were required to be prepared in connection with the application.
- (6) The appropriate body must notify the applicant in writing of its decision in respect of the application or variation and any conditions as determined by that body.
- (7) The appropriate body may at any time vary an approval including any applicable conditions, whether or not at the request of the beneficiary.
- (8) Before varying an approval (other than at the request of the beneficiary), the appropriate body must give the beneficiary—
- (a) a written explanation of the reasons for the proposed variation; and
 - (b) the opportunity of making written representations within such period as that body considers reasonable.
- (9) If, on the expiry of the period referred to in paragraph (8)(b), the appropriate body has not received any written representations, that body may make the variation as proposed.
- (10) If the appropriate body has received written representations within the period referred to in paragraph (8)(b), it must consider any such representations in deciding whether to make any variation.

Undertakings and transfer of holdings

- 5.—(1) A beneficiary must give the appropriate body such written undertaking in respect of such period or periods as the appropriate body considers appropriate for the purposes of these Regulations.
- (2) Paragraph (3) applies where—
- (a) an appropriate body has, under regulation 4(7), varied an approval where a person other than the original applicant is to be the beneficiary; or
 - (b) subject to Article 47(2) of the Rural Development Regulation, there has been a transfer of all or any part of the land in respect of which an undertaking has been given.
- (3) Where this paragraph applies, the appropriate body may accept a written undertaking from the new beneficiary or occupier of the land given within and in respect of such period and subject to such conditions as the appropriate body considers appropriate.

(4) For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee must inform the appropriate body of the transfer and request any claim for payment, is 90 days beginning with the first day after the date of transfer.

Claims and payments of grant

6.—(1) Payment of grant by an appropriate body is subject to it receiving a claim for payment by the beneficiary at such time and in such form and manner as the appropriate body may require.

(2) The beneficiary must provide all particulars and information and copies of such documents and records relating to a claim for payment as the appropriate body may require.

(3) The appropriate body may pay a grant by way of a lump sum or in instalments.

(4) Before paying a grant, the appropriate body must be satisfied that any applicable eligibility conditions and requirements, including those referred to in any undertakings, have been met, in addition to being satisfied as regards the matters mentioned in regulation 4(3).

PART 3

LEADER

Funding arrangements: LEADER grant

7.—(1) Subject to regulations 9 and 10, the Scottish Ministers must reimburse an accountable body in respect of any payment of LEADER grant made by that body.

(2) The Scottish Ministers may pay an advance to an accountable body in respect of any payment of LEADER grant to be made by that body.

Service level agreement

8.—(1) The Scottish Ministers must conclude a service level agreement with an accountable body.

(2) A service level agreement may, with the agreement of the Scottish Ministers and the accountable body, be amended at any time.

Breach of service level agreement

9.—(1) Where, in the opinion of the Scottish Ministers, an accountable body breaches any of the conditions of a service level agreement, the Scottish Ministers may take any of the following steps—

- (a) specify what is required by the accountable body to remedy the breach and a timescale for meeting any requirement specified;
- (b) refuse to reimburse the accountable body in respect of the whole or part of any payment of LEADER grant made by that body;
- (c) recover on demand the whole or any part of a payment already made available to the accountable body (to include interest on that amount at a rate of one percentage point above the Bank of England base rate calculated (in accordance with regulation 18(3)) on a daily basis for the period beginning with the date of payment and ending on the date of recovery); or
- (d) terminate the service level agreement.

(2) Before taking any step under paragraph (1), the Scottish Ministers must give the accountable body—

- (a) a written explanation of their reasons for proposing to take that step; and

(b) the opportunity of making written representations within such period as the Scottish Ministers consider reasonable.

(3) If, on the expiry of the period referred to in paragraph (2)(b), the Scottish Ministers have not received any written representations, they may take the proposed step.

(4) If the Scottish Ministers have received written representations within the period referred to in paragraph (2)(b), they must consider any such representations in deciding whether to take the proposed step..

Termination of service level agreement

10.—(1) Where a service level agreement is terminated under regulation 9(1)(d), the Scottish Ministers may—

- (a) require the relevant local action group to select another accountable body with whom Ministers must conclude a service level agreement;
- (b) make such alternative arrangements as Ministers consider appropriate in respect of the reimbursement of any payments of LEADER grant made in respect of the local action group; or
- (c) direct the local action group to take such other steps as Ministers consider appropriate.

(2) Paragraph (1) is without prejudice to the powers of an authorised person acting on behalf of the Scottish Ministers under Part 4.

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)(a); 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(b).

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.

(a) 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.

(b) 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.

(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.

(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(a) 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(b).

PART 5

MISCELLANEOUS

Information and records

19.—(1) A beneficiary must—

(a) retain all invoices, accounts and other relevant documents in relation to any application, undertaking, claim for payment or grant paid and produce them for inspection if required to do so by an appropriate body; and

(b) provide such additional information in relation to the application, undertaking, claim for payment or grant paid in pursuance of the application or undertaking as an appropriate body may require.

(2) The duties in paragraph (1) apply—

(a) in the case of a payment of grant for the purchase of heritable property, for a period of 10 years;

(b) in any other case, for a period of 6 years,

and, in either case, the period commences on the later of—

(i) the date of the last payment of grant under these Regulations; or

(ii) the expiry of the period of the applicable undertaking.

(3) If the beneficiary transfers the original of any document referred to in paragraph (1) to another person in the normal course of business, the beneficiary must keep a copy of that document for the period specified in paragraph (2).

(4) Paragraph (1) does not apply where the document has been removed by any person lawfully authorised to remove it.

(a) 1998 c.11.

(b) S.I. 2014/3260.

SRDP Guidance

20.—(1) The Scottish Ministers must 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;
- (c) the exercise of powers of recovery under these Regulations; and
- (d) generally, how it is intended that functions should be performed under these Regulations.

(2) Any appropriate body must have regard to any guidance published under paragraph (1) when performing its functions under these Regulations.

(3) Where the Scottish Ministers have published relevant guidance before the coming into force of these Regulations, that is to be treated as guidance for the purposes of these Regulations.

Agency arrangements

21.—(1) The Scottish Ministers may make an arrangement with another person or body for any of its functions under these Regulations to be exercised by that person or body as its agent.

(2) Such an arrangement must be in writing and signed by or on behalf of the Scottish Ministers and the person or body concerned and may be subject to conditions.

(3) Such an arrangement may be supplemented by a service level agreement or such other written documents as may be agreed by the Scottish Ministers and the person or body concerned.

Revocations and saving

22.—(1) The Regulations listed in the Schedule are revoked subject to paragraph (2).

(2) Notwithstanding paragraph (1), those Regulations continue to apply on or after 12th June 2015 in relation to—

- (a) any approval of aid under those Regulations;
- (b) any variation of an approval under those Regulations;
- (c) any undertaking given under or for the purposes of those Regulations;
- (d) any claim for, or payment of, aid under those Regulations; and
- (e) the exercise of any function in relation to—
 - (i) enforcement of the Regulations or recovery of aid under those Regulations;
 - (ii) the variation of any approval or undertaking; or
 - (iii) the acceptance of an undertaking from a new occupier following a change of occupation of all or any part of the land,

where the approval under those Regulations was given or made prior to 12th June 2015 in respect of any measures under Article 20, 36, 52 or 63 of Regulation 1698/2005.

RICHARD LOCHHEAD
A member of the Scottish Government

St Andrew's House,
Edinburgh
12th May 2015

SCHEDULE

Regulation 22(1)

Revocations

- The Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008**(a)**;
The Leader Grants (Scotland) Regulations 2008**(b)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008**(c)**;
The Forestry Challenge Funds (Scotland) Regulations 2008**(d)**;
The Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008**(e)**;
The Land Managers Skills Development Grants (Scotland) Regulations 2008**(f)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2008**(g)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2009**(h)**;
The Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2009**(i)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment (No. 2) Regulations 2009**(j)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment (No. 3) Regulations 2009**(k)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment (No. 4) Regulations 2009**(l)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2010**(m)**;
The Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011**(n)**;
The Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2011**(o)**;
The Rural Development Support Measures (Control Procedures and Miscellaneous Amendments) (Scotland) Regulations 2011**(p)**;
The Leader Grants (Scotland) Amendment Regulations 2012**(q)**;

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- (a)** S.S.I. 2008/64, as amended by S.S.I. 2011/260 and S.I. 2011/1043.
(b) S.S.I. 2008/66, as amended by S.S.I. 2011/260, S.I. 2011/1043 and S.S.I. 2012/182.
(c) S.S.I. 2008/100, as amended by S.S.I. 2008/233, S.S.I. 2009/1, S.S.I. 2009/233, S.S.I. 2009/335, S.S.I. 2009/411, S.S.I. 2010/87, S.S.I. 2011/106, S.S.I. 2011/228, S.S.I. 2011/260, S.I. 2011/1043, S.S.I. 2012/215, S.S.I. 2012/307, S.S.I. 2012/360 and the Crofting Reform (Scotland) Act 2010 (asp 14), section 1(4).
(d) S.S.I. 2008/135, as amended by S.S.I. 2011/260 and S.I. 2011/1043.
(e) S.S.I. 2008/159, as amended by S.S.I. 2009/155, S.S.I. 2011/85, S.S.I. 2011/228, S.S.I. 2011/260, S.I. 2011/1043, S.S.I. 2012/360, S.S.I. 2013/309 and the Crofting Reform (Scotland) Act 2010 (asp 14), section 1(4).
(f) S.S.I. 2008/162, as amended by S.S.I. 2011/260, S.I. 2011/1043 and S.S.I. 2015/153.
(g) S.S.I. 2008/233.
(h) S.S.I. 2009/1.
(i) S.S.I. 2009/155.
(j) S.S.I. 2009/233.
(k) S.S.I. 2009/335.
(l) S.S.I. 2009/411.
(m) S.S.I. 2010/87.
(n) S.S.I. 2011/85.
(o) S.S.I. 2011/106.
(p) S.S.I. 2011/260.
(q) S.S.I. 2012/182.

The Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2012**(a)**;
and

The Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations
2013**(b)**.

(a) S.S.I. 2012/307.
(b) S.S.I. 2013/309.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purposes of implementation of:

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p.320) (“the Common Provisions Regulation”); and
- Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p.487) (“the Rural Development Regulation”)

Those EU instruments (as supplemented by relevant implementing and delegated regulations) make provision for EU-funded support for measures in Member States through the framework of rural development programmes. In respect of Scotland, the relevant programme as administered by the Scottish Ministers is the Scottish Rural Development Programme (“SRDP”), as approved or amended by the European Commission in accordance with articles 10 and 11 of the Rural Development Regulation and articles 29 and 30 of the Common Provisions Regulation (see <http://www.gov.scot/Topics/farmingrural/SRDP>). Moreover, in relation to LEADER local development, this is implemented through local development strategies prepared by local action groups.

The management of EU-funding under those EU instruments is also subject to Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (“the Horizontal Regulation”) (OJ L 347, 20.12.2013, p.549), which is also further supplemented by relevant implementing and delegated regulations.

Collectively, the applicable EU instruments are defined in regulation 2(1) of these Regulations as “the EU Regulations”.

Part 2

Regulation 3 makes provision for the making of applications for grant.

Regulation 4 sets out the powers of an appropriate body (as defined in regulation 2(1) as the Scottish Ministers or, in relation to an application for LEADER grant, a local action group) to determine or vary applications for grant.

Regulation 5 makes provision for the giving of undertakings by beneficiaries in relation to grants paid to them under the Regulations, and also makes provision for their transfer to another person, for example, following a change of occupation of the land in respect of which an undertaking has been given.

Regulation 6 makes provision for the payment of grant (whether by way of a lump sum or in instalments) following submission of a claim for payment.

Part 3

Part 3 makes particular provision for grants in relation to LEADER.

Regulation 7 makes provision for the Scottish Ministers to reimburse and pay advances to an accountable body (as defined in regulation 2(1)) in respect of payments of LEADER grant.

Regulation 8 makes provision for the Scottish Ministers to conclude a service level agreement with the accountable body.

Regulation 9 sets out the powers of the Scottish Ministers in light of a breach of a service level agreement. This includes a power to terminate the agreement. Regulation 10 makes further provision for the consequences of such a termination.

Part 4

Part 4 makes provision for the enforcement and recovery of grants payable under these Regulations and offences.

Regulations 11 and 12 respectively confer powers of entry and of inspection on persons authorised by an appropriate body (“authorised persons” as defined in regulation 2(1)). Regulation 13 also makes provision for an applicant or beneficiary to provide reasonable assistance to authorised persons as required when the latter are exercising those powers.

Regulation 14 makes provision for offences and penalties for obstructing an authorised person, failing to provide assistance and supplying false or misleading information. Regulation 15 provides for the application of those offences in relation to bodies corporate, Scottish partnerships and unincorporated associations.

Regulation 16 makes provision for an appropriate body to determine whether a beneficiary has breached the terms of any approval of grant or undertaking, including the applicable regulatory requirements. This is a pre-requisite for the purpose of exercising any of the powers of recovery as set out in regulation 17 (which includes powers to withhold, reduce or recover grant payments, revoke approvals or terminate undertakings).

Regulation 18 makes further provision for the recovery (as a debt) and set-off of undue payments, including interest.

Part 5

Regulation 19 requires a beneficiary to retain appropriate information and records in relation to matters being funded by payments of grant under these Regulations.

Regulation 20 requires the Scottish Ministers to publish guidance setting out how functions should be performed under these Regulations (and which must be taken account of by appropriate bodies).

Regulation 21 also enables the Scottish Ministers to enter into agency arrangements with other persons or bodies in relation to the exercise of any of the Scottish Ministers’ functions under the Regulations. This could include bodies such as Scottish Natural Heritage, the Forestry Commission and Highlands and Islands Enterprise in respect of the administration of grants for particular measures under the SRDP.

Regulation 22 makes provision for the revocation of the instruments listed in the Schedule, subject to saving provisions.

A business and regulatory impact assessment is being prepared for these Regulations and will be placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.

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