
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 66

The Leader Grants (Scotland) Regulations 2008

Citation and commencement

1. These Regulations may be cited as the Leader Grants (Scotland) Regulations 2008 and shall come into force on 22nd March 2008.

Interpretation

2.—(1) In these Regulations—

“applicant” means either a local action group or where the context requires an eligible body;

“application” means an application for local action group grant made under regulation 3 or, where the context requires, LEADER grant made under regulation 8;

“approved expenditure” means the costs of a project approved by a local action group for the purpose of calculating LEADER grant under these Regulations;

“authorised person” means a person who is authorised by Ministers, either generally or specifically, to act in matters arising under these Regulations and includes any official of the Commission who accompanies such an authorised person;

“beneficiary” means a local action group which has made a claim for payment and has received local action group grant or where the context requires an applicant who made a claim for payment and has received LEADER grant;

“claim for payment” means a written request for payment of sums of grant due to an applicant in respect of a project and “claimant” shall be construed accordingly;

“cooperation” means either trans-regional or, where the context requires, trans-national cooperation and shall have the same meaning as in Article 65 of the Council Regulation;

“LEADER” means the Leader approach as defined in Article 61 of the Council Regulation;

“LEADER grant” means a payment under these Regulations made by a local action group to an eligible person;

“LEADER funding” means a sum of money paid to a local action group by Ministers from which the local action group may pay LEADER grant;

“local action group” means the public/private partnership selected by Ministers to deliver LEADER in a particular geographical area of Scotland;

“local action group area” means the geographical area within which a local action group operates;

“local action group grant” means a payment under these Regulations made by Ministers to a local action group;

“local development strategy” means a strategy formed by a local action group and approved by Ministers which is—

(a) based upon—

(i) the 4 axes of the Council Regulation being—

- axis 1 – improving the competitiveness of the agriculture and forestry sector;
axis 2 – improving the environment and countryside;
axis 3 – quality of life in rural areas and diversification of the rural economy;
axis 4 – leader; and
- (ii) the 5 main outcomes for rural development in Scotland–
business viability;
enhanced biodiversity and landscape;
improved water quality;
climate change; and
enhanced development of rural communities; and
- (b) which has selected one or two of the following LEADER themes:–
revitalising communities;
rural community capacity;
new markets and products;
progressive rural economy;
conservation of the rural environment;

“Ministers” means the Scottish Ministers;

“project” means a project or investment proposed by a local action group in an application for local action group grant or, where the context requires, an eligible body in an application for LEADER grant;

“project costs” means the costs of a project as specified in an application;

“the Community legislation” means–

- (a) the Control Regulation;
(b) the Council Regulation; and
(c) Commission Regulation (EC) No. 1974/2006(1), as amended by Commission Regulations (EC) No. 434/2007(2) and (EC) 1236/2007(3), laying down detailed rules for the application of the Council Regulation.

“the Control Regulation” means Commission Regulation (EC) No. 1975/2006(4), as corrected by Commission Regulation (EC) No. 1396/2007(5) laying down detailed rules for the implementation of the Council Regulation;

“the Council Regulation” means Council Regulation (EC) No 1698/2005 of 20 September 2005(6), as amended by Council Regulations (EC) No. 1944/2006(7) and (EC) No. 2012/2006(8), laying 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(9); and

(1) O.J. No. L 368, 23.12.2006, p.15.
(2) O.J. No. L 104, 21.4.2007, p.8.
(3) O.J. No. L 280, 24.10.2007, p.3.
(4) O.J. No. L 368, 23.12.2006, p.74.
(5) O.J. No. L 311, 29.11.2007, p.3.
(6) O.J. No. L 277, 21.10.2005, p.1.
(7) O.J. No. L 367, 22.12.2006, p.23.
(8) O.J. No. L 384, 29.12.2006, p.8.
(9) O.J. No. L 209, 11.8.2005, p.1.

“the Scotland rural development programme” means the 2007 to 2013 Rural Development Programme for Scotland approved by the European Commission describing the measures arising out of the Council Regulation which will apply in Scotland over the period 2007 to 2013.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation shall be construed as a reference to the regulation so numbered in these Regulations.

(3) Any reference in these Regulations to a numbered paragraph shall be construed as a reference to the paragraph so numbered in the regulation in which the reference occurs.

(4) 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(10), which has been recorded and is consequently capable of being reproduced.

Local action group grant

3.—(1) Ministers may, pay—

- (a) local action group grant of up to 100% of project costs incurred; or
- (b) a maximum of 7% in advance of costs to be incurred by each local action group;

on such occasions as they consider fit, and subject to—

- (c) such conditions as Ministers may prescribe in writing from time to time; and
- (d) the funding restrictions specified in regulation 5.

(2) Local action group grant may be made available for the following purposes—

- (a) implementation of the local development strategy of a local action group;
- (b) implementation of the projects of a local action group;
- (c) partnership working (across regions or countries) between local action groups and other rural groups similar in constitution to a local action group; and
- (d) management of local action groups and all activities which contribute to the development of the local action group area and all collaborative or partnership activities.

Payment of local action group grant

4.—(1) Ministers need not make any payment of local action group grant unless—

- (a) they receive a claim for payment made by the local action group; and
- (b) the project has been completed, or a stage of the project has been completed, or the Ministers are satisfied that the project merits advance funding under regulation 3(1).

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

(3) Ministers may make payments of local action group 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.

Funding restrictions on local action group grant

5. The management costs specified in regulation 3(2)(d) will be eligible for local action group grant subject to a maximum of 20% of the total sum of LEADER funding approved by Ministers and awarded to a local action group.

(10) 2000 (c. 7); as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

Networking by local action groups

6. Where reasonably required by Ministers, all local action groups will demonstrate their participation in the National Rural Network and any LEADER sub-network.

LEADER grant

7. Subject to such conditions as Ministers may publish in writing, the funding restrictions specified in regulation 12 and the overall level of LEADER grant rates which Ministers may specify from time to time, local action groups may pay, on such occasions as they consider fit—

- (a) LEADER grant to an eligible body towards project costs within the local action group area;
- (b) together with other local action groups and rural groups similar in constitution to a local action group within Scotland for project costs of a project involving cooperation; and
- (c) together with other local action groups towards the eligible project costs of a project for projects involving cooperation in the United Kingdom and projects involving co operation in other EU member states and non EU countries.

Projects which may be considered for LEADER grant

8. A project may only be considered for LEADER grant if all of the general grant requirements in regulation 14 are met.

Eligible body for LEADER grant

9. In these Regulations “eligible body” means—

- (a) incorporated bodies;
- (b) individuals;
- (c) partnerships and companies;
- (d) public agencies;
- (e) consortia, comprising collaborations between groups and individuals listed above where such collaboration is governed by a written legal agreement; and
- (f) local action groups.

Determination of applications for LEADER grant

10.—(1) Paragraph (2) applies where—

- (a) an application is made for LEADER grant towards a project; and
- (b) the project may be considered for LEADER grant under regulations 8, 13 and 14.

(2) Where this paragraph applies, a local action group may approve or reject an application for LEADER grant in whole or in part.

(3) Before approving an application, a local action group must have regard to—

- (a) the total amount of LEADER funding available;
- (b) the benefits of the project; and
- (c) the value for money which the project represents and the level of LEADER grant likely to be required.

(4) Eligible bodies must provide any information local action groups reasonably require in order to consider an application.

(5) Where a local action group approves an application, they—

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

Payment of LEADER grant

- 11.**—(1) A local action group will not make any payment of LEADER grant unless—
- (a) they have approved an application for LEADER grant under regulation 10(2);
 - (b) they receive a claim for payment made by an eligible body; and
 - (c) the project has been completed (or a stage of the project has been completed).
- (2) It is for the local action group to determine the form and manner for making a claim for payment.
- (3) A local action group may make payments of LEADER 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 the local action group considers appropriate.

Funding restrictions on LEADER grant

- 12.**—(1) LEADER grant may only provide support for projects which do not receive support from other structural funds payments or other delivery mechanisms under the Scotland rural development programme. But—
- (a) projects involving the production, processing and marketing of products listed in Annex I to the Treaty establishing the European Community⁽¹¹⁾ not funded through any other scheme within the Scotland rural development programme are eligible; and
 - (b) funding of community projects relating to forestry or other forms of land management will be eligible provided they demonstrate wider community benefits and are not a direct replacement for grants available through any other scheme.
- (2) A project which has failed to achieve support under any other scheme under the Scotland rural development programme will not be eligible for LEADER grant.
- (3) The following specific claims will not be eligible for LEADER grant—
- (a) claims for local action group grant for less than £1,000;
 - (b) internal staffing costs of any organisation;
 - (c) operating and running costs including, rent, utilities, equipment, leasing charges or interest on loans;
 - (d) activities which are statutory obligations of regional corporate bodies, including, local authorities and their agencies;
 - (e) awards of prize money or fees to artists;

(11) O.J. No. C321, 29.12.2006 E/1.

(f) land and buildings which are to be used in a project involving cooperation not located in Scotland; and

(g) unidentifiable costs of projects involving cooperation taking place outside Scotland.

(4) Professional fees for architectural, landscape design and engineering services may be funded to a maximum of 10% of the total building cost. But an additional 5% funding of the central building cost may be available by LEADER grant for projects which in the view of a local action group involve an intensive planning element, including work on listed or otherwise protected buildings or technically complex projects.

(5) A maximum payment of 95% of project costs may be made from public funds including LEADER grant unless the applicant is a public body.

Exceptions to LEADER grant funding restrictions

13.—(1) Subject to regulation 7, joint funding of projects by LEADER grant and other funds may be permitted—

- (a) where the other funds are made available solely from non European funded programmes;
- (b) where State Aid on the provision of these other funds has been approved by the European Commission; or
- (c) where LEADER grant supports a distinct phase of a large project for which another distinct phase is funded under a different programme.

(2) Subject to regulation 12(3)(b) internal staffing costs may be funded by LEADER grant where these are directly applicable to a project.

General LEADER grant requirements

14. A project may be considered for LEADER grant under these Regulations if the following conditions A to I are met and for revenue-generating projects, condition J is also met:—

- (a) Condition A is met if it is considered by the local action group that the project is sustainable over the period of the Scotland rural development programme;
- (b) Condition B is met if the project is located within a local action group area;
- (c) Condition C is met if the project is considered by a local action group to be of significance and value in implementing the local development strategy;
- (d) Condition D is met if the project is considered by a local action group to provide an exemplar of an innovative initiative for a local action group area;
- (e) Condition E is met if it is considered by a local action group that the project involves or engages the population across the local action group area;
- (f) Condition F is met if it is considered by a local action group that it will make a positive or at least neutral contribution to ecological, economic, cultural and social sustainability in the local action group area;
- (g) Condition G is met if the project is clearly related to one of the strategic priorities identified in the local development strategy of the local action group;
- (h) Condition H is met if it is considered by a local action group that the project will contribute to the implementation of the local action group's local development strategy;
- (i) Condition I is met if the project receives the support of the local action group selection panel;
- (j) Condition J is met if an eligible body demonstrates the profitability of a project.

Powers of authorised persons

- 15.—(1) An authorised person may, at any reasonable time, enter any land or premises to—
- (a) verify the accuracy of any information provided by an applicant or beneficiary relating to an application or claim for payment under these Regulations;
 - (b) determine whether or not an applicant or beneficiary has complied with the provisions of these Regulations;
 - (c) provide a control report in accordance with Article 13 or 19(2) of the Control Regulation.

(2) Paragraph (1) applies to land or premises—

- (a) which is the subject of an application or claim for payment under these Regulations;
- (b) connected with the carrying out of a project paid for (in full or in part) under these Regulations; and
- (c) which an authorised person has reasonable grounds to believe may be a place in which documents or other information are being kept which may require to be produced under these Regulations.

(3) Where land or premises 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 this right has been given to all residents of that dwelling house.

(4) An authorised person who has entered any land or premises under paragraph (1) may—

- (a) inspect it and any document, plant, machinery, or equipment on the land or premises;
- (b) require the applicant or beneficiary, or any employee or agent of such applicant or beneficiary—
 - (i) to produce, or secure the production of, any document relating to any matter governed by these Regulations; and
 - (ii) to supply any additional information relating to any matter governed by these Regulations which is in the possession of or under the control of that person;
- (c) where any document or information referred to in sub-paragraph (b) is kept by means of a computer—
 - (i) have access to any computer and any associated apparatus, data storage facility or material which is or has been used for storing that information; and
 - (ii) require the information to be reproduced in a form in which it is legible and can be taken away;
- (d) require copies of or extracts from any document or other record referred to in sub-paragraph (a) or (b) to be produced;
- (e) retain a copy of any document produced;
- (f) seize and retain any document or other record which the authorised person reasonably believes may be required as evidence in proceedings under these Regulations; and
- (g) if necessary for the purposes of paragraph (1)—
 - (i) inspect and count livestock on the land, and
 - (ii) require the applicant or beneficiary, or any employee or agent of such beneficiary, to arrange for the collection, penning and securing of such livestock.

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

- (a) any official of the European Commission; and
- (b) such other persons as the responsible body considers necessary for any of the purposes mentioned in paragraph (1).

(6) Paragraphs (4), (5) and (7) apply in relation to a person referred to in paragraph (5)(b), when acting under the instructions of an authorised person, as if they were an authorised person.

(7) An authorised person shall not be liable in any proceedings for anything done in exercise of the powers conferred on an authorised person by these Regulations if a 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 or premises under these Regulations must, if so required, produce proof of appointment for these purposes.

Assistance to authorised persons

16. An applicant or beneficiary, and any employee or agent of the applicant or beneficiary, shall give an authorised person such assistance as may reasonably be requested so as to enable the authorised person to exercise any power conferred by regulation 15.

Responsible bodies

17.—(1) The following persons or bodies are responsible bodies for the purposes of these Regulations—

- (a) Ministers; and
- (b) a local action group.

(2) Where a local action group can no longer act as a responsible body or where it refuses a written request from Ministers to act as a responsible body then Ministers may act in the capacity of responsible body in place of the local action group.

Breaches of obligations, etc.

18.—(1) Paragraph (2) applies where a responsible body has approved an application (in whole or in part) for the purposes of a payment of grant and the responsible body thinks—

- (a) the applicant or beneficiary has given information on any matter relevant to the giving of approval or the making of payment of grant, which is false or misleading in a material particular;
 - (b) any condition or undertaking subject to which the approval was given, or the payment was made, has not been complied with;
 - (c) the project in respect of which the approval was given, or the payment was made, has not been carried out or has not been carried out in accordance with the application approved by the responsible body;
 - (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 the responsible body gave written permission to do so;
 - (f) the European Commission has decided that the grant paid, or to be paid, does not comply with a relevant Community Obligation;
 - (g) public funds in excess of those permitted under a Scheme have been applied to the project;
- or

- (h) the applicant or beneficiary has–
 - (i) intentionally obstructed any authorised person in exercise of the powers under regulation 16; or
 - (ii) failed to comply with a requirement imposed under regulation 14(3) (b), (d) or (g)(ii).
- (2) Where this paragraph applies, the responsible body may–
 - (a) apply a reduction to any payment made, or to be made, to the applicant or beneficiary under these Regulations;
 - (b) revoke or vary (including any conditions subject to which it was given) the approval in respect of the whole or any part of a payment made or to be made;
 - (c) withhold payment 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 the responsible body also thinks that the applicant or beneficiary acted recklessly or intentionally, the responsible body may also–
 - (a) withhold or apply a reduction of an additional sum equal to 10% of the sums paid or payable to the beneficiary; and
 - (b) prohibit the applicant or beneficiary from applying for payment under these Regulations for such period (not exceeding 2 years) from the date of withholding or reduction of payment or the revocation of final approval of any payment as the responsible body may specify.
- (4) A reduction under paragraph (2)(a) shall be applied in accordance with the Control Regulation.
- (5) But, before the responsible body does anything under paragraph (2) or (3), it must–
 - (a) give the applicant or beneficiary 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 or beneficiary an opportunity to make representations about the proposed step, within such time and in such form as the responsible body thinks fit; and
 - (c) consider such representations.
- (6) In paragraph (1)(f), a “relevant Community Obligation” is–
 - (a) Article 14(2) of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(12); or
 - (b) the Community legislation.

Set off

19. The amount of any payment payable by a responsible body to a claimant under these Regulations, whether as principal or agent, may be set off against the amount of any sum recoverable by that responsible body under these Regulations.

Sums payable to be recoverable as a debt

20. Where an amount falls to be paid to a responsible body by virtue of (or by virtue of action taken under) these Regulations, the amount shall be recoverable as a debt.

(12) O.J. No. L 160, 26.6.1999, p.1, as last amended by Council Regulation 1698/2005.

Interest

21.—(1) Where a responsible body intends to recover a payment (in whole or in part) in accordance with regulation 18(2)(d), the responsible body 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 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 the responsible body 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.

Guidance

22.—(1) Ministers may publish guidance on—

- (a) the circumstances in which a responsible body will normally apply a reduction under regulation 18(2)(a), and the amount such a reduction will normally be; and
- (b) generally, how the responsible bodies intend to perform their functions under these Regulations.

(2) A responsible body must have regard to any guidance published under paragraph (1) when performing their functions under these Regulations.

Offences

23.—(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 payment under these Regulations is 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 15(5)) in the exercise of the powers under regulation 15 is 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⁽¹³⁾ (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

24.—(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.

(13) 1995 c. 46.

(4) In paragraph (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 member’s functions of management as if the member were a director of the body corporate.

Information and records for local action group grant

25.—(1) A local action group must–

(a) retain copies of all invoices, accounts and other relevant documents in relation to the application and produce them for inspection if required to do so by an authorised person; and

(b) provide such additional information in relation to the project or the local action group 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 local action group grant for the purchase of heritable property, for a period of 10 years;

(b) in any other case, for a period of 5 years;

(in either case) following the last payment of local action group grant under these Regulations.

(3) If the local action group 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 15(4)(f).

Information and records for LEADER grant

26.—(1) A beneficiary 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 a local action group or by an authorised person; and

(b) provide such additional information in relation to the project or the LEADER grant monies paid in pursuance of that project as Ministers may require.

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

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

(b) in any other case, for a period of 5 years,

(in either case) following the last payment of LEADER grant under these Regulations.

(3) If the original of any document referred to in paragraph (1) is transferred 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 15(4)(f).

Right of appeal

27. The Agricultural Subsidies (Appeals) (Scotland) Regulations 2004(**14**) shall be amended by inserting after regulation 4(r)–

“(v) a decision by the Scottish Ministers to withhold any aid due or recover any aid paid (in whole or in part) or require payment of any sum under the Leader Grants (Scotland) Regulations 2008, in terms of those Regulations.”.

St Andrew’s House,
Edinburgh
28th February 2008

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