
STATUTORY INSTRUMENTS

1995 No. 3295 (S.244)

EUROPEAN COMMUNITIES

**The Rural Diversification Programme
(Scotland) Regulations 1995**

Made - - - - *14th December 1995*
Laid before Parliament *11th January 1996*
Coming into force - - *1st February 1996*

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to measures relating to promotion of rural development⁽²⁾, in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations, which may be cited as the Rural Diversification Programme (Scotland) Regulations 1995, shall come into force on 1st February 1996.

(2) These Regulations shall apply to the following areas of Scotland, namely:—

- (a) Borders Region and Dumfries and Galloway Region; and
- (b) those wards or parishes or parts thereof lying within the districts and regions specified in column 1 of Schedule 1 specified opposite thereto in column 2 of that Schedule.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“agriculture” has the same meaning as in section 85(1) of the Agricultural Holdings (Scotland) Act 1991⁽³⁾ and

“agricultural” shall be construed accordingly;

“agricultural holding” means an agricultural holding within the meaning of the Agricultural Holdings (Scotland) Act 1991;

“agricultural unit” means an agricultural holding or smallholding within the programme area;

(1) 1972 c. 68.
(2) S.I.1994/1887.
(3) 1991 c. 55.

- “animal” has the same meaning as in the Zoo Licensing Act 1981(4);
- “application” means an application for financial assistance under the programme made in accordance with regulation 4 and “applicant” and “apply” shall be construed accordingly;
- “approved” means approved by the Secretary of State in writing and “approve” and “approval” shall be construed accordingly;
- “eligible expenditure” means expenditure (including reasonable professional fees and charges) approved in relation to a measure to be undertaken under the programme;
- “eligible person” has the meaning specified in regulation 3;
- “livestock” includes any creature kept for the production of food, wool, skins, or fur or for use in the farming of land;
- “measure” means a diversification measure specified in Schedule 2;
- “nursery stock” means trees (but not for afforestation) shrubs, herbaceous and alpine plants;
- “part of the programme area” means either—
- (a) Borders Region; or
 - (b) Dumfries and Galloway Region; or
 - (c) the area specified in Part A (Rural Stirling and Upland Tayside) of Schedule 1; or
 - (d) the area specified in Part B (North and West Grampian) of that Schedule;
- “programme” means the programme to assist the economic diversification of the agricultural sector within the programme area by implementation of the measures set out in Schedule 2;
- “programme area” means the area of Scotland referred to in regulation 1(2);
- “relevant part of the programme area” means the part of the programme area in which the agricultural unit which is relevant for the purpose of establishing eligibility under regulation 3 lies;
- “set-aside land” means set-aside land as defined in regulation 2 of the Set-Aside Regulations 1988(5);
- “smallholding” means any holding within the meaning of section 2 and section 32 of the Small Landholders (Scotland) Act 1911(6);
- “ward” means a ward for district council elections as at 7th May 1992.

(2) References in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

Eligible person

- 3.—(1) A person shall be eligible to receive financial assistance under these Regulations if he is—
- (a) a person who is a legal occupier of an agricultural unit who has been engaged in agriculture on that unit for a continuous period of at least 2 years ending with the date of the application; or
 - (b) a person authorised to act on behalf of such legal occupier; or
 - (c) any member of the immediate family of such legal occupier who resides on or adjacent to the agricultural unit and is acting with such legal occupier’s consent.

(4) 1981 c. 37.

(5) S.I. 1988/1352; amended by S.I. 1989/1042, 1990/1716 and 1991/1993.

(6) 1911 c. 49; section 2 was extended by the Small Landholders and Agricultural Holdings (Scotland) Act 1931 (c. 44), section 14 and both section 2 and 32 were restricted by the Crofters (Scotland) Act 1955 (c. 21), Schedule 6, Part I.

(2) In paragraph (1) above, “immediate family” means the husband, wife, son, daughter, brother or sister of the eligible person.

Approval of application

4.—(1) Any eligible person seeking financial assistance towards the cost of any measure to be undertaken under the programme shall submit an application for approval by the Secretary of State.

(2) An application submitted for approval shall be set out in such form as the Secretary of State may from time to time require and shall include—

- (a) sufficient information to show that the measure is to be undertaken by an eligible person;
- (b) confirmation that the measure is located within the relevant part of the programme area or is a marketing or promotion measure which relates to a measure so located;
- (c) a description of the measure proposed;
- (d) a statement that the measure could not proceed without financial assistance under the programme;
- (e) sufficient information to show that the measure is likely to—
 - (i) provide employment opportunities within the relevant part of the programme area; or
 - (ii) increase the income of the eligible person;
- (f) confirmation that public funding towards the cost of the measure has not been sought otherwise than under these Regulations and that it is not intended to seek such funding;
- (g) a business plan including a 3 year cash flow projection;
- (h) a proposed timetable for the work to be undertaken consistent with the business plan and the cash flow projection.

(3) The applicant shall furnish to the Secretary of State such further information and evidence in relation to the application as the Secretary of State reasonably may require.

(4) More than one application may be submitted provided that the total amount of financial assistance to be received by the eligible person in respect of these applications does not exceed the relevant limits mentioned in regulation 7(2).

Restrictions on approval of application

5.—(1) The Secretary of State shall not approve an application for financial assistance in relation to a measure unless the eligible expenditure is at least £1,000.

(2) The Secretary of State shall not approve an application for financial assistance in relation to a measure unless he is satisfied that—

- (a) the measure is to be carried out by, or on behalf of, the eligible person;
- (b) the application relates to one or more of the measures set out in Schedule 2;
- (c) completion of the measure will achieve the objectives specified in regulation 4(2)(e);
- (d) no other public funding has been or will be sought in respect of the measure other than under these Regulations;
- (e) the provision of such a measure is appropriate having regard to the need for, and existing provision of, measures of that type in the relevant part of the programme area.

(3) Subject to paragraphs (1) and (2) above, the Secretary of State may refuse to approve the application or may approve the application in whole or in part and he may make his approval subject to such conditions as he thinks fit.

Variation of approval of application

6. The Secretary of State may vary the approval or any condition attached thereto.

Financial assistance

7.—(1) Subject to the provisions of these Regulations the Secretary of State may give to an eligible person financial assistance towards eligible expenditure on approved diversification measures mentioned in column 1 for the provision of any work or facility of the kind set out in column 2 of Schedule 2 except where the work or facility described in paragraph 3(7)(b) and (c) and paragraph 4(7)(a)–(d) of the said Schedule is to be carried out on set-aside land.

- (2) The amount of financial assistance payable under paragraph (1) above shall—
- (a) be 50% of the eligible expenditure; and
 - (b) not exceed the sum of £25,000, or, in the case of an eligible person who demonstrates to the Secretary of State's satisfaction that the measures which are the subject of his application are to be carried out as part of a cooperative venture with at least two other eligible persons, £30,000.

Claims for financial assistance

8. Any claims for financial assistance by an eligible person under these Regulations shall be made in such form and manner and at such time as the Secretary of State may from time to time require, and the eligible person shall furnish all such particulars and information relating to the claim and copies of such documents and records relating thereto as the Secretary of State may require and in particular—

- (a) evidence that the amount of expenditure on which financial assistance is claimed has been incurred including details of any discount received by the eligible person;
- (b) evidence that the approved measure has been properly executed.

Payment of assistance

9. The Secretary of State may determine the manner, timing and conditions of payment of financial assistance under these Regulations.

Powers of entry and inspection

- 10.—(1) For the purposes of these Regulations and in particular for the purpose of—
- (a) securing that financial assistance under these Regulations is made in proper cases only;
 - (b) ascertaining whether any financial assistance is payable or recoverable;
 - (c) ascertaining whether an offence under these Regulations has been or is being committed,
- any person duly authorised in that behalf by the Secretary of State may, upon production if so required of some duly authenticated document showing his authority, at all reasonable times of the day enter upon and inspect any land and may—
- (i) inspect any premises, plant and machinery, equipment or livestock in respect of which financial assistance under these Regulations has been made or claimed provided that admission to any premises used as a dwellinghouse shall not be demanded as of right under this sub-paragraph unless 24 hours' notice of intended entry has been given to the occupier of the building;
 - (ii) require the eligible person to furnish for inspection any book, account or other record in his possession or under his control which the authorised person considers is necessary to substantiate the entitlement to financial assistance under these Regulations.

(2) In exercise of the power conferred on him by this regulation, an authorised person may be accompanied by such persons acting under his instructions as appear to him to be necessary and, in relation to the inspection of documents, he shall be entitled to take such copies or extracts therefrom as he may consider necessary.

Reduction, withholding or recovery of financial assistance

11.—(1) Subject to paragraph (2) below, if at any time after the Secretary of State has approved an application or paid financial assistance under these Regulations it appears to him that—

- (a) the carrying out or provision of the measure in respect of which such financial assistance is claimed frustrates the purposes served by assistance previously given out of money provided by Parliament or the European Community; or
- (b) the carrying out of the measure in respect of which such financial assistance is claimed has been effected in a way which has destroyed or damaged the natural beauty and amenity of the countryside to an extent which cannot be justified by the purpose for which financial assistance is claimed; or
- (c) public funding in respect of expenditure towards which such financial assistance is claimed has been or may be given otherwise than under these Regulations; or
- (d) the expenditure towards which such financial assistance is claimed is excessive, having regard to the work or facility carried out or provided and to which the claim relates; or
- (e) any condition subject to which the approval was given or the financial assistance has been paid has not been complied with, or the expected benefits have not been achieved for reasons other than circumstances outwith the control of the eligible person; or
- (f) the measure in respect of which financial assistance has been claimed or paid has been badly done or provided, or has been unreasonably delayed or is unlikely to be completed; or
- (g) the eligible person has—
 - (i) intentionally obstructed any officer in exercise of his powers under regulation 10; or
 - (ii) failed to comply with a requirement imposed under regulation 10(1); or
- (h) the eligible person has given information on any matter relevant to the giving of approval or the making of the payment which was false or misleading in a material respect,

the Secretary of State may revoke the approval, in whole or in part, or may reduce or withhold any financial assistance under these Regulations and, where any such financial assistance has been paid, may recover on demand as a debt an amount equal to the financial assistance which has been so paid or such part thereof as he may specify.

(2) Before revoking an approval, reducing or withholding any financial assistance or making a demand under paragraph (1) above, the Secretary of State shall give to any person to whom any such financial assistance would be payable or from whom any such amount would be recoverable a written notification of the reasons for the action proposed to be taken by him, and shall allow that person a period of 21 days in which to make representations in writing to him.

False statements

12.—(1) If the eligible person, for the purposes of obtaining for himself or any other person any financial assistance under these Regulations, knowingly or recklessly makes a statement which is false in any material particular he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Summary proceedings for such an offence may be commenced at any time within 3 years after the commission of the offence and within 6 months after the relevant date and for the purposes

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of this paragraph proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted if such warrant is executed without undue delay.

(3) In this regulation “the relevant date” means the date on which evidence sufficient in the opinion of the Procurator Fiscal to justify proceedings comes to his knowledge.

(4) For the purposes of the foregoing paragraph a certificate of the Procurator Fiscal as to the date on which such evidence as is there mentioned came to his knowledge shall be conclusive evidence of that fact.

St Andrew’s House,
Edinburgh
14th December 1995

Lindsay
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulation 1(2)

Column 1 Region and District	Column 2 Ward or Parish
PART A (RURAL STIRLING/UPLAND TAYSIDE)	
Central Region	
Stirling District	The wards of— Callander Trossachs Endrich Leckie
Tayside Region	
Angus District	The wards of— Eastern Glens Western Glens Brechin North Brechin South Kirriemuir Forfar Central and Lemno (only those parts of Fern and Tannadice parishes in the ward)
Perth and Kinross District	The wards of— Alyth Aberfeldy Dunkeld (only those parts of Monzieviard and Strowan, Dull, Fowlis Wester, Little Dunkeld and Dunkeld and Dowally parishes in the ward) East Strathearn (Crieff parish only) Ericht Lunan Valley Pitlochry

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Column 1 Region and District	Column 2 Ward or Parish
	Rannoch and Atholl
	West Strathearn (only those parts of Comrie and Monzieviard and Strowan parishes in the ward)
PART B (NORTH AND WEST GRAMPIAN)	
Grampian Region	
Banff and Buchan District	The wards of—
	Banff Hilton
	Deer
	Macduff Gardenstown
	Buchan North
	Fraserburgh West
	Fraserburgh East
	Buchan North East
	Fordyce— Boyndie
	Longside Rattray
	Buchanhaven Catto
	Aberchirder and King Edward
	Meethill Glendaveny
	Kirkton Roanheads
	Clerkhill
	Cruden Boddam (only the part of Peterhead Parish in ward)
Gordon District	The wards of—
	Huntly
	Strathbogie
	Upper Donside
	Lower Donside (only that part of Oyne parish in the ward)

Column 1 Region and District	Column 2 Ward or Parish
	West Garioch (only those parts of Leslie, Inch, Premnay, Culsalmond, Oyne, and Rayne parishes in the ward)
Kincardine and Deeside District	The wards of— Upper Deeside
	Aboyne and Cromar (only Logie Coldstone parish)
Moray District	The parishes of— Alves Bellie Birnzie Boharm Botriphnie Cullen Deskford Drainie Duffus Elgin Grange Keith Rathven Rothiemay St Andrews Lhanbride Speymouth Spynie Urquhart

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SCHEDULE 2

Regulation 7

RURAL DIVERSIFICATION PROGRAMME— DIVERSIFICATION MEASURES

Diversification measures	Kind of work or facility
1. Alternative agricultural production or aquaculture	<p>1. Provision, alteration, enlargement or reconditioning of permanent buildings or other permanent structures.</p> <p>2. Works of a capital nature relating to workshops, office, accommodation, stores and processing rooms including the provision or improvement of toilet and washing facilities.</p> <p>3. The provision and installation of fixed equipment and machinery required in connection with the measure.</p> <p>4. Provision or improvement of facilities for the supply of gas, electricity, heating oil or water.</p> <p>5. Provision or improvement of drainage including facilities for the disposal of rain and surface water and facilities for the treatment and disposal of foul waste generated by the measure.</p> <p>6. Provision or improvement of access roads, paths, fences, hardstandings and car parks required in connection with the measure.</p> <p>7. Provision of nursery stock for propagation and provision of livestock.</p> <p>8. Land preparation works required to assist establishment of a horticultural enterprise, including measures to improve soil fertility to assist establishment of an enterprise producing horticultural crops under glass or polythene structures.</p> <p>9. The provision of rafts or boats required in connection with the measure.</p> <p>10. Marketing or promotion of the measure.</p>
2. Tourist accommodation	<p>1. Provision, alteration, enlargement or reconditioning of permanent buildings.</p> <p>2. Works of a capital nature relating to provision of tourist accommodation including the provision or improvement of catering, drying, washing and toilet facilities.</p> <p>3. Provision and installation of fixed equipment and machinery required in connection with the measure.</p> <p>4. Provision or improvement of facilities for the supply of gas, electricity, heating oil or water.</p>

Diversification measures	Kind of work or facility
3. Tourism facilities	<p>5. Provision or improvement of drainage, including facilities for the disposal of rain and surface water, and facilities for the treatment and the disposal of foul waste arising from the measure.</p>
	<p>6. Provision or improvement of access roads, paths, fences, hardstandings and car parks associated with the measure.</p>
	<p>7. Marketing or promotion of the measure.</p>
	<p>1. Provision, alteration, enlargement or reconditioning of permanent buildings forming part of the measure.</p>
	<p>2. Works of a capital nature relating to provision of information, picnic areas, display or exhibition areas, including fixed seating and shelters, viewing galleries, notices and signs and the provision or improvement of toilet and washing facilities.</p>
	<p>3. Provision and installation of fixed equipment and machinery required in connection with the measure.</p>
	<p>4. Provision and improvement of facilities for the supply of gas, electricity, heating oil or water.</p>
	<p>5. Provision or improvement of drainage, including facilities for the disposal of rain and surface water and facilities for the treatment and disposal of foul waste associated with the measure.</p>
	<p>6. Provision or improvement of access roads, paths, fences, hardstandings and car parks associated with the measure.</p>
<p>7. Works of a capital nature relating to the establishment of nature trails, including—</p> <ul style="list-style-type: none">(a) the establishment of paths and wet areas;(b) the clearance of obstacles (other than trees or shrubs);(c) the regrading of land; and(d) the provision and planting of trees, shrubs and other plants.	
<p>8. Provision of animals for use in interpretive centres, wildlife parks, children’s zoos and similar measures.</p>	
<p>9. Provision or renovation of boats or rafts.</p>	

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Diversification measures	Kind of work or facility
4. Provision of facilities for sports and recreation	10. Marketing or promotion of the measure.
	1. Provision, alteration, enlargement, or reconditioning of permanent buildings.
	2. Works of a capital nature relating to provision of picnic areas and office and club house accommodation, including seating and shelter for spectators, and the provision or improvement of drying, washing and toilet facilities.
	3. Provision and installation of fixed equipment and machinery required in connection with the measure.
	4. Provision or improvement of facilities for the supply of gas, electricity, heating oil or water.
	5. Provision or improvement of roads, paths, fences, hardstanding and car parks.
	6. Provision or improvement of drainage, including facilities for the disposal of rain and surface water, and facilities for treatment and disposal of foul waste associated with the measure.
	7. Works of a capital nature relating to the establishments of sports facilities, including—
	(a) field drainage;
	(b) land levelling and grading;
(c) reseeded and regeneration of amenity grassland;	
(d) laying of turf and of hard surfaces; and	
(e) the establishment of ponds for recreational fishing.	
5. Provision of services	8. Provision or renovation of boats or rafts.
	9. Provision of horses and ponies for pony trekking and fish for managed waters.
	10. Marketing or promotion of the measure.
	1. Provision, alteration, enlargement or reconditioning of permanent buildings required to provide the service.
	2. Provision and installation of fixed equipment and machinery required in connection with the measure.
	3. Provision or improvement of toilet facilities and facilities for the supply of gas, electricity, heating oil and water.

Diversification measures	Kind of work or facility
	4. Provision or renovation of boats for use other than commercial fishing.
	5. Marketing or promotion of the measure.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st February 1996, lay down measures necessary to implement Council Regulation (EEC) No. 4256/88 laying down provisions for implementing Council Regulation (EEC) No. 2052/88 as regards the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section (O.J. No. L374, 31.12.88, p.25), as amended by Council Regulation (EEC) No. 2085/93 (O.J. No. L193, 31.7.93, p.44). They enable financial assistance to be received from that Section under approved programmes contained in the Single Programming Documents for the four Objective 5b areas in Scotland approved by Commission Decisions of 21st April 1995 [O.J. No.]. The Single Programming Documents include proposals for the economic diversification of the agricultural sector in those areas.

Article 1 of Council Regulation (EEC) No. 2052/88 (O.J. No. L185, 15.7.88, p.9) as amended by Council Regulation (EEC) No. 2081/93 (O.J. No. L193, 31.7.93, p.5) requires the Structural Funds to support the achievement of the objectives set out in Articles 130a and 130c of the EC Treaty by contributing to the attainment of certain priority objectives, one of which is the promotion of rural development by facilitating the development and structural adjustment of rural areas (Objective 5(b)). Article 11 provides for establishment of a list of eligible areas by the Commission.

Council Regulation (EEC) No. 4253/88 (O.J. No. L374, 31.12.88, p.1) as amended by Council Regulation (EEC) No. 2082/93 (O.J. No. L193, 31.7.93, p.20) lays down provisions for implementing Council Regulation (EEC) No. 2052/88 as regards co-ordination of the activities of the different Structural Funds etc. Article 5 deals with the submission of rural development plans to the Commission along with other plans in the form of a single programming document for approval by decision of the Commission in accordance with Article 10. Article 14 deals with applications for assistance from the Structural Funds.

Council Regulation (EEC) No. 4256/88 as amended by Council Regulation (EEC) No. 2085/93 lays down provisions for implementing Council Regulation (EEC) No. 2052/88 as regards the EAGGF Guidance Section. Article 6 provides that financial assistance for promoting the development of rural areas covered by Objective 5(b) shall in the main take the form of operational programmes.

The established list of rural areas eligible under Objective 5(b) was confirmed by Commission Decision (94/197/62) of 26th January 1994 (O.J. No. L96, 14.4.94, p.1) and includes the Dumfries and Galloway and Borders Regions and parts of North and West Grampian, Rural Stirling and Upland Tayside. Schedule 1 to these Regulations details the precise areas involved.

These Regulations provide for financial assistance to be given towards the cost of the diversification measures specified in Schedule 2 by an eligible person within the relevant part of the programme area (as defined in regulation 2(1)). A diversification measure must be one which will provide employment opportunities within that part or increase the income of the eligible person (regulation 4(2)(e)).

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“Eligible person” is defined in regulation 3(1) as meaning a legal occupier of an agricultural unit within the programme area who has been involved in agriculture on that unit for the 2 year period prior to the making of the application for assistance or any person authorised by him, or a member of his immediate family living on or adjacent to the agricultural unit.

To benefit from financial assistance an eligible person must make an application for approval (regulation 4).

The Regulations also—

- (a) impose certain restrictions on the approval of the application (regulation 5);
- (b) allow the variation of the approval given (regulation 6);
- (c) set out the measures on which financial assistance can be given and the amount available (regulation 7 and Schedule 2);
- (d) provide for how financial assistance may be claimed (regulation 8);
- (e) provide for the Secretary of State to determine the manner, timing and conditions of payment of the approved financial assistance (regulation 9);
- (f) confer a power of entry and inspection (regulation 10);
- (g) provide for the revocation of approval and the reduction, withholding or recovery of financial assistance (regulation 11); and
- (h) create an offence punishable on summary conviction of knowingly or recklessly making a false statement to obtain financial assistance (regulation 12).