STATUTORY RULES OF NORTHERN IRELAND

2002 No. 30

AGRICULTURE

Agricultural Processing and Marketing Grant Regulations (Northern Ireland) 2002

Made . . . . . 6th February 2002

Coming into operation . . 14th March 2002

The Department of Agriculture and Rural Development, being a Department designated(**a**) for the purpose of section 2(2) of the European Communities Act 1972(**b**) as regards measures relating to the operation of the Structural Funds and matters relating to the promotion of rural development, in exercise of the powers conferred on it by the said section 2(2), and all other powers enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Agricultural Processing and Marketing Grant Regulations (Northern Ireland) 2002 and shall come into operation on 14th March 2002.

Interpretation

2.—(1) In these Regulations—

"application" means an application for the approval of expenditure under regulation 4;

"approved" in relation to any expenditure means approved by the Department under regulation 5;

"authorised person" means any person authorised by the Department either generally or specifically, for the purposes of these Regulations and includes any official of the Commission who accompanies such an authorised person;

"beneficiary" means a person whose application has been granted;

"Community support" means support payable pursuant to Articles 25 to 28 of the Council Regulation from the Guidance Section of the European Agricultural Guidance and Guarantee Fund in accordance with the Community legislation;

"the Community legislation" means the Council Regulation and any other instruments listed in the Schedule in so far as they relate to Community support;

(**a**) S.I. 1999/2788 and S.I. 2000/3238
(**b**) 1972 c. 68

"the Council Regulation" means Council Regulation (EC) No. 1257/1999(**a**) of 17th May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations;

"the Department" means the Department of Agriculture and Rural Development;

"electronic communication" has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001(**b**);

"financial support" means an amount paid or payable under these Regulations;

"operation" means an investment or project in Northern Ireland;

"public funds" means monies made available by:—

(*a*) a body exercising public functions within the United Kingdom; or

(*b*) the European Communities.

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.

(3) The Interpretation Act (Northern Ireland) 1954(**c**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Grants to improve processing and marketing of agricultural products

3.—(1) The Department may pay financial support to a beneficiary towards approved expenditure incurred in connection with an operation.

(2) The amount of any such financial support shall be 40 per cent of the approved expenditure or, if any other grant is payable from public funds in relation to the same approved expenditure, such other amount as, when added to that other grant, would make up 40 per cent of the approved expenditure.

(3) The maximum financial support payable under this regulation in respect of any operation shall be £572,000.

Approval of expenditure

4.—(1) An application for the approval of expenditure in connection with an operation shall be made in such form and at such time as the Department reasonably may require.

(2) An application shall contain such information as the Department reasonably may require.

5.—(1) Subject to paragraphs (2) and (3) the Department may approve in whole or in part expenditure in connection with an operation for which an application has been made.

(**a**) O.J. No. L160, 26.6.1999, p. 80
(**b**) 2001 c. 9 (N.I.)
(**c**) 1954 c. 33 (N.I.)

(2) The Department shall not approve expenditure unless it is satisfied that the operation to which it relates is eligible for Community support.

(3) The Department shall not approve expenditure on any operation unless the eligible expenditure to be incurred in connection with that operation is £70,000 or more.

(4) Approval may be given subject to such conditions as the Department may determine.

(5) Subject to paragraph (6) the Department may vary any approval granted under this regulation.

(6) The Department shall only vary an approval granted under this regulation pursuant to a request in writing from the beneficiary to do so, or in any other case after—

(*a*) giving the beneficiary notice in writing that it proposes to do so together with a statement of its reasons;

(*b*) giving the beneficiary an opportunity to make written representations within such time as the Department considers reasonable; and

(*c*) considering any such representations.

(7) An approval or variation under this regulation shall be in writing.

Claims

6. A claim for financial support shall be made at such time or within such period and in such form, and be accompanied by such information, as the Department reasonably may require.

Payments

7.—(1) The Department may pay financial support in respect of approved expenditure in connection with an operation by payment of a single lump sum or by instalments.

(2) Payments may be made:—

(*a*) at such time as the Department reasonably may determine; and

(*b*) subject to such conditions as the Department reasonably may determine.

Information

8.—(1) A beneficiary shall give the Department such information about any approved expenditure and any operation in connection with which such expenditure is incurred as the Department reasonably may require.

(2) Where the Department requires such information, the beneficiary shall give it to the Department within such period as the Department reasonably may determine.

Record keeping

9.—(1) A beneficiary shall, subject to paragraphs (2) and (3), keep any invoice, account or other document relating to approved expenditure or any operation in connection with which such expenditure is incurred for the period

of 6 years beginning with the day on which the last payment of financial support under these Regulations is made to him in connection with that expenditure or operation.

(2) If in the normal course of business a beneficiary transfers to another person the original of any document he is required to keep under paragraph (1) within the period he is required to keep it under that paragraph it shall be sufficient compliance with that paragraph for him to keep a copy of that document for that period.

(3) Paragraph (1) shall not apply in any case where a document to which that paragraph relates has been removed by any person lawfully authorised to remove it.

Powers of authorised persons

10.—(1) An authorised person may at all reasonable times, on producing, if so required, some duly authenticated document showing his authority, enter on any land, other than land used solely for the purpose of a dwelling-house:—

(*a*) to which an application or approved expenditure relates; or

(*b*) on which he has reasonable grounds to believe that documents or equipment relating to an application or approved expenditure are being kept,

for any of the purposes mentioned in paragraph (2).

(2) The purposes referred to in paragraph (1) are:—

(*a*) inspecting the land or equipment to which the application or approved expenditure relates;

(*b*) verifying the accuracy of any information provided by an applicant or beneficiary relating to an application or approved expenditure; and

(*c*) determining whether or not a beneficiary has complied with the conditions of an approval.

(3) An authorised person who has entered any land under paragraph (1) may:—

(*a*) inspect the land and any document, record or equipment on it which he reasonably believes relates to an application or approved expenditure;

(*b*) require the applicant or beneficiary or any employee, servant or agent of such applicant or beneficiary, to produce, or secure the production of, any document or supply any additional information in his possession or under his control relating to the application or approved expenditure, as the case may be;

(*c*) where any information referred to in sub-paragraph (*b*) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require 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 such document or other record referred to in sub-paragraph (*a*) or (*b*) to be produced; and

(*e*) seize and retain any document or other record which he reasonably believes may be required as evidence in proceedings under these Regulations.

(4) An applicant or beneficiary, and any employee, servant or agent of such applicant or beneficiary shall give an authorised person all reasonable assistance in relation to the exercise of his powers under paragraphs (1) and (3).

(5) An authorised person entering any land under paragraph (1) may take with him such other person as he considers necessary and paragraphs (3) and (4) shall apply to any such person when acting under the instructions of an authorised person as if he were an authorised person.

Breaches of obligations

11.—(1) Subject to paragraph (2) where—

(*a*) any information furnished to the Department by the beneficiary is false or misleading;

(*b*) the beneficiary is in breach of any of the conditions of an approval;

(*c*) the beneficiary is in breach of any requirement to which he is subject under these Regulations or under the Community legislation; or

(*d*) the whole or part of the financial support payable in respect of approved expenditure duplicates other grant paid or to be paid out of public funds,

the Department may exercise the powers contained in regulation 13.

(2) For the purposes of paragraph (1)(*d*), other grant duplicates such financial support if it is, or would be, for any of the same purposes as the financial support.

(3) Where—

(*a*) a beneficiary has transferred all or part of the land to which an approval relates to another person ("the transferee");

(*b*) the transferee has given an undertaking to the Department to assume the conditions of the approval in place of the beneficiary; and

(*c*) the Department has accepted that undertaking,

the beneficiary shall be released from the conditions of the approval, other than in respect of any breach or other matter occurring before the acceptance by the Department of the transferee's undertaking.

Other cases in which recovery etc. powers apply

12. The Department may exercise the powers contained in paragraph (1)(*a*) and (*b*) of regulation 13 where—

(*a*) there has been a material change in the nature, scale, costs or timing of the approved expenditure in question or any operation to which it relates; or

(*b*) the operation to which the approved expenditure in question relates has been or is being delayed, or is unlikely to be completed.

Department's powers

13.—(1) The powers conferred by regulations 11(1) and 12 are—

(*a*) to withhold the whole or any part of the financial support payable to the beneficiary; and

(*b*) to recover on demand the whole or any part of the financial support already paid to the beneficiary.

(2) Where all the circumstances in which the powers conferred by regulation 11(1) and specified in paragraph (1) have become exercisable are such as were intended by the beneficiary or as to which the beneficiary was reckless, the Department may also require the beneficiary to pay to it an additional sum equal to no more than 10 per cent of the financial support paid or payable to him.

(3) Where the Department takes any step specified in paragraph (1) it may also serve in writing on the beneficiary a notice suspending or terminating the approval.

(4) Where, under paragraph (3), the Department treats the approval as terminated, it may by notice in writing served on the beneficiary prohibit the beneficiary from making an application for the approval of expenditure in connection with an operation for such period (not exceeding two years) from the date of the termination as may be specified in the notice.

(5) Before taking any step specified in paragraph (1), (2), (3) or (4) the Department shall—

(*a*) give the beneficiary a written explanation of the reasons for the step proposed to be taken;

(*b*) afford the beneficiary an opportunity to make written representations within such time as the Department considers reasonable; and

(*c*) consider any such representations.

Recovery of interest

14.—(1) Where the Department exercises the power conferred by regulation 13(1)(*b*) it may also recover on demand interest on the financial support to be recovered for the period beginning with the day following that on which the financial support was paid and ending on the day on which the Department recovers it.

(2) The rate at which the interest is payable for any day in that period is one percentage point above LIBOR.

(3) For the purposes of paragraph (2) "LIBOR" means the sterling three month London interbank offered rate in force on the day in question, and in any proceedings relating to the recovery of such interest a certificate of the Department stating the LIBOR applicable for any day is conclusive evidence of the rate applicable for that day if the certificate also states that the Bank of England notified the Department of that rate.

Recovery of payments

15. In any case where an amount falls to be paid to the Department by virtue of (or by virtue of action taken under) these Regulations, the amounts so falling to be paid shall be recoverable as a debt.

Offences and penalties

16.—(1) A person is guilty of an offence if—

(*a*) for the purposes of obtaining financial support for himself or any other person under these Regulations he knowingly or recklessly makes a statement which is false or misleading in a material particular; or

(*b*) he intentionally obstructs an authorised person (or a person accompanying him and acting under his instructions) in the exercise of his powers under regulation 10.

(2) A person who is guilty of an offence shall be liable—

(*a*) in the case of an offence under paragraph (1)(*a*)—

(i) on summary conviction, to a fine not exceeding the statutory maximum; or

(ii) on conviction on indictment, to a fine; and

(*b*) in the case of an offence under paragraph (1)(*b*), to a fine not exceeding level 3 on the standard scale.

Revocations and transitional savings

17.—(1) Subject to paragraph (2) the Agricultural Processing and Marketing Grant Regulations (Northern Ireland) 1996(**a**) ("the 1996 Regulations") are hereby revoked.

(2) Paragraph (1) shall not affect the continued operation of regulations 4(3) and (4) and 5 to 8 (and regulation 2 in so far as it relates to those regulations) of the 1996 Regulations in respect of financial support paid under those Regulations.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 6th February 2002.

(L.S.)

Liam McKibben

A senior officer of the Department of Agriculture and Rural Development

(**a**) S.R. 1996 No. 196

SCHEDULE Regulation 2(1)

Meaning of "Community Legislation"

1. Council Regulation (EC) No. 1260/1999 of 21st June 1999 laying down general provisions on the Structural Funds (O.J. No. L161, 26.6.1999, p. 1).

2. Commission Regulation (EC) No. 1750/1999 of 23rd July 1999 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (O.J. No. L214, 13.8.1999, p. 31, as amended by Commission Regulation (EC) No. 2075/2000 of 29th September 2000 (O.J. No. L246, 30.9.2000, p. 46)).

3. Commission Decision (EC) No. 1999/501 of 1st July 1999 fixing an indicative allocation by Member State of the commitment appropriations for Objective 1 of the Structural Funds for the period 2000 to 2006 (O.J. No. L194, 27.7.1999, p. 49).

4. Commission Decision (EC) No.1999/502 of 1st July 1999 drawing up the list of regions covered by Objective 1 of the Structural Funds for the period 2000 to 2006 (O.J. No. L194, 27.7.1999, p. 53).

5. Commission Regulation (EC) No. 1685/2000 of 28th July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No. 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds (O.J. No. L193, 29.7.2000, p. 39).

6. Commission Regulation (EC) No. 438/2001 of 2nd March 2001 laying down detailed rules for the implementation of Council Regulation (EC) 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (O.J. No. L63, 3.3.2001, p. 21).

7. Commission Decision of 22nd March 2001 approving the Programme for Building Sustainable Prosperity – C (2001)637.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which come into operation on 14th March 2002, supplement in respect of Northern Ireland the Community legislation listed in the Schedule to the Regulations ("the Community legislation"). The Community legislation *inter alia* provides for support to be paid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund ("Community support") towards investment for the improvement of the processing and marketing of agricultural products. These Regulations operate within the scope of these provisions to enable Community support to be paid towards expenditure incurred in connection with operations involving such improvements.

The Regulations implement a part of the Northern Ireland Programme for Building Sustainable Prosperity (BSP) as approved by the European Commission under Article 44 of Council Regulation (EC) No. 1257/1999 (O.J. No. L160, 26.6.1999, p. 80), and provide for the payment of Community support by the Department of Agriculture and Rural Development in respect of any expenditure it has approved (regulation 3). Such expenditure may be approved if it is expenditure which is in accordance with that part of the BSP which concerns the improvement of the processing and marketing of agricultural products (expenditure for which support may be granted pursuant to Articles 25 to 28 of Council Regulation (EC) No. 1257/1999 (regulation 5)).

The Regulations also provide for the making of claims for, and the payment of, grants following approval (regulations 6 and 7) and also contain provisions creating obligations on those in receipt of grants concerning the provision of information (regulation 8) and record-keeping (regulation 9).

In addition the Regulations confer powers of entry on certain authorised persons, including Officials of the Commission (regulation 10), introduce a system of penalties to be imposed in the event of a breach of obligations by granting the Department various powers to take action, up to and including termination of approval in the event of breaches of the conditions of an approval and in a number of other cases (regulations 11 to 13), provide power to recover interest on sums recovered and that these be classified as a debt (regulations 14 and 15) and create offences in respect of the furnishing of false information for the purpose of obtaining financial assistance and in respect of obstruction (regulation 16).

The Regulations revoke, subject to transitional saving, the Agricultural Processing and Marketing Grant Regulations (Northern Ireland) 1996 (S.R. 1996 No. 196) (regulation 17).

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