2001 No. 208

CROFTING

The Crofting Community Development Scheme (Scotland) Regulations 2001

Made	*5th June 2001*
Laid before the Scottish Parliament	*7th June 2001*
Coming into force	*29th June 2001*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Crofting Community Development Scheme (Scotland) Regulations 2001 and shall come into force on 29th June 2001.

(2) These Regulations shall extend to Scotland only.

Interpretation

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

"the 1993 Act" means the Crofters (Scotland) Act 1993(**b**);

"application" means an application for financial assistance under the Scheme made in accordance with regulations 4 and 5 and "applicants" and "apply" shall be construed accordingly;

"approved" means approved by the Scottish Ministers in writing and "approve" and "approval" shall be construed accordingly;

"the Community legislation" means–

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

(b) Council Regulation (EC) No 1260/1999 of 21st June 1999 laying down general provisions on the Structural Funds(**d**);

(c) Council Regulation (EC) No. 438/2001 of 2nd March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No. 1260/1999(**e**); and

(d) 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

(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
(b) 1993 c.44.
(c) O.J. No. L 160, 26.6.99, p.80.
(d) O.J. No. L 161, 26.6.99, p.1.
(e) O.J. No. L 063, 03.03.01, p.21.

development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(**a**);

"croft" has the same meaning as in section 3 of the 1993 Act;

"crofting community" means the residents of a township or district within the crofting counties, some or all of whom are the owners, tenants or sub-tenants of crofts situated within that township or district;

"the crofting counties" has the same meaning as in section 61(1) of the 1993 Act;

"eligible applicants" means a grazings committee or any group in a crofting community the majority of whose members are occupiers of crofts;

"grazings committee" means a committee appointed under section 47 of the 1993 Act and shall include a grazings constable appointed under that section;

"plan co-ordinator" means the clerk to a common grazings committee or a grazings constable or the member of any eligible applicants who is responsible for the implementation of any development plan prepared for the purposes of these Regulations;

"scheme area" means the area of the Highlands and Islands of Scotland known as the crofting counties;

"the Scheme" means the Crofting Community Development Scheme being a measure to assist rural communities described at Priority 4, Sub-Priority (a), Measure 3, Sub-Measure (i) of the Highlands and Islands Special Transitional Programme approved by Commission Decision of 8th August 2000 on the adoption of the Single Programming Document for the Highlands and Islands Special Transitional Programme.

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

(3) 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(**b**), which has been recorded and is consequently capable of being reproduced.

Purposes and Objectives

3.—(1) The purposes of the Scheme shall be–

(a) the promotion of co-operative development by eligible applicants within crofting communities; and

(b) the creation of community-based development plans which qualify for financial assistance under the Scheme.

(2) Subject to the provisions of the Scheme and the Community legislation, the Scottish Ministers may make payments under the Scheme to eligible applicants as provided in regulation 6 where they are satisfied that the payments will help to achieve the objectives of encouraging recipients to meet one or more of the following objectives:–

(a) to improve the quality and the marketing of the agricultural output from that community without increasing the level of production;

(b) to diversify and broaden the economic base of the community;

(c) to adopt beneficial environmental measures;

(d) to identify and implement projects of a social or cultural nature for the benefit of the community;

(e) to establish communication links and management structures within communities;

(f) to use information technology;

(g) to prepare and implement suitable local training programmes.

Applications and Development Plans

4.—(1) Eligible applicants who propose to apply for financial assistance under the Scheme shall prepare and submit an application and development plan in accordance with the following paragraphs of this regulation.

(a) O.J. No. L 214, 13.8.99, p.31.
(b) 2000 c.7.

(2) The application and development plan shall be in writing in such form as the Scottish Ministers may reasonably require and shall include–

(a) a copy of the constitution of the group and the name and designation of the plan co-ordinator;

(b) a list of the current membership of the group, identifying each member of the group who is the tenant or owner of a croft;

(c) confirmation that the development plan will be implemented within the scheme area;

(d) a statement as to how the implementation of the plan will benefit the crofting community and sufficient information to show that the implementation of the development plan is likely to meet at least one of the objectives specified in regulation 3;

(e) a statement as to whether the implementation of the plan will have any detrimental effect on the local environment;

(f) a statement that the implementation of the plan will promote equal opportunities between men and women;

(g) a statement that public funding has been obtained for the implementation of the constituent elements of the development plan;

(h) sufficient information to satisfy the Scottish Ministers that the development plan contains at least two discrete projects that relate to two or more of the development sectors set out in Schedule 1;

(i) sufficient information to satisfy the Scottish Ministers that the cost of the development plan (including public funding) shall be at least £2,000,

provided that if the eligible applicants are a grazings committee, the information referred to in sub-paragraphs (a) and (b) above will not be required for the determination of an application.

(3) Eligible applicants shall furnish to the Scottish Ministers such further information and evidence in relation to the application and development plan as the Scottish Ministers may reasonably require.

(4) Eligible applicants may submit consecutive applications and development plans under this regulation but no new application and development plan will be considered until each previous application has been determined under regulation 5 and until a previously approved development plan has been duly carried out to the satisfaction of the Scottish Ministers.

(5) The Scottish Ministers may suspend the operation of the Scheme at any time and while so suspended no application under paragraph (1) above may be submitted.

Determination of applications

5.—(1) Subject to the provisions of these Regulations and the Community Legislation, the Scottish Ministers as they think fit may–

(a) refuse to approve an application or approve it in whole or in part;

(b) cause such approval to be given, and any payment by way of financial assistance to be made, subject to such conditions as they may impose; or

(c) at any time on giving reasonable notice vary the approval or amend such conditions attached to the approval.

(2) The Scottish Ministers shall in writing–

(a) notify applicants of their decision in respect of that application; and

(b) notify applicants whose application has been approved under this regulation of any conditions, relating to such approval, which they have imposed or amended under paragraph (1) above.

(3) The Scottish Ministers shall not approve an application for financial assistance under the Scheme in relation to a development plan unless they are satisfied that–

(a) the development plan can be implemented by, or on behalf of, the eligible applicants;

(b) completion of the development plan will achieve at least one of the objectives specified in regulation 3;

(c) the projects specified in the development plan relate to two or more of the development sectors specified in Schedule 1; and

(d) the projects specified in the development plan qualify for financial assistance from the Scottish Ministers or other public sector body or agency.

(4) Before approving an application (in whole or in part), the Scottish Ministers may consult such body or such other interests as they consider appropriate to satisfy themselves that the implementation of the plan will not discriminate between men and women or between social groups and will not cause any unjustified detrimental effect to the environment.

(5) The Scottish Ministers may vary the approval or amend conditions attached to the approval in accordance with paragraph (1)(c) above only if they are satisfied as to the matters mentioned in paragraph (3) above.

(6) Before varying the approval or amending conditions attached to the approval in accordance with paragraph (1)(c) above, the Scottish Ministers shall–

(a) give to the person to whom the application has been granted written notification of the action proposed to be taken;

(b) give that person an opportunity to make representations about the action proposed to be taken within such time and in such form as the Scottish Ministers may require; and

(c) consider any such representations.

Provision of financial assistance to eligible applicants

6.—(1) The Scottish Ministers may give to eligible applicants, whose application has been approved under regulation 5, financial assistance to implement the development plan.

(2) Subject to paragraphs (3) and (4) below, the amount of financial assistance payable in respect of any approved application shall not exceed the amount specified in column 2 of Schedule 2 in relation to the net cost of the approved plan specified in column 1 of that Schedule.

(3) The financial assistance payable under this regulation shall be paid in the manner and at the times following:–

(a) up to 25% of the financial assistance payable in respect of any approved application shall be paid when the application and development plan have been determined under regulation 5;

(b) up to 50% of the financial assistance payable in respect of any approved application shall be paid when–

(i) the Scottish Ministers are satisfied that the quotations in writing for the projects specified on the applicants' development plan have been accepted in writing by the applicants; and

(ii) the projects specified in the development plan have been approved in writing for financial assistance by the Scottish Ministers or other public sector body or agency;

(c) the balance of the financial assistance payable in respect of any approved application shall be paid when the Scottish Ministers are satisfied that the projects specified on the applicants' development plan have been duly completed and the applicants submit details in writing of the actual costs that they incur in implementing the development plan.

(4) The aggregate amount of financial assistance payable in respect of any one application shall not exceed the sum of £7,000.

Claims for financial assistance

7. A claim for financial assistance under these Regulations by eligible applicants whose application and development plan is, or has been, approved under regulation 5 shall–

(a) be made at the times specified in regulation 6 in such form and manner as the Scottish Ministers may from time to time reasonably require; and

(b) include such particulars and information relating to the claim and copies of such documents and records relating thereto as the Scottish Ministers may reasonably require.

Provision of financial assistance to providers of services to eligible applicants

8.—(1) Subject to paragraph (2) below, the Scottish Ministers may provide financial assistance to meet the cost of services provided to eligible applicants by any person or persons approved by them as a fit and proper person to provide such services.

(2) The services for which financial assistance may be paid under the preceding paragraph will be advice and assistance given to eligible applicants by any person approved for that purpose in the preparation and submission of an application and development plan for the purposes of regulation 4 or in the submission of a claim under regulation 7.

Crofters Commission

9.—(1) The Scottish Ministers may, with the agreement of the Crofters Commission, arrange for any of their functions under these Regulations to be exercised on their behalf by the Crofters Commission.

(2) Such an arrangement shall be in writing and may be subject to such conditions (including conditions as to the costs and the charge for those costs) as may be agreed.

Information and Records

10.—(1) Subject to paragraphs (2) and (3) below, an eligible person shall, for a period of not less than five years following the last payment of financial assistance under these Regulations–

(a) retain all invoices, accounts and other relevant documents in relation to an approved measure and produce them for inspection if required to do so by the Scottish Ministers; and

(b) provide the Scottish Ministers with such additional information in relation to the approved measure or the financial assistance paid in pursuance of that measure as they may reasonably require.

(2) If the eligible person transfers the original of any such document to another person in the normal course of business, the duty under paragraph (1) above shall be treated as having been fulfilled if there is kept a copy of that document for the said period.

(3) Paragraph (1) above shall not apply if, and for as long as, the document has been removed by an authorised person under regulation 11(3)(d).

Powers of authorised persons

11.—(1) For the purposes set out in paragraph (2) below, an authorised person may at any reasonable time enter any land or premises–

(a) which is the subject of a measure which is included in the development plan or an application submitted in terms of regulation 4(1); or

(b) which an authorised person has reasonable grounds to believe may be a place in which documents or other information which may require to be produced under these Regulations are kept.

(2) The purposes referred to in paragraph (1) above are–

(a) verifying the accuracy of any information contained in an application or a claim for financial assistance under these Regulations or any other information provided by the eligible person relating to the measure;

(b) ascertaining whether any financial assistance is payable or recoverable under these Regulations, or the amount that is payable or recoverable; and

(c) ascertaining whether an offence under these Regulations has been or is being committed.

(3) An authorised person who has entered any land under paragraph (1) above–

(a) may inspect the land and any premises, plant, machinery, equipment, livestock, document or record which that person reasonably believes relates to the financial assistance or the measure referred to in paragraph (1)(a) above;

(b) may require the eligible person or any employee or agent of the eligible person to produce, or secure the production of, any document or supply any additional information in the possession or under the control of that eligible person relating to the financial assistance or the measure referred to in paragraph (1)(a) above;

(c) where any document or other record relating to the financial assistance or the measure is kept by means of a computer, shall be afforded access to any computer and any associated apparatus or material which is or has been used in connection with that document or record;

(d) may require copies of or extracts from any such documents or other record to be produced and may retain them and take them away;

(e) may remove and retain for a reasonable period any document or other record which that person reasonably believes may be required as evidence in any proceedings and, if it is recorded otherwise than in legible form, require it to be produced in a form which is legible or which can be taken away.

(4) An eligible person or any employee or agent of the eligible person shall give an authorised person all reasonable assistance in relation to the matters mentioned in paragraphs (1) and (3) above.

(5) An authorised person entering any land under paragraph (1) above may be accompanied by such other persons as considered necessary, and paragraphs (3) and (4) above shall apply to such persons when acting under the instructions of an authorised person as they apply to authorised persons.

(6) An authorised person shall not be liable in any proceedings for anything done in the purported exercise of the powers conferred on authorised persons by these Regulations if the 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.

(7) Paragraph (1) above shall apply to any land used for the purposes of a dwelling-house only where reasonable notice of its intended exercise has been given to all residents of that dwelling-house.

(8) An authorised person seeking admission to any land under this regulation shall, if so required, produce proof of appointment as an authorised person for these purposes.

Revocation of approval and reduction, withholding or recovery of financial assistance

12.—(1) Subject to paragraph (2) below, if at any time after the Scottish Ministers have approved an application in whole or in part or have paid financial assistance under these Regulations, it appears to them that–

(a) any condition on which the approval was given or the financial assistance has been paid has not been complied with, or the agreed objectives have not been achieved for reasons other than circumstances outwith the control of the eligible person;

(b) the development plan, in respect of which approval was given or financial assistance has been paid, has not been implemented in accordance with the application approved by the Scottish Ministers, or has been or is being unreasonably delayed or is unlikely to be completed;

(c) the implementation of the development plan, in respect of which such financial assistance is claimed, is contrary to the purposes served by assistance previously given out of money provided by the United Kingdom Parliament, the Scottish Parliament or the European Community;

(d) the implementation of the development plan, in respect of which such financial assistance is claimed, has been effected in a way which has destroyed or damaged the natural heritage of the countryside to an extent which cannot be justified by the purpose for which financial assistance is claimed;

(e) public funding in respect of expenditure towards which such financial assistance is claimed has been or may be given otherwise than under these Regulations;

(f) the eligible person has–

(i) intentionally obstructed any authorised person in exercise of the powers under regulation 11; or

(ii) failed to comply with a requirement imposed under regulation 11(3)(b);

(g) information was given by the eligible person on any matter relevant to the giving of the approval or the making of the payment which was false or misleading in a material respect;

(h) the financial assistance paid towards the implementation of the development plan is excessive having regard to the final aggregate costs of the measures included in the final development plan; or

(i) the European Commission has decided that the grant paid, or to be paid, does not comply with the Community legislation,

the Scottish Ministers 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 and as a debt an amount equal to the financial assistance which has been so paid or such part thereof as they may determine.

(2) Before revoking an approval in whole or in part or reducing or withholding any financial assistance or making a demand by virtue of paragraph (1) above, the Scottish Ministers shall–

(a) give to the person from whom any such amount is sought written notification of the step proposed to be taken and, if appropriate, the amount by which it is proposed that financial assistance be reduced or the amount of such assistance which it is proposed be withheld;

(b) give that person an opportunity to make representations about the action proposed to be taken by them within such time and in such form as they may require; and

(c) consider any such representations.

Interest

13.—(1) Where the Scottish Ministers intend to recover on demand financial assistance in whole or in part in accordance with these Regulations, they may, in addition, recover interest on that amount at a rate of one per cent above the sterling three month London interbank offered rate on a day to day basis, from the date of payment of financial assistance until the date of recovery.

(2) In any proceedings for recovery under these Regulations, a certificate issued by the Scottish Ministers 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.

Offences

14.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person any financial assistance under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, shall be guilty of an offence and shall be 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 11(5)) in the exercise of the powers under regulation 11 shall be guilty of an offence and shall be 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 at any time within the period of 12 months from the date on which the offence was committed.

(4) Section 136(3) of the Criminal Procedure (Scotland) Act 1995(**a**) (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

15.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(a) 1995 c.46.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) above shall 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.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
5th June 2001

Regulations 4 and 5

SCHEDULE 1

DEVELOPMENT SECTORS

1. Agriculture
2. Forestry
3. Environment
4. Heritage
5. Social
6. Diversification
7. Marketing
8. Training

Regulation 6

SCHEDULE 2

AGGREGATE FINANCIAL ASSISTANCE PAYABLE RELATIVE TO

NET COST OF APPROVED DEVELOPMENT PLAN

Column 1 *Net cost of approved plan (£)*	*Column 2* *Financial assistance payable*
0-7000	50%
7001-8000	£3500
8001-10000	£4000
10001-12000	£4500
12001-14000	£5000
14001-16000	£5500
16001-18000	£6000
18001-25000	£6500
25001+	£7000

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce measures to supplement–

1. Council Regulation (EC) No 1257/1999 of 17th May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (O.J. No. L 160, 26.6.99, p.80);

2. Council Regulation (EC) No 1260/1999 of 21st June 1999 laying down general provisions on the Structural Funds (O.J. No. L 161, 26.6.99, p.1); and

3. Commission Regulation (EC) No 1750/1999 of 23rd July 1999n 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. L 214, 13.8.99, p.31).

The Community legislation referred to above provides for payment of assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund for measures which promote rural development falling within the scope of Council Regulation 1257/1999. Measures relating to Objective 1 areas (which include the Highlands and Islands for transitional support under Objective 1) are subject to the provisions of Council Regulation 1260/1999.

These Regulations set up the Crofting Community Development Scheme and enable the payment of financial assistance under the Single Programming Document for the Highlands and Islands Special Transitional Programme which, in accordance with Council Regulation 1260/1999, was approved by the European Commission on 8th August 2000.

Financial assistance under the Regulations can be provided for the implementation of a development plan which achieves one of the objectives listed in regulation 3(2).

An eligible applicant who wishes to benefit from financial assistance must prepare a development plan which must include the information listed at regulation 4(2). Applications can be made at any time. The Scottish Ministers may, however, suspend receipt of applications.

The Regulations also–

(a) make provision for the determination of applications by the Scottish Ministers (regulation 5);

(b) provide for the levels of financial assistance available including the maximum limits of financial assistance payable (regulation 6);

(c) provide for how financial assistance may be claimed and what evidence may be required in support of a claim (regulation 7);

(d) provide for retention of information and records (regulation 10);

(e) confer powers of entry and inspection for authorised persons to enforce the Regulations (regulation 11);

(f) make provision for the revocation of approval and the withholding or recovery of financial assistance (regulation 12);

(g) make provision for payment of interest on financial assistance recovered under these Regulations (regulation 13); and

(h) create offences of knowingly or recklessly making a false statement to obtain financial assistance or of obstructing authorised persons acting under the Regulations (regulations 14 and 15).

A copy of the Commission Decision approving the Single Programming Document, together with a copy of the Single Programming Document, may be inspected at the Scottish Executive Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.

S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

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