2003 No. 52

AGRICULTURE

The Nitrate Vulnerable Zones (Grants) (Scotland) Scheme 2003

Approved by the Scottish Parliament

Made	*28th January 2003*
Laid before the Scottish Parliament	*30th January 2003*
Coming into force	*14th March 2003*

The Scottish Ministers in exercise of the powers conferred by section 29 of the Agriculture Act 1970(**a**) and of all other powers enabling them in that behalf, hereby make the following Scheme:

Citation, commencement and extent

1.—(1) This Scheme may be cited as the Nitrate Vulnerable Zones (Grants) (Scotland) Scheme 2003, and shall come into force on 14th March 2003.

(2) This Scheme extends to Scotland only.

Interpretation

2.—(1) In this Scheme–

"application" means an application for a grant under this Scheme by a person made in accordance with paragraph 3 and "applicant" shall be construed accordingly;

"farmyard manure" means a mixture of livestock manure and bedding material which can be stored as a solid and which is not capable of being pumped as a semi-solid or liquid;

"nitrate vulnerable zone" has the same meaning as in the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003(**b**);

"slurry" means–

(a) excreta, including any liquid fraction, produced by livestock whilst in a yard or building; or

(b) a mixture consisting wholly of or containing such excreta, bedding, feed residues, rainwater and washings from a building or yard used by livestock, dungsteads or middens, high level slatted buildings and weeping wall structures or any combination of these, provided such excreta is present,

of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process.

(2) In this Scheme, any reference to–

(a) a numbered paragraph is a reference to the paragraph in this Scheme so numbered;

(a) 1970 c.40. Section 29 was amended by section 10 of the Agriculture (Miscellaneous Provisions) Act 1972 (c.62), section 15 of the Agriculture (Miscellaneous Provisions) Act 1976 (c.55) and Schedule 1 to the Statute Law (Repeals) Act 1986 (c.12). Section 28 contains a definition of "the appropriate authority" and "the appropriate Minister". The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain Treasury approval was removed by section 55 of that Act.

(b) S.S.I. 2003/51.

(b) a numbered sub-paragraph (with no corresponding reference to a specific paragraph) is a reference to the sub-paragraph so numbered in the paragraph in which that reference appears.

(3) A reference in this Scheme 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(**a**), which has been recorded and is consequently capable of being reproduced.

Applications for grant

3.—(1) Any application for a grant under this Scheme shall be made in such form and manner and by such date as the Scottish Ministers may determine, and the applicant in question shall provide such particulars and information relating to the application as the Scottish Ministers may reasonably require.

(2) The applicant shall furnish to the Scottish Ministers such further information and evidence in relation to the application as the Scottish Ministers reasonably may require in order to allow proper consideration of the application.

(3) A person may submit more than one application under this paragraph.

(4) The Scottish Ministers may at any time suspend the operation of the Scheme and, while so suspended, no application under sub-paragraph (1) submitted to them shall be approved.

(5) The Scottish Ministers shall inform an applicant in writing whether the application is approved or not and if it is not approved shall give reasons in writing for not approving it.

Restrictions on the acceptance of applications for grant

4.—(1) The Scottish Ministers shall not consider an application for grant under this scheme–

(a) in respect of an agricultural business which is not at least partly carried out on land situated in a nitrate vulnerable zone; or

(b) towards any expenditure incurred in respect of an agricultural business which in the opinion of the Scottish Ministers is likely to result in an increase in the production capacity of that business.

(2) The Scottish Ministers shall only consider an application for grant under this scheme if they are satisfied that the expenditure towards which the grant is to be made will not result in an increase in pollution from nitrates within the nitrate vulnerable zone concerned.

Determination of applications

5.—(1) Subject to the provisions of this Scheme, 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 payments by way of grant to be made, subject to such conditions as they may impose; or

(c) at any time, but subject to sub-paragraphs (7) and (8) below, on giving reasonable notice vary the approval or amend such conditions attached to the approval.

(2) The Scottish Ministers shall in writing–

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

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

(3) The Scottish Ministers shall not approve an application for grant unless they are satisfied that the expenditure towards which the grant is to be made has been incurred by the applicant.

(4) In determining whether an application should be approved or rejected, the Scottish Ministers may have regard to the likely extent to which pollution by nitrates within a nitrate vulnerable zone will be reduced by virtue of the measures for which a grant is so applied for in comparison with the measures referred to in other applications received by them (whether or not those other applications relate to the same nitrate vulnerable zone).

(a) 2000 c.7.

(5) Before approving an application (in whole or in part), the Scottish Ministers may consult such persons as they consider appropriate.

(6) The Scottish Ministers shall not approve an application submitted to them after the fifth anniversary of the coming into force of this Scheme.

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

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

(a) give to the person to whom the assistance has been granted written notification of the action proposed to be taken and the reasons therefor;

(b) afford 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 consider fit; and

(c) consider any such representations.

Payment and amount of grants

6.—(1) The Scottish Ministers may make to any person one or more grants representing in total 40 per cent of the expenditure incurred by that person for the purpose of or in connection with the carrying on of an agricultural business.

(2) The expenditure referred to in sub-paragraph (1) shall be the sums which–

(a) have been incurred after the date of coming into force of the scheme but before the seventh anniversary of the coming into force of this Scheme;

(b) are in respect of–

(i) the provision, replacement or improvement of one or more of–

(aa) facilities (including safety fencing and covers) for the handling and storage of farmyard manure and slurry;

(bb) fixed disposal facilities for slurry; or

(cc) facilities (other than roofing) for the separation of clean and dirty water, where those facilities reduce the need to store slurry; or

(ii) any work, facility or transaction (including conservation or amenity works) incidental to any matter in respect of which a grant may be made under the foregoing provisions of this sub-sub-paragraph;

(c) appear to the Scottish Ministers to relate to work of a capital nature or incurred in connection with expenditure of a capital nature;

(d) are approved by the Scottish Ministers for the purposes of a grant under this Scheme; and

(e) do not in aggregate exceed £85,000.

(3) Where it appears to the Scottish Ministers that expenditure in respect of which a grant is approved under sub-paragraph (1) has been incurred partly for the purposes of or in connection with the carrying on of an agricultural business and partly for other purposes they may treat as having been incurred for the purposes of or in connection with the carrying on of an agricultural business so much of that expenditure as appears to them to be referable to the carrying on of that agricultural business.

(4) In this paragraph, "agricultural business" means an agricultural business which is at least partly carried out on land situated in a nitrate vulnerable zone.

Withholding of grants

7.—(1) Without prejudice to section 29(4) of the Agriculture Act 1970, the Scottish Ministers may also withhold, reduce or recover the whole or any part of a grant otherwise payable under this Scheme where they consider that–

(a) assistance in respect of expenditure towards which the grant is claimed has been obtained from another source;

(b) the work in respect of which the grant is claimed would frustrate the purposes served by assistance previously given out of money provided by Parliament, the Scottish Parliament or the European Community;

(c) the expenditure towards which the grant is being claimed is excessive, having regard to all the circumstances of the case; or

(d) the carrying out of the work in respect of which the grant is to be made has destroyed or damaged or is likely to destroy or damage the natural beauty and amenity of the countryside to an extent which cannot be justified by any resulting agricultural benefit.

(2) In any case in which the Scottish Ministers consider that it is appropriate for them to withhold, reduce or recover any grant under sub-paragraph (1), they shall, before making a decision–

(a) give the applicant written notification of the reasons for the action proposed to be taken by them;

(b) afford that person an opportunity of appearing before and being heard by a person appointed for that purpose by them; and

(c) consider the report by a person so appointed and supply a copy of the report to the applicant.

ROSS FINNIE
A member of the Scottish Executive

Pentland House,
Edinburgh
28th January 2003

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Instrument establishes the Nitrate Vulnerable Zones (Grants) Scheme 2003 ("the Scheme"). It enables the payment of grants to applicants who satisfy certain conditions. Applications for grants will not be considered if the agricultural business of the applicant is not situated on land which is (at least in part) in a nitrate vulnerable zone ("NVZ") or if the expenditure proposed is, in the opinion of the Scottish Ministers, likely to lead to an increase in the production capacity of the business (paragraph 4(1)). Furthermore, an application will only be considered if the Scottish Ministers are satisfied that the grant will not be used on expenditure which will result in an increase in pollution from nitrates in the NVZ in question (paragraph 4(2)).

The Scottish Ministers may approve or reject an application. They may also approve an application in part or approve subject to conditions (paragraph 5(1)). In reaching a decision as to whether to approve an application, the Scottish Ministers may have regard to other applications for grant and the comparative extent to which each will reduce pollution of nitrates in an NVZ (paragraph 5(4)).

The Scottish Ministers may pay in total 40 per cent of the expenditure incurred by an applicant. The expenditure may be approved up to the fifth anniversary of the start of the Scheme (paragraph 5(6)) and can only be paid if incurred before the seventh anniversary of the start of the Scheme (paragraph 6(2)(a)). The total expenditure to which the 40% maximum grant applies must relate to the matters listed in paragraph 6(2)(b). The total payable to an applicant, no matter how many applications for grant are made by that person, will not exceed £85,000 (paragraph 6(2)(e)).

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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