

**2008 No. 380**

**AGRICULTURE**

**Rural Development (Financial Assistance) Regulations  
(Northern Ireland) 2008**

*Made* - - - - - *11th September 2008*

*Coming into operation* *15th October 2008*

The Department of Agriculture and Rural Development is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> as regards measures relating to the operation of the Structural Funds and matters relating to the promotion of rural development.

The Department of Agriculture and Rural Development makes the following Regulations in exercise of the power conferred on it by section 2(2) of the European Communities Act 1972.

**Citation and commencement**

**1.** These Regulations may be cited as the Rural Development (Financial Assistance) Regulations (Northern Ireland) 2008 and shall come into operation on 15th October 2008.

**Interpretation**

**2.—**(1) In these Regulations—

“accountable body” means a body administering rural development payments which relate to the measures in Article 63 of Council Regulation 1698/2005<sup>(c)</sup>, which may be—

- (a) an administrative and financial lead actor selected by a local action group in accordance with Article 62(2) of Council Regulation 1698/2005; or
- (b) a local action group whose structure and constitution meet the requirements specified in that Article;

“agent” means a person authorised in writing by the Department for the purposes of these Regulations;

“application” means an application made pursuant to regulation 4;

“approved operation” means an operation approved by the Department or an agent under regulation 5;

“authorisation”, in relation to an agent or accountable body, means an authorisation in writing under this regulation;

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

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(a) S.I. 1999/2788 and S.I. 2000/3238

(b) 1972 c. 68

(c) O.J. No. L277, 21.10.2005, p. 1, to which there are amendments not relevant to these Regulations

“beneficiary” means—

- (a) a person who has applied for and been granted approval for an operation, and
- (b) in relation to any time after financial assistance has been paid in connection with the approval, the person to whom the financial assistance has been paid;

“Commission Regulation 1974/2006” means Commission Regulation (EC) No. 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(a);

“Commission Regulation 1975/2006” means Commission Regulation (EC) No. 1975/2006 laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005 as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(b);

“the Commission” means the Commission of the European Communities;

“Community assistance” means assistance pursuant to Articles 52 and 63 of Council Regulation 1698/2005;

“the Community legislation” means the instruments listed in the Schedule;

“the Council Regulation” means Council Regulation (EC) No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(c);

“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(d);

“financial assistance” means an amount paid or payable under these Regulations;

“operation” means an investment, plan, project or action which is the subject of an application;

“local action group” means a group which has been selected to implement a local development strategy in accordance with Article 37 of Commission Regulation 1974/2006;

“Rural Development Programme” means the Northern Ireland Rural Development Programme submitted by the United Kingdom to the European Commission in accordance with Article 18 of the Council Regulation, as approved by Commission Decision C(2007) 4411 of 27 September 2007(e).

(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) Other expressions used in these Regulations which are also used in the Council Regulation or Commission Regulations 1774/2005 and 1975/2006 shall be construed in accordance with the appropriate Regulation.

(4) A reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made.

(5) The Interpretation Act (Northern Ireland) 1954(f), except section 20(2) and (3), shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

### **Assistance for rural development**

**3.—(1)** The Department, or an agent or an accountable body may pay financial assistance to a beneficiary towards expenditure incurred or to be incurred by him in connection with any approved operation.

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(a) O.J. No. L368, 23.12.2006, p. 15

(b) O.J. No. L368, 23.12.2006, p. 74

(c) O.J. No. L277, 21.10.2005, p. 1

(d) 2001 c. 9

(e) CCI No. 2007/UKO6RPO002. Copies of the Northern Ireland Rural Development Programme may be downloaded from <http://www.dardni.gov.uk/index/publications/pubs-dard-rural-development/nirdp-2007-13-approved-programme.htm>.

(f) 1954 c. 33 (N.I.)

(2) The Department may make funds available to an agent or an accountable body to enable him to pay financial assistance under paragraph (1).

### **Applications for approval of operations**

4. An application for the approval of an operation shall be made in such form and contain such information as the Department or an agent reasonably may require.

### **Approval of operations**

5.—(1) The Department or an agent may—

(a) refuse to approve an operation for the receipt of financial assistance;

or

(b) approve an operation in whole or in part, unconditionally or subject to such conditions as it may determine,

but it may not approve an operation unless it is satisfied that—

(i) the operation is in accordance with the Northern Ireland Rural Development Programme 2007-2013; and

(ii) the operation is eligible for Community assistance.

(2) The Department or an agent may vary an approval by varying any condition to which it is subject, or by imposing conditions.

(3) Before the Department or an agent decides to refuse approval for an operation under paragraph (1) or to vary an approval under paragraph (2), it shall—

(a) give the applicant or beneficiary, as the case may be, notice in writing of its proposed decision with a statement of its reasons;

(b) give that applicant or beneficiary an opportunity to make written representations within such time as the Department or, as the case may be, the agent considers reasonable; and

(c) consider any such representations.

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

### **Claims**

6. A claim for financial assistance shall be made at such time and in such form and be accompanied by such information as the Department or, as the case may be, an agent reasonably may require.

### **Payment**

7.—(1) The Department, or an agent or an accountable body may pay financial assistance by payment of a single lump sum or by instalments.

(2) Payments under paragraph (1) may be made—

(a) at such time or times as the Department or, as the case may be, the agent or the accountable body thinks fit; and

(b) subject to such conditions as the Department or, as the case may be, the agent or accountable body reasonably may determine.

### **Information**

8.—(1) A beneficiary shall supply the Department or an agent or an accountable body with such information about an approved operation as the Department or the agent or the accountable body reasonably may require.

(2) Where the Department or an agent or an accountable body requires such information, the beneficiary shall supply the Department or agent or accountable body with it within such period as the Department or agent or accountable body reasonably may determine.

### **Powers of authorised persons**

**9.**—(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 operation relates; or
- (b) on which he has reasonable grounds to believe that documents or equipment relating to an application or approved operation 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 operation relates;
- (b) verifying the accuracy of any information provided by an applicant or beneficiary relating to an application or approved operation; 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 operation;
- (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 operation, as the case may be;
- (c) where any document or other record relating to any application or approved operation is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used in connection with that document or record;
- (d) require copies of or extracts from any such document or other record to be produced;
- (e) seize and retain any document or other record which he reasonably believes may be required as evidence in proceedings under these Regulations, and if it is recorded otherwise than in a form in which it is legible or can be taken away, require it to be produced in a form in which it is legible or in which it can be taken away.

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

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

### **Record-keeping**

**10.**—(1) A beneficiary shall keep any invoice, account or other document relating to an approved operation for the period of six years beginning with the day on which the last payment of financial assistance under these Regulations is made to him in connection with that operation, subject to paragraphs (2) and (3).

(2) If the beneficiary transfers the original of any such document to another person in the normal course of business, he must instead keep a copy of that document for that period.

(3) Paragraph (1) does not apply if the document has been removed by an authorised person under regulation 9(3)(e).

### **Breaches of obligations**

**11.** Where—

- (a) any information furnished to the Department or an agent or an accountable body by the beneficiary is false or misleading;
- (b) the beneficiary breaches any of the conditions of an approval; or
- (c) the beneficiary breaches any requirement to which he is subject under these Regulations,

the Department may exercise the powers contained in regulation 13.

### **Other cases in which recovery etc. powers apply**

**12.** The Department may exercise the powers contained in paragraphs (1)(a) and (1)(b) and paragraph (2) of regulation 13 where—

- (a) there has been a material change in the nature, scale, costs or timing of the approved operation;
- (b) the approved operation has been or is being delayed, or is unlikely to be completed;
- (c) the whole or part of the payment of financial assistance in connection with an approved operation would duplicate assistance provided or to be provided out of monies made available by or under any statutory provision or by a body exercising public functions within the United Kingdom,

and for the purposes of paragraph (c), a payment duplicates such assistance if it would be paid for the whole or part of an approved operation in respect of which that assistance had already been paid.

### **Department's powers**

**13.—**(1) Where regulation 11 or 12 applies, the Department may—

- (a) withhold or direct the agent or an accountable body to withhold the whole or any part of the financial assistance payable to the beneficiary;
- (b) recover on demand or direct the agent or an accountable body to recover on demand the whole or any part of any amount of financial assistance already paid to the beneficiary; and
- (c) require or direct the agent or an accountable body to require the beneficiary to pay to the Department or, as the case may be, to the agent or accountable body an additional sum equal to no more than 10% of the financial assistance paid or payable to the beneficiary.

(2) Where the Department takes any step specified in paragraph (1) the Department may also serve in writing or direct the agent to serve in writing on the beneficiary by post at his last known address a notice suspending or terminating the approval.

(3) Where, under paragraph (2), the Department or, as the case may be, the agent treats the approval as terminated, the Department may—

- (a) by notice in writing served on the beneficiary by post at his last known address prohibit the beneficiary from making an application for such period (not exceeding two years) from the date of the termination as may be specified in the notice; or
- (b) direct the agent to serve a notice in writing on the beneficiary by post at his last known address prohibiting the beneficiary from making an application for such period determined by the Department (not exceeding two years) from the date of the termination as may be specified in the notice.

(4) Before taking any step specified in paragraphs (1) to (3), 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) If the Department decides to recover or to direct an agent or an accountable body to recover any amount under regulation 11 or 12, it may also recover on demand interest on the amount to be recovered, and the rate of interest shall be one percentage point above LIBOR on a day-to-day basis.

(2) For the purposes of this regulation, “LIBOR” means the sterling three-month London interbank offered rate in force during the period between the date on which the Department or, as the case may be, the agent or accountable body makes the payment to be recovered and the date on which the Department or, as the case may be, the agent or accountable body recovers the payment.

(3) In any proceedings relating to the recovery of such interest, a certificate of the Department stating the LIBOR applicable during a period specified in the certificate shall be conclusive evidence

of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Department of that rate.

### **Compliance with directions**

**15.** An agent or an accountable body shall comply with any directions of the Department under regulation 13 or 14.

### **Breach by an agent or an accountable body of his authorisation**

**16.—(1)** Where an agent or an accountable body breaches any of the conditions of his authorisation the Department may—

- (a) withhold funds from the agent or accountable body; and
- (b) recover on demand the whole or any part of funds already made available to the agent or accountable body.

**(2)** Before taking any step specified in paragraph (1), the Department shall—

- (a) give the agent or accountable body a written explanation of the reasons for the step proposed to be taken;
- (b) afford the agent or accountable body an opportunity to make written representations within such time as the Department considers reasonable; and
- (c) consider any such representations.

### **Recovery of payments**

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

### **Set-off**

**18.** The amount of any sum payable by the Department under Council Regulation 1782/2003 or 1698/2005, whether as principal or agent, may be set off against the amount of any sum recoverable by the Department or an agent under regulation 13(1), 13(2) or 14(1).

### **Offences and penalties**

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

- (a) for the purposes of obtaining financial assistance for himself or any other person 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 9.

**(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 conviction on indictment, to a fine; or
  - (ii) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) in the case of an offence under paragraph (1)(b), to a fine not exceeding level 3 on the standard scale.

**(3)** Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, chief executive, manager, member of the management committee, secretary or other similar officer of that body or any person who was purporting to act in such a capacity, he is also guilty of the offence and liable to be proceeded against and punished accordingly.

**(4)** Where the affairs of a body corporate are managed by its members, paragraph (3) applies to acts and defaults of a member in connection with his management functions as if he were a director.

(5) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

**Revocation of the Rural Development (Financial Assistance) Regulations (Northern Ireland) 2001**

20. Subject to regulation 21, the Rural Development (Financial Assistance) Regulations (Northern Ireland) 2001(a) are revoked.

**Transitional Savings and Amendments**

21.—(1) Without prejudice to section 28(2) of the Interpretation Act (Northern Ireland) 1954 the Rural Development (Financial Assistance) Regulations (Northern Ireland) 2001 shall, subject to paragraph (2), continue to have effect in relation to any application or approval made for the purposes of those Regulations and any financial assistance paid in pursuance therewith as if those Regulations had not been revoked.

(2) In paragraph 4 of the Schedule to the Rural Development (Financial Assistance) Regulations (Northern Ireland) 2001 for the reference to “Commission Regulation (EC) No. 1750/1999” substitute “Commission Regulation (EC) No. 817/2004 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)”(b).

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 11th September 2008.

(L.S.)

*Pauline Keegan*

A senior officer of the Department of Agriculture and Rural Development

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(a) S.R. 2001 No. 332

(b) O.J. No. L231, 30.6.2004, p. 24

## MEANING OF “COMMUNITY LEGISLATION”

1. Commission Regulation (EC) No. 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for Rural Development by the European Agricultural Fund for Rural Development (EAFRD) (O.J. No. L368, 23.12.2006, p. 15).
2. Commission Regulation (EC) No. 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Regulation (EC) No. 1698/2005, as regards the implementation of control measures as well as cross-compliance in respect of rural development support measures (O.J. No. L368, 23.12.2006, p. 74).
3. Commission Regulation (EC) No. 1320/2006 of 5 September 2006 laying down rules for the transition to the rural development support provided for in Council Regulation (EC) No. 1698/2005 (O.J. No. L243, 6.9.2006, p. 6).
4. Council Regulation (EC) No. 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (O.J. No. L209, 11.8.2005, p. 1).
5. Commission Regulation (EC) No. 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No. 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (O.J. No. L171, 23.6.2006, p. 90).
6. Commission Regulation (EC) No. 883/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No. 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD (O.J. No. L171, 23.6.2006, p. 1).
7. Commission Regulation (EC) No. 1481/2006 of 6 September 2006 laying down form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the accounts of the EAGF and EAFRD as well as for monitoring and forecasting purposes (O.J. No. L276, 7.10.2006, p. 3).
8. Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/94, (EC) No. 1251/1999, (EC) No. 1673/2000, (EC) No. 2358/71 and (EC) No. 2529/2001.
9. Commission Decision of 27 September 2007 approving the rural development programme of Northern Ireland for the 2007-2013 programming period. CCI No. 2007/UK06RPO002.



## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations, which come into operation on 15th October 2008, supplement the Community legislation listed in the Schedule to the Regulations (“the Community legislation”). The Community legislation inter alia provides for assistance to be paid from the European Agricultural Fund for Rural Development (EAFRD) towards operations which promote rural development by facilitating the improvement of the quality of life in rural areas and diversification of the rural economy. They also provide for the use of local action groups to assist with the delivery of rural development. The Northern Ireland Rural Development Programme 2007-2013 is co-funded by the EAFRD and the UK Exchequer.

The Regulations also implement Article 74(1) of Council Regulation (EC) No. 1698/2005 (O.J. No. L277, 21.10.2005, p. 1) (“the Council Regulation”) and Article 9(1) of Council Regulation (EC) No. 1290/2005 (O.J. No. L209, 11.8.2005, p. 1), which requires Member States to adopt legislative and administrative provisions to ensure that the Community’s financial interests in relation to expenditure on rural development are effectively protected.

The Regulations operate within the scope of the Community legislation by enabling financial assistance to be paid by the Department of Agriculture and Rural Development (“the Department”) or its agents or an accountable body in respect of operations which it or they have approved (regulation 3). Such operations may be approved if they are eligible for assistance under the Community legislation and are in accordance with Article 52 of the Council Regulation (regulation 5).

The Regulations provide for the making of claims for, and the payment of, financial assistance following approval (regulations 6 and 7) and also impose obligations concerning the provision of information (regulation 8) and record-keeping (regulation 10) on those in receipt of financial assistance. In addition, they 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 the approval, in the event of breaches of the conditions of an approval and in a number of other cases (regulations 11 to 13). Regulation 9 confers powers of entry and inspection on certain authorised persons (including officials of the Commission), whilst regulation 19 creates offences in respect of the furnishing of false information for the purpose of obtaining financial assistance and in respect of obstruction.

The Regulations also revoke the Rural Development (Financial Assistance) Regulations (Northern Ireland) 2001 subject to the savings and amendments in regulation 21.

1. Copies of the Northern Ireland Rural Development Programme 2007-2013 are available from:—

The Department of Agriculture and Rural Development  
Rural Development Division  
Room 141  
Dundonald House  
Upper Newtownards Road  
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