

2009 No. 10

AGRICULTURE

**Rural Development (Financial Assistance) (Public Expenditure)
Regulations (Northern Ireland) 2009**

Made - - - - - *14th January 2009*

Coming into operation - *25th February 2009*

The Department of Agriculture and Rural Development^(a) makes the following Regulations in exercise of the powers conferred by Article 4 of the Agriculture (Miscellaneous Provisions) (Northern Ireland) Order 1994^(b) with the approval of the Department of Finance and Personnel in relation to the making of grants for the encouragement of rural development.

Citation and commencement

1. These Regulations may be cited as the Rural Development (Financial Assistance) (Public Expenditure) Regulations (Northern Ireland) 2009 and shall come into operation on 25th February 2009.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^(c) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

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

“application” means an application for the approval of an operation made under regulation 4;

“approved” in relation to any expenditure means approved by the Department or the agent;

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

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

“authorised person” means a person authorised by the Department to enforce these Regulations;

“beneficiary” means—

(a) a person who has applied for and been granted an approval for an operation, and

(b) in relation to any time after grant has been paid in connection with the approval, the person to whom the grant has been paid;

(a) 1999 No. 283 (N.I. 1) Article 3(4)

(b) 1994 No. 1891 (N.I. 6)

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

“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(a);

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

“operation” means an investment or project in Northern Ireland which is the subject of an application.

(3) 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.

Grants

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

(2) The Department may make funds available to an agent 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 the operation is for the purposes of rural development.

(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.

(a) 2001 c. 9

Payment

7.—(1) The Department or an agent 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 thinks fit; and
- (b) subject to such conditions as the Department or, as the case may be, the agent reasonably may determine.

Information

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

(2) Where the Department or an agent requires such information, the beneficiary shall supply the Department or agent with it within such period as the Department or agent 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) 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 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 or the agent 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 to withhold the whole or any part of the financial assistance payable to the beneficiary;
- (b) recover on demand or direct the agent 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 to require, the beneficiary to pay to the Department or, as the case may be, to the agent 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 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 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 makes the payment to be recovered and the date on which the Department or, as the case may be, the agent 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.

Directions

15. An agent shall comply with any direction of the Department under Regulations 13 or 14.

Breach by an agent of his authorisation

16.—(1) Where an agent breaches any of the conditions of his authorisation, the Department may—

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

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

- (a) give the agent a written explanation of the reasons for the step proposed to be taken;
- (b) afford the agent 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 or agent 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.

Offences and penalties

- 18.—(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.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 14th January 2009.



Pauline Keegan

A senior officer of the Department of Agriculture and Rural Development

The Department of Finance and Personnel hereby approves the foregoing Regulations. Sealed with the Official Seal of the Department of Finance and Personnel on 14th January 2009.



Jack Layberry

A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which come into force on 25th February 2009, provide for assistance to be paid towards operations which promote rural development.

The Regulations enable financial assistance to be paid by the Department of Agriculture and Rural Development (“the Department”) or an agent in respect of operations which it has approved (regulation 3).

The Regulations provide for the making of claims for, and the payment of, financial assistance following approval (regulations 4 to 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, whilst regulation 18 creates offences in respect of the furnishing of false information for the purpose of obtaining financial assistance and in respect of obstruction.

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