
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 359

**AQUACULTURE
FISH FARMING
SEA FISHERIES**

**The European Maritime and Fisheries
Fund (Grants) (Scotland) Regulations 2015**

Made - - - - 27th October 2015
*Laid before the Scottish
Parliament* - - - - 29th October 2015
Coming into force - - 30th November 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(1) (“the 1972 Act”) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Scottish Ministers that it is expedient for references to the EU Regulations (as defined in regulation 2(1)) to be construed as references to those Regulations as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015 and come into force on 30th November 2015.

(2) Subject to regulation 12, these Regulations extend to Scotland only.

(3) So far as these Regulations extend beyond Scotland, they do so only as a matter of Scots law.

Interpretation

2.—(1) In these Regulations—

(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1. The Scottish Ministers have been designated in regulation 3 of the Grants for Fishing and Aquaculture Industries Regulations 2015 (S.I. 2015/1711) as the intermediate body in Scotland for the purposes of Article 123 of the Common Provisions Regulation.

“application” means an application for payment of a grant under regulation 3, and “applicant” is to be construed accordingly;

“approval” means approval of an application under regulation 5 and includes any conditions subject to which that approval has been given, and “approve” and “approved” are to be construed accordingly;

“approved operation” means a relevant operation which the Scottish Ministers have approved;

“authorised officer” means a person authorised in writing by the Scottish Ministers to act in matters arising under these Regulations or the EU Regulations;

“beneficiary” means a person whose application has been approved;

“Common Provisions Delegated Regulation” means Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund⁽²⁾;

“Common Provisions Regulation” means Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006⁽³⁾;

“eligible expenditure” means expenditure which has been incurred in connection with an approved operation and which the Scottish Ministers have approved for the purpose of receiving a grant under regulation 5;

“EMFF Regulation” means Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council⁽⁴⁾;

“EMFF Implementing Regulation” means Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for the compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the *ex ante* evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund⁽⁵⁾;

“EU aid” means aid towards eligible expenditure from the European Maritime and Fisheries Fund and payable in accordance with the EU Regulations;

“EU Regulations” means the—

- (a) Common Provisions Delegated Regulation;
- (b) Common Provisions Regulation;
- (c) EMFF Regulation; and

(2) OJ L 138, 13.5.2014, p.5.

(3) OJ L 347, 20.12.2013, p.320.

(4) OJ L 149, 20.5.2014, p.1.

(5) OJ L 209, 16.7.2014, p.20.

(d) EMFF Implementing Regulation;

“grant” means a payment of grant under these Regulations;

“relevant condition” means any condition relating to—

(a) the approval of an application under regulation 5(1)(b); or

(b) the making of a payment of any grant which has been notified to a beneficiary under regulation 5(3)(b) or 7;

“relevant document” means any invoice, account, drawing, plan, technical specification or other document relating to the approved operation; and

“relevant operation” means an investment, project or action which is eligible for EU aid.

(2) A reference in these Regulations to the EU Regulations, or to any of the instruments referred to in the definition of the EU Regulations, means a reference to the EU Regulations or that instrument as amended from time to time.

(3) Except where the context otherwise requires, other expressions used in these Regulations have the meaning they bear in the EU Regulations.

(4) A reference in these Regulations to anything done in writing includes an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000(6) which has been recorded and is consequently capable of being reproduced.

Grants

3. Subject to the provisions of the EU Regulations and these Regulations, the Scottish Ministers may pay a grant to any person—

(a) who has applied for a grant; and

(b) whose application the Scottish Ministers have approved in respect of eligible expenditure incurred in connection with a relevant operation.

Applications

4.—(1) An application must be made in such form and manner and include such information as the Scottish Ministers may from time to time require.

(2) An application must be made at such time and be delivered to such address as the Scottish Ministers may from time to time require.

(3) An applicant must provide any further information and documents relating to the application as the Scottish Ministers may from time to time require.

Determination of applications

5.—(1) Subject to the EU Regulations and these Regulations, the Scottish Ministers may—

(a) refuse to approve an application; or

(b) approve an application in whole or in part, either unconditionally or subject to such conditions as the Scottish Ministers may determine.

(2) The Scottish Ministers may at any time vary an approval by amending any conditions to which it has been made subject, or by adding conditions.

(3) The Scottish Ministers must notify—

(a) an applicant in writing of their decision in respect of an application;

(6) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

- (b) a beneficiary of any conditions to which their approval has been made subject or which has been varied under this regulation.
- (4) Paragraph (5) applies where the Scottish Ministers notify—
 - (a) an applicant of a refusal to approve an application;
 - (b) a beneficiary of the approval of an application subject to conditions; or
 - (c) a beneficiary of the variation of the terms of an existing approval.
- (5) The Scottish Ministers must give such an applicant or beneficiary—
 - (a) written reasons for the decision; and
 - (b) an opportunity to make representations in relation to that decision within such reasonable time as is notified to the applicant or beneficiary by the Scottish Ministers.
- (6) The Scottish Ministers must—
 - (a) consider any representations received under paragraph (5)(b);
 - (b) make a decision which either confirms their original decision or substitutes a different decision; and
 - (c) notify the applicant or beneficiary in writing of the decision under sub-paragraph (b).

Claims for payment of grant

6.—(1) Subject to paragraph (2) and to regulation 14, payment of a grant may be made to a beneficiary.

(2) No grant is to be paid in respect of an approval unless the Scottish Ministers have been supplied with evidence which satisfies the Scottish Ministers that the amount of expenditure for which payment of a grant is claimed has been incurred by the beneficiary.

Method of payment of grant

7. Payments by way of grant may be made—
- (a) at such time, or by such instalments at such intervals or time; and
 - (b) subject to such conditions,

as the Scottish Ministers may reasonably determine, and any conditions in relation to any payment must be notified to the beneficiary in writing.

Undertakings

8. A beneficiary must give the Scottish Ministers such undertakings as the Scottish Ministers consider appropriate for the purposes of these Regulations.

Information

9.—(1) A beneficiary must supply the Scottish Ministers with such information in relation to an approved operation as the Scottish Ministers may from time to time reasonably require.

(2) Where the Scottish Ministers require information under paragraph (1), the beneficiary must supply them with that information within such period as the Scottish Ministers may reasonably determine.

Records

- 10.—(1) A beneficiary must—

- (a) keep a record of all expenditure incurred in connection with an approved operation; and
 - (b) during the carrying out and after completion of the approved operation for the duration of the control period, retain such record together with any relevant documents, except to the extent that an authorised officer has removed and retained any of the same under regulation 12(6).
- (2) Subject to paragraph (3), “the control period” is—
- (a) the period applicable by virtue of Article 71 of the Common Provisions Regulation and identified in the notice of approval of an application, commencing with the last payment of grant in respect of the approved operation; or
 - (b) such further period beyond the end of that period as has been notified in writing by the Scottish Ministers to the beneficiary at any time before the expiry of that period.
- (3) In determining in any case the date on which the control period expires, no account is to be taken of any time between the commencement and final determination of any proceedings brought under regulation 14 for the recovery of any grant paid in respect of that approved operation.

Assistance to authorised officers

11. Any beneficiary and any employee, servant or agent of a beneficiary must give to an authorised officer such assistance as the officer may reasonably require to exercise any power conferred on the officer by regulation 12.

Powers of authorised officers

12.—(1) An authorised officer may at all reasonable hours and on producing, if requested to do so, a duly authenticated document showing the authority of the officer, exercise the powers specified in this regulation for the purposes of—

- (a) verifying the accuracy of any information or evidence contained in or included with an application or supplied under regulation 6;
- (b) ascertaining whether and to what extent any expenditure for which a grant is claimed should be approved;
- (c) ascertaining whether and to what extent any undertaking given by a beneficiary under regulation 8 or any relevant condition has been complied with;
- (d) ascertaining whether or to what extent any amount of grant is payable, or should be reduced, withheld or recovered under regulation 14;
- (e) ascertaining whether an offence under regulation 16 has been or is being committed; or
- (f) otherwise ascertaining, pursuant to Article 72 of the Common Provisions Regulation, whether EU aid is being properly managed and controlled,

and such powers are exercisable for those purposes in relation to any Scottish fishing boat, wherever it may be, and on a random, spot-check or sample basis as well as by reference to the particular circumstances of individual cases.

(2) Subject to paragraph (3), an authorised officer may enter upon any premises which are, or which such officer has reasonable cause to believe are, relevant premises.

(3) The power conferred by paragraph (2) may be exercised in relation to premises used as a dwelling house only where reasonable notice of the intended exercise of the power has been given to all residents of that dwelling house.

(4) Any authorised officer who has entered any premises in accordance with paragraph (2) may inspect—

- (a) those premises;

- (b) any equipment which is, or which such officer has reasonable cause to believe is, relevant equipment; and
- (c) any documents on those premises which are, or which such officer has reasonable cause to believe are, relevant documents.

(5) An authorised officer entering any premises by virtue of this regulation may be accompanied by such other person as the officer considers necessary, and paragraphs (2), (4) and (6) and regulations 11 and 13 apply in relation to such other person when acting under the instructions of the officer as if that person were an authorised officer.

(6) An authorised officer may—

- (a) require any beneficiary or an employee, servant or agent of a beneficiary to produce any relevant documents and to supply such additional information in the possession of that person or under their control relating to an application or an approved operation as the officer may reasonably request;
- (b) inspect such documents and, where any such documents are kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with those documents;
- (c) require that copies of, or extracts from, any relevant documents be produced;
- (d) remove and retain for a reasonable period any such relevant document which the officer has reason to believe may be required as evidence in proceedings under these Regulations or which the Scottish Ministers may be required to make available to the Commission pursuant to Article 122 of the EMFF Regulation; and
- (e) where any relevant document is kept by means of a computer, require such document to be produced in a form in which it may be taken away and in which it is visible and legible.

(7) In this regulation—

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995⁽⁷⁾ and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

“premises” includes any vessel or other vehicle;

“relevant equipment” means any plant, machinery or other equipment for which a grant has been claimed or paid; and

“relevant premises” means any premises to which an approved operation relates or in which relevant documents or relevant equipment are retained or in which an authorised officer has reasonable grounds to believe such documents or equipment may be retained.

Personal liability of authorised officers

13.—(1) No authorised officer shall be personally liable in respect of any act—

- (a) in the execution or purported execution of these Regulations; and
- (b) within the scope of that officer’s employment,

if the authorised officer acted in the honest belief that these Regulations required the act to be done.

(2) Nothing in paragraph (1) is to be construed as relieving the Scottish Ministers from any liability in respect of the acts of authorised officers.

(3) Where an action has been brought against an authorised officer in respect of an act—

- (a) in the execution or purported execution of these Regulations; and

(7) 1995 c.21.

(b) outside the scope of that officer's employment,
the enforcement authority which authorised the authorised officer may indemnify the authorised officer against the whole or part of any damages which that officer has been ordered to pay or any costs which that officer may have incurred if they are satisfied that that officer honestly believed that the act complained of was within the scope of that officer's employment.

Reduction, withholding and recovery of a grant

14.—(1) Subject to the provisions of this regulation, if, at any time after the Scottish Ministers have approved an application, it appears to them that—

- (a) any relevant condition has not been complied with in whole or in part;
- (b) the application so approved or any part of it was not an application which the beneficiary was eligible to make;
- (c) the beneficiary or an employee, servant or agent of a beneficiary—
 - (i) has failed to comply with regulation 9, 10, 11 or 12(6);
 - (ii) has intentionally obstructed any authorised officer, or any person accompanying and acting under the instructions of such an officer in accordance with regulation 12(5), acting in exercise of a power under regulation 12; or
 - (iii) has given information on any matter relevant to the giving of the approval or the making of a payment relevant to the approval which is false or misleading in a material respect;
- (d) the approved operation was commenced before the date on which the Scottish Ministers gave written permission to do so;
- (e) the approved operation for which the expenditure was incurred has not been carried out or has not been carried out properly or in accordance with the approval;
- (f) the approved operation has been or is being unreasonably delayed beyond the time limit set out in the notification of approval or is unlikely to be completed;
- (g) any undertaking given by the beneficiary under regulation 8 has not been complied with; or
- (h) the Commission has decided pursuant to Article 101 of the EMFF Regulation to suspend EU aid,

the Scottish Ministers may revoke the approval in whole or in part or reduce or withhold any grant in respect of the approved operation and, where any such grant has been paid, may recover on demand as a debt an amount equal to the grant which has been so paid or such part of it as they determine.

(2) Before revoking an approval in whole or in part or reducing or withholding any grant or making a demand under paragraph (1), the Scottish Ministers must—

- (a) give the beneficiary a written explanation of the reasons for the step proposed to be taken;
- (b) afford the beneficiary the opportunity of making written representations within a reasonable time; and
- (c) consider any representations.

Interest

15.—(1) Where the Scottish Ministers intend to recover on demand a grant in whole or in part in accordance with regulation 14, they may, in addition, recover interest on that amount at a rate of 1 per cent above the base lending rate of the Bank of England calculated on a daily basis for the period from the date of payment of the grant 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 is, unless the contrary is shown, conclusive of those matters.

Offences and penalties

16.—(1) It is an offence for any person, for the purposes of obtaining a grant for themselves or any other person, knowingly or recklessly—

- (a) to make a statement, in providing any information in purported compliance with a requirement imposed by or under regulation 4, 6, 9 or 12(6)(a), which is false or misleading in a material particular; or
- (b) to produce a document, in purported compliance with a requirement imposed under regulation 4(3), 6, 9 or 12(6)(a) or (c), which is false or misleading in a material particular.

(2) It is an offence for any person to—

- (a) fail to comply with regulation 9, 10 or 11; or
- (b) intentionally refuse to supply any information, make any return or produce any document when required to do so by, or otherwise intentionally obstruct, any authorised officer (or any person accompanying and acting under the instructions of such an officer in accordance with regulation 12(5)) acting in exercise of a power under regulation 12.

(3) A person who commits an offence under paragraph (1) or (2) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) Proceedings for an offence under these Regulations may, subject to paragraph (5), be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(5) No proceedings for an offence under these Regulations are to be commenced more than 5 years after the commission of the offence.

(6) Section 136(3) of the Criminal Procedure (Scotland) Act 1995⁽⁸⁾ (date of commencement of proceedings) applies for the purposes of this regulation as it applies for the purposes of that section.

(7) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor, stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor, is conclusive evidence of that fact; and
- (b) a certificate stating that matter, and purporting to be signed by or on behalf of the prosecutor, is deemed to be so signed unless the contrary is proved.

Offences by bodies corporate etc.

17.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

⁽⁸⁾ 1995 c.46.

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

- (2) In paragraph (1), “relevant individual” means—
- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
 - (b) in relation to a Scottish partnership, a partner;
 - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Revocations and savings

18.—(1) The following Regulations are revoked subject to the savings in paragraph (2)—

- (a) the European Fisheries Fund (Grants) (Scotland) Regulations 2007⁽⁹⁾;
- (b) the European Fisheries Fund (Grants) (Scotland) Amendment Regulations 2010⁽¹⁰⁾;
- (c) the European Fisheries Fund (Grants) (Scotland) Amendment Regulations 2012⁽¹¹⁾.

(2) The Regulations listed in paragraph (1) continue to apply in relation to—

- (a) any approval of financial assistance under those Regulations;
- (b) any variation of an approval under those Regulations;
- (c) any undertaking given under, or for the purposes of, those Regulations;
- (d) any claim for, or payment of, financial assistance under those Regulations; and
- (e) the exercise of any function in relation to—
 - (i) enforcement of the Regulations or recovery of financial assistance under those Regulations; or
 - (ii) the variation of any approval or undertaking under those Regulations,

where the approval under those Regulations was given prior to 30th November 2015.

St Andrew’s House,
Edinburgh
27th October 2015

AILEEN McLEOD
Authorised to sign by the Scottish Ministers

⁽⁹⁾ S.S.I. 2007/307, as amended by S.S.I. 2010/323 and S.S.I. 2012/166.

⁽¹⁰⁾ S.S.I. 2010/323.

⁽¹¹⁾ S.S.I. 2012/166.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purposes of implementation of:

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p.320) (“the Common Provisions Regulation”); and
- Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p.1) (the “EMFF Regulation”).

Those EU instruments (as supplemented by relevant implementing and delegated regulations) make provision for EU-funded support in Member States in respect of certain categories of investments, projects and actions in the fisheries and aquaculture sector and in the industry sector processing and marketing products from the fisheries and aquaculture sector. Collectively, the applicable EU instruments are defined in regulation 2(1) of these Regulations as “the EU Regulations”.

These Regulations provide for and regulate the payment of grants by the Scottish Ministers towards expenditure on operations which the Scottish Ministers have approved in accordance with these Regulations and the EU Regulations.

Regulation 3 makes provision for the Scottish Ministers to pay a grant to a person who has made an application.

Regulation 4 makes provision about the form and manner of applications for a grant and the procedural requirements for making an application.

Regulation 5 makes provision in relation to the Scottish Ministers’ determining an application for a grant; adding or varying conditions to which a grant is subject; notifying decisions; providing reasons for decisions; and considering any representations made by the person applying for, or benefitting from, a grant.

Regulation 6 provides that a grant is dependent on the provision of satisfactory evidence of the expenditure incurred.

Regulation 7 makes provision concerning the method of payment of a grant.

Regulation 8 provides that the Scottish Ministers may require undertakings to be given by a person whose application is approved.

Regulation 9 makes provision for persons whose applications for a grant have been approved to supply to the Scottish Ministers such information as the Scottish Ministers may from time to time reasonably require.

Regulation 10 makes provision requiring persons whose application has been approved to keep certain records for a specified period of time.

Regulations 11 and 12 make provision concerning enforcement powers. Regulation 12 confers powers of entry and inspection on authorised officers. Regulation 11 requires a person whose application for a grant has been approved, or an employee, servant or agent of such a person, to provide reasonable assistance to authorised officers as required when the latter are exercising those powers.

Regulation 13 makes provision excluding authorised officers from incurring any personal liability when acting in good faith.

Regulation 14 makes provision for the reduction, withholding or recovery, in certain circumstances, of a grant.

Regulation 15 makes provision for the payment of interest on sums recovered.

Regulation 16 makes provision for offences and penalties for obstructing an authorised officer, failing to provide assistance and supplying false or misleading information.

Regulation 17 provides for the application of those offences in relation to bodies corporate, Scottish partnerships and unincorporated associations.

Regulation 18 makes provision for the revocation of three instruments relating to the European Fisheries Fund (the programme which preceded the European Maritime and Fisheries Fund), subject to savings provisions.

No Business and Regulatory Impact Assessment has been prepared in respect of these Regulations as they have no new impact on business.