

2016 No. 63

CROFTERS, COTTARS AND SMALL LANDHOLDERS

The Croft House Grant (Scotland) Regulations 2016

Made - - - - 28th January 2016

Laid before the Scottish Parliament 1st February 2016

Coming into force - - 1st April 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 42(6) of the Crofters (Scotland) Act 1993(a) (as read with sections 42(4), 44 and 45(1)(ca) of that Act) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Croft House Grant (Scotland) Regulations 2016 and come into force on 1st April 2016.

Interpretation

2. In these Regulations, “grant” means assistance provided by the Scottish Ministers by way of grant towards the erection or improvement or rebuilding of a dwelling-house, in accordance with arrangements made by them under section 42(4), section 44, or section 42(4) as read with section 45(1)(ca), of the Crofters (Scotland) Act 1993.

Period of grant conditions

3. Where a grant has been provided in respect of a dwelling-house, the conditions in regulation 4 apply for the period of ten years beginning with the date of completion of the work for which the grant is provided.

Conditions of grant

- 4.—(1) The dwelling-house must be occupied as an only or principal home by—
- (a) a crofter;
 - (b) a cottar;
 - (c) an owner-occupier crofter; or
 - (d) a member of the family of a person in sub-paragraph (a), (b) or (c).

(a) 1993 c.44. Section 61(1) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made. Section 42(4) was amended by the Crofting Reform etc. Act 2007 (asp 7) (“the 2007 Act”), schedule 1, paragraph 2(10)(d). Section 42(6) was amended by the 2007 Act, schedule 1, paragraph 2(10)(f). Section 44 was amended by the 2007 Act, schedule 1, paragraph 2(11). Section 45(1)(ca) was inserted by the Crofting Reform (Scotland) Act 2010 (asp 14), schedule 4, paragraph 3(26)(a). 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).

- (2) The dwelling-house must be maintained in a good state of repair.
- (3) The dwelling-house must be kept insured against destruction and damage for a sum of not less than the amount of the grant.
- (4) Before any of the steps in paragraph (5) is taken in relation to the dwelling-house, the person mentioned in paragraph (6) must—
 - (a) inform the Scottish Ministers of the proposed step in writing;
 - (b) provide the name and address of any proposed new tenant or owner; and
 - (c) obtain the prior written consent of the Scottish Ministers to the proposed step.
- (5) The steps are—
 - (a) renunciation, assignation or sub-lease of the tenancy;
 - (b) sale; or
 - (c) lease.
- (6) The person is—
 - (a) in the case of a dwelling-house that is part of, or relates to, a croft—
 - (i) the crofter or owner-occupier crofter for the time being; or
 - (ii) any assignee or transferee of that person’s interest in the dwelling-house; and
 - (b) in the case of a dwelling-house that is part of, or relates to, the holding occupied by a cottar—
 - (i) the cottar for the time being; or
 - (ii) any assignee or transferee of that person’s interest in the dwelling-house.

Recording or registration of notice

5. Where the conditions in regulation 4 apply, the Scottish Ministers must cause to be recorded in the Register of Sasines or registered in the Land Register of Scotland a notice in the form set out in Schedule 1 specifying the conditions which by virtue of regulation 4 apply to the dwelling-house.

Recovery of grant

6.—(1) In the event of a breach of a condition in regulation 4, the Scottish Ministers may, after giving notice in writing to the person specified in paragraph (5) of this regulation, recover from that person as a debt—

- (a) a sum calculated in accordance with paragraph (2) of this regulation; and
- (b) interest on that sum at the rate of 8 per cent per annum above the Bank of England base rate, calculated on a daily basis, from the date on which payment of the grant was made until the date of repayment.

(2) The sum is a sum bearing the same proportion to the grant as the period between the date of the breach of the condition referred to in paragraph (1) of this regulation and the expiration of the period specified in regulation 3 bears to the whole of that period.

(3) In any legal proceedings brought pursuant to paragraph (1), a certificate of the Scottish Ministers which—

- (a) sets out the Bank of England base rate applicable during a specified period; and
- (b) includes a statement that the Bank of England notified the Scottish Ministers of that rate for that period,

is evidence of the rate applicable during that period.

(4) In this regulation, “the Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate being the

rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the markets; or

- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998(a) is in force, an equivalent determined by the Treasury under that section.

(5) The person is—

- (a) where the breach is a breach of a condition in regulation 4(4), the person who by virtue of regulation 4(6) was required to comply with that condition;
- (b) where the dwelling-house in respect of which a grant has been provided becomes vacant on the death of the person mentioned in regulation 4(6), the executor of the deceased in that person's capacity as executor;
- (c) where the tenancy of—
 - (i) the croft; or
 - (ii) the holding occupied by a cottar,relating to the dwelling-house in respect of which a grant has been provided terminates otherwise than on the death of the tenant and the dwelling-house is unlet, the person who was the last tenant of that croft or holding; and
- (d) in any other case, the person mentioned in regulation 4(6).

(6) The Crofting Commission may act on behalf of the Scottish Ministers for the purpose of exercising functions under this regulation.

Termination of grant conditions

7.—(1) The conditions in regulation 4 cease to apply before the expiry of the period in regulation 3 where—

- (a) the sum in regulation 6(1)(a) and interest in regulation 6(1)(b) is recovered in accordance with that regulation; or
- (b) prior to the serving of a notice under regulation 6(1), the person mentioned in regulation 6(5) repays to the Scottish Ministers, or to the Crofting Commission on behalf of the Scottish Ministers, a sum bearing the same proportion to the grant as the period between the date of repayment and the expiration of the period specified in regulation 3 bears to the whole of that period.

(2) Where paragraph (1) applies, the Scottish Ministers must cause to be recorded in the Register of Sasines or registered in the Land Register of Scotland a notice in the form set out in Schedule 2 to these Regulations.

Revocation and saving

8.—(1) The Croft House Grant (Scotland) Regulations 2006(b) are revoked, subject to paragraphs (2) and (3).

(2) Notwithstanding paragraph (1), those Regulations continue to apply on and after 1st April 2016 in relation to—

- (a) any payment of grant under regulation 3 (as read with 4 and 5) of those Regulations;
- (b) any application for grant under regulation 6 of those Regulations;
- (c) any claim for payment of grant under regulation 7 of those Regulations;
- (d) the conditions of grant under regulations 8 and 9 of those Regulations;
- (e) the recovery and repayment of any grant under regulation 10 of those Regulations; and
- (f) the termination of conditions of grant under regulation 11 of those Regulations,

(a) 1998 c.11.

(b) S.S.I. 2006/214, amended by the Crofting Reform (Scotland) Act 2010 (asp 14), Part 1, section 1(4).

where the application for grant was made before 1st April 2016.

(3) In paragraph (2), an application for grant is made on the day it is received by the Scottish Ministers in the form, and with the information, specified by the Scottish Ministers under regulation 6(1) of the Croft House Grant (Scotland) Regulations 2006.

St Andrew's House,
Edinburgh
28th January 2016

AILEEN McLEOD
Authorised to sign by the Scottish Ministers

FORM OF NOTICE OF CONDITIONS OF GRANT

NOTICE OF CONDITIONS OF GRANT

This notice is given where the Scottish Ministers have made a grant in relation to the dwelling-house specified in the notice, in accordance with—

- (1) arrangements made by them under provisions of the Crofters (Scotland) Act 1993; and
- (2) the Croft House Grant (Scotland) Regulations 2016 (“the Regulations”).

The notice specifies, in accordance with regulation 5 of the Regulations, the conditions which by virtue of regulation 4 of the Regulations apply to the dwelling-house specified in the notice.

Dwelling-house to which the notice relates:

(See note 1 below)

Purpose of grant:

(see note 2 below)

Amount of grant:

(See note 3 below)

Applicant:

(See note 4 below)

Landlord or owner-occupier crofter:

(See note 5 below)

Period of conditions of grant:

(See note 6 below)

Conditions of grant:

- (1) The dwelling-house must be occupied as an only or principal home by—
 - (a) a crofter;
 - (b) a cottar;
 - (c) an owner-occupier crofter; or
 - (d) a member of the family of a person in sub-paragraph (a), (b) or (c).
- (2) The dwelling-house must be maintained in a good state of repair.

(3) The dwelling-house must be kept insured against destruction and damage for a sum of not less than the amount of the grant.

(4) Before any of the steps in paragraph (5) is taken in relation to the dwelling-house, the person mentioned in paragraph (6) must—

- (a) inform the Scottish Ministers of the proposed step in writing;
- (b) provide the name and address of any proposed new tenant or owner; and
- (c) obtain the prior written consent of the Scottish Ministers to the proposed step.

(5) The steps are—

- (a) renunciation, assignation or sub-lease of the tenancy;
- (b) sale; and
- (c) lease.

(6) The person is—

- (a) in the case of a dwelling-house that is part of, or relates to, a croft –
 - (i) the crofter or owner-occupier crofter for the time being; or
 - (ii) any assignee or transferee of that person’s interest in the dwelling-house; and
- (b) in the case of a dwelling-house that is part of, or relates to, the holding occupied by a cottar-
 - (i) the cottar for the time being; or
 - (ii) any assignee or transferee of that person’s interest in the dwelling-house

Signature:

(See note 7 below)

Date of signing:

Notes for completion

(These notes are not part of the notice)

1. Describe the dwelling-house in a way that is sufficient to identify it. Where the dwelling-house has a postal address, the description must include that address. Where title to the dwelling-house has been registered in the Land Register of Scotland, the description must refer to the title number of the dwelling-house or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
2. State whether the grant is for the erection, re-building or improvement of the dwelling-house.
3. Give the amount of the grant in Sterling.
4. Give the name and address of the person who applied for the grant (“the applicant”).
5. Give the name and address of the present landlord of the dwelling-house or, where applicable, the owner-occupier crofter.
6. Give the commencement date of the conditions of grant and the period of years for which they apply to the dwelling-house.
7. The notice must be signed on behalf of the Scottish Ministers.

SCHEDULE 2

Regulation 7(2)

FORM OF NOTICE OF CESSATION OF GRANT CONDITIONS

NOTICE OF CESSATION OF CONDITIONS OF GRANT

This notice is given where—

(1) the Scottish Ministers have made a grant in relation to the dwelling-house specified in the notice, in accordance with—

(a) arrangements made by them under provisions of the Crofters (Scotland) Act 1993; and

(b) the Croft House Grant (Scotland) Regulations 2016 (“the Regulations”);

(2) a Notice of Conditions of Grant in the form set out in Schedule 1 to the Regulations has been recorded in the Register of Sasines or registered in the Land Register of Scotland; and

(3) the sum in regulation 6(1)(a) and interest in regulation 6(1)(b) of the Regulations has been recovered by, or the sum required under regulation 7(1)(b) of the Regulations has been repaid to, the Scottish Ministers, or the Crofting Commission on behalf of the Scottish Ministers.

This notice provides, in accordance with regulation 7(2) of the Regulations, that the conditions specified in the Notice of Conditions of Grant cease to apply to the dwelling-house.

Dwelling-house to which the notice relates:

(See note 1 below)

Purpose of grant:

(see note 2 below)

Amount of grant:

(See note 3 below)

Applicant:

(See note 4 below)

Landlord or owner-occupier crofter:

(See note 5 below)

Date conditions of grant ceased to apply:

(See note 6 below)

Signature:

(See note 7 below)

Date of signing:**Notes for completion**

(These notes are not part of the notice)

1. Describe the dwelling-house in a way that is sufficient to identify it. Where the dwelling-house has a postal address, the description must include that address. Where title to the dwelling-house has been registered in the Land Register of Scotland, the description must refer to the title number of the dwelling-house or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
2. State whether the grant is for the erection, re-building or improvement of the dwelling-house.
3. Give the amount of the grant in Sterling.
4. Give the name and address of the person who applied for the grant (“the applicant”).
5. Give the name and address of the present landlord of the dwelling-house or, where applicable, the owner-occupier crofter.
6. Give the date on which the conditions of grant set out in the Notice of Grant Conditions ceased to apply to the dwelling-house.
7. The notice must be signed on behalf of the Scottish Ministers.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Croft House Grant (Scotland) Regulations 2006.

Section 42(4) of the Crofters (Scotland) Act 1993 enables the Scottish Ministers to, in accordance with arrangements made by them, provide assistance by way of grants towards the erection or improvement or rebuilding of dwelling-houses for crofters. They may also make this assistance available to cottars (section 44) and to owner-occupier crofters (section 45(1)(ca)). Where Scottish Ministers make such arrangements, regulations must be made about matters set out in section 42(6). These Regulations relate to those matters.

Regulation 4 sets out conditions that apply to any dwelling-house in respect of which a grant has been provided. Where these conditions apply, a notice in the form prescribed at Schedule 1 must be recorded in the Register of Sasines or registered in the Land Register for Scotland (regulation 5).

Where a condition in regulation 4 is breached, regulation 6 enables the Scottish Ministers, after giving notice, to recover a sum equivalent to a proportion of the grant, calculated in accordance with regulation 6(2), together with interest on that sum at the rate of 8 per cent above the Bank of England base rate, calculated on a daily basis from the date of payment of the grant. Regulation 6(5) sets out from whom recovery may be made.

Regulation 3 sets out the period for which the conditions in regulation 4 apply. Regulation 7 provides that those conditions cease to apply before the expiry of that period where recovery has been made under regulation 6, or where a sum calculated in accordance with regulation 7(1)(b) has been repaid. In these circumstances, the Scottish Ministers must cause to be recorded in the Register of Sasines or registered in the Land Register of Scotland a notice in the form prescribed at Schedule 2.

Regulation 8 revokes the Croft House Grant (Scotland) Regulations 2006 and makes saving provision in respect of applications for grant made before 1st April 2016.

No business and regulatory impact assessment has been prepared for these Regulations as no impact on business, charities or voluntary bodies is foreseen.

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