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STATUTORY INSTRUMENTS

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**1994 No. 3096 (S.167)**

**EUROPEAN COMMUNITIES**

**The Highlands and Islands Agricultural  
Programme Regulations 1994**

*Made* - - - - - *5th December 1994*  
*Laid before Parliament* *9th December 1994*  
*Coming into force* - - - *30th December 1994*

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to promotion of the development and structural adjustment of regions whose development is lagging behind, in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Highlands and Islands Agricultural Programme Regulations 1994 and shall come into force on 30th December 1994.

(2) These Regulations shall apply to the area of Scotland comprising—

- (a) Highland Region; Western Isles Islands area; Orkney Islands area; Shetland Islands area; Argyll and Bute District; Arran, Great Cumbrae and Little Cumbrae in Cunninghame District; and
- (b) in Moray District, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“agriculture” has the same meaning as in section 86 of the Agriculture (Scotland) Act 1948<sup>(3)</sup> and “agricultural” shall be construed accordingly;

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(1) S.I.1994/1887.  
(2) 1972 c. 68.  
(3) 1948 c. 45.

“agricultural holding” means an agricultural holding within the meaning of the Agricultural Holdings (Scotland) Act 1991(4);

“agricultural unit” means a croft, agricultural holding or smallholding within the programme area and includes a common grazing;

“application” means an application for financial assistance under the scheme made in accordance with regulation 5 and “applicant” and “apply” shall be construed accordingly;

“apportioned land” means land formerly part of a common grazing apportioned by the Crofters Commission under section 52 of the Crofters (Scotland) Act 1993(5) for the exclusive use of a crofter;

“approved” means approved by the Secretary of State in writing and “approve” and “approval” shall be construed accordingly;

“Commission Decision” means the Commission Decision of 29th July 1994 on the adoption of the single programming document for Community structural assistance in the region of Highlands and Islands concerned by Objective 1;

“Community assistance” means assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund (“EAGGF”) payable in accordance with Council Regulations;

“Council Regulations” means—

- (a) Council Regulation (EEC) No 2052/88 of 24th June 1988(6) on the tasks of the Structural Funds and their effectiveness and on co-ordination of their activities between themselves and with the operation of the European Investment Bank and other existing financial instruments as amended by Council Regulation (EEC) No 2081/93 of 20th July 1993(7);
- (b) Council Regulation (EEC) No 4253/88 of 19th December 1988(8) laying down provisions for implementing Regulation (EEC) No 2052/88 as regards co-ordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments as amended by Council Regulation (EEC) No 2082/93 of 20th July 1993(9); and
- (c) Council Regulation (EEC) No 4256/88 of 19th December 1988(10) laying down provisions for implementing Council Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section as amended by Council Regulation (EEC) No.2085/93 of 20th July 1993(11);

“croft” has the same meaning as in section 3 of the Crofters (Scotland) Act 1993;

“eligible expenditure” means expenditure (including reasonable professional fees and charges) approved in relation to measures to be undertaken under the scheme;

“eligible person” means a person who is the legal occupier of an agricultural unit within the area to which these Regulations apply and in relation to a common grazing means the grazings committee;

“grazings committee” means a committee appointed under section 47(1) or (3) of the Crofters (Scotland) Act 1993 and includes a grazings constable;

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(4) 1991 c. 55.

(5) 1993 c. 44.

(6) OJ L185, 15.7.88, p.9.

(7) OJ L193, 31.7.93, p.5.

(8) OJ L374, 31.12.88, p.1.

(9) OJ L193, 31.7.93, p.20.

(10) OJ L374, 31.12.88, p.25.

(11) OJ L193, 31.7.93, p.44.

“inbye land” means any land which is, or has been enclosed or delineated by fences, dykes, hedges etcetera (including apportioned land) which has been used for cultivation, production of forage or closely controlled grazing by livestock;

“measure” means a business improvement measure or environmental enhancement measure specified in the Schedule;

“programme” means the agricultural programme for farming and crofting businesses described at Priority 4 Measure 3 of the single programming document approved by the Commission Decision and entitled, for the purposes of these Regulations, the Highlands and Islands Agricultural Programme;

“scheme” means the agricultural business improvement scheme to assist the improvement of agricultural businesses by the implementation of the measures set out in the Schedule;

“smallholding” means any holding within the meaning of section 2 and section 32 of the Small Landholders (Scotland) Act 1911(12).

(2) References in these Regulations to a numbered regulation or to the Schedule shall be construed as a reference to the regulation so numbered in or to the Schedule to these Regulations.

### **Objectives**

3. Subject to the provisions of these Regulations the Secretary of State may make payments of financial assistance under the scheme where he is satisfied that the payments will help to achieve the objectives of improving the income generating potential of those employed in agriculture, maintaining rural employment and enhancing the environment and in particular—

- (a) improving the efficiency of the agricultural unit;
- (b) improving margins by reducing the need for purchased agricultural inputs;
- (c) improving the quality and value of agricultural produce;
- (d) encouraging the uptake of opportunities by eligible persons to become involved in other economic activities;
- (e) maintaining the environment and providing opportunities for its enhancement.

### **Resource audit and business assessment**

4.—(1) An eligible person who proposes to seek financial assistance under the scheme shall prior to making an application comply with the following paragraphs of this regulation.

(2) The eligible person shall obtain the prior approval of the Secretary of State to the undertaking of a resource audit and business assessment of the agricultural unit.

(3) If the Secretary of State so approves the eligible person shall arrange for the undertaking of the resource audit and business assessment in accordance with paragraphs (4) and (5) below.

(4) The resource audit and business assessment shall identify to the satisfaction of the Secretary of State—

- (a) the assets of the agricultural business;
- (b) the opportunities for development including opportunities for conservation or enhancement of the environment;
- (c) the skills and training needs of the eligible person and the farming family resident on or in the vicinity of the agricultural unit; and
- (d) the priorities for investment in the agricultural business.

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(12) 1911 c. 49; section 2 was extended by the Small Landholders and Agricultural Holdings (Scotland) Act 1931 (c. 44), section 14 and both section 2 and 32 were restricted by the Crofters (Scotland) Act 1955 (c. 21), Schedule 6, Part I.

(5) The resource audit and business assessment shall be undertaken at the expense of the eligible person.

(6) The Secretary of State may pay to the eligible person financial assistance at the rate of 50% towards the cost incurred in the preparation of the resource audit and business assessment, subject to a maximum payment of £250.

### **Application**

5.—(1) An eligible person who has had a resource audit and business assessment undertaken under regulation 4 may submit an application to the Secretary of State for approval in accordance with the following provisions of this regulation.

(2) An application shall be made in writing in such form as the Secretary of State reasonably may require and shall include—

- (a) sufficient information to show that the measure is being undertaken by an eligible person;
- (b) confirmation that the measure is being undertaken on an agricultural unit within the area to which these Regulations apply;
- (c) sufficient information to show that the measure is identified in the resource audit and business assessment as a priority for investment;
- (d) a description of the measure proposed; and
- (e) a statement of the specific benefits which the proposed measure will achieve.

(3) The applicant shall furnish to the Secretary of State such further information and evidence in relation to the application as the Secretary of State reasonably may require.

(4) More than one application may be submitted provided that the total amount of financial assistance to be received in respect of the agricultural unit does not exceed the limits mentioned in regulation 8(3) and (4).

### **Restrictions on approval of applications**

6.—(1) The Secretary of State shall not approve an application for financial assistance—

- (a) towards a business improvement measure mentioned in Column 1 of Part A of the Schedule unless he is satisfied that—
  - (i) the measure is to be carried out by, or on behalf of the eligible person;
  - (ii) completion of the measure will achieve the objectives of the scheme set out in regulation 3;
  - (iii) the application relates to one or more of the measures set out in Column 1 of Part A of the Schedule;
  - (iv) the measure has been identified by the resource audit and business assessment as a priority for investment;
  - (v) no other public funding has been or will be sought in respect of the measure, other than under these Regulations; and
  - (vi) the eligible expenditure is at least £1,000;
- (b) towards an environmental enhancement measure mentioned in Column 1 of Part B of the Schedule unless the eligible person has a business improvement measure referred to above approved in respect of the agricultural unit; or
- (c) if he considers that in the circumstances current at the time of application other applications are to be preferred.

(2) Subject to paragraph (1) above, the Secretary of State as he thinks fit may refuse to approve the application or may approve the application in whole or in part and he may make his approval subject to such conditions as he may impose.

### **Variation of approval**

7. The Secretary of State may vary the approval or any condition attached thereto.

### **Financial assistance**

8.—(1) The Secretary of State may give to an eligible person financial assistance under the scheme towards eligible expenditure—

- (a) on approved business improvement measures mentioned in Column 1 of Part A of the Schedule;
- (b) on approved environmental enhancement measures mentioned in Column 1 of Part B of the Schedule.

(2) Financial assistance shall be payable in respect of any measure at the rate specified in Column 2 of the Schedule opposite the measure mentioned in Column 1 of the Schedule.

(3) In respect of the business improvement measures referred to in paragraph (1)(a) above, the total amount of financial assistance payable in respect of the agricultural unit shall not exceed—

- (a) in the case of a common grazing £60,000;
- (b) in any other case £20,000.

(4) In respect of the environmental enhancement measures referred to in paragraph 1(b) above, the total amount of financial assistance payable in respect of the agricultural unit shall not exceed £6,000.

### **Claims for financial assistance**

9. Any claims for financial assistance under these Regulations shall be made in such form and manner and at such time as the Secretary of State may from time to time require, and the eligible person shall furnish all such particulars and information relating to the claim and copies of such documents and records relating thereto as the Secretary of State reasonably may require and in particular—

- (a) evidence that the amount of expenditure on which financial assistance is claimed has been incurred including details of any discount received by the eligible person;
- (b) documentary evidence that the approved measure has been properly executed; and
- (c) in respect of a claim in respect of the cost of the resource audit and business assessment referred to in regulation 4, a copy of the assessment.

### **Payment of assistance**

10. The Secretary of State may determine the manner and timing of the payment of financial assistance under these Regulations.

### **Powers of entry and inspection**

11.—(1) For the purposes of these Regulations and in particular for the purpose of—

- (a) securing that financial assistance under these Regulations is made in proper cases only;
- (b) ascertaining whether any financial assistance is payable or recoverable;

(c) ascertaining whether an offence under these Regulations has been or is being committed, any person duly authorised in that behalf by the Secretary of State may upon production if so required of some duly authenticated document showing his authority, at all reasonable times of the day enter upon and inspect any land and may—

- (i) inspect any premises, plant and machinery, equipment or livestock in respect of which financial assistance under these Regulations has been made or claimed; provided that admission to any premises used as a dwellinghouse shall not be demanded as of right under this sub-paragraph unless 24 hours' notice of intended entry has been given to the occupier of the premises;
- (ii) require the eligible person to furnish for inspection any book, account or other record in his possession or under his control which the authorised person considers is necessary to substantiate the entitlement to financial assistance under these Regulations.

(2) In exercise of the power conferred on him by this regulation, an authorised person may be accompanied by such persons acting under his instructions as appear to him to be necessary and, in relation to the inspection of documents, he shall be entitled to take such copies or extracts therefrom as he may consider necessary.

### **Reduction, withholding and recovery of financial assistance**

**12.**—(1) Subject to paragraph (2) below, if at any time after the Secretary of State has approved an application or paid financial assistance under these Regulations it appears to him that—

- (a) any condition subject to which the approval was given or the financial assistance has been paid has not been complied with, or the expected benefits have not been achieved; or
- (b) any measure in respect of which financial assistance has been paid has been badly done or provided, or has been or is being unreasonably delayed or is unlikely to be completed; or
- (c) the carrying out or provision of the measure in respect of which such financial assistance is claimed appears to the Secretary of State to frustrate the purposes served by assistance previously given out of money provided by Parliament or the European Community; or
- (d) the carrying out of the measure in respect of which such financial assistance is claimed has been effected in a way which appears to the Secretary of State to have destroyed or damaged the natural beauty and amenity of the countryside to an extent which cannot be justified by the purpose for which financial assistance is claimed; or
- (e) public funding in respect of expenditure towards which such financial assistance is claimed has been or may be given otherwise than under these Regulations; or
- (f) he considers that the expenditure towards which such financial assistance is claimed is excessive, having regard to the measure carried out or provided and to which the claim relates; or
- (g) the eligible person has—
  - (i) intentionally obstructed any officer in exercise of his powers under regulation 11; or
  - (ii) failed to comply with a requirement imposed under regulation 11(1); or
- (h) the eligible person gave information on any matter relevant to the giving of the approval or the making of the payment which was false or misleading in a material respect,

the Secretary of State may revoke the approval, in whole or in part or may reduce or withhold any financial assistance under these Regulations and, where any such financial assistance has been paid, may recover on demand an amount equal to the financial assistance which has been so paid or such part thereof as he may specify.

(2) Before revoking an approval, reducing or withholding any financial assistance or making a demand under paragraph (1) above, the Secretary of State shall give to any person to whom any such financial assistance would be payable or from whom any such amount would be recoverable a

written notification of the reasons for the action proposed to be taken by him, and shall allow that person a period of 21 days in which to make representations in writing to him.

### **False statements**

**13.**—(1) If the eligible person, for the purposes of obtaining for himself or any other person any financial assistance under these Regulations, knowingly or recklessly makes a statement which is false in any material particular he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Summary proceedings for such an offence may be commenced at any time within 3 years after the commission of the offence and within 6 months after the relevant date and for the purposes of this paragraph proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted if such warrant is executed without undue delay.

(3) In this regulation “the relevant date” means the date on which evidence sufficient in the opinion of the Procurator Fiscal to justify proceedings comes to his knowledge.

(4) For the purposes of the foregoing paragraph a certificate of the Procurator Fiscal as to the date on which such evidence as is there mentioned came to his knowledge shall be conclusive evidence of that fact.

St Andrew’s House,  
Edinburgh  
5th December 1994

*Hector Monro*  
Parliamentary Under Secretary of State, Scottish  
Office

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## SCHEDULE

Regulations 6 and 8

## AGRICULTURAL BUSINESS IMPROVEMENT SCHEME ELIGIBLE MEASURES

## PART A

## BUSINESS IMPROVEMENT MEASURES

Column 1 Measure	Column 2 Rate of Grant
1. Provision, replacement or improvement of livestock accommodation (other than accommodation for dairy cows, pigs or poultry)	(a) (a) 50% for vernacular buildings (b) 40% in all other cases
2. Provision, replacement or improvement of storage sheds	(a) (a) 50% for vernacular buildings (b) 40% in all other cases
3. Adaption or improvement of redundant farm buildings and related structures for tourism, crafts or other economic activity	(a) (a) 50% for vernacular buildings (b) 40% in all other cases
4. Provision, replacement or improvement of electricity and water supplies	40%
5. Provision, replacement or improvement of fanks and dippers and stock-handling facilities for livestock	40%
6. Provision, replacement or improvement of hard standings for livestock	40%
7. Provision or improvement of systems for handling storage and disposal of farm waste	40%
8. Reseeding, reconditioning and drainage in inbye land	35%
9. Fencing-inbye and hill land	30%
10. Dyking-inbye and hill land	70%

## PART B

## ENVIRONMENTAL ENHANCEMENT MEASURES

Column 1 Measure	Column 2 Rate of Grant
1. Provision of dykes to exclude livestock in association with conservation management	70%
2. Provision of fencing to exclude livestock in association with conservation management	60%



Column 1 Measure	Column 2 Rate of Grant
3. Small-scale planting of trees (eg shelter belts, amenity planting)	60%
4. Eradication of bracken to encourage heather regeneration	60%
5. Selective control of rhododendrons	60%
6. Restoration of ponds	50%
7. Creation of wetlands or marsh lands	50%
8. Planting of approved species to encourage wildlife habitats	50%

## EXPLANATORY NOTE

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

These Regulations lay down measures necessary to implement Council Regulation (EEC) No.4256/88 laying down provisions for implementing Council Regulation (EEC) No.2052/88 as amended by Council Regulation (EEC) No.2085/93 as regards the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section and enable financial assistance to be received from that Section under an approved measure contained in the Single Programming Document (SPD) for the Highlands and Islands Objective 1 area approved by the EC Commission on 29th July 1994.

Article 1 of Council Regulation (EEC) No.2052/88 as amended by Council Regulation (EEC) No.2081/93 requires the Structural Funds to support the achievement of objectives set out in Articles 130a and 130c of the EC Treaty by contributing to the attainment of certain priority objectives, one of which is the promotion of the development and structural adjustment of regions whose development is lagging behind (Objective 1). Article 8 sets out those regions covered by Objective 1 and includes the Highlands and Islands Enterprise area being the area of Scotland comprising—

- (a) Highland Region; Western Isles Islands area; Orkney Islands area; Shetland Islands area; Argyll and Bute district; Arran, Cumbrae and Little Cumbrae in Cunninghame District; and
- (b) in Moray District, the Parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes

and requires that a regional development plan be submitted to the EC Commission for appraisal to ensure that the plan is consistent with the objectives of the Council Regulations.

Council Regulation (EEC) No.4253/88 lays down provisions for implementing Council Regulation (EEC) No.2052/88 as regards co-ordination of the activities of the different Structural Funds etc. as amended by Council Regulation (EEC) No.2082/93. Article 14 deals with applications for assistance from the Structural Funds.

The Regulations provide for financial assistance to be given towards the cost of farm development measures, and environmental enhancement measures specified respectively in Part A and B of the Schedule coming within the Agricultural Business Improvement Scheme, where it is clear that the

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payment will help to achieve the objective of improving the income generating potential of those employed in agriculture, maintaining rural employment and enhancing the environment.

To benefit from financial assistance an eligible person must first submit to the Secretary of State for approval an application to undertake a resource audit and business assessment of the farm business (regulation 4). An eligible person who has had a resource audit and business assessment undertaken must then submit to the Secretary of State an application for approval (regulation 5). The application must indicate that the measure is being undertaken by an eligible person, that it is on an agricultural unit within the Objective area and that the measure is identified in the resource audit and business assessment as a priority for investment, and provide a statement of the specific benefits which the proposed measure will achieve.

The Regulations also—

- (a) impose certain restrictions on the approval of the application (regulation 6);
- (b) allow variation of the approval (regulation 7);
- (c) set out the measures on which financial assistance can be given, the amount of financial assistance available, the maximum limits of financial assistance and provide for the payment thereof (regulation 8);
- (d) provide for how financial assistance may be claimed (regulation 9);
- (e) provide for the Secretary of State to determine the manner and timing of payment of the approved financial assistance (regulation 10);
- (f) confer a power of entry and inspection (regulation 11);
- (g) provide for the revocation of approval and the recovery of financial assistance paid (regulation 12); and
- (h) create an offence punishable on summary conviction of knowingly or recklessly making a false statement to obtain financial assistance (regulation 13).