STATUTORY RULES OF NORTHERN IRELAND

# 2008 No. 380

# AGRICULTURE

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

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| *Made - - - -* | *11th September 2008* |
| *Coming into operation* | *15th October 2008* |

The Department of Agriculture and Rural Development is designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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(**3**), 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;

(**1**) S.I. 1999/2788 and S.I. 2000/3238
(**2**) 1972 c. 68
(**3**) O.J. No. L277, 21.10.2005, p. 1, to which there are amendments not relevant to these Regulations

"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;

"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)(**4**);

"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(**5**);

"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)(**6**);

"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(**7**);

"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(**8**).

(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**) O.J. No. L368, 23.12.2006, p. 15
(**5**) O.J. No. L368, 23.12.2006, p. 74
(**6**) O.J. No. L277, 21.10.2005, p. 1
(**7**) 2001 c. 9
(**8**) 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.

(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(**9**), 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.

(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.

(**9**) 1954 c. 33 (N.I.)

**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