STATUTORY RULES OF NORTHERN IRELAND

2008 No. 295

AGRICULTURE

Farm Modernisation Programme Regulations (Northern Ireland) 2008

Made - - - -	*17th July 2008*
Coming into operation	*21st August 2008*

The Department of Agriculture and Rural Development is designated(**1**) for the purpose of section 2(2) of the European Communities Act 1972(**2**) as regards measures 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 Farm Modernisation Programme Regulations (Northern Ireland) 2008 and shall come into operation on 21st August 2008.

Interpretation

2.—(1) 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 expenditure under regulation 4;

"approved" in relation to any expenditure means approved by the Department or the agent under regulation 5;

"authorised person" means any person authorised by the Department, either generally or specifically, for the purposes of these Regulations and includes any official of the Commission who accompanies such an authorised person;

"beneficiary" means a person who has been granted approval for an operation;

"Commission Regulation 1974/2006"(**3**) means Commission Regulation (EC) No. 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005(**4**)

(**1**) S.I. 1999/2788 and S.I. 2000/3238
(**2**) 1972 c. 68
(**3**) O.J. No. L368, 23.12.2006, p. 15

on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);

"Commission Regulation 1975/2006"(**5**) 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;

"Community support" means support payable pursuant to Articles 20(b)(i) and 26 of the Council Regulation from the European Agricultural Fund for Rural Development in accordance with the Community legislation;

"the Community legislation" means the Council Regulation and any other instruments listed in the Schedule insofar as they relate to Community support;

"Council Regulation 1782/2003"(**6**) means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers;

"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;

"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 support" means an amount paid or payable under these Regulations;

"operation" means an investment or project in Northern Ireland;

"public funds" means monies available by—

(a) a body exercising public functions within the United Kingdom; or

(b) the European Communities.

(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) The Interpretation Act (Northern Ireland) 1954(**8**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(4) Any 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) Other expressions used in these Regulations which are also used in the Council Regulation 1698/2005 or Commission Regulation 1975/2006 shall be construed in accordance with the appropriate Regulation.

Grants payable

3. The Department may pay financial support to a beneficiary towards approved expenditure incurred or to be incurred in connection with an operation.

(**4**) O.J. No. L277, 21.10.2005, p. 1
(**5**) O.J. No. L368, 23.12.2006, p. 74
(**6**) O.J. No. L270, 21.10.2003, p. 1
(**7**) 2001 c. 9 (N.I.)
(**8**) 1954 c. 33 (N.I.)

Applications for approval of operation

4. An application for the approval of expenditure in connection with an operation shall be made in such form and at such time, and contain such information, as the Department or an agent reasonably may require.

Approval of operations

5.—(1) Subject to paragraph (2) the Department or an agent may approve in whole or in part expenditure in connection with an operation for which an application has been made.

(2) The Department or an agent shall not approve expenditure unless it is satisfied that the operation to which it relates is eligible for Community support.

(3) Approval may be given subject to such conditions as the Department or an agent may determine.

(4) Where the Department or an agent refuses approval for an operation under paragraph (1) it shall—

(a) give the applicant its decision in writing with a statement of its reasons;

(b) give that applicant 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.

(5) Subject to paragraph (6) the Department or an agent may vary any approval granted under this regulation.

(6) The Department or an agent shall only vary an approval granted under this regulation pursuant to a request in writing from the beneficiary to do so, or in any other case after—

(a) giving the beneficiary notice in writing that it proposes to do so together with a statement of its reasons;

(b) giving the 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) considering any such representations.

(7) An approval or variation under this regulation shall be in writing.

Claims

6. A claim for financial support shall be made at such time or within such period and in such form, and be accompanied by such information, as the Department or, as the case may be, an agent reasonably may require.

Payments

7.—(1) The Department may pay financial support in respect of approved expenditure in connection with an operation by payment of a single lump sum or by instalments.

(2) Payments under paragraph (1) may be made—

(a) at such time as the Department reasonably may determine; and

(b) subject to such conditions as the Department reasonably may determine.

Information

8.—(1) A beneficiary shall supply the Department or an agent with such information about any approved expenditure and any operation in connection with which such expenditure is incurred as the Department or the agent reasonably may require.

(2) Where the Department or an agent requires such information, the beneficiary shall give it to the Department or the agent within such period as the Department or agent reasonably may determine.

Record-keeping

9.—(1) A beneficiary shall, subject to paragraphs (2) and (3), keep any invoice, account or other document relating to approved expenditure or any operation in connection with which such expenditure is incurred until 31st December 2020.

(2) If in the normal course of business a beneficiary transfers to another person the original of any document he is required to keep under paragraph (1) within the period he is required to keep it under that paragraph, it shall be sufficient compliance with that paragraph for him to keep a copy of that document for that period.

(3) Paragraph (1) shall not apply in any case where a document to which that paragraph relates has been removed by any person lawfully authorised to remove it.

Powers of authorised persons

10.—(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 expenditure relates; or

(b) on which he has reasonable grounds to believe that documents or equipment relating to an application or approved expenditure 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, building or equipment to which an application or approved expenditure relates;

(b) verifying the accuracy of any information provided by an applicant or beneficiary relating to an application or approved expenditure; 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 expenditure;

(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 expenditure, as the case may be;

(c) where any information referred to in sub-paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require information to be reproduced in a form in which it is legible and can be taken away;

(d) require copies of or extracts from any such document or other record referred to in sub-paragraph (a) or (b) to be produced; and

(e) seize and retain any document or other record which he reasonably believes may be required as evidence in proceedings under these Regulations.

(4) An applicant or beneficiary, and any employee, servant or agent of such applicant or beneficiary shall give an authorised person all reasonable assistance in relation to the exercise of his powers under paragraphs (1) and (3).

(5) An authorised person entering any land under paragraph (1) may take with him such other person as he considers necessary and paragraphs (3) and (4) shall apply to any such person when acting under the instructions of an authorised person as if he were an authorised person.

Breaches of obligations

11.—(1) Where—

(a) any information furnished to the Department or an agent by the beneficiary is false or misleading;

(b) the beneficiary is in breach of any of the conditions of an approval;

(c) the beneficiary is in breach of any requirement to which he is subject under these Regulations or under the Community legislation; or

(d) the whole or part of the financial support payable in respect of approved expenditure duplicates other grant paid or to be paid out of public funds,

the Department may exercise the powers contained in regulation 13.

(2) For the purposes of paragraph (1)(d), other grant duplicates such financial support if it is, or would be, for any of the same purposes as the financial support.

(3) Where—

(a) a beneficiary has transferred all or part of the land to which an approval relates to another person ("the transferee");

(b) the transferee has given an undertaking to the Department or the agent to assume the conditions of the approval in place of the beneficiary; and

(c) the Department or the agent has accepted that undertaking,

the beneficiary shall be released from the conditions of the approval, other than in respect of any breach or other matter occurring before the acceptance by the Department or the agent of the transferee's undertaking.

Other cases in which recovery etc. powers apply

12. The Department may exercise the powers contained in paragraph (1)(a) and (b) of regulation 13 where—

(a) there has been a material change in the nature, scale, costs or timing of the approved expenditure in question or any operation to which it relates; or

(b) the operation to which the approved expenditure in question relates has been or is being delayed, or is unlikely to be completed.

Department's powers

13.—(1) The powers conferred by regulations 11(1) and 12 are—

(a) to withhold, or to direct the agent to withhold, the whole or any part of the financial support payable to the beneficiary; and

(b) to recover on demand, or to direct the agent to recover on demand, the whole or any part of the financial support already paid to the beneficiary.