

2011 No. 260

AGRICULTURE

FORESTRY

The Rural Development Support Measures (Control Procedures and Miscellaneous Amendments) (Scotland) Regulations 2011

<i>Made</i>	- - - -	<i>26th May 2011</i>
<i>Laid before the Scottish Parliament</i>		<i>1st June 2011</i>
<i>Coming into force</i>	- -	<i>2nd July 2011</i>

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(a), and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Scottish Ministers that it is expedient for references in these Regulations and the Regulations they are amending to the Commission Regulation (EU) No 65/2011 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(b) to be construed as references to that Regulation as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Rural Development Support Measures (Control Procedures and Miscellaneous Amendments) (Scotland) Regulations 2011 and come into force on 2nd July 2011.

Amendment of the Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008

2.—(1) The Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008(c) are amended in accordance with paragraphs (2) to (6).

(a) 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.

(b) O.J. L 25, 28.1.2011, p.8.

(c) S.S.I. 2008/64 as amended by S.I. 2011/1043.

- (2) In regulation 2(1) (interpretation), for the definition of “the Control Regulation” substitute—
 ““the Control Regulation” means Commission Regulation (EU) No 65/2011 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^(a)”;
- (3) For regulation 2(2), substitute—
 “(2) A reference in these Regulations to the EU legislation, or to any of the instruments referred to in the definition of the EU legislation, means a reference to the EU legislation or that instrument as amended from time to time.”
- (4) In regulation 2(3), for “the Electronic Communications Act 2000”, substitute “section 15 of the Electronic Communications Act 2000^(b)”.
- (5) In regulation 9(4)(f) (powers of authorised persons), before “inspect and count”, insert “may”.
- (6) For regulation 13 (offences by bodies corporate), substitute—

“Offences by bodies corporate

- 13.—**(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, the individual as well as the body corporate, Scottish partnership or unincorporated association, is guilty of 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; or
 - (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.”

Amendment of the Leader Grants (Scotland) Regulations 2008

- 3.—**(1) The Leader Grants (Scotland) Regulations 2008^(c) are amended in accordance with paragraphs (2) to (5).
- (2) In regulation 2 (interpretation)—
- (a) in paragraph (1), for the definition of “the Control Regulation”, substitute—
 ““the Control Regulation” means Commission Regulation (EU) No 65/2011 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, as amended from time to time;”; and

(a) O.J. L 25, 28.1.2011, p.8.

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

(c) S.S.I. 2008/66 as amended by S.I. 2011/1043.

- (b) in paragraph (4), for “the Electronic Communications Act 2000” substitute “section 15 of the Electronic Communications Act 2000”.
- (3) In regulation 15 (powers of authorised persons)—
 - (a) in paragraph (1)(c), for “Article 13 or 19(2)” substitute “Article 13, 19(2) or 27” ; and
 - (b) in paragraph (2)(b), for “and” substitute “or”.
- (4) In regulation 18(1) (breaches of obligations, etc.)—
 - (a) in sub-paragraph (h)(i), for “regulation 16” substitute “regulation 15”; and
 - (b) in sub-paragraph (h)(ii), for “regulation 14(3) (b), (d) or (g)(ii)” substitute “regulation 15(4) (b), (c)(ii), (d) or (g)(ii)”.
- (5) For regulation 24 (offences by bodies corporate), substitute—

“Offences by bodies corporate

24.—(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, the individual as well as the body corporate, Scottish partnership or unincorporated association, is guilty of 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; or
 - (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.”.

Amendment of the Forestry Challenge Funds (Scotland) Regulations 2008

4.—(1) The Forestry Challenge Funds (Scotland) Regulations 2008(a) are amended in accordance with paragraphs (2) to (8).

- (2) In regulation 2(1) (interpretation) for the definition of “the Control Regulation” substitute—

““the Control Regulation” means Commission Regulation (EU) No 65/2011 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;”.
- (3) For regulation 2(2) substitute—

“(2) A reference in these Regulations to the EU legislation, or to any of the instruments referred to in the definition of the EU legislation, means a reference to the EU legislation or that instrument as amended from time to time.”.
- (4) In regulation 2(3) for “the Electronic Communications Act 2000” substitute “section 15 of the Electronic Communications Act 2000”.

(a) S.S.I. 2008/135 as amended by S.I. 2011/1043.

(5) In regulation 3(1)(e) (projects which may be considered for grant), for “Article 54” substitute “Article 53”.

(6) In regulation 10(4) (information and records), for “regulation 11(4)(d)”, substitute “regulation 11(4)(e)”.

(7) For regulation 12(1)(d)(i) (revocation or variation of approval and withholding or recovery of grant) substitute—

“(i) the statutory management requirements established by Article 5 of, and Annex II to, Council Regulation (EC) 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(a);”.

(8) For regulation 16 (offences by bodies corporate), substitute—

“Offences by bodies corporate

16.—(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, the individual as well as the body corporate, Scottish partnership or unincorporated association, is guilty of 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; or
 - (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.”.

Amendment of the Land Managers Skills Development Grants (Scotland) Regulations 2008

5.—(1) The Land Managers Skills Development Grants (Scotland) Regulations 2008(b) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1) (interpretation), for the definition of “the Control Regulation”, substitute—

““the Control Regulation” means Commission Regulation (EU) No 65/2011 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;”.

(a) O.J. L 30, 31.1.2009, p.16.

(b) S.S.I. 2008/162 as amended by S.I. 2011/1043.

(3) For regulation 2(2) substitute—

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

(4) In regulation 2(3) for “the Electronic Communications Act 2000” substitute “section 15 of the Electronic Communications Act 2000(a)”.

(5) For regulation 14 (offences by bodies corporate), substitute—

“Offences by bodies corporate

14.—(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, the individual as well as the body corporate, Scottish partnership or unincorporated association, is guilty of 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; or
 - (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.”.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew’s House,
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26th May 2011

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008, the Leader Grants (Scotland) Regulations 2008, the Forestry Challenge Funds (Scotland) Regulations 2008 and the Land Managers Skills Development Grants (Scotland) Regulations 2008 (“the relevant Regulations”).

The relevant Regulations provide for schemes for the making of grants, and in particular introduced measures to supplement Council Regulation (EC) No 1698/2005 (O.J. L 27, 21.10.2005, p.1) which lays down general rules governing European support for rural development, financed by the European Agricultural Fund for Rural Development established by Council Regulation (EC) No 1290/2005 (O.J. L 329, 16.12.2005, p.40).

The relevant Regulations define the “Control Regulation”, 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 (O.J. L 368, 23.12.2006, p.74), which was repealed and replaced by Commission Regulation (EU) No 65/2011 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 (O.J. L 25, 28.1.2011, p.8). These Regulations substitute the definition of the Control Regulation in the relevant Regulations with a reference to Commission Regulation (EU) No 65/2011 (regulations 2(2), 3(2)(a), 4(2) and 5(2)) and update a cross-reference to it (regulation 3(3)(a)).

These Regulations also ensure clarity in the use of ambulatory references (regulations 2(3), 4(3) and 5(3)) and, in the case of the Leader Grants (Scotland) Regulations 2008, ensure that references are made to Commission Regulation (EU) No 65/2011 as amended from time to time (regulation 3(2)(a)).

These Regulations also amend some minor errors in the relevant Regulations. These include the amendment of incorrect cross-references (regulations 3(4) and 4(5) and (6)), some points to clarify the drafting of the relevant Regulations (regulations 2(4), (5) and (6), 3(2)(b), (3)(b), (4) and (5), 4(4) and (8) and 5(4) and (5)) and the updating of out of date references to EU legislation (regulation 4(7)).

A Business and Regulatory Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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