

**2012 No. 166**

**SEA FISHERIES**

**The European Fisheries Fund (Grants) (Scotland) Amendment  
Regulations 2012**

|                                            |         |                       |
|--------------------------------------------|---------|-----------------------|
| <i>Made</i>                                | - - - - | <i>24th May 2012</i>  |
| <i>Laid before the Scottish Parliament</i> |         | <i>25th May 2012</i>  |
| <i>Coming into force</i>                   | - -     | <i>25th June 2012</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 the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any reference to Council Regulation (EC) No 1198/2006 of 27th July 2006 on the European Fisheries Fund(b) or Commission Regulation (EC) No 498/2007 of 26th March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund(c) to be construed as a reference to that Regulation as amended from time to time.

**Citation and commencement**

1. These Regulations may be cited as the European Fisheries Fund (Grants) (Scotland) Amendment Regulations 2012 and come into force on 25th June 2012.

**Amendment of the European Fisheries Fund (Grants) (Scotland) Regulations 2007**

2. The European Fisheries Fund (Grants) (Scotland) Regulations 2007(d) are amended in accordance with regulations 3 to 15.

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- (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), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. 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 Scotland Act 1998.
- (b) OJ L 223, 15.8.2006, p.1.
- (c) OJ L 120, 10.5.2007, p.1.
- (d) S.S.I. 2007/307, amended by S.S.I. 2010/323.

3. In regulation 2 (interpretation), in paragraph (1)—

(a) before the definition of “application”, insert—

““accountable body” means a group administering EU aid by virtue of Article 45 of Council Regulation 1198/2006 and which may be—

(a) an administrative and financial lead partner selected by the group in accordance with Article 23(2) of Commission Regulation 498/2007; or

(b) a group whose structure and constitution meets the requirements specified in that Article of that Commission Regulation;”;

(b) in the definition of “approved operation” after “Scottish Ministers have” insert “, or an accountable body has, ”;

(c) in the definition of “eligible expenditure” after “Scottish Ministers have” insert “, or an accountable body has, ”;

(d) in the definition of “LIBOR” omit “to the Scottish Ministers”; and

(e) after the definition of “relevant operation” insert—

““service level agreement” means an agreement between the Scottish Ministers and an accountable body entered into for the purposes of Articles 57 and 70(1) of Council Regulation 1198/2006 and Article 23(5)(b) of Commission Regulation 498/2007;”.

4. After regulation 2 (interpretation), insert—

**“Funding arrangements: EU aid and grant**

**2A.**—(1) Subject to paragraph (2) and to regulations 2C and 2D, the Scottish Ministers shall reimburse an accountable body in respect of payments of EU aid and grant.

(2) No reimbursement of EU aid and grant may be made to an accountable body under paragraph (1) unless an agreement specified in regulation 2B has been concluded between the Scottish Ministers and that accountable body.

**Service level agreement**

**2B.**—(1) The Scottish Ministers shall conclude a service level agreement with an accountable body.

(2) Where a service level agreement was concluded before 25th June 2012, it shall be treated as being a service level agreement for the purpose of these Regulations.

(3) A service level agreement may be amended at any time by agreement of the Scottish Ministers and the accountable body.

**Breach of service level agreement**

**2C.**—(1) Where, in the opinion of the Scottish Ministers, an accountable body breaches a service level agreement, the Scottish Ministers may take any of the following steps—

(a) specify what is required by the accountable body to remedy the breach and a timescale for meeting those requirements;

(b) refuse to reimburse the accountable body in respect of payments of EU aid and grant;

(c) recover on demand the whole or any part of payments already made available to the accountable body (to include interest on that amount at a rate of 1 per cent above LIBOR calculated on a daily basis for the period from the date of payment, or such other date that the Scottish Ministers may decide, to the date of recovery);

(d) terminate the service level agreement.

- (2) Before taking any step specified in paragraph (1), the Scottish Ministers shall—
  - (a) give the accountable body a written explanation of the reasons for the step proposed to be taken;
  - (b) provide the accountable body with an opportunity to make written representations within such time as the Scottish Ministers consider reasonable; and
  - (c) consider any such representations.

#### **Termination of service level agreement**

**2D.**—(1) Where a service level agreement is terminated in accordance with regulation 2C(1)(d), the Scottish Ministers may—

- (a) require the accountable body to select another lead partner with whom Ministers shall enter into a service level agreement; or
- (b) reimburse directly the accountable body in respect of any payments of EU aid or grant made by that body.

(2) Paragraph (1) is without prejudice to the powers of the Scottish Ministers contained in regulations 14 to 15A.”.

#### **5. In regulation 3 (financial assistance)—**

- (a) in paragraph (1), after “a grant to any person”, insert “(other than EU aid or a grant which may be paid by an accountable body under paragraph (1A))”;
- (b) after paragraph (1) insert—
 

“(1A) Subject to the provisions of Council Regulation 1198/2006, Commission Regulation 498/2007 and to these Regulations, an accountable body may pay EU aid and, if it so determines, a grant to any person—

  - (a) who has applied to the accountable body, in accordance with regulation 4, for the purpose of obtaining such financial assistance, for approval under regulation 5 of—
    - (i) a relevant operation; and
    - (ii) in the case of an application for financial assistance which comprises eligible expenditure, expenditure incurred or to be incurred in connection with that operation; and
  - (b) whose application it has approved.”; and
- (c) in paragraph (2)—
  - (i) for “paragraph (1)” substitute “paragraph (1) or (1A)”;
  - (ii) after “Scottish Ministers” insert “or, as the case may be, the accountable body”.

**6. In regulation 4 (applications), in paragraph (2) after “Scottish Ministers” insert “or, as the case may be, an accountable body”.**

#### **7. In regulation 5 (determination of applications)—**

- (a) in paragraph (1)—
  - (i) after “Scottish Ministers”, insert “or, in the case of EU aid or a grant paid under regulation 3(1A), an accountable body,”; and
  - (ii) after “they”, insert “or the accountable body”;
- (b) in paragraph (2) after “Scottish Ministers”, insert “or, as the case may be, an accountable body”;
- (c) in paragraph (3)—
  - (i) after “Scottish Ministers”, insert “or, as the case may be, an accountable body”; and
  - (ii) in subparagraphs (a) and (b) after “their”, insert “or its”;

(d) for paragraph (4), substitute—

“(4) Where the Scottish Ministers or, as the case may be, an accountable body notify—

- (a) an applicant of the refusal to approve an application;
- (b) a beneficiary of the granting of an approval subject to conditions; or
- (c) a beneficiary of the variation of the terms of an existing approval,

then paragraph (4A) applies.

(4A) The Scottish Ministers or, as the case may be, an accountable body shall give such applicant or beneficiary—

- (a) written reasons for the decision; and
- (b) an opportunity to make representations in relation to that decision within such reasonable time as is notified to the applicant or beneficiary by the Scottish Ministers or, as the case may be, the accountable body.”; and

(e) in paragraph (5)—

- (i) after “Scottish Ministers”, insert “or, as the case may be, an accountable body”;
- (ii) in subparagraph (a) for “paragraph (4)” substitute “paragraph (4A)”;
- (iii) in subparagraph (b) after “their”, insert “or its” and for “paragraph (4)” substitute “paragraph (4A)”.

**8.** In regulation 6 (eligibility and claims for payment of financial assistance), in paragraph (2), after “Scottish Ministers have”, insert “or, as the case may be, an accountable body has”.

**9.** In regulation 7 (method of payment of financial assistance), after “Scottish Ministers”, insert “or, as the case may be, an accountable body”.

**10.** In regulation 8 (undertakings), after “Scottish Ministers”—

- (a) where it first occurs, insert “or, as the case may be, an accountable body”; and
- (b) where it second occurs, insert “or the accountable body”.

**11.** In regulation 9 (information)—

(a) in paragraph (1), after “Scottish Ministers”—

- (i) where it first occurs, insert “or, as the case may be, an accountable body”; and
- (ii) where it second occurs, insert “or the accountable body”;

(b) in paragraph (2)—

- (i) after “Scottish Ministers”, where it first occurs, insert “or, as the case may be, an accountable body”;
  - (ii) after “them”, insert “or it”; and
  - (iii) after “Scottish Ministers”, where it second occurs, insert “or the accountable body”;
- and

(c) after paragraph (2), insert—

“(3) An accountable body shall supply the Scottish Ministers with a report as to the operation of these Regulations—

- (a) no later than one calendar month after any date on which the accountable body has paid financial assistance to any person under regulation 3(1A), or as and when required by the Scottish Ministers; and
- (b) subsequently either at intervals of not more than one month, beginning with the date on which it last sent a report under this regulation, or as and when required by the Scottish Ministers.”.

**12.** In regulation 10(2)(b) (records) after “Scottish Ministers”, insert “or, as the case may be, by an accountable body”.

**13. In regulation 14 (reduction, withholding and recovery of financial assistance)—**

- (a) in paragraph (1)—
  - (i) after “Scottish Ministers have”, insert “or, as the case may be, an accountable body has”;
  - (ii) after “them”, insert “or it”;
  - (iii) in subparagraph (d), after “Scottish Ministers”, insert “or the accountable body”; and
  - (iv) after “Scottish Ministers”, where it last occurs, insert “or the accountable body”; and
- (b) in paragraphs (4) and (5), after “Scottish Ministers” insert “or, as the case may be, the accountable body”.

**14. In regulation 15 (interest)—**

- (a) in paragraph (1)—
  - (i) after “Scottish Ministers intend”, insert “or an accountable body intends”; and
  - (ii) after “they”, insert “or it”; and
- (b) in paragraph (2), after “Scottish Ministers”, insert “or an accountable body”.

**15. After regulation 15, insert—**

**“Failure or refusal to act by accountable body**

**15A.** Where an accountable body cannot act in accordance with regulation 14 or 15, or where it refuses a written request from the Scottish Ministers to act in accordance with those regulations, then the Scottish Ministers may act in the capacity of, and in place of, the accountable body.”.

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
24th May 2012

## EXPLANATORY NOTE

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

These Regulations amend the European Fisheries Fund (Grants) (Scotland) Regulations 2007 (“the principal Regulations”). The principal Regulations supplement Council Regulation 1198/2006 on the European Fisheries Fund (“the Council Regulation”) (OJ L 223, 15.8.2006, p.1) and Commission Regulation (EC) 498/2007 laying down detailed rules for the implementation of the Council Regulation (“the Commission Regulation”) (OJ L 120, 10.5.2007, p.1).

These Regulations amend the principal Regulations to provide that only accountable bodies can determine applications for, and pay, EU aid and grant in respect of priority axis 4 measures (regulations 5 and 7 amending regulations 3 and 5, respectively, of the principal Regulations). A definition of the term “accountable body” is inserted into regulation 2 of the principal Regulations (regulation 3). Accountable bodies are local fishing entities or groups representing public and private partners from local relevant socio economic sectors (“Fisheries Local Action Groups”) which administer EU aid by virtue of Article 45 of the Council Regulation. They may either be an administrative and financial lead partner selected by the group in accordance with Article 23(2) of the Commission Regulation or a group whose structure and constitution meets the requirements specified in that Article. Priority axis 4 measures provide for the sustainable development of areas which have a significant level of employment in the fisheries sector and which are eligible to receive financial assistance.

Regulation 4 inserts new regulations 2A, 2B, 2C and 2D into the principal Regulations.

The new regulation 2A of the principal Regulations makes provision for the reimbursement of payments of EU aid and grant made by accountable bodies from the Scottish Ministers.

The new regulation 2B of the principal Regulations makes provision for the Scottish Ministers to enter into service level agreements with accountable bodies for the purposes of Articles 57 and 70(1) of the Council Regulation and Part A of Annex XII of the Commission Regulation.

The new regulation 2C of the principal Regulations sets out the powers of the Scottish Ministers where an accountable body breaches a service level agreement. This includes a power to terminate the agreement.

The new regulation 2D of the principal Regulations makes further provision for the consequences of such a termination.

Consequential provision inserting a new definition of “service level agreement” in regulation 2 of the principal Regulations is made by regulation 3.

Consequential provision is made to the principal Regulations to provide accountable bodies with appropriate powers and functions to allow them to administer the scheme (regulations 3, 5, 6, 8 to 14).

Regulation 11 also amends regulation 9 of the principal Regulations to provide the accountable bodies with a duty to report to the Scottish Ministers as to the operation of the principal Regulations.

Regulation 15 inserts a new regulation 15A in the principal Regulations to provide that where an accountable body cannot act in accordance with regulation 14 or 15 of the principal Regulations, or where it refuses a written request from the Scottish Ministers to act, that the Scottish Ministers can act in the capacity of, and in place of, the accountable body.

No Business and Regulatory Impact Assessment has been prepared in respect of these Regulations.



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