

Statutory Instrument 2001 No. 3899

The Rural Development Grants (Local Communities) Regulations 2001

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STATUTORY INSTRUMENTS

2001 No. 3899

EUROPEAN COMMUNITIES, ENGLAND

The Rural Development Grants (Local Communities) Regulations 2001

<i>Made</i>	<i>6th December 2001</i>
<i>Laid before Parliament</i>	<i>10th December 2001</i>
<i>Coming into force</i>	<i>1st January 2002</i>

The Secretary of State, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] as regards measures relating to the promotion of rural development and matters relating to the operation of the Structural Funds, in exercise of the powers conferred on her by the said section 2(2) and of all other powers enabling her in that behalf, hereby makes the following Regulations:

Title, commencement and extent

1. - (1) These Regulations may be cited as the Rural Development Grants (Local Communities) Regulations 2001 and shall come into force on 1st January 2002.

(2) These Regulations shall extend to England only.

Interpretation

2. - (1) In these Regulations -

"applicant" means a person who has made an application;

"application" means an application made pursuant to regulation 4;

"approved operation" means an operation which has been approved by the Secretary of State and "approve" and "approval" are to be construed accordingly;

"authorised person" means a person who is authorised by the Secretary of State, either generally or specifically, to act in matters arising under 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;

"the Commission" means the Commission of the European Communities;

"Community assistance" means assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund granted pursuant to the Community legislation;

"the Community legislation" means the instruments listed in the Schedule to these Regulations;

"Council Regulation 1260/1999/EC" means Council Regulation (EC) No. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds[3];

"electronic communication" has the same meaning as in the Electronic Communications Act 2000[4];

"the England LEADER+ Programme" means the Programme approved by the Commission in the Decision referred to in paragraph 7 of the Schedule to these Regulations;

"financial assistance" means an amount paid or payable under these Regulations; and

"operation" means an investment, plan, project or action which is the subject of an application.

(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 subsequently capable of being reproduced.

Assistance for rural development

3. The Secretary of State may pay financial assistance to a beneficiary towards expenditure incurred or to be incurred by him in connection with an approved operation.

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 Secretary of State reasonably may require.

Approval of operations

5. - (1) The Secretary of State may -

- (a) refuse to approve an operation for the receipt of financial assistance; or**
- (b) approve it in whole or in part, unconditionally or subject to such conditions as she may determine,**

but she shall not approve it unless she is satisfied that -

- (i) it is in accordance with the England LEADER+ Programme; and**
- (ii) it is eligible for Community assistance.**

(2) The Secretary of State may vary an approval by varying any condition to which it is subject, or imposing conditions.

(3) Before varying an approval under paragraph (2), the Secretary of State shall -

- (a) give the beneficiary notice in writing that she proposes to do so with a statement of her reasons;**
- (b) give the beneficiary an opportunity to make written representations within such time as the Secretary of State 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 or within such period and in such form and be accompanied by such information as the Secretary of State reasonably may require.

Payment

7. - (1) The Secretary of State 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 Secretary of State reasonably may determine; and**
- (b) subject to such conditions as the Secretary of State reasonably may determine.**

Information

8. - (1) A beneficiary shall supply the Secretary of State with such information about an approved operation as the Secretary of State reasonably may require.

(2) Where the Secretary of State requires such information, the beneficiary shall supply her with it within such period as the Secretary of State reasonably may determine.

Powers of authorised persons

9. - (1) An authorised person may at all reasonable times, on producing, if so required, some duly authorised 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 relating to an application or approved operation are being kept,

for any of the purposes specified in paragraph (2).

(2) The purposes referred to in paragraph (1) are -

(a) inspecting the land 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 the 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; and

(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) 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 shall 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. - (1) Where -

(a) any information furnished to the Secretary of State by the beneficiary is false or misleading;

(b) the beneficiary breaches any of the conditions of an approval;

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

(d) subject to paragraph (2), 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 -

(i) the European Communities;

(ii) Parliament; or

(iii) a body exercising public functions within the United Kingdom,

the Secretary of State may exercise any of the powers specified in regulation 13(1).

(2) For the purposes of paragraph (1)(d), a payment duplicates such assistance if it would be paid for the whole or such part of an approved operation, in respect of which that assistance had already been paid.

Other cases in which recovery etc. powers apply

12. The Secretary of State may exercise any of the powers specified in regulation 13(1) where -

(a) there has been a material change in the nature, scale, costs or timing of the approved operation; or

(b) the approved operation has been or is being delayed, or is unlikely to be completed.

Secretary of State's powers of recovery

13. - (1) The powers conferred on the Secretary of State by regulations 11(1) and 12

are -

(a) to withhold the whole or any part of the financial assistance payable to the beneficiary; and

(b) to recover on demand the whole or any part of any amount of financial assistance already paid to the beneficiary.

(2) Where all the circumstances in which the powers conferred by regulation 11(1) and specified in paragraph (1) have become exercisable are such as were intended by the beneficiary or as to which the beneficiary was reckless, the Secretary of State may also require the beneficiary to pay to the Secretary of State an additional sum equal to no more than 10 per cent of the financial assistance paid or payable to the beneficiary.

(3) Where the Secretary of State takes any steps specified in paragraph (1), she may also suspend or terminate the approval of the operation, and thereupon any entitlement of the beneficiary to payment of financial assistance in respect of the unexpired period of the approval shall likewise be suspended or terminated, as the case may be.

(4) The powers conferred on the Secretary of State by paragraphs (2) and (3) shall be exercisable by a notice served on the beneficiary by post at his last known address.

(5) Before taking any step specified in paragraph (1), (2) or (3), the Secretary of State shall -

(a) give to the beneficiary a written explanation of the reasons for the step proposed to be taken;

(b) afford the beneficiary the opportunity of making written representations within such time as the Secretary of State considers reasonable; and

(c) consider any such representations.

Recovery of interest

14. - (1) If the Secretary of State decides to recover any amount under regulation 11 or 12, she may also recover on demand interest on that amount for the period beginning with the day following that on which the amount was paid and ending on the day on which she recovers it.

(2) The rate at which the interest is payable for any day in that period is one percentage point above LIBOR.

(3) For the purposes of paragraph (2) "LIBOR" means the sterling three month London interbank offered rate in force on the day in question, and in any proceedings relating to the recovery of such interest a certificate of the Secretary of State stating the LIBOR applicable for any day is conclusive evidence of the rate applicable for that day if the certificate also states that the Bank of England notified the Secretary of State of that rate.

Recovery of payments

15. In any case where an amount falls to be paid to the Secretary of State by virtue of (or by virtue of action taken under) these Regulations, the amount so falling to be paid shall be recoverable as a debt.

Offences and penalties

16. - (1) A person is guilty of an offence if -

(a) for the purposes of obtaining financial assistance for himself or any other person he knowingly or recklessly makes a statement which is false or misleading in a material particular; or

(b) he intentionally obstructs an authorised person (or a person accompanying him and acting under his instructions) in the exercise of his powers under regulation 9.

(2) Any person who is guilty of an offence under this regulation is liable -

(a) in the case of an offence under paragraph (1)(a) -

(i) on indictment, to a fine; or

(ii) on summary conviction, to a fine not exceeding the statutory maximum;

and

(b) in the case of an offence under paragraph (1)(b), to a fine not exceeding level 3 on the standard scale.

(3) Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body or any person who was purporting to act in such a capacity, he also is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) applies to acts and defaults of a member in connection with his management functions as if he was a director.

Alun Michael

Minister of State, Department for Environment, Food and Rural Affairs

6th December 2001

SCHEDULE

Regulation 2(1)

MEANING OF "COMMUNITY LEGISLATION"

1. Council Regulation (EC) No. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ No. L161, 26.6.1999, p. 1, as amended by

Council Regulation (EC) No. 1447/2001 of 28 June 2001 (OJ No. L198, 21.7.2001, p. 1)), in so far as it relates to Community initiatives concerning rural development as established pursuant to Article 20(1)(c) of that Regulation (referred to in this Schedule as "LEADER").

2. Commission Regulation (EC) No. 1685/2000 of 28 July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No. 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds (OJ No. L193, 29.7.2000, p. 39), in so far as it relates to LEADER.

3. Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ No. L160, 26.6.1999, p. 80) in so far as it relates to LEADER.

4. Commission Regulation (EC) No. 1750/1999 of 23 July 1999 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ No. L214, 13.8.1999, p. 31, as amended by Commission Regulation (EC) No. 2075/2000 of 29 September 2000 (OJ No. L246, 30.9.2000, p. 46), Commission Regulation (EC) No. 672/2001 of 2 April 2001 (OJ No. L93, 3.4.2001, p. 28) and Commission Regulation (EC) No. 1763/2001 of 6 September 2001 (OJ No. L239, 7.9.2001, p. 10)) in so far as it relates to LEADER.

5. Regulation (EC) No. 1783/1999 of the European Parliament and of the Council of 12 July 1999 on the European Regional Development Fund (OJ No. L213, 13.8.1999, p. 1) in so far as it relates to LEADER.

6. Regulation (EC) No. 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the European Social Fund (OJ No. L213, 13.8.1999, p. 5) in so far as it relates to LEADER.

7. Commission Decision No. C(2001) 2100 of 9 August 2001 on the granting of assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) for a LEADER+ Community Initiative programme in England, United Kingdom.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st January 2002 and extend to England only, supplement the Community legislation listed in the Schedule to the Regulations ("the Community legislation"). The Community legislation *inter alia* provides for assistance to be paid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund ("Community assistance") towards operations which fall within Community initiatives to promote rural development ("LEADER") pursuant to Article 20(1)(c) of Council Regulation (EC) No. 1260/1999 (OJ No. L161, 26.6.1999, p. 1). In the case of England, the initiative concerned is the England LEADER+ Programme, approved by the Commission of the European Communities ("the Commission") by virtue of the Decision referred to in paragraph 7 of the Schedule ("the Commission Decision").

The Regulations operate within the scope of these provisions by enabling financial assistance to be paid by the Secretary of State in respect of operations which she has approved (regulation 3). Such operations may be approved if they are eligible for

assistance under the Community legislation and are in accordance with the England LEADER+ Programme (regulation 5).

The Regulations provide for the making of claims for, and the payment of, financial assistance following approval (regulations 6 and 7) and also impose obligations concerning the provision of information (regulation 8) and record-keeping (regulation 10) on those in receipt of financial assistance. In addition, they introduce a system of penalties to be imposed in the event of a breach of obligations by granting the Secretary of State various powers to take action, up to and including termination of the approval in the event of breaches of the conditions of an approval and in a number of other cases (regulations 11 to 13). Regulation 9 confers powers of entry and inspection on certain authorised persons (including officials of the Commission), whilst regulation 16 creates offences in respect of the furnishing of false information for the purpose of obtaining financial assistance and in respect of obstruction.

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

Copies of the Commission Decision and of the England LEADER+ Programme are available for inspection during normal office hours at the offices of the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

Notes:

[1] S.I. 1994/1887 and 1999/2788.back

[2] 1972 c. 68.back

[3] OJ No. L161, 26.6.1999, p. 1.back

[4] 2000 c. 7.back

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