

Undertaking in terms of the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 (SSI 2008/100)

Your participation in Rural Development Contracts Rural Priorities (“the Scheme”) requires you to enter into an undertaking in terms of the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008. This is that undertaking. In signing this undertaking you make certain declarations and undertake to comply with certain conditions. Some of these conditions are standard for all Rural Development Contracts. Others are specific to each particular Rural Priorities Option. The declarations must be correct and you must adhere to the conditions or the aid payable under the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 may be withheld or, if already paid, recovered by the Scottish Ministers. This undertaking contains a Schedule of Activities that lists those activities you must complete to the criteria and standards set out in the SRDP web pages (the “programme guidance”).

Definitions

In this undertaking the following words have the following meanings;-

“the 2008 Regulations” means the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008;

“approved activities” means the activities described in the “Schedule of Works ” attached to this Undertaking;

“the period of undertaking” is the period or periods referred to in Regulation 9(2) and 9(3) of the 2008 Regulations;

“Natura 2000 site” also known as “European Site” has the meaning given in Regulation 10 of the Conservation (Natural Habitats &c.) Regulations 1994. These cover SPAs (Special Protection Areas) and SACs (Special Areas of Conservation);

“SSSI Site” means a site of special scientific interest as defined in the Wildlife & Countryside Act 1981 (as amended) and within the meaning of section 3(6) or of Schedule 5 to the Nature Conservation (Scotland) Act 2004;

Operations Requiring Consent – Operations requiring consent, or ORCs, are activities that could damage the natural features of an SSSI and for which Scottish Natural Heritage is responsible for giving consent.

The following have the same meaning as in regulation 2(1) of the 2008 Regulations:-

“activities”;

“approved proposal”;

“application for aid”;

“area related options”;

“eligible land” and

“rural priorities options”

I/We understand that;

- This is an undertaking in accordance with the 2008 Regulations in respect of an approved proposal;
- The 2008 Regulations apply to this undertaking;
- If I/we breach any of the terms of this undertaking the Scottish Ministers will, under the 2008 Regulations, be able to withhold payment of aid or recover all or any part of the aid already paid;
- I/we have responsibility to check the pre-printed information given in the Single Application Form (SAF) and will make any necessary amendments;
- The approved activities I/we propose to carry out comply with the legal or contractual obligations (including any SNH management agreements) for any Site of Special Scientific Interest or Natura 2000 sites on my/our holding. If consent is required for any Operations Requiring Consents (ORCs) for any SSSI, I/we have gained permission from Scottish Natural Heritage (or the relevant regulatory Authority designated in the Nature Conservation (Designation of Relevant Regulatory Authorities) under Section 15 of the Nature Conservation (Scotland) Act 2004);
- I/we have received permission from Historic Scotland for any approved activities I/we propose to carry out which may affect a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;
- I/we agree to obtain any planning permission or other relevant permissions required for any approved activities before starting any work on those particular approved activities;
- I/we understand that if I/we knowingly or recklessly make a false statement, I/we may be prosecuted. If I/we make a false statement intentionally, or as a result of serious negligence, I/we may be excluded from the Scheme. If I/we otherwise break the rules or fail to comply with the undertakings I/we have given, I/we may lose some of, or the entire payment of aid I/we have claimed or received;
- I/we have not claimed payment under any other funding mechanism administered by the Scottish Government Rural Payments and Inspections Directorate (SGRPID) or any other public body (except where it is

specifically authorised under the terms of the Scheme) for the carrying out of any approved activities which is the subject of the application for aid;

- The land in respect of which the aid is to be paid is eligible land;
- In the event that there is specified in the approved activities, activities under area related options, I/we meet the requirements of the 2008 Regulations in relation to those regarding ownership and tenancy;
- In the event that I/we enter this undertaking as a grazings committee I/we bind our successors in office to the terms of the undertaking;
- I/we confirm that there are no legal or other restrictions affecting the eligible land which prevent the completion or maintenance of the approved activities;
- I/we confirm that no part of the assets included in the application for aid have been reconstructed or purchased with funds received in settlement of any insurance claim;
- I/We have read the programme guidance on the SRDP website. I/we understand the rules of the scheme and will abide them for the period of the undertaking;
- I/we have read the Important Information Annex that is part of this contract.

Data Disclosure

The data you provide as part of the application and claim process is subject to the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA), the Data Protection Act 1998 (DPA) and the Environmental Information (Scotland) Regulations 2004 (EI(S)R).

It is the policy of the Scottish Ministers to share relevant data, including historical data, that is held on your business with other organisations for legitimate purposes and when required to do so and also to share relevant data under FOISA and EI(S)R when it is in the public interest.

It is also the policy of the Scottish Ministers to release information on recipients and amounts of subsidy under the Single Farm Payment Scheme and new schemes under the Rural Development Regulation.

Undertakings

I/we hereby undertake:

Regulatory basis

To comply with the current version of Council Regulations (EC) 1257/1999 (On support for rural development from the European Agricultural Guidance and Guarantee Fund), (EC) 1783/2003 (amending regulation (EC) 1257/1999) and (EC) 1782/2003 (common rules for support under the Common Agricultural Policy) also Commission Regulations (EC) 817/2004,

(EC) 795/2004 (Rules implementing the single payment scheme) and (EC) 796/2004 (rules for the implementation of cross-compliance, modulation and IACS). Council regulation (EC) No 1698/2005 (On support for rural development by the European Agricultural Fund for Rural Development, Commission Regulation (EC) No 1974/2006 (laying down detailed rules for the application of for the Council regulation (EC) No 1698/2005) Council Regulation (EC) No 146/2008 of 14 February 2008 amending Regulation (EC) No 1782/2003 and Regulation (EC) No 1698/2005, 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.

Cross Compliance

To meet the statutory management requirements established by Article 4 of and Annex III to Council Regulation 1782/2003 as amended, the good agricultural and environmental conditions specified in regulation 4 of and the Schedule to the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 as amended, the historic environment condition specified in Part 1 of Schedule 4 to the 2008 Regulations and the requirements applicable under the enactments as amended specified in Part 2 of Schedule 4 to the 2008 Regulations in order to be eligible to receive payment.

Maps

To carry out the work authorised in this Rural Development Contract, on the land shown on the map related to this Contract and signed by the Case Officer (in all parts of this Contract called “the land”), where such a map is required to describe where the work will be carried out.

Outcome Plans

To carry out the work in such a way that:

- it meets the requirements of those Regional Priorities approved by the Scottish Ministers; and
- it accords with any descriptions, methods and specialist advice in any Outcome Plan relevant to the approved works.

Publicity

To acknowledge, when publicising the approved activities in respect of which aid is paid as set out below, that financial assistance has been received from the Scottish Government and the European Union (EU) and to give consent to the Scottish Ministers publicising the detail of the award of aid under the 2008 Regulations, should they so wish.

To erect an explanatory plaque where the total cost for the project exceeds €50,000.

To erect a billboard where the total costs for the project exceeds €500,000.

Landlord obligations

That if I am /we are a landlord, I/we will only apply for funding for activities on land that I/we let out on a seasonal basis and acknowledge that I/we will be responsible for making sure the requirements on the land are met.

Tenant or contractual licensee obligations

To discuss the proposed application with the landlord to make sure it does not break the conditions of my/our tenancy or licence.

To submit a joint application with the landlord or the land owner if I/we have a tenancy or a licence with less than five years to run, if I/we wish to carry out options under Rural Development Contracts – Rural Priorities.

Five year commitment for capital items

To ensure that where a grant has been paid for capital items, that for a period of five years, no modifications or changes will be made that substantially affect the nature, usage or location of the item purchased, including any change of ownership.

Proposals from Grazings Committees

In the event that I am/we are applying as a grazings committee, to submit an application to include the following:

- the written consent of a majority of the crofters ordinarily resident within the township and sharing in the common grazing;
- evidence that notice of the intention to submit a proposal and the proposed division of the aid amongst the eligible crofters has been given to the clerk of the grazings committee;
- confirmation from the Crofters Commission that it has approved the proposal and has received no representation from any of the crofters included within the proposal.

Funding from other sources

To tell the Scottish Ministers if grant aid from another public body or bodies is either approved, or is being sought in relation to the approved activities.

Public access

To allow any public rights of way over the land and comply with the responsibilities of being a land manager in relation to the right of responsible access secured by the Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code. If any Local Authority in whose area the land or any part of it lies, ask me/us to discuss the possibility of providing additional public access facilities over the land, I/we must say whether or not I/we would agree to consider such access.

Timescale for returning the signed contract

To sign and return this undertaking within 28 days of receipt and accept that if otherwise approval may not be guaranteed.

Additional costs

The Scottish Ministers will only pay you the rates of payment of aid as specified in this contract. They will not be liable for any additional costs that may be incurred in respect of any works covered by the approved activities.

Claims for aid

To submit my/our claim for payment of aid in accordance with the 2008 Regulations. Claims must be submitted within the timescale of the Schedule of Works. All capital claims and supporting documentation must be submitted by the end of that scheduled calendar year.

Value Added Tax

To ensure that claimed amounts are exclusive of VAT if I/we or my/our business is VAT registered.

Supporting information for claim

To submit the original and correctly receipted invoices and evidence to prove that I/we have made the expenditure (the Scottish Ministers will return the originals to you) for approved activities where payment is based on actual costs incurred.

Purchasing used machinery

To certify that any used machinery purchased with the grants I/we have applied for under Rural Development Contracts – Rural Priorities have not been the subject of grant aid from any previous Scottish Government funding scheme.

Insurance

To insure all buildings, equipment, livestock and other assets which relate to the application for aid against loss by fire, storm, theft, impact and other risks as appropriate and to comprehensively insure all vehicles which relate to the application for aid and to exhibit policies and receipts from the companies on request.

Unable to carry out the work

To tell the Scottish Ministers as soon as possible in writing (including by email) if I/we cannot complete any of the approved activities.

Withdrawal from the Scheme

To inform the Scottish Ministers if I/we wish to withdraw from the Scheme and accept that unless I/we can meet the force majeure criteria I/we will normally need to repay any payments I/we have already received, plus interest and possibly a penalty sum.

Compliance with the law

To ensure that any person or body carrying out any of the approved activities complies with the law, for the time being in force, in Scotland and in particular does not commit any act of discrimination rendered unlawful by the Sex Discrimination Act 1975 or the Race Relations Act 1976 and to comply with the Equal Opportunity requirements in planning, implementing and operating any of the approved activities.

Governing Law

This undertaking will be governed by the law of Scotland and will be subject to the jurisdiction of the courts of Scotland.

END OF UNDERTAKINGS

IMPORTANT INFORMATION ANNEX – PLEASE READ

How we will handle information under the Data Protection Act 1998 (“the DPA”)

We will protect other personal data we receive in line with the DPA. We will use the data provided in the application primarily for the purpose of processing the proposals and claims. However, personal data may also be used subject to the safeguards of the DPA for purposes connected with:

- Administration of the Common Agricultural Policy;
- SRDP and other aid schemes;
- The production and safety of food;
- Management of land and other environmental controls;
- Provision of services to businesses;
- Animal health and welfare and
- Occupational health and welfare.

Giving us information

You must be prepared to give us any additional information relating to your application which the Scottish Ministers request. You can do this in writing (by post, other delivery or by e-mail), or in person to the appropriate office.

If the Scottish Ministers need to give you general information, they will send it in writing either by post or by e-mail to you.

Unless the Scottish Ministers have agreed otherwise, they will send it to you at your address(es) set out in the RDC Contract, or to the first of you named in the RDC Contract at the address given for that person.

Scheduled monuments

Scheduled monuments are protected by law. If you plan to carry out any works on or near a scheduled monument, you **must** obtain scheduled monument consent (SMC). You should contact Historic Scotland for advice when making your Rural priorities application. You can get advice and SMC from:

Historic Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH
Phone: 0131 668 8777
e-mail: hs.inspectorate@scotland.gsi.gov.uk

Alternatively, you can speak to your local monument warden.

What your invoices must show if you are to claim for actual costs incurred or capital items

- the supplier or contractor's name and address and your business name and address as the customer;
- details of goods and services purchased and supplied;
- A separate costing for each approved activity and VAT details where appropriate;
- the date when the supplier or contractor delivered the goods and/or services to you;
- the total amount of the invoice;
- the amount paid by you in figures or words. If this differs from the total invoice amount, you must provide information to explain the difference (such as the amount of any discount, or credit or hire purchase charges);
- the signature and stamp of the supplier or contractor receiving payment (or their employee);
- if you settle an invoice for over £500 by cash, you must keep additional evidence of payment, such as bank statements, for your records.

Inspecting your land, equipment and records

Under the terms of the 2008 Regulations you must allow SGRPID or its agents to inspect land, animals, any relevant equipment, storage facilities and farm records to verify the information given on your application for aid. We will expect you to give reasonable assistance to authorised officers in making their inspection. Please note that these compliance checks are normally unannounced.

Landlords and tenants

Please see the guidance for Landlords and tenants on the SRDP web page: <http://www.scotland.gov.uk/Topics/Rural/SRDP/RuralPriorities/HowItWorks/ScHEMERules> This also includes advice about what to do if you sell the property.

Amending the contract

If you want to amend the contract you should contact your Case Officer immediately in writing or by e-mail. Please note that payment of aid may be suspended while we consider your proposed modification.

Selling or leasing all or part of your holding

If the new owner does not take on your undertaking and the obligations under this contract you may need to repay all or part of the payments that you have already received, plus interest.

No longer able to meet the Scheme rules or conditions

You must write to your Case Officer with an explanation and evidence of the facts within 10 days from the date you are no longer able to meet the Scheme rules or conditions.

Please note that you may have to pay back some or all of the payments made to you, plus interest and possibly a penalty in these circumstances. You may not be required to repay aid if you can give evidence that the reason for the failure meets the strict conditions of 'force majeure' or "exceptional circumstances".

Definition of "Force Majeure" or exceptional circumstances

The categories of force majeure or exceptional circumstances include:

- the death of a beneficiary;
- the long term professional incapacity of a beneficiary;
- expropriation of a large part of the holding if that could not have been anticipated on the day on which the commitment was given;
- a severe natural disaster seriously affecting land on the holding;
- the accidental destruction of livestock buildings on the holding;
- an epizootic disease affecting all or part of the farmer's livestock.

Penalties if the contract is terminated

The Scottish Ministers will apply any penalty in a manner proportionate to the seriousness of the breach and the potential economic benefit that you have derived from it. The Scottish Ministers will apply one or more of the following penalties if the contract is terminated under the contract Undertaking

- withhold all or part of any money owed to you, permanently or pending completion of any works that the Scottish Ministers consider necessary for you to remedy the breach;
- recover any payments made with interest;
- where the breach has been intentional or you have exercised reckless conduct resulting in a breach you may be asked to pay an additional sum equal to no more than 10% of the aid payable;
- You may be prohibited from applying for aid for activities for up to 2 years

How interest is calculated

Interest on the repayment will be calculated for the period between the date of demand for payment (this is the terms of the 2008 Regulations) and reimbursement. The interest rate shall be one percentage point above the Sterling three month London inter-bank offered rate. The Scottish Ministers will provide you with a certificate stating the rate applicable for the period specified in the certificate. This shall be conclusive evidence of that interest

rate if the certificate also states that the Bank of England notified the Scottish Ministers of that rate.

How we will deal with overpayments

If we overpay aid to you, we will seek reimbursement of the overpayment, with interest from the date of demand for payment to the date of reimbursement. Alternatively, we may deduct the amount of overpayment from the next Scheme payment, plus interest from the date the overpayment was made to the date that we were informed about the overpayment. No interest shall be payable where the wrongful payment is due to an error made by the Scottish Ministers.