

Afforestation Grant & Premium Schemes to 31 Dec 2014

Guide on Change of Ownership / Change of Applicant

NB: This Guide refers only to forestry planted before 31 Dec 2014.

For forestry planted after that date, see: Afforestation Grant & Premium Schemes 2014-2020
Guide on Change of Ownership / Change of Applicant

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Please contact us with all enquiries about changes of ownership:

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Wexford Y35 PN52**

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For Schemes and conditions please see:

<http://www.agriculture.gov.ie/forests-service/grantsandpremiumschemes2015-2016/archive/grantandpremiumschemes/>

(note that older schemes appear under the "archive" heading)

PART I: GENERAL ADVICE for the owners of grant-aided plantations

1. General

- Land on which grant-aided forestry was planted remains the property of the owner/s but the Minister has an interest in it once grant is claimed. The Department is entitled to claw-back aid paid if the applicant or owner do not keep it in the scheme for the full term (normally 20 years) and observe the rules of the scheme. The trees cannot be removed without the permission of the Department – see paragraphs 3 & 5 below.
- Responsibility for the ultimate success or failure of the grant-aided plantation rests with its owner/s but the Forest Service of the Department will offer advice and guidance. Owners should be familiar with the terms and conditions of the scheme and are encouraged to make and maintain contact with their Teagasc Forestry Advisor, Forestry Company or Consultant – for a list of registered foresters, please see <http://www.agriculture.gov.ie/forestry/>
- You must notify the Forest Service of any damage to or failure of the trees (para 10, 15).
- Owners are strongly advised to insure their plantations, especially against fire and wind.

2. Notify Forest Service before sale or transfer to avoid claw-back

The Forest Service must be notified of any change of ownership of any part of a plantation on which a grant was paid. This obligation lasts for the duration of the contract, normally 20 years. The owner must give advance notice to the Forest Service of any intention to sell or transfer ownership, or if the legal status of his/her ownership during these 20 years becomes subject to a caution, inhibition, judgement mortgage or enforced sale. When notice of a change of ownership is received payments are suspended until a new applicant is registered in the scheme. All documentation to support new claims must be received in Forest Service at least one year before expiry of the term of the premiums scheme. Information given to this Office will be kept confidential, privacy will be protected.

Solicitors dealing with sale or transfer of ownership should be informed of the terms of the scheme. It is very important that any **Solicitor drawing up a contract for sale** of lands on which forestry grant was paid takes account of the provisions of the Scheme, especially that if the buyer does not take over participation in the Scheme, all grants and premiums already paid from the date of planting **must be repaid to the Department by the previous owner**. See also paragraph 12.4 of this Guide.

3. Taking land out of the forestry scheme

Prior permission of the Forest Service is needed before removing any trees on which grant was paid and before selling or transferring ownership of planted land for the purpose of taking it out of the scheme. Removing any part of the plantation from the scheme will entail repayment to the Department of all grants and premiums paid since the date of completion of the plantation. Also, please see paragraph 5 below, on the law on felling and uprooting trees.

4. After the scheme ends

At the end of the term of the scheme, payments from the Department cease and there is no further need to give notice of changes of ownership. The only continuing restrictions on the owner's use of their property at that stage are those applying under the Forestry Act 1946 – see paragraph 5. However, the Minister retains an interest in all grant-aided plantations and would be anxious that forest owners would achieve the best returns from the State's investment. Forest owners should keep in contact with their Teagasc Forestry Advisor and/or their chosen Forestry Company or Consultant.

5. Legal aspects:

All plantations are protected by the **Forestry Act 1946**, which controls felling of trees. Under Section 37 of the Act, it is illegal to cut down any tree, grant-aided or not, unless prior notice has been given by the landowner in accordance with the Act and a Felling Licence obtained from the Forest Service. Any new owners of the plantation should be made aware of the law on felling and uprooting trees. **Tax Clearance regulations** apply to payments under forestry grant and premium schemes.

PART II: SUCCESSION / INHERITANCE of a grant-aided plantation**6. INHERITANCE – on the death of an Owner / Applicant**

If the death takes place of the owner or joint owner or joint manager who was claiming forestry premium, the Forest Service must be informed as soon as possible by the family or their Solicitors. Forest Service (Change of Applicant Section) will help to facilitate continuity of scheme payments.

7. Do the benefits and obligations pass to the beneficiary on inheritance?

7.1 A new owner may claim payments under the scheme when he /she provides proof of ownership and a completed and signed Form 5 to take over the obligations of the scheme. These papers must be received at least 1 year before end of the term of the premiums. The undertakings required include a commitment to maintain and protect the plantation to Forest Service standards for commercial forestry for the rest of the term of the contract, and, in the event of failing to do that, to repay to the Department all grants and premiums paid since the date of planting.

7.2 If the rate of premium paid to the deceased person was the higher, farmer rate, the new applicant may be eligible to claim it, subject to the conditions in paragraph 9 below. If several members of the family of the deceased inherit, there is a *Joint Management Consent* (JMC) facility to allow members of the **immediate family** to designate one of them to be the sole applicant for premiums. All owners must sign the obligations on Form 5.

7.3 If the rate of premium paid to the deceased was the (lower) non-farmer rate, that rate will apply to that plantation for the full duration of the scheme. It cannot be increased to the farmer rate even if the new applicant would otherwise qualify as a farmer or has that status under other schemes.

7.4 Any forestry premiums due to the deceased at the date of death will be released to the Representatives of the Estate on receipt of Probate and when a new applicant has registered to take over in the scheme. The documents needed in cases of inheritance are set out at Paragraph 8 below.

8. Paperwork for beneficiary to claim

The documents needed following the death of the owner / joint owner / joint manager are, generally:

- A copy of the Death Certificate and
- A copy of the Will and Grant of Probate, or Grant of Administration.

If these documents have already been supplied to the Department we will access them electronically. If original documents are received, we can make a copy and return the originals, if asked to do so.

8.1 If the person inheriting the plantation plans to sell it, please see Paragraphs 11 -15 of this Guide.

8.2 If the beneficiary / family intend to keep the planted lands, the following will be required:

(a) Proof of Ownership: The options are;

- Folio in the new owner's name and folio map, **or**,
- if folio is not yet registered, the old Folio in the name of the deceased person, along with Assent & Application, plus our Certification of Land Transfer signed & stamped by solicitor.

(b) Form 5 (for Registration details, and to sign the Declaration & Undertakings on the back). A separate Form 5 is to be completed and signed by each owner and applicant.

(c) A new Mandate for the 2nd instalment Grant, if it applies (e.g. where the 2nd instalment has not yet been paid).

(d) Tax clearance certificates (eTCC) for owner & applicant if total claim exceeds the threshold.

SUCCESSION / INHERITANCE (continued)

9. Rate of Premium on inherited plantations

On inheritance of a plantation the rate payable may be either the higher or lower rate, as follows:

9.1 (a) If the deceased person was claiming premiums at the farmer rate and if the new applicant is a **member of the immediate family of the deceased**, (i.e. husband, wife, parent, son, daughter, brother or sister) the premium may be claimed at the farmer rate. Such new applicants do not have to prove their farmer status to qualify for the farmer rate of premium.

9.1 (b) If the deceased person had been in receipt of the farmer rate of premium and the new applicant is **not a member of the immediate family** of the deceased, the new owner/s may claim farmer rate if they qualify as farmers as defined in Part IV of this Guide. Otherwise non-farmer rates will apply.

9.2 A Joint Management Consent (JMC form) allows owners who so wish, to designate a member of their **immediate family** to manage the plantation and be the sole claimant for the premium payments. A JMC form is available on request. (Owners may cancel the JMC later to take over participation in the scheme, by writing to the Change of Applicant Section.) Tax clearance regulations apply to owner/s who use the JMC facility, as well as to the applicant.

9.3 If the deceased owner qualified for premium at the (lower) non-farmer rate, that rate will apply to that plantation for the full duration of the contract regardless of the farmer status of any new applicant. It cannot be increased to the farmer rate, even if a new applicant would otherwise qualify as a farmer or has that status under other schemes operated by the Department.

10. When change of applicant formalities are completed

10.1 Any arrears accruing while the change of applicant documents are awaited may be claimed if these are received on time; i.e. at least 1 year before end of the term of the premiums. Claims for annual premium payments may continue for the remainder of the term of the contract provided the conditions of the scheme continue to be fulfilled. Periodic inspections take place to ensure that the plantation is being maintained to Forest Service standards for commercial forestry.

10.2 Any further changes of ownership or applicant during the term of the contract must be notified to the Forest Service in advance of sale or transfer. See paragraphs 11–15.

10.3 Damage to the plantation, e.g. by fire or wind, or failure of trees due to frost, drought, disease or damage by insects or animal pests, must be notified to the Forest Service and a plan agreed for the restoration of the plantation. No grant aid is available **for fire and wind damage so insurance is vital**. A forestry company or farm Insurer can arrange insurance.

10.4 If the owner wishes to remove any trees during the term of the scheme he/she must obtain prior permission from the Department and pay back all grants and premiums paid since the date of the original planting. A Felling Licence is always required before cutting down any trees – all trees are protected by the Forestry Act 1946 – see paragraph 5 of this Guide. For further information contact Felling Section of the Department Tel 1890 200 223.

10.5 Debts registered against a forest owner may be recovered by the Forest Service by netting the money off any payments due to the customer under any scheme administered by the Department.

Part III: Sale / Purchase or Transfer of a grant-aided plantation

11. Advance Notice of sale / transfer may help avoid clawback

11.1 Advance notice must be sent to the Forest Service if the owner of a plantation established with grant aid plans to sell or transfer all or part of the planted land during the term of the contract, i.e. normally 20 years. The same applies in the case of any legal restriction on ownership – e.g. caution, inhibition, judgement, mortgage, etc. We will issue a letter explaining the procedures for continuity of scheme payments to the new applicant and send out the Department's forms (incl Form 5). Payments will be suspended until registration of the new applicant has been finalised. Information received about change of ownership will be kept confidential and clients' privacy will be protected.

11.2 If the new owner is not willing to participate in the scheme (i.e. provide proof of ownership and sign the Form 5 to undertake the obligations of the scheme), all grants and premiums paid since the date of completion of the plantation must be repaid to the Department by the previous applicant. **Solicitors should take this into account when drawing up contracts for sale of forestry land** (see also Point 12.4 below). Debt recorded against a customer may be recovered by the Forest Service by netting it off any money due to the customer under other schemes administered by the Department.

11.3 If the planted land is sold or transferred for uses other than commercial forestry, the Minister will exercise the right to require immediate repayment by the previous owner / applicant.

12. The new owner may claim benefits until end of the term.

12.1 A new owner may claim payments under the scheme if, at least one year before the end of the term of the premiums, he/she provides proof of ownership to the Forest Service and signs for the obligations to maintain and protect the plantation to Forest Service standards for commercial forestry for the rest of the term of the scheme, and, in the event of failing to so maintain it, to repay all grants and premiums paid since the date of completion of the plantation.

12.2 If the rate of premium paid to the previous applicant was the farmer rate, the new applicant may be eligible to claim it by fulfilling the criteria for farmer status set out at Part IV of this Guide.

12.3 If the premium was paid to the previous owner at the (lower) non-farmer rate, that rate will apply to that plantation for the full term of the contract. It cannot be increased to the farmer rate even if the new applicant would otherwise qualify as a farmer or has that status under other schemes.

12.4 The Forest Service will not divide grant or premium money according to ownership for part of a year or claim period. The 2nd instalment of the grant may be claimed at Year 4 and is paid when the plantation is up to standard. The parties to any sale or transfer should take these payments into account in the timing and the terms of their legal arrangements and contracts for sale.

13. Paperwork required in sale / transfer cases

13.1 The owner must give prior notice of the intention to sell or transfer ownership. The Forest Service will reply with full details of the procedures and the forms. Payments will be suspended.

13.2 If the sale / transfer does not go ahead, the owner should cancel this notice, in writing. The suspension of the premiums would then be lifted and claims processed in the normal way.

13.3 On completion of the purchase or transfer, the new applicant should forward:

(a) Proof of Ownership. The options are:

- Folio in the new owner's name with folio map, **or,**

- if folio is not yet registered, Folio and folio map in the name of the vendor/ transferor, plus
 - (i) Deed of Transfer with Stamp duty paid, or
 - (ii) Unstamped Deed plus our Certification of Land Transfer signed and stamped by a solicitor. Blank forms for Certification of Land Transfer and a plantation map are available on request.

(b) Form 5 for the applicant's registration details and signed Declaration & Undertakings on the back. A separate Form 5 is to be completed and signed by each owner and applicant.

(c) Form 5b, an indemnity by the former applicant against any further claims by him/her.

(d) A new Mandate for the 2nd instalment Grant, if relevant (i.e. where the 2nd instalment has not yet been paid).

(e) Tax clearance certificates (eTCC) for owner & applicant if total claim exceeds the threshold.

13.4 paperwork required in sale or transfer to a Company

Where a Company wishes to participate in the scheme, the relevant Form 5 must be signed by two principals in the Company. Normally these Form 5s are signed by the Company Secretary and a Director.

Documentary evidence must be provided to satisfy the Department that such persons have the authority to sign on behalf of the Company for the obligations of the scheme which may include full repayment to the Department of any grant or premium payments made, including those made to any previous owner and to any Forestry Company or contractor on foot of a mandate by such previous owner/s.

14. Qualifying for Premiums on plantations bought or transferred

14.1 The new owner may claim payments for the remaining years of the contract if, at least one year before the end of the term of the premiums scheme he /she has provided all necessary ownership documentation to the Forest Service and has signed the Form 5 undertaking the obligations of the scheme, to maintain and protect the plantation to Forest Service standards for commercial forestry for the remainder of the term of the contract, and, in the event of failing to so maintain it, to pay back all grants and premiums paid since the date of completion of planting.

14.2 The rate of premium on purchase / transfer:

(a) If the previous owner received the farmer rate of premium, the new applicant may qualify for it by providing evidence of farmer qualification as defined in Part IV of this Guide. Otherwise the non-farmer rate will apply.

(b) A Joint Management Consent (JMC form available on request) allows owners who so wish, to designate a member of their **immediate family** to manage the plantation and be the sole claimant for premium payments. The owner may end the JMC anytime and take over participation in the scheme him/ herself, using a Termination of JMC form. Tax clearance regulations apply to owner/s using the JMC facility, as well as to the applicant/s.

(c) If the previous owner was paid premium at the (lower) non-farmer rate, that rate will apply to that plantation for the full term of the contract. The rate cannot be increased to the farmer rate even if the new applicant would otherwise qualify as a farmer or has that status under other schemes.

15. After the new Applicant is registered

15.1 Any arrears accruing to either the previous applicant or the new applicant while the new applicant's documents were awaited may be claimed if the proofs are received at least one year before the end of the term of the premiums scheme. Please note paragraph 12.4 above. Claims for premium may continue for the remainder of the term of the contract provided the conditions of the scheme continue to be fulfilled. Periodic inspections take place to ensure that the plantation is being maintained to the scheme standards for commercial forestry.

15.2 Any further changes of owner / applicant must be notified to the Department in advance of sale or transfer, or as soon as possible if the death occurs of an owner / joint owner or joint manager.

15.3 Any damage to the plantation, e.g. by fire or wind, or failure of trees due to frost, drought, disease or damage by insects or animal pests, must be notified to the Forest Service and a plan agreed for the restoration of the plantation. No grant aid is available for fire and wind damage **so insurance is vital**. Your forestry company or farm Insurer can arrange this.

15.4 If the owner wishes to remove any trees during the term of the scheme he/she must obtain prior permission from the Department and repay all grants and premiums paid since the date of completion of planting. A Felling Licence is always required before cutting down any trees – all trees are protected by the Forestry Act 1946 – see paragraph 5 of this Guide. For further information, please contact Felling Section of the Department: Ph 053 9163400

15.5 Debts registered against a forestry customer may be recovered by netting them off money due to the customer under any schemes administered by the Department.

Part IV: Criteria for Farmer rate of premium upon Changes of Owner /Applicant

16. All Applicants for premium must:

Be 18 years of age or over and have a Personal Public Services Number (PPS No.).

17. There are two levels of premium on forests completed since 1993.

(Before 1993, the FP scheme benefitted farmers only and there were upper income limits)

- **Farmer rates**, payable for 20 years, to applicants who farm at least 3 hectares of an agricultural holding in the State and who fulfil the criteria at paragraph 18 below;
- **Non-farmer rates**, payable for 15 years, to those who do not meet the criteria at para 18.

18. Applicants for farmer rate must be engaged in farming

Applicants for farmer rate must be engaged in farming on at least 3ha.in the State (except on inheritance of plantation from immediate family, defined in paragraph 9.1.(a) above)

18.1 Evidence of farming activity in the State must be provided in one of the following forms:

(a) An active REPS registration number, Herd number or registration under the Bovine Tuberculosis Eradication Scheme or other scheme operated by the Department of Agriculture, Food and the Marine. An 'active' registration means that the applicant has been a beneficiary under the particular scheme in the year of the change event or in one of the three preceding years;

OR

(b) Documentary evidence that at least 25% of the applicant's income was derived from farming in the State in the year of the change event or in one of the three preceding years, using any of the following documents:

- A tax assessment, showing level of farming income as well as total income or
- A TF1, (Certificate of Farming Income) completed, signed and stamped by a local Teagasc Land Use Advisor or
- A TF2 (Certificate of Farming Income) completed, signed and stamped by a member of the Agricultural Consultants Association who is based in the locality.

18.2 If the change of ownership / applicant occurred **before 01.01.2007**, applicants for farmer rate must prove that **25% of income was derived from farming**, as at paragraph 18.1(b), in any of the 3 years before the date of planting or any of the 3 years before the change event. Paragraph 18.1(a) does not apply.

NOTE: The Forest Service may require additional supporting evidence of farming activity and may carry out additional checks to verify farmer status in any individual case.

18.3 Detailed notes on completion of the TF1 and TF2 forms at 18.1(b) are available in the scheme conditions and in the forestry schemes manual.

19. Applicants already qualified for farmer rate

An applicant who qualified for farmer premium **on the basis of income assessment on a current contract**, need not have income re-assessed for plantations acquired afterwards.

20. Farm Retirement Scheme

Participants in the **Farm Retirement Scheme** are eligible for non-farmer rates only on plantations acquired or completed after the date of their retirement from farming. However, on inheritance from immediate family (para 9), criteria on income / occupation do not apply.

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