

Afforestation Grant & Premium Schemes 2014-2020

Guide on Change of Ownership / Change of Applicant

NB: This Guide refers only to forestry planted from 1 January 2015.

For forestry planted before that date, see: [Afforestation Grant & Premium Schemes to 31 Dec 2014 Guide on Change of Ownership / Change of Applicant](#)

This Guide summarises the requirements and procedures involved where a change in the ownership and/or change of applicant occurs in respect of forestry grant-aided under the Afforestation Grant and Premium Schemes 2014-2020.

There are a number of important differences between the conditions attaching to new forestry schemes (since 1 Jan 2015) compared to those applicable under the older schemes (up to 2014). The Guide should be read in conjunction with the relevant scheme conditions for the *Afforestation Grant and Premium Schemes 2014-2020* and the *Forestry Standards Manual*, which set out the detailed provisions and requirements attaching to the schemes.

When selling lands on which forestry grant-aid / premia were paid, forest owners should note 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.**

For all enquiries in relation to changes of ownership / applicant, please contact:

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For Schemes and conditions please see: <http://www.agriculture.gov.ie/forests-service/>

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PART 1 - GENERAL ADVICE for owners of grant-aided plantations

The Department's Forestry Division must be notified if there is a change of ownership of a grant-aided plantation during the term of the contract, as defined by the relevant scheme documentation. An original applicant provides signed undertakings when s/he claims payment (*via* Form 2) of the 1st instalment and the 1st premium, including an undertaking to notify the Department in advance of any proposal to sell or transfer ownership of any or all of the afforested land, and to repay all grants and premiums received if this condition or any of the terms of the Afforestation Scheme are breached.

Likewise, the Department should be notified as soon as possible if the death occurs of the owner or joint owner of a grant-aided plantation, so that arrangements can be put in place to continue payment of the grant and premiums to the new owner(s).

Once a change of ownership is notified to the Department, payments will be suspended until the registration of the new applicant(s) has been finalised. Any arrears accruing may be claimed at that stage, provided the documentation needed to register the new owner(s) is submitted to the Department in accordance with the conditions of the scheme.

The documents required at change of ownership stage broadly coincide with those required to claim the 1st premium, *viz.* proof of ownership, and a new signed commitment (on a Form 5&5a) to take over the obligations of the scheme. In addition, the new owner(s) must provide evidence of the reason for the change of ownership / change of applicant and the date of that event.

Payment of annual premiums is always subject to the satisfactory maintenance of the plantation to Department standards, the availability of funds within each financial year, and compliance with the tax clearance regulations.

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-aid / premia were paid takes account of the provisions of the Scheme, including that **where a 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.**

After the term of the contract ends, the Forestry Act 2014 (which controls the felling and replanting of trees) will apply regarding the landowner's use of the property. Owners shall contact the Felling Section of the Department before undertaking any felling or tree clearing operations. The provisions of the Forestry Act 2014 apply, regardless of whether or not the owner participated in the Afforestation Scheme.

PART 2: Participation in the schemes

2.1 Eligibility

Individuals applying for participation in the scheme must be over 18 years of age and hold a Personal Public Service Number (PPSN). Companies must provide their company registration details (CRO number).

In order to qualify for payment of afforestation grants and premiums, the applicant must own, lease or be in joint management of the lands proposed for planting. Applicants must provide documentary

evidence of ownership and of leasing or joint management where relevant, as detailed in the *Forestry Standards Manual*.

2.2 Proof of ownership

Where the applicant is the registered owner of the land, s/he must provide a copy of the Folio documents and Filed Plan (Folio Map) identifying the applicant as the owner.

If an applicant has recently acquired the lands and is in the process of registering ownership with the Property Registration Authority, the following documentation may be submitted:

- Folio and Folio Map in the name of the vendor / transferor *plus*
 - a Deed of Transfer with Stamp duty paid *or*
 - an Unstamped Deed plus the Department's Certification of Land Transfer (see Appendix 2) signed and stamped by a solicitor.

For unregistered land, where the proof of ownership takes the form of an Indenture or Memorial from the Registry of Deeds, such documentation should be submitted along with a map stamped by the applicant's solicitor showing the area of the proposed plantation. The owner's solicitor must also provide a letter confirming that the area of the plantation is included in the Deeds, and that ownership is unchanged since the last entry.

2.3 Leases

An applicant who is leasing lands may be eligible to receive the Afforestation Scheme grant and premiums. The following documentation must be provided in support of the application:

- a copy of the Folio documents and File Plan (Folio Map) or other documentation as described in Section 3.2, identifying the owner of the lands, and
- a copy of the Lease.

The Lease must comply with the following requirements:

- The Lease must be stamped by the Revenue Commissioners or registered with the Property Registration Authority.
- The Lease must be signed and dated and witnessed independently in a solicitor's office.
- The duration of the term of the Lease must be at least 50 years where the crop is predominately coniferous in nature, i.e. approximating the length of a conifer crop rotation and allowing time for reforestation. Longer leases may be required where broadleaf species are planted, as decided by the Department on a case-by-case basis.
- If the Lease covers an area in excess of 21 hectares, it must be shown as a burden on the Folio. Alternatively, a new Folio may be raised for the leased area.
- The lessee (the applicant for the Afforestation Scheme grant and premiums) must be the beneficiary of the annual afforestation premiums.
- The Lease must specify who is to be the beneficiary(s) of the timber crop, and must also state that the plantation will be subject to the Forestry Act 1946 and any subsequent Act regulating the felling and replanting of trees.
- The monetary cost of the Lease must be stated. In the event that this amount is not the commercial rate for leasing the land, an explanation must be provided.

2.4 The Department will refuse applications for grant aid where it is found that an application was made by a person other than a person that meets the above criteria.

PART 3 – CHANGE OF APPLICANT

3.1 Change of Applicant

The Department's Forestry Division must be notified in advance if:

- i. a grant-aided forest is transferred, sold, leased or otherwise disposed of by the applicant during the term of the contract, up to and including payment of the final annual premium; or
- ii. a judgement mortgage or an inhibition or similar restriction is placed on the Folio for the afforested land during the term of the contract.

3.2 In the event of the death of the applicant i.e. owner, joint owner or joint manager who was claiming forestry premium, the Department's Forestry Division must be notified as soon as possible by the deceased's next-of-kin, legal personal representatives or registered forester.

3.3 When notice of a change of ownership is received by the Department, payments will be suspended until a new applicant is registered in the scheme. The new owner will be entitled to apply for all future annual premiums remaining under the afforestation contract, subject to providing proof of ownership and a completed and signed Form 5 to take over the obligations of the Scheme.

3.4 New applicants must submit all necessary documentation as early as possible and **no later than one year after the date of the deed of transfer for the land ownership change, or the date that a deceased applicant's estate is settled.** Failure to meet these deadlines may result in a new owner not being admitted to the scheme and the contract will, in effect, be terminated.

- i. In every case, all documentation relating to change of ownership and applications for payments must be submitted before the expiry of the term of the contract. Applications for admission to the Scheme (Form 5) or for payment of premiums (Form 4) or 2nd instalment grants (Form 3) **made after the expiry of the term of the contract will not be considered.** In exceptional circumstances (e.g. delays in finalising a deceased person's estate), the date by which documents must be submitted may be extended at the discretion of the Minister.
- ii. All decisions regarding eligibility for payment of grant and premiums will be made by reference to the level of compliance with the conditions of the Scheme, including the completion of outstanding remedial works, on the date of the deed of transfer of a plantation or the date that a deceased applicant's estate is settled. For example, where remedial works have not been satisfactorily completed by the date of the deed of transfer, the new owner will be responsible for completion of the remedial works and, once satisfactorily completed, s/he will be eligible to apply for payment of premiums due for the period after the date of the deed and/or for the 2nd instalment grant if not already paid.
- iii. The Minister will refuse payment of premiums and/or 2nd instalment grant to the previous owner(s) if s/he has failed to maintain the plantation to the standard required under the Scheme for the period of the contract under his/her ownership.
- iv. The Department will not divide grant or premium payments according to ownership for part of a year; individual grant or premium payments will not be split or subdivided. The parties to any sale or transfer should take these payments into account in the timing and terms of their legal arrangements and/or contracts for sale.
- v. An exception may be made for the division of 2nd instalment grants if unpaid at the date of sale or transfer, provided that all parties notify the Department in writing that they have agreed on a mutually acceptable allocation of the grant and that both parties will indemnify the Minister against any claim arising in connection with or as a consequence of that agreement.

- vi. In exceptional circumstances affecting a change of ownership process, at his or her discretion, the Minister may extend the closing date of a contract subject to such conditions as may be specified by the Minister.
- vii. **If a new owner is not willing to participate in the Scheme, or is unwilling to give an undertaking to protect and maintain the forest in accordance with the Scheme, the previous owner will be liable for repayment of all grants and premiums previously paid under the Scheme in respect of the afforested land.**
- viii. Where a debt is accrued under a contract for any reason and the cause of the debt has existed and/or continued during the ownership of more than one owner, the debt will be allocated in accordance with the amount of overpayment received by each owner; each owner will be responsible for repaying the overpayment s/he received.

The Minister reserves the right to alter these procedures from time to time.

3.5 Joint Management Consent

A landowner may enter into a joint management arrangement with an immediate family member to jointly manage the forest and assign the afforestation grants and premiums to that family member. The owner consents to forego the right to these payments. A joint management arrangement may only be made between **immediate family members**, namely, husband and wife, sons, daughters, parents, brothers and sisters. Joint Management Consent forms are available at Appendix 8 of the *Forestry Standards Manual*.

The owner of the land and the applicant are both liable for the repayment of grants and premiums paid if the applicant fails to abide by the conditions of the scheme or in the event of sale or transfer of ownership during the 20 year term of the scheme.

A joint management arrangement may be cancelled at any time provided the owner takes over the obligations of the scheme or, repays all grant and premium moneys already paid or, enters into a new joint management arrangement with another member of the immediate family willing to jointly manage the plantation to Department standards and take over the obligations and benefits of the scheme. Any such change should be notified to the Change of Applicant Section.

In these cases, the following documentation is required:

- Documentary evidence, as defined in Section 3.2 above, identifying the owner(s) of the planted lands.
- A Joint Management Consent Form (see Appendix 4) completed by the owner(s) of the lands and the applicant.

Owners who wish to use the joint management facility must comply with the tax clearance requirements.

3.6 Tax Clearance Requirement

It is a condition of this Scheme that all grant-aided activities shall be conducted in compliance with the laws of the State relating, inter alia, to tax and employment. Proof of compliance, such as the provision of Tax Clearance Certificates (eTCC), may be required by the Department.

PART 4 – Other changes to new schemes 2014-2020

There are a number of important differences between the conditions attaching to new forestry schemes (since 1 Jan 2015) compared to those applicable under the older schemes (up to 2014). Please note in particular:

4.1 Premiums and duration of scheme

Premiums will be payable for a maximum period of 15 years. In the case of Agro-forestry, premiums will be payable for a maximum period of 5 years. In the case of the Forestry for Fibre Grant and Premium Category (GPC) the number of premiums payable is for a maximum period of 10 years. [\(Please see sections 8.11 to 8.14 of *Afforestation Grant and Premium Scheme 2014-2020* for specific provisions in relation to duration of contracts.\)](#)

4.2 For the purposes of eligibility and payment of premiums no differentiation is made between farmers and non-farmers.

4.3 Any payments not applied for in accordance with the Scheme and/or not approved for payment by the expiry of the contract may be forfeited at the discretion of the Minister. The Minister reserves the right to forfeit any payments on the basis of non-compliance with the requirements of the scheme.

4.4 Penalties

Failure to comply with the terms and conditions of the Scheme, incorporating The *Code of Best Forest Practice – Ireland; Forestry Standards Manual*; circulars amending scheme requirements; and the relevant environmental guidelines and requirements may result in an appropriate penalty or sanction being applied.

Penalties which shall apply to certain specific breaches of the Scheme are set out in the document titled *Forestry Scheme Penalty Schedules (DAFM 2015)* which are a condition of grant aid. Other breaches of the Scheme not specified in the Scheme Penalties Schedules may also incur a penalty. However, all or any failure to comply with the scheme or any breaches of its terms and conditions may result in a penalty.

Penalties may include the repayment of all or part of the grant(s) and/or all or part of the annual premium(s).

Monetary penalties shall include interest payable at the rate provided for under *S.I. No. 13 of 2006*. Interest shall be calculated for the period elapsing between a date specified in a notification to the applicant of the repayment obligation and either repayment or recovery by deduction.

Penalty amounts may be deducted from future payments due to the Applicant under the forestry schemes or from payments due under other schemes administered by the Department. Where monetary penalties are not paid or recovered within the period requested, the Department may take whatever action is deemed necessary for their recovery. The Department may also recover the monies as a simple contract debt in a court of competent jurisdiction.

The principle of proportionality will apply. Penalties may be imposed that are, in the opinion of the Minister, proportionate to the alleged breach of the Scheme.

The imposition of a penalty shall not relieve an Applicant of an obligation to comply with an instruction from the Minister to undertake remedial works in respect of a forest.

PART 5 – PAPERWORK REQUIRED

5.1 Inheritance: 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.

If the person inheriting the plantation plans to sell it, please see section **5.4** of this Guide.

5.2 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&5a (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.

5.3 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.

5.4 Paperwork required in sale / transfer cases

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

5.5 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 would be processed in the normal way.

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

(a) Proof of Ownership 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
- Deed of Transfer with Stamp duty paid, or
- 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&5a for the applicant's registration details and signed Declaration & Undertakings on the back. A separate Form 5&5a must 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 if any, has not yet been paid).

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

5.7 Sale or transfer to a Company

Where a Company wishes to participate in the scheme, the relevant Form 5/5a 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.

6. Unrecovered Overpayments and the Change of Applicant Process

In certain instances, including forestry change of applicant, Department business IDs may be transferred from one person to another or to a partnership or company. All parties to any forestry transaction should note that, in line with the Department's Debt Management Policy, where an unrecovered overpayment exists on the account of the vendor / transferor, the Department reserves the right to take action to recover the amount outstanding before processing or completing the transfer application.

NB: This Guide refers only to forestry planted from 1 January 2015.

For forestry planted before that date, see: Afforestation Grant & Premium Schemes to 31 Dec 2014
Guide on Change of Ownership / Change of Applicant