

Regulations relating to grants from the Svalbard Environmental Protection Fund

Adopted by the Ministry of the Environment under section 98 of the Act of 15 June 2001 No. 79 relating to the protection of the environment in Svalbard (the Svalbard Environmental Protection Act) and the Storting's budget resolution for 2007.

Section 1. *The purpose of the Fund and use of its capital*

The Fund is to be used for the benefit of the environment in Svalbard by encouraging the initiation of projects to protect the natural environment and cultural heritage of the archipelago, in accordance with the Svalbard Environmental Protection Act and the statutes of the Fund. The Fund's capital is intended to play a part in ensuring that the distinctive natural wilderness of Svalbard is maintained as a source of knowledge, experience and value creation. The Fund is to initiate and promote suitable projects for the purpose of pursuing the ambitious environmental goals that have been set for Svalbard.

The Fund's capital may be used only for projects in Svalbard for the purpose of protecting the environment. It may be used for:

- a) investigations and measures to survey and monitor the state of the environment, the causes of environmental pressure and the environmental impact of activities;
- b) restoration of the environment;
- c) grants for management, maintenance and investigations in accordance with sections 21, 44, third paragraph, and 45 of the Svalbard Environmental Protection Act, in so far as the person responsible or the owner cannot be expected to cover the expenses of these measures;
- d) information and training measures and measures to improve access.

The Office of the Governor of Svalbard serves as the secretariat for the Fund, cf section 8 of the statutes of the Svalbard Environmental Protection Fund.

Section 2. *Target groups*

Applicants for grants from the Svalbard Environmental Protection Fund may be private legal persons, voluntary organisations or public agencies.

Section 3. *Announcement*

Grant appropriations shall be announced in the newspaper *Svalbardposten*. If the board so decides, announcements may also be made in other suitable media.

The announcement shall specify that persons, organisations and agencies that come within the scope of section 2 of these regulations may apply for grants for projects of the types described in section 1 of the regulations. The announcement must also set out other requirements for applications, cf section 4 below, and the deadline for applications.

Section 4. *Requirements for applications*

An application shall be signed by the person who is responsible for implementing the project to which the grant application applies. This person's name, address and telephone number must be stated in the application. In the case of Norwegian businesses, the business enterprise organisation number must be supplied. The number of the bank account to which a grant is to be transferred must also be given.

An application must specify the purpose of the project and contain an adequate description of the project or how it is to be implemented, together with a progress plan.

In the case of an application relating to a project that requires a high level of technical or other specialised expertise, it must be substantiated that the applicant possesses the necessary expertise to carry out the project.

An application must contain a realistic estimate of the costs of implementing the project and a funding plan, and must state the amount applied for. If the project is planned to last for more than one year, the amounts must be presented on an accrual basis. The Governor will lay down further requirements relating to specification of the costs of projects for which grant applications are submitted. If the funding plan is based on contributions, loans or the like from sources other than the Svalbard Environmental Protection Fund and the applicant, the application must specify the amounts involved and indicate the reliability of such sources of funding. Written confirmation that such elements of the funding plan are secured must be provided before the Governor submits a recommendation to the board, cf section 5 of the regulations.

Applications may be submitted in hard copy or electronically. Applications that are submitted in electronic form must be confirmed in hard copy form before the Governor submits a recommendation to the board, cf section 5 of the regulations.

Applications must contain information on any legal authority that exempts the results of the project from public disclosure.

Section 5. *Processing of applications*

Applications that are received after the deadline for submission or that do not satisfy the requirements of sections 1 and 2 of the regulations shall be rejected.

The Governor may ask an applicant for further information about any unclear points in the application.

Priorities among applications are to be decided on the basis of section 1 of these regulations, the statutes of the Fund and the annual allocation letters from the Ministry of the Environment, taking into account the application sums and the capital available from the Fund.

The board will decide which projects are to receive grants and the size of the grants.

Decisions regarding allocations from the Fund are not regarded as individual decisions under the Public Administration Act, cf section 98, third paragraph, of the Svalbard Environmental Protection Act.

Section 6. *Information to applicants on the results of application processing*

The Governor shall ensure that all applicants receive written information on the results of application processing by the board.

An applicant who is awarded a grant shall receive a letter of commitment specifying the size of the grant and all conditions of importance for implementation of the project by the recipient, reporting requirements, information on controls that may be carried out to verify that the grant has been used in accordance with the conditions for the commitment, and informing the applicant that repayment of the grant may be required in the event of non-compliance with the conditions on which it was awarded.

Section 7. *Disbursement plan for grants*

Confirmation that the conditions in the letter of commitment are accepted must be received before any disbursements are made.

The Governor will determine the disbursement plan on the basis of the size of the grant. Disbursements shall normally be made in arrears, in line with the recipient's expenditure in implementing the project. However, the timing of disbursements must not prevent the implementation of projects that have received grants. Disbursements may be made in advance if it has been documented that this is necessary for the implementation of the project.

If a grant is to be paid in instalments, the last instalment shall be withheld until a final report has been submitted and has been approved by the Governor.

If the letter of commitment covers a period of several years, annual disbursements shall be limited to the actual expenditure in the year in question.

Section 8. Requirements for recipients of grants to provide reports and accounts

The Governor will determine the requirements for reporting by grant recipients. Non-governmental recipients may be required to submit auditors' statements.

A final report shall be submitted at the latest three months after the project has been completed. The final report shall contain a statement of accounts showing costs and funding, specified as required by the Governor, cf section 4 above, and information on whether the project was implemented in accordance with the conditions on which the grant was awarded, or whether adjustments or changes were made during the project, together with the reasons for this if there is no documentation that changes were agreed with the Governor. The final report shall also contain the results of the project and any data from investigations carried out as part of the project.

Exemptions may be made from the requirements of the second paragraph if special reasons so indicate.

In cases where it has been decided that the grant is to be paid in instalments, progress reports should normally be required before the instalments are paid, cf section 7 above.

Section 9. Control of grant recipients

The Governor will carry out controls to verify that grants are used in accordance with the conditions on which they were awarded. Controls may also be undertaken by the Office of the Auditor General, cf. section 12, third paragraph, of the Act relating to the Office of the Auditor General.

If any doubt arises as to whether a government agency has used a grant in accordance with the conditions on which it was awarded, a report shall be obtained from the agency in question. If this does not clarify the issue, the matter shall be raised with the Ministry of the Environment.

Section 10. Reimbursement of grant funding

If it is found that a grant has been used contrary to the conditions on which it was awarded, the board may decide to require its reimbursement. The recipient of the grant shall be given written notice of this as soon as possible, with a reasonable time limit for reimbursement. Such claims are to be dealt with in accordance with Chapters 5.4.2.5, 5.4.3, 5.4.4 and 5.4.5 of the Provisions on financial management in central government.

Section 11. Entry into force

These regulations enter into force immediately.

1. Comments on the individual provisions

Re section 1 The purpose of the Fund and use of its capital

The wording of this section is largely taken from the statutes of the Svalbard Environmental Protection Fund and section 98, second paragraph, of the Svalbard Environmental Protection Act. Section 98 of the Act sets out provisions on the use of the Fund's capital, but within this framework the Ministry may make further provisions on how the Fund's capital may be used, for example in the form of statutes and allocation letters to the Fund.

Research projects are eligible for grants from the Fund, but they must as a general rule be carried out within the archipelago itself, as set out in the legislative history of the Svalbard Environmental Protection Act, which specifies that the Fund must ensure that its capital is

used only in Svalbard, in accordance with the Svalbard Treaty, and for environmental purposes only.

The Fund is not intended to finance the normal tasks of the Office of the Governor of Svalbard (afterwards referred to as “the Governor”) in its role as environmental authority.

The Ministry would like to emphasise that the second paragraph of section 1 is based on the Svalbard Environmental Protection Act, and does not rank the types of projects for which grants may be awarded. Furthermore, the Ministry would like to make it clear that projects to be carried out in the settlements are also eligible for funding, but that the Fund cannot provide support for ordinary activities in the land-use planning areas. The Fund’s capital is to be used for projects in all parts of the archipelago.

As regards projects concerning protected structures and sites, the Ministry would like to point out that the owner of a structure or site is responsible for normal maintenance and management. This can be derived from section 45, last paragraph, of the Svalbard Environmental Protection Act. The second paragraph of section 45 specifically authorises the Governor to carry out management and maintenance on another person’s property. However, the owner or rightsholder must be notified beforehand. This provision does not prevent owners from taking similar steps themselves.

Under section 45, second paragraph, of the Svalbard Environmental Protection Act, measures over and above ordinary maintenance, such as restoration, rebuilding or investigations, require the approval of the Directorate for Cultural Heritage. An owner may also apply for funding for such purposes from the Fund, see the legislative history of the Act (Proposition No. 38 (2000-2001) to the Odelsting, p. 204), which states that the Svalbard Environmental Protection Fund may provide funding for certain types of investigations of protected structures and sites. Thus, an owner can apply for a grant from the Fund for projects of the types mentioned in the sections of the Act referred to in section 1, second paragraph, c, of these regulations.

The Office of the Governor of Svalbard serves as the secretariat for the Fund (this function is afterwards referred to as “the secretariat”).

Re section 2 Target groups

All private legal persons, voluntary organisations and public agencies, with the exception of the Governor of Svalbard and superior administrative bodies, are target groups and may apply for grants from the Fund. If directorates take on consultancy-type tasks that are not part of their normal duties, the Ministry will not exclude the possibility that their costs can be covered as part of a project.

Re section 3 Announcement

It is important to ensure that announcements reach all potential applicants for grants. Announcements must therefore be published in the newspaper *Svalbardposten*. These will mainly reach potential applicants in Svalbard. To ensure that potential applicants in mainland Norway are reached, announcements may also be made in other suitable media. The Internet is of particular interest; for instance, announcements could be posted on the Fund’s website or the Governor’s website. If appropriate, it may also be decided to publish announcements in printed media on the mainland.

Announcements must specify all the requirements for applications, including the deadline for submission.

Since the Fund’s capital is formally allocated through the government budget, the cash basis method of accounting will be used. This means that the grant appropriation must in principle be allocated to projects that are to be carried out in the course of the same budgetary

year. It is therefore important to announce the grant appropriation as early as possible. The announcement could for example be published as soon as the budget proposal for the year in question has been submitted to the Storting (Norwegian parliament).

A suitable deadline must be set for submitting applications, so that applicants have a reasonable amount of time to familiarise themselves with the requirements for applications and to draw up applications. Grants for a particular year cannot be awarded before the allocation letter from the Ministry has been received.

If it is considered convenient, for example on the basis of the amount of funding available, announcements may be published twice a year.

Re section 4. Requirements for applications

The first paragraph is intended to ensure that the applicant is clearly defined, among other things so that it is clear who is responsible for implementation of a project for which a grant is awarded. This is particularly important in cases where controls are carried out to verify that a grant has been used in accordance with the conditions on which it was awarded.

The second paragraph requires the applicant to describe the project and its purpose. The description must be sufficiently detailed to give a clear picture of the project.

If a project requires a high level of technical or other specialised expertise, it is important to ensure that the applicant possesses the necessary expertise to carry out the project. If this is not the case, there may be a substantial risk that the project will not be completed.

The fourth paragraph requires the application to contain a realistic estimate of the costs of implementing the project. The secretariat will lay down further requirements for how costs are to be specified. It is important that they are specified in a way that makes it possible to assess whether the estimate is realistic, and so that different cost components and types of costs are separated clearly enough. Cost estimates are essential in deciding priorities among applications. Only a limited amount of funding will be available, and costly projects could require a considerable proportion of this. It will be necessary to ensure that such projects do not block the way for projects with lower costs but with higher overall benefits relative to their costs.

The same paragraph contains a requirement to include a funding plan in a grant application. Since the funding available will be limited, it may be necessary for applicants to provide a share of the funding or for contributions to be found from other sources, grants and/or loans. A funding plan is important as one means of ensuring that projects that receive grants from the Fund are completed; among other things, it will make it possible to assess whether it is realistic to assume that a project will be implemented. If a funding plan is based on contributions, loans or the like from others, written documentation of this must be provided before the secretariat submits a recommendation to the board, see section 5 of the regulations.

Applications may be submitted in electronic form. However, there are at present no secure routines for electronic identification of applicants, and such applications must therefore be confirmed in writing before the secretariat sends its recommendation to the board.

The results of investigations supported by the Fund must be made available to the public, and the requirement of the sixth paragraph of section 4 has been included to ensure this. The provision must be considered in the context of the rights and duties grant recipients have under other legislation, such as the Public Information Act.

Re section 5. Processing of applications

The secretariat must ensure that any unclear points in applications are clarified, and may ask for further information. However, it is important to note that this must not result in

submission of a new application, so that an applicant in practice is given an extension of the deadline for submitting applications. In accordance with good administrative practice, the Governor has a duty to obtain sufficient information about the matter to be able to submit a recommendation to the board. However, the Governor must be careful to ensure that matters raised with applicants in such cases do not concern information on the substance of the application.

Applications that do not meet the requirements or that are received after the deadline must be rejected.

The third paragraph refers to the criteria for determining priorities among applications. Applications are primarily to be assessed on the basis of the purpose of the Fund, its statutes and the allocation letters from the Ministry. These must be considered in relation to the application sum and the size of the grant appropriation.

The Environmental Protection Fund is a government fund and therefore organised as part of the public administration. This means that as a general rule, the Public Administration Act and the Public Information Act will apply to the Fund's activities. Section 5 states that the board will decide which projects are to receive grants and the size of the grants. The board's decisions are not considered to be individual decisions, and therefore cannot be appealed, see section 98, third paragraph, of the Svalbard Environmental Protection Act.

Re section 6. Information to applicants on the results of application processing

All applicants are entitled to a reply to their applications. This also applies to applications that are rejected on the grounds set out in section 5 and to applications that are not given high enough priority for grants to be awarded.

The section also deals with the requirements for the information to be given to applicants who are awarded grants. These requirements follow particularly from section 7 (disbursement plan), section 8 (reporting requirements), section 9 (control) and section 10 (reimbursement) of the regulations.

In addition, the information must identify the project that has been awarded a grant unambiguously, including the cost estimate, funding plan (including the amount of the grant awarded) and progress plan, and the information needed for the grant to reach the recipient. Furthermore, the recipient must be told how long the letter of commitment is valid and be given a time limit for accepting the conditions. Recipients will also be required to retain accounting records for up to 10 years in accordance with the Accounting Act.

Re section 7. Disbursement plan for grants

The recipient must confirm that all conditions in the letter of commitment are accepted before any disbursements can be made.

The secretariat (the Governor) has been authorised to draw up guidelines for the disbursement of grants.

The Storting has issued instructions to the public administration to ensure that disbursements of government funding are as far as possible made in pace with expenditure by the recipients of such funding. Government funding is not to be used to provide a liquid reserve or to earn interest for recipients. This means that the pace of disbursements must be adjusted to expenditure by recipients. Disbursements in this case must also be adapted to payment routines at the Office of the Governor, for example by paying the grant in equal amounts instalments, the number to be determined on the basis of the size of the grant and how long it will take to complete the project.

Disbursements are normally to be made in arrears, but may be made in advance if this is necessary for the implementation of the project. Use of this option must be assessed in

relation to the recipient's financial situation. If payment in arrears will involve considerable financial problems for the recipient, payments may be made in advance.

If the grant is to be paid in instalments, the need for progress reports must be assessed, see section 8. In such cases, the secretariat must have approved the final report before the final payment can be made.

Since the cash basis method of accounting is to be used, one year's disbursements must cover expenditure in the same year. If a letter of commitment is issued concerning a funding for a project that is to continue beyond the end of the year, annual disbursements must be limited to expenditure by the recipient in the year in question.

The disbursement plan must be set out in the letter of commitment.

Re section 8. Requirements for recipients of grants to provide reports and accounts

The secretariat will determine the requirements for reporting by grant recipients. These must be adapted to the type of project. The function of the reports is to confirm compliance with the conditions on which funding was awarded. The starting point will be the application, together with any changes that have been agreed in writing. The scope of the report must also be considered in relation to the size of the grant, the proportion of the total costs of the project met by the grant, and the type of project. For example, for projects to restore cultural heritage structures and sites or other technical installations, photographs taken before and after the work is done could form part of the documentation. This can reduce the need for written documentation.

The secretariat must also consider whether there is a need for auditor's statements. This does not apply in the case of grants made to governmental bodies that are audited by the Office of the Auditor General. The need for auditor's statements must be considered on the basis of the size of the grant and the cost of obtaining such statements. A requirement for an auditor's statement must not make it difficult for the recipient to fund the project for which a grant has been awarded. If an auditor's statement is required, it must be clear which types of control the auditor is expected to carry out. These must come within the competence of an auditor. It would be difficult, for example, for an auditor to evaluate aspects of the implementation of a project that require technical or other specialised expertise. An auditor's statement is part of the control system to verify that grants are used in accordance with the conditions on which they were awarded, and should provide confirmation that the accounts are satisfactory, but it does not relieve the secretariat of its responsibility for verifying compliance with the conditions for awarding funding.

The final report must as a general rule be submitted at the latest three months after completion of a project. As set out in section 7 of the regulations, the last instalment of the grant is to be withheld until the final report has been received and approved by the secretariat. This is intended as an incentive for recipients to deliver their final reports as soon as possible after completing projects. The recipients of a grant is responsible for producing the final report, but the secretariat must also follow this up and send a reminder if no final report has been received from a project that should have been completed according to the progress plan. A final report must contain a statement of accounts specified in the same way as the budget and funding plan. It must also include documentation of compliance with the conditions on which the grant was awarded. Any changes that were made and not agreed in writing with the secretariat must be described in the report. The secretariat must consider whether such changes to the project are so significant that the project no longer satisfies the conditions on which the grant was awarded, see section 10 of the regulations. The report must also include the results of any investigations financed by the Fund. This provision must be considered in

the context of the rights and duties grant recipients have under other legislation, such as the Public Information Act.

For projects where the grant is to be paid in instalments, the secretariat must assess the need for progress reports to be submitted before each instalment is paid. Any such requirement must be included in the letter of commitment. Unless special circumstances indicate otherwise, it is sufficient for a grant recipient to confirm that work on the project is progressing in accordance with the plans submitted, see the comments to section 7 above.

Requirements relating to reporting must be set out in the letter of commitment.

Re section 9. Control of grant recipients

Section 10, second paragraph, of the Appropriation Regulations requires grant administrators to reserve the right to carry out controls to verify that funding is used in accordance with the conditions on which it was granted. In the present case, the Governor is the grant administrator. Similarly, under section 12, third paragraph, of the Act relating to the Office of the Auditor General, the Auditor General has a right to make the investigations it considers necessary to verify that a grant has been used in accordance with the conditions on which it was granted. A letter of commitment for a grant under this scheme must therefore state that both the Governor and the Auditor General reserve the right to carry out such controls.

The Governor's control activities should normally be based on the reports and accounts that have been received, and should involve checking compliance with formal requirements and evaluating the credibility of the information received, based among other things on the Governor's general knowledge of the recipient and the field/discipline of the project.

If such control activities or information obtained in other ways indicate that there is a need for further checks, the Governor must first make a risk analysis and consider the significance of any non-compliance; this must include a cost-benefit assessment of further controls. If it is decided that further controls are necessary, the recipient's auditor should be informed and if appropriate invited to take part. While such controls are being carried out, no further disbursements should be made, and no new letters of commitment should be issued to the recipient in question until the matter has been finally resolved.

Re section 10. Reimbursement of grant funding

If it is found that a grant has not been used in accordance with the conditions on which it was awarded, the recipient may be required to repay all or part of the grant. As a general rule, repayment will be required, but this must be considered in relation to how serious the breach of the conditions is considered to be. A recipient who finds during work on the project that it is appropriate to make changes from the original plans must as a general rule discuss this with the secretariat, and the changes must be approved by the secretariat before they are made. However, situations may arise where this procedure is not followed. In such cases, the board must assess whether or not the grant would have been awarded for the purpose for which the funds have been used. The board should generally require reimbursement of the grant unless important considerations indicate otherwise.

Claims for reimbursement of grants are to be dealt with in accordance with Chapters 5.4.2.5, 5.4.3 and 5.4.5 of the Provisions on financial management in central government. If it is proposed to cancel such claims, the matter must under Chapter 5.4.4 of the said Provisions be raised with the Ministry of the Environment, which will take the matter further.

Re section § Entry into force

The regulations entered into force on 30 April 2007.

