

1993 No. 449

AGRICULTURE

**The Hill Livestock (Compensatory Allowances)
Regulations (Northern Ireland) 1993**

Made 15th November 1993

The Department of Agriculture being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Economic Community, in exercise of the powers conferred upon it by the said section 2(2) and of every other power enabling it in that behalf hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1993.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the use of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

“applicant” means a person who has applied for a compensatory allowance under these Regulations;

“approved breed” means any hardy breed or cross breed of sheep approved by the Department for the purposes of these Regulations, being a breed or cross breed which is suitable for breeding and rearing on land in respect of which the severity of the permanent natural handicaps affecting the breeding and rearing of sheep on that land is greater than that affecting the breeding and rearing of sheep on severely disadvantaged land generally;

(a) S.I. 1972/1811

(b) 1972 c. 68 section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. (N.I.) 1984 No. 253

(c) 1954 c. 33 (N.I.)

- “authorised person” means a person (whether or not an officer of the Department) who is authorised by the Department, either generally or specially, to act in matters arising under these Regulations;
- “breeding cow” means a female bovine animal, comprised in a regular breeding herd, which is not maintained primarily for the production of milk and which, on or before the qualifying day—
- (a) has borne a calf and is capable of lactation, or
 - (b) has been brought into the herd primarily for the purpose of replacing an animal which has borne a calf, and is, in the opinion of the Department, suitable for the purpose of bearing a calf before 15th November in the year in respect of which an application for a compensatory allowance is made under these Regulations;
- “Commission Regulation” means Commission Regulation (EEC) No. 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(a);
- “Council Regulation” means Council Regulation (EEC) No. 2328/91(b) on improving the efficiency of agricultural structures as amended by Council Regulation (EEC) No. 870/93(c);
- “the Department” means the Department of Agriculture for Northern Ireland;
- “designated map” means the map marked “map of less-favoured farming areas in Northern Ireland”, dated 8th May 1991, signed by the Secretary of State and deposited at the Offices of the Department at Dundonald House, Upper Newtownards Road, Belfast, BT4 3SB;
- “disadvantaged land” means the land shown coloured blue or coloured pink on the designated map, being land—
- (a) which is, in the opinion of the Department, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and
 - (b) whose agricultural production is, in the opinion of the Department, restricted in its range by, or by any combination of, soil, relief, aspect or climate;
- “ECU” means the unit of account used for the purposes of the common agricultural structures policy of the European Community, and any reference in these Regulations to a specified number of ECU in relation to a compensatory allowance shall be taken to be a reference to the sterling equivalent of that number of ECU converted into sterling at the agricultural exchange rate applicable on the qualifying day in the year in which the compensatory allowance is paid;
- “eligible land” means an area of land of not less than three hectares—

(a) OJ No. L391, 31.12.92, p. 36

(b) OJ No. L218, 6.8.91, p. 1

(c) OJ No. L91, 15.4.93, p. 10

- (a) which is situated in an area included in the list of less-favoured farming areas adopted by the Council or the Commission of the European Communities under Article 2(2) of Council Directive No. 75/268/EEC(a) on mountain and hill farming and farming in certain less-favoured areas as amended by Council Directive 80/666/EEC(b), which list is contained in Council Directive 84/169/EEC(c) as amended by Commission Decision 91/25/EEC(d), and
- (b) which is severely disadvantaged land or disadvantaged land;
- “ewe” means a female sheep which, on the qualifying day, is more than one year old;
- “forage area” means the area of land producing plants grazed by, or fed to, livestock;
- “livestock unit” means the unit of measurement of numbers of livestock described in Article 19 and Annex 1 of the Council Regulations;
- “occupier” includes a person who has a right to use eligible land for the purpose of grazing cattle or sheep;
- “overgrazing” means grazing land with livestock in such numbers as adversely to affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree, or in such numbers that the need for supplementary feeding leads to excessive trampling or poaching of the land by the animals or excessive rutting by vehicles used to transport the feed;
- “qualified flock” means a flock of ewes which is kept on eligible land, or on eligible land and other land used with it, primarily for the breeding and rearing of lambs, and which is, in the opinion of the Department, maintained and managed in accordance with sound husbandry practice;
- “the qualifying day” means, in respect of any year in which a compensatory allowance may be paid under these Regulations, 1st January in that year;
- “regular breeding herd” means a herd of cattle which is kept on eligible land, or on eligible land and other land used with it, and which—
- (a) is, in the opinion of the Department, maintained primarily for the purpose of breeding and rearing calves, and
- (b) is in the opinion of the Department, maintained and managed in accordance with sound husbandry practice;
- “relevant afforested land” means land which in the opinion of the Department was converted to forest on or after 1st January 1986 and before 1st January 1988 by or on behalf of a person to whom a

(a) OJ No. L128, 19.5.75, p. 1
(b) OJ No. L180, 14.7.80, p. 34
(c) OJ No. L82, 26.3.84, p. 67
(d) OJ No. L16, 22.1.91, p. 25

compensatory allowance was paid in respect of that land before the date when the conversion to forest was completed under the Hill Livestock (Compensatory Allowances) Regulations 1984(a), the Hill Livestock (Compensatory Allowances) Regulations 1979(b); or the Hill Livestock (Compensatory Allowances) Regulations 1975(c); but land shall cease to be relevant afforested land for the purposes of these Regulations 15 years after the date when such conversion was completed;

“retirement pension” means a category A and category B pension within the meaning of section 20(1)(f) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(d); a category C and category D pension within the meaning of section 63(f) of that Act, or a graduated retirement benefit as referred to in Schedule 1 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978(e);

“severely disadvantaged land” means—

(a) the land shown coloured pink on the designated map, being land—

(i) which is, in the opinion of the Department, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and

(ii) whose agricultural production is, in the opinion of the Department, severely restricted in its range by, or by any combination of, soil, relief, aspect or climate;

“sound husbandry practice” includes practice in relation to the grazing and feeding of livestock;

“specially qualified flock” means a qualified flock—

(a) in which all, or in the opinion of the Department substantially all, of the ewes comprised in the flock are of an approved breed;

(b) in which the ewes are in the opinion of the Department, maintained in three distinct age groups; and

(c) which is maintained on severely disadvantaged land or on severely disadvantaged land and other land used with it;

“specified control measure” means any check which a member state is required to carry out under Article 6 of the Commission Regulation.

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- (a) S.I. 1984/2024 to which the relevant amendment is S.I. 1985/2075. There are other amendments which are not relevant because S.I. 1984/202 was revoked in so far as it applied to Northern Ireland by S.R. (N.I.) 1987 No. 92
- (b) S.I. 1979/1748, amended by S.I. 1980/2028, 1981/1843, 1982/1886 and revoked by S.I. 1984/2024
- (c) S.I. 1975/2210, amended by S.I. 1976/1203, 1977/1960, 1979/941 and revoked by S.I. 1979/1748
- (d) 1992 c. 7
- (e) S.R. 1978 No. 105

Compensatory allowances

3.—(1) Subject to the provisions of these Regulations, the Department may, in respect of the year 1994 and each succeeding year, pay to any person who is on the qualifying day in that year the occupier of eligible land, a compensatory allowance for cattle and sheep owned or leased under a formal leasing arrangement by him on that day, being cattle comprised in a regular breeding herd and sheep comprised in a qualified flock.

(2) A compensatory allowance in respect of any year shall be paid to an occupier of eligible land only if (except in the case of such an occupier who is in receipt of a retirement pension) he has entered into a written undertaking in such form as the Department may require to the effect that he will, for a period of five years from the first payment of a compensatory allowance made under these Regulations, the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1987(a) or the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1992(b) continue to use eligible land for agricultural purposes.

(3) Subject to regulations 3(5), 3(6) and 4, a compensatory allowance for cattle shall be payable in respect of the number of breeding cows comprised in a herd on the qualifying day at a rate of 20.3 ECU per cow.

(4) Subject to regulations 3(5), 3(6) and 5, a compensatory allowance for sheep shall be payable in respect of the number of ewes comprised in a flock on the qualifying day at a rate of 3.045 ECU per ewe.

(5) Notwithstanding the provisions of paragraphs (3) and (4) above, the total amount of a compensatory allowance which may be paid in respect of any year—

(a) to the occupier of severely disadvantaged land, shall not exceed £81.13 or 123 ECU for each hectare of such land which appears to the Department to have been available to that occupier in the preceding year for the maintenance of his herd or flock or which is relevant afforested land;

(b) to the occupier of disadvantaged land, shall not exceed £60.85 or 123 ECU for each hectare of such land which appears to the Department to have been available to that occupier in the preceding year for the maintenance of his herd or flock or which is relevant afforested land.

(6) Where in this regulation alternative rates in sterling and in ECU are given, the rate which results in the lower payment in sterling shall apply.

Provisions with respect of cattle

4.—(1) A compensatory allowance for cattle shall not be paid in respect of any breeding cow the use of which for breeding would not, in the opinion of the Department, be in accordance with sound husbandry practice.

(2) Where, in the opinion of the Department, an appreciable quantity of milk has been produced by a regular breeding herd in the period of 12 months immediately preceding the qualifying day, and such milk has been sold or

(a) S.R. (N.I.) 1987 No. 92 as amended by S.R. 1987 No. 445, S.R. 1990 No. 36, S.R. 1991 No. 58 and S.R. 1991 No. 286

(b) S.R. (N.I.) 1992 No. 68 as amended by S.R. 1993 No. 16

used for the manufacture of milk products for sale, a compensatory allowance shall be payable in relation to that qualifying day in respect of the number of breeding cows comprised in the herd on that day, reduced by such number as appears to the Department to be the number of cows in the herd required to produce that quantity of milk in that period.

(3) Subject to paragraph (1) and notwithstanding paragraph (2) and the foregoing provisions of these Regulations, the number of breeding cows in respect of which a compensatory allowance may be paid in relation to any qualifying day shall not exceed—

- (a) the number of breeding cows comprised in the herd on the date of the application for that allowance;
- (b) the number of breeding cows maintained in the herd for a total of 120 days between 1st January in the year preceding that qualifying day and the date of the application for that allowance, inclusive, or, in the case of a herd newly established or re-established between those dates, for such smaller number of days between those dates as the Department may determine, disregarding—
 - (i) any seasonal variation in number, and
 - (ii) any losses which the Department is satisfied have been or will be made good, or cannot reasonably be made good, within a reasonable period;
- (c) the number of breeding cows held by the applicant on eligible land, or on eligible land and other land used with it, for a period of two months from the day following lodgement of the application for that allowance;
- (d) the number of breeding cows which, in the opinion of the Department, is reasonable, having regard to the number of calves produced in the year preceding the qualifying day or, in the case of a herd newly established or re-established in that year, in such shorter period as the Department may determine;
- (e) the number of breeding cows which the Department determines to be the number which the land on which the herd was grazed and maintained in the year preceding that day was, in the opinion of the Department, capable of carrying without overgrazing the whole or any part of it, taking into account the number of other animals grazed and maintained on that land in that year; or
- (f) the number of breeding cows which, when added to the number of ewes in a qualified flock grazed and maintained on eligible land available to the applicant's herd and, as the case may be, flock throughout the period referred to in sub-paragraph (b), is equivalent to 1.4 livestock units per hectare of the forage area of the eligible land so available.

Provisions with respect to sheep

5.—(1) A compensatory allowance for sheep shall not be paid in respect of any ewe the use of which for breeding would not, in the opinion of the Department, be in accordance with sound husbandry practice.

(2) Subject to paragraph (1) and notwithstanding the foregoing provisions of these Regulations, the number of ewes in respect of which a compensatory allowance may be paid in relation to any qualifying day shall not exceed—

- (a) the number of ewes comprised in the flock on the date of the application for that allowance;
- (b) the number of ewes maintained in the flock for a total of 120 days between 1st January in the year preceding that qualifying day and the date of the application for that allowance, inclusive, or, in the case of a flock newly established or re-established between those dates, for such smaller number of days between those dates as the Department may determine,—disregarding—
 - (i) any seasonal variation in number, and
 - (ii) any losses which it is satisfied have been or will be made good, or cannot reasonably be made good, within a reasonable period;
- (c) the number of ewes held by the applicant on eligible land, or on eligible land and other land used with it, for a period of two months from the day following lodgement of the application for that allowance;
- (d) the number of ewes which, in the opinion of the Department, is reasonable, having regard to the number of lambs produced in the year preceding the qualifying day or, in the case of a flock newly established or re-established in that year, in such shorter period as the Department may determine;
- (e) a number calculated at the rate of—
 - (i) six ewes for each hectare of severely disadvantaged land, and
 - (ii) nine ewes for each hectare of disadvantaged land, which is relevant afforested land or forage area and which the Department is satisfied was available for the maintenance of the flock throughout the period referred to in sub-paragraph (b);
- (f) the number of ewes which the Department determines to be the number which the land on which the flock was grazed and maintained in the year preceding that day was, in the opinion of the Department, capable of carrying without overgrazing the whole or any part of it, taking into account the number of other animals grazed and maintained on that land in that year; or
- (g) the number of ewes which, when added to the number of cattle comprised in a regular breeding herd grazed and maintained on eligible land available to the applicant's flock and, as the case may be, herd throughout the period referred to in sub-paragraph (b), is equivalent to 1.4 livestock units per hectare of the forage area of the eligible land so available.

Applications for compensatory allowances

6.—(1) An application for a compensatory allowance in respect of any year shall be lodged with the Department between 15th November in the preceding year and 20th February in the year in respect of which the application is made (inclusive).

(2) An application for a compensatory allowance shall be made in such form as the Department may require, and no person shall make more than one such application in respect of any year.

Powers of authorised persons

7.—(1) An authorised person may, at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority to exercise the powers specified in this regulation for the purposes of—

- (a) carry out any specified control measure;
- (b) ascertaining whether an offence under regulation 12 has been or is being committed; or
- (c) ensuring that compensatory allowances under these Regulations are paid in proper cases only.

(2) An authorised person may enter any land, other than land used only as a dwelling, which is, or which such person has reasonable cause to believe to be, occupied by an applicant or used by him for grazing a herd or flock to which an application for a compensatory allowance relates.

(3) An authorised person who has entered any land by virtue of this regulation may—

- (a) inspect and verify the total area of that land, including forage area;
- (b) inspect that land for the purposes of determining whether or not it has been overgrazed;
- (c) carry out any other activity which is a specified control measure; and
- (d) count and inspect any animals on that land.

(4) An authorised person entering any land by virtue of this regulation may take with him such other persons acting under his instructions as he considers necessary.

(5) An authorised person may—

- (a) require that an applicant or any employee, servant or agent of an applicant furnish for inspection any document or other record in his possession or under his control relating to any animals kept or formerly kept by him, and where any such record is kept by means of a computer, gives access to inspect and check the operation of that computer and any associated apparatus or material which is or has been used in connection with that record; and
- (b) make such copies of any document or other record referred to in subparagraph (a) as he may think fit.

Assistance to Authorised Officer

8. An applicant, any employee, servant or agent of an applicant or any person in charge of animals on the land shall give to an authorised person such assistance as the authorised officer may reasonably request so as to enable the authorised person to exercise any power conferred by regulation 7 and in particular, in relation to any animal shall arrange for the collection, penning and securing of such animal, if so required.

Release from undertaking

9. A person who applies for, or who is in receipt of, a compensatory allowance under these Regulations shall be released from the undertaking referred to in regulation 3(2), if—

- (a) he is in receipt of a retirement pension; or
- (b) he is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond his control; or
- (c) he ceases farming and at least 3 hectares of his eligible land, or the eligible land used by him for the grazing of animals, continues to be used for agricultural purposes.

Withholding or recovery of compensatory allowances

10.—(1) Where any person with a view to obtaining payment to himself or to any other person of a compensatory allowance under these Regulations makes any statement or furnishes any information which is untrue or misleading in a material particular, the Department shall be entitled to withhold or to recover on demand the whole or any part of any compensatory allowance payable or paid to him or to such other person.

(2) Where any person having given an undertaking under regulation 3(2), which has not been released in accordance with regulation 9, fails in any way to comply with the terms thereof, the Department shall be entitled to withhold or to recover on demand the whole or any part of any compensatory allowance payable or paid to him.

(3) Where an applicant, or an employee, servant or agent of an applicant, intentionally obstructs an authorised person, or a person accompanying such authorised person and acting under his instructions, from exercising any power conferred by regulation 7, or fails without reasonable excuse to comply with a request made by an authorised person when carrying out any such power, the Department shall be entitled to withhold or to recover from that applicant the whole or any part of any compensatory allowance payable or paid to him.

Rate of interest

11. Except where the Department recovers from any applicant any compensatory allowance or part of any compensatory allowance paid to that applicant as a result of an error of the Department, for the purpose of Article 14(1) of Commission Regulation, interest shall be charged at the rate of one percentage point above the sterling three months London Interbank Offered Rate on a day to day basis for the period specified in that Article.

Offences

12. It shall be an offence for a person—

- (a) intentionally to obstruct an authorised person in the exercise of a power conferred by regulation 7;
- (b) without reasonable excuse, to fail to comply with a request made under regulation 8; or

- (c) knowingly or recklessly to make a statement or furnish any information which is untrue or misleading in a material particular where the statement is made or the information is furnished for the purpose of obtaining for himself or any other person the whole or any part of any compensatory allowance.

Punishment of offences

13.—(1) A person guilty of an offence under regulation 12(a) or (b) shall be liable on summary conviction to a fine not exceeding £400.

(2) A person guilty of an offence under regulation 12(c) shall be liable on summary conviction to a fine not exceeding £2,000.

Revocation and savings

14. The Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1992 and the Hill Livestock (Compensatory Allowances) (Amendment) Regulations (Northern Ireland) 1993 are hereby revoked except in relation to any compensatory allowance in respect of the year 1993 or any preceding year.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 15th November 1993.

(L.S.)

D. A. J. Hirrell

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations consolidate with amendments the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1992, as amended. The Regulations comply with Council Directive 75/268/EEC on mountain and hill farming and farming in certain less-favoured areas, as amended by Council Directive No. 80/666/EEC, and with Articles 17 to 19 of Council Regulation (EEC) No. 2348/91 on improving the efficiency of agricultural structures, as amended by Council Regulation (EEC) No. 870/93. The Regulations also make provision for the first time for the administration and enforcement of provision for payment of compensatory allowances contained in Commission Regulation (EEC) No. 3887/92 laying down detailed rules for applying the integrated administration and control system for certain European Community aid schemes.

The Regulations continue to provide for the payment of an annual compensatory allowance for cattle and sheep which are maintained by the occupier of "eligible land". "Eligible land" continues to be defined as land located in a less-favoured farming area which is shown on the designated map and which is "disadvantaged" or "severely disadvantaged"; the map is available for inspection during normal office hours at the address specified in the definition of "designated map" (regulation 2(2)). The rates of payment of the allowance are reduced to 20.3 ECU per cow and 3.045 ECU per ewe, but the total amounts which may be paid per hectare of land remain the same.

The following changes are also made by these Regulations—

- (a) detailed new conditions are introduced relating to the number of animals in respect of which an allowance may be paid (regulations 4(3)(a) to (c) and 5(2)(a) to (c));
- (b) an application for an allowance must be made in a specified period (regulation 6);
- (c) the rate of interest payable on amounts recovered in specified circumstances is prescribed (regulation 11); and
- (d) new offences are created (regulation 12(a) and (b)) and penalties are prescribed in respect of them (regulation 13(1)).