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STATUTORY INSTRUMENTS

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**2009 No. 138**

**AGRICULTURE, ENGLAND**

**The Hill Farm Allowance Regulations 2009**

*Made* - - - - 29th January 2009  
*Laid before Parliament* 3rd February 2009  
*Coming into force* - - 24th February 2009

The Secretary of State is designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Community and measures relating to the promotion of rural development.

The Secretary of State makes the following Regulations under the powers conferred by that section.

**Title, commencement and application**

1. These Regulations—
  - (a) may be cited as the Hill Farm Allowance Regulations 2009;
  - (b) come into force on 24th February 2009;
  - (c) apply only in relation to holdings situated wholly or partly in England.

**Interpretation**

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;

“breeding cow” means a suckler cow or a heifer;

“claim” means a claim for hill farm allowance made in a single payment scheme application;

“claimant” means a person who has made a claim;

“claimed forage area” means land included as forage land in a single payment scheme application or related less favoured area allowance application;

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(1) S.I. 1972/1811 and 1995/751.

(2) 1972 c. 68.

“Commission Regulation 1973/2004” means [Commission Regulation \(EC\) No 1973/2004](#) laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials<sup>(3)</sup>;

“common land” means land registered as common land with grazing rights under the Commons Registration Act 1965<sup>(4)</sup> or the Commons Act 2006<sup>(5)</sup>;

“Council Regulation 1257/1999” means Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations<sup>(6)</sup>;

“Council Regulation 1698/2005” means Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)<sup>(7)</sup>;

“Council Regulation 1782/2003” means Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending certain Regulations<sup>(8)</sup>;

“disadvantaged land” (except in the expression “severely disadvantaged land”) means any area of land shown coloured blue on the England LFA maps;

“eligible forage area” means such part of the qualifying forage area that is severely disadvantaged land;

“the England LFA maps” means the three volumes of maps numbered 1 to 3, each volume being marked “Volume of maps of less-favoured farming areas in England”, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food and deposited at the offices of the Department for Environment, Food and Rural Affairs at Ergon House, Horseferry Road, London, SW1P 2AL;

“ewe” means a female sheep which was at least one year old on 1st January 2009, or had lambed by that date;

“forage area” has the same meaning as in Article 131(2)(b) of Council Regulation 1782/2003;

“heifer” means a female bovine animal aged 8 months or over which has not yet calved;

“hill farm allowance” means the compensatory allowance payable in accordance with these Regulations, Article 36(a)(ii) of Council Regulation 1698/2005 and Chapter V of Title II of Council Regulation 1257/1999;

“holding” has the same meaning as in Article 2(b) of Council Regulation 1782/2003;

“individual reference quantity of milk” has the same meaning as in Article 117(2) of Commission Regulation 1973/2004;

“less favoured area” means any area of land shown coloured blue or pink on the England LFA maps;

“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitutes a single livestock unit—

- (a) one suckler cow;
- (b) one heifer aged 24 months or over;
- (c) 1.67 heifers under the age of 24 months; and

(3) OJ No L 345, 20.11.04, p1, last amended by [Commission Regulation \(EC\) No 1124/2008](#) (OJ L 303, 14.11.2008, p. 7).

(4) 1965 c. 64.

(5) 2006 c. 26.

(6) OJ No L 160, 26.6.1999, p80, last amended by Council Regulation 1698/2005.

(7) OJ No L 277, 21.10.05, p1, last amended by Council Regulation (EC) No 146/2008 (OJ No L 46, 21.2.08, p1).

(8) OJ No L 270, 21.10.03, p1, corrected by OJ No L 270, 21.10.03, p70) and last amended by Council Regulation (EC) No 1009/2008 (OJ No L 276, 17.10.08, p1).

(d) 6.67 ewes;

“moorland” means all the land shown coloured pink in the three volumes of maps entitled “Moorland Map of England 2007”, each volume being marked with the number of the volume, dated 7th October 2007, signed on behalf of the Secretary of State for Environment, Food and Rural Affairs and deposited at the offices of the Department for Environment, Food and Rural Affairs at Ergon House, Horseferry Road, London, SW1P 2AL;

“notional livestock density” means the number of livestock units per hectare of the claimant’s disadvantaged land and severely disadvantaged land, calculated in accordance with Schedule 1;

“other competent authority” means the Scottish Ministers, the Welsh Ministers or, in Northern Ireland, the Department of Agriculture and Rural Development;

“permanent pasture” means non-rotational land used for grass production (sown or natural) on a permanent basis (five years or longer) excluding land set aside under Article 6 of Council Regulation (EC) No 1251/1999 establishing a support system for producers of certain arable crops<sup>(9)</sup> and Article 54 of Council Regulation 1782/2003;

“qualifying forage area” means the claimed forage area or, where regulation 6 applies, such part of that area as remains following deductions made to it in accordance with that regulation;

“related less favoured area allowance” means a compensatory allowance payable in relation to land situated in Northern Ireland, Scotland or Wales in accordance with Article 36(a)(i) or (ii) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999;

“relevant animals” means, in relation to a claimant, the breeding cows and ewes determined as relevant animals in accordance with Schedule 5;

“severely disadvantaged land” means any area of land shown coloured pink on the England LFA maps;

“single payment scheme” means the support scheme established under Title III of Council Regulation 1782/2003;

“single payment scheme application” means an application to the single payment scheme submitted in 2008 in accordance with Article 34 of Council Regulation 1782/2003 and Title II of Part II of [Commission Regulation \(EC\) No 796/2004](#) laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers<sup>(10)</sup>;

“suckler cow” has the same meaning as in Article 122(d) of Council Regulation 1782/2003.

### **Payment of hill farm allowance**

3.—(1) The Secretary of State must pay hill farm allowance for 2009 to a claimant who is eligible under regulation 4.

(2) The Secretary of State must only pay such allowance in respect of eligible forage area that does not exceed 700 hectares.

### **Eligibility for hill farm allowance**

4.—(1) A claimant who satisfies the conditions in paragraph (2) is eligible for hill farm allowance.

(2) The conditions are that—

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<sup>(9)</sup> OJ No L 160, 26.6.99, p1, last amended by Council Regulation (EC) No 2322/2003 (OJ No L 345, 31.12.03, p. 20).

<sup>(10)</sup> OJ No L 141, 30.4.04, p18, corrected by OJ No L 37, 10.2.05, p22, and last amended by [Commission Regulation \(EC\) No 1266/2008](#) (OJ No L 338, 17.12.08, p34).

- (a) the claim relates to at least—
    - (i) ten hectares of severely disadvantaged land in England, or
    - (ii) one hectare of severely disadvantaged land in England, where the claimant is eligible for a related less favoured area allowance in another part of the United Kingdom;
  - (b) the land referred to in sub-paragraph (a)—
    - (i) was available to be grazed or have a forage crop taken from it for a continuous period of seven months, starting on any date from 1st January 2008 to 31st March 2008 inclusive, and
    - (ii) during that seven-month period, was available to the claimant to be grazed or have a forage crop taken from it for a period, or periods in total, of at least four months; and
  - (c) the notional livestock density is not less than 0.15 (unless paragraph (5) applies).
- (3) But a claimant who is in breach of the agricultural undertaking is not eligible for hill farm allowance, unless the Secretary of State considers it reasonable in all the circumstances that the breach should not affect the claimant's eligibility.
- (4) For the purposes of paragraph (3), a claimant who ceases to farm does not breach that undertaking provided that at least ten hectares of the land in respect of which the undertaking was given continue to be used for the purposes of agriculture.
- (5) The Secretary of State may determine that a notional livestock density of less than 0.15 is sufficient given the circumstances of any particular case or group of cases.
- (6) A claimant must provide such information as the Secretary of State reasonably requires to enable such a determination to be made.
- (7) The Secretary of State must notify the claimant of any such determination in writing or, where the determination is made in relation to more than one case, publish that determination in such way as the Secretary of State thinks fit.
- (8) For the purposes of paragraph (2)(b), land is available to be used for grazing or to have a forage crop taken from it if it is not so available only as a result of an agri-environment agreement.
- (9) In this regulation, "agri-environment agreement" means—
- (a) an agreement made as part of a scheme made under Article 39 of Council Regulation 1698/2005, or
  - (b) such other agreement involving environmental commitments as the Secretary of State thinks fit.
- (10) In paragraph (3), the "agricultural undertaking" means the undertaking given by the claimant to pursue farming activity in a less favoured area for at least five years from the date of the first payment to that person in a claim made under these Regulations or any of the Hill Farm Allowance Regulations 2004 to 2008(11).
- (11) This regulation and regulation 5 are subject to Article 51 of Council Regulation 1698/2005 (reduction or cancellation of payments).

### **Amount of payment**

- 5.—(1) The Secretary of State must pay hill farm allowance at the rates specified in this regulation.
- (2) For the qualifying forage area of land specified in column 1 of the table in Schedule 2, the rate payable per hectare is that specified in—
- (a) column 2 of that table for the first 350 hectares, and

- (b) column 3 for the next 350 hectares.
- (3) The amount of any payment must be increased by 5% if either condition A or condition B is met, and by 10% if both those conditions are met.
- (4) Condition A is that at least one hectare or 5% (whichever is the smaller) of the claimant's severely disadvantaged land—
  - (a) is planted with arable crops in respect of which the claimant is not receiving any other financial support, and
  - (b) was not converted from permanent pasture in or after 2003.
- (5) Condition B is that at least one hectare or 5% (whichever is the smaller) of the claimant's severely disadvantaged land—
  - (a) is planted with woodland in respect of which the claimant is not receiving any other financial support, and
  - (b) was not converted from permanent pasture in or after 2003.
- (6) The Secretary of State may also increase the amount of any payment by up to 10% if the fund available for hill farm allowance is greater than anticipated by the Secretary of State because—
  - (a) the amount of eligible forage area in respect of which such allowance is payable is smaller than anticipated, or
  - (b) the budget allocation for the Rural Development Programme for England 2007-2013, or that part of that budget available for hill farm allowance, is or is likely to be greater than anticipated.
- (7) The Secretary of State may decrease it by up to 10% if that fund is smaller than anticipated by the Secretary of State because—
  - (a) the amount of eligible forage area in respect of which such allowance is payable is greater than anticipated, or
  - (b) the budget allocation for the Rural Development Programme for England 2007-2013, or that part of that budget available for hill farm allowance, is or is likely to be smaller than anticipated.
- (8) Any increase applied under paragraph (6) or decrease applied under paragraph (7) must be applied in respect of each claimant's payment.
- (9) In paragraphs (4) and (5), "other financial support" does not include financial support from the single payment scheme.
- (10) The "Rural Development Programme for England 2007-2013" is the Programme for England approved by the European Commission on 7th December 2007 under Article 18(4) of Council Regulation 1698/2005.

#### **Deductions from claimed forage area**

6. Where an individual reference quantity of milk is available to a claimant, Schedule 3 (deductions from claimed forage area) has effect.

#### **Holdings situated partly outside England**

7. Schedule 4 (holdings situated partly outside England) has effect.

29th January 2009

*Huw Irranca-Davies*  
Parliamentary Under-Secretary  
Department for Environment, Food and Rural  
Affairs

SCHEDULE 1

Regulation 2

Notional Livestock Density

Notional livestock density is calculated as follows—

$$NLD = (A - B) \div C$$

where—

“A” is the number, expressed in livestock units, of relevant animals on the claimant’s qualifying forage area;

“B” is the number of livestock units grazed on so much of the claimant’s qualifying forage area as does not fall within a less favoured area (“non-LFA land”). For this purpose, any non-LFA land other than common land is treated as being grazed by 1.8 livestock units per hectare and any non-LFA land which is common land is treated as being grazed by 1.0 livestock units per hectare;

“C” is the claimant’s disadvantaged land and severely disadvantaged land expressed in hectares;

“NLD” is the notional livestock density on the claimant’s disadvantaged land and severely disadvantaged land.

SCHEDULE 2

Regulation 5(2)

Payment Rates per Hectare

<i>Column 1</i>	<i>Column 2 (Up to 350 hectares)</i>	<i>Column 3 (from 350 to 700 hectares)</i>
Severely disadvantaged land (other than moorland or common land)	£37.34	£18.67
Severely disadvantaged land (moorland or common land)	£14.14	£7.07

SCHEDULE 3

Regulation 6

Deductions From Claimed Forage Area

1. If an individual reference quantity of milk was available to a claimant on 31st March 2008, the claimed forage area is subject to the deductions specified in paragraph 4.

2. The deductions are calculated by reference to the number of livestock units deemed to constitute the dairy herd kept by the claimant on land in England (“the notional dairy herd”), determined in accordance with paragraph 3.

3. The notional dairy herd is calculated as follows—

*Status: This is the original version (as it was originally made).*

$$TLU = IRQ \div 5730$$

where—

“*IRQ*” is the individual reference quantity of milk (expressed in litres) available to the claimant in relation to the claimant’s land in England;

“*TLU*” is the number of livestock units in the notional dairy herd; and

“5730” is the number of litres of milk deemed to be equivalent to the annual production of one dairy cow.

4. The deductions are made as follows—

(a) *U* hectares are deducted from *A*, where *U* is equal to the lesser of—

(i)  $TLU \div 1.8$ , and

(ii) *A*;

(b) if *TLU* is greater than  $1.8U$ , *V* hectares are deducted from *B*, where *V* is equal to the lesser of—

(i)  $TLU - 1.8U$ , and

(ii) *B*;

(c) If *TLU* is greater than  $1.8U + V$ , *W* hectares are deducted from *C*, where *W* is equal to the lesser of—

(i)  $(TLU - (1.8U + V)) \div 1.4$ , and

(ii) *C*;

(d) if *TLU* is greater than  $1.8U + V + 1.4W$ , *X* hectares are deducted from *D*, where *X* is equal to the lesser of—

(i)  $TLU - (1.8U + V + 1.4W)$ , and

(ii) *D*;

(e) If *TLU* is greater than  $1.8U + V + 1.4W + X$ , *Y* hectares are deducted from *E*, where *Y* is equal to the lesser of—

(i)  $TLU - (1.8U + V + 1.4W + X)$ , and

(ii) *E*;

(f) If *TLU* is greater than  $1.8U + V + 1.4W + X + Y$ , *Z* hectares are deducted from *F*, where *Z* is equal to the lesser of—

(i)  $(TLU - (1.8U + V + 1.4W + X + Y)) \div 1.4$ , and

(ii) *F*;

where—

“*A*” is the number of hectares of claimed forage area not within a less favoured area which is not common land;

“*B*” is the number of hectares of claimed forage area not within a less favoured area which is common land;

“*C*” is the number of hectares of claimed forage area within the disadvantaged land;



“*D*” is the number of hectares of claimed forage area within the disadvantaged land that is either Moorland or Common Land;

“*E*” is the number of hectares of claimed forage area within the severely disadvantaged land that is either Moorland or Common Land;

“*F*” is the number of hectares of claimed forage area within the severely disadvantaged land; and

“*TLU*” is the total number of livestock units in the notional dairy herd.

## SCHEDULE 4

Regulation 7

### Holdings Situated Partly Outside England

#### **Agency arrangements**

1. For holdings situated partly in Scotland, the Secretary of State and the Scottish Ministers may arrange for—

- (a) the Secretary of State’s functions under these Regulations to be exercised on the Secretary of State’s behalf by the Scottish Ministers, and
- (b) the Scottish Ministers’ functions under any regulations made by them in implementation of Article 36(a)(i) or (ii) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999 to be exercised on their behalf by the Secretary of State.

2. For holdings situated partly in Wales, the Secretary of State and the Welsh Ministers may arrange for—

- (a) the Secretary of State’s functions under these Regulations to be exercised on the Secretary of State’s behalf by the Welsh Ministers, and
- (b) the Welsh Ministers’ functions under any regulations made by them in implementation of Article 36(a)(i) or (ii) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999 to be exercised on their behalf by the Secretary of State.

3. For holdings situated partly in Northern Ireland, the Secretary of State and the Department of Agriculture and Rural Development may arrange for—

- (a) the Secretary of State’s functions under these Regulations to be exercised on the Secretary of State’s behalf by the Department of Agriculture and Rural Development, and
- (b) the functions of the Department of Agriculture and Rural Development under any regulations made by it in implementation of Article 36(a)(i) or (ii) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999 to be exercised on its behalf by the Secretary of State.

4. An arrangement made under paragraph 1, 2 or 3—

- (a) must be in writing, signed by or on behalf of the Secretary of State and either the Scottish Ministers, the Welsh Ministers or the Department of Agriculture and Rural Development (as appropriate), and
- (b) may be subject to such conditions (including as to costs) as may be agreed from time to time.

**Set-off**

5. In relation to a holding situated partly outside England, the amount of any sum payable by the Secretary of State by way of hill farm allowance or related less favoured area allowance, whether as principal or on behalf of any other competent authority, may, without prejudice to the amount of any sum payable by the Secretary of State to any other competent authority, be set off against the amount of any sum recoverable from the claimant by the Secretary of State, whether as principal or on behalf of such competent authority.

**Apportionment of livestock units**

6. Where a holding in respect of which a claim has been made is situated partly outside England, the number of livestock units grazed on that part of the holding situated in England is calculated as follows—

$$N = (TLU \times X) \div Y$$

where—

“X” is the claimed forage area in hectares of that part of the holding situated in England;

“Y” is the total claimed forage area in hectares of that holding;

“TLU” is the total number of livestock units grazed on that holding; and

“N” is the number of livestock units grazed on that part of the holding situated in England.

**Apportionment of individual reference quantity of milk**

7. Where a holding in respect of which a claim has been made is situated partly outside England, the individual reference quantity of milk which is treated as available to a claimant in relation to the claimant’s land in England is calculated as follows—

$$IRQ = (TIRQ \times X) \div Y$$

where—

“X” is the claimed forage area in hectares of that part of the holding situated in England;

“Y” is the total claimed forage area in hectares of that holding;

“TIRQ” is the total individual reference quantity of milk available to the claimant in respect of that holding; and

“IRQ” is the individual reference quantity of milk which is treated as available in respect of that part of the holding situated in England.

**Apportionment of hectareage of land used for the purposes of agriculture**

8. Where a holding in respect of which a claim has been made is situated partly outside England, the hectareage of land which must be used for the purposes of agriculture under regulation 4(4) is reduced by a percentage equal to the percentage of the land which is outside England.

## SCHEDULE 5

Regulation 2

### Relevant Animals

#### Breeding cows

- 1.—(1) Subject to paragraph 3, a breeding cow is a relevant animal if—
- (a) it is declared in, or subsequently accepted by the Secretary of State as being included in, the claimant's claim;
  - (b) it is of a meat breed, or is a crossbreed, or the offspring of a crossbreed;
  - (c) it is registered in accordance with Schedule 2 to the Cattle Identification Regulations 2007<sup>(12)</sup>;
  - (d) throughout a period of six consecutive months starting on any date from 1st July 2008 to 31st December 2008 inclusive—
    - (i) it was part of a herd used for rearing calves for meat production only;
    - (ii) it was owned by, or leased under a written leasing agreement to, the claimant;
    - (iii) the claimant had economic responsibility for it; and
    - (iv) it was kept on the claimant's holding.
- (2) The condition in sub-paragraph (1)(d)(iv) continues to be met if—
- (a) the breeding cow was replaced with another one during that six-month period;
  - (b) the conditions in sub-paragraph (1)(a) to (d)(iii) are met in respect of that replacement; and
  - (c) that replacement was kept on the claimant's holding for the remainder of that period.
- (3) In this paragraph—
- (a) “crossbreed” means a bovine animal with at least one parent of a meat breed;
  - (b) “meat breed” means any bovine breed not listed in Annex XV to Commission Regulation 1973/2004.

2.—(1) For the purposes of paragraph 1(1)(d)(iii), a claimant had economic responsibility for a breeding cow if, in relation to that cow, the claimant—

- (a) was its keeper;
- (b) made the final decisions regarding, and paid for, its feeding, bedding, housing and veterinary requirements; and
- (c) was in possession of its cattle passport.

(2) In sub-paragraph (1), “cattle passport” and “keeper” have the same meaning as in regulation 2(1) of the Cattle Identification Regulations 2007.

3. Where—

- (a) the claimant's breeding cows which meet the conditions in paragraph 1(1) include heifers, and
- (b) the number of such heifers, expressed in livestock units, exceeds 40% of the total number of breeding cows which meet those conditions,

the number of heifers which are relevant animals is reduced so that no more than 40%, expressed in livestock units, of the claimant's breeding cows which are relevant animals are heifers.

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<sup>(12)</sup> S.I. 2007/529, to which there is an amendment not relevant to these Regulations.

## Ewes

4. A ewe is a relevant animal if—
- (a) it is declared in, or subsequently accepted by the Secretary of State as being included in, the claimant's claim;
  - (b) the requirements of articles 14, 17 and 20 of the Sheep and Goats (Records, Identification and Movement) (England) Order 2005<sup>(13)</sup> (which relate to holding registers, movement documents and inventories) were complied with in relation to that ewe;
  - (c) it formed part of a flock kept on the holding for a consecutive period of 100 days starting on any day from 1st January 2008 to 22nd September 2008 inclusive; and
  - (d) it was, throughout that consecutive period, owned by, or leased under a written leasing agreement to, the claimant.
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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Regulation (EC) No 1698/2005 (OJ No L 277, 21.10.05, p1) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and Council Regulation (EC) No 1257/1999 (OJ No L 160, 26.6.99, p80) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), in so far as those Council Regulations relate to less favoured areas.

These Regulations define the conditions of eligibility for hill farm allowance (regulations 3 and 4). Such allowance is payable only in relation to severely disadvantaged land (and for not more than 700 hectares), at the rates set out in regulation 5 and Schedule 2.

These Regulations apply only in relation to holdings situated wholly or partly in England. Schedule 4 makes provision for holdings situated partly outside England.

Provisions relating to the enforcement of these Regulations are contained in the Rural Development (Enforcement) (England) Regulations 2007 (SI 2007/75).

Copies of the Rural Development Programme for England 2007-2013 are available at <http://www.defra.gov.uk/corporate/publications/pubcat/rural.htm#erdp> and from the Department for Environment, Food and Rural Affairs, Information Resource Centre, Ergon House, Horseferry Road, London SW1P 2AL.

An impact assessment has not been prepared because the changes to the existing hill farm allowance scheme introduced by these Regulations will have a negligible additional impact on business and the voluntary sector.

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<sup>(13)</sup> S.I. 2005/3100, to which there are amendments not relevant to these Regulations. S.I. 2005/3100 was revoked by the Sheep and Goats (Records, Identification and Movement) (England) Order 2007 (S.I. 2007/3493) on 11th January 2008.