

2001 No. 71

AGRICULTURE

**Less Favoured Area Compensatory Allowances Regulations
(Northern Ireland) 2001**

Made 21st February 2001

Coming into operation 6th March 2001

The Department of Agriculture and Rural Development 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 Community and in relation to matters relating to the promotion of rural development, in exercise of the powers conferred on 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 Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2001 and shall come into operation on 6th March 2001.

Interpretation

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

(2) In these Regulations—

“the 1975 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1975(d);

“the 1979 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1979(e);

“the 1984 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1984(f);

“the 1994 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1994(g);

(a) S.I. 1972/1811 and S.I. 2000/3238

(b) 1972 c. 68

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

(d) S.I. 1975/2210, amended by S.I. 1976/1203, S.I. 1977/1960 and S.I. 1979/941 and revoked by S.I. 1979/1748

(e) S.I. 1979/1748, amended by S.I. 1980/2028, S.I. 1981/1843 and S.I. 1982/1886 and revoked by S.I. 1984/2024

(f) S.I. 1984/2024, amended by S.I. 1985/2075, S.I. 1987/2129, S.I. 1991/392 and S.I. 1991/1439 and revoked, insofar as they applied to Northern Ireland, by S.R. 1987 No. 92 and, insofar as they applied to Great Britain, by S.I. 1992/269

(g) S.R. 1994 No. 417 amended by S.R. 1995 No. 22, S.R. 1995 No. 245, S.R. 1995 No. 404, S.R. 1996 No. 7 and revoked by S.R. 1996 No. 230

- “the 1996 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1996(a);
- “the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1999(b);
- “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;
- “area aid application” has the same meaning as in Article 6 of Council Regulation 3508/1992;
- “authorised person” means any person who is authorised by the Department, either generally or specially, to act in relation to matters arising under these Regulations, whether or not he is an officer of the Department;
- “beneficiary” means a person who has entered into an undertaking;
- “claimant” means any person who has made a claim for compensatory allowance;
- “claimed forage area” means land which has been entered as forage area in an area aid application for the year 2000;
- “Commission” means the Commission of the European Communities;
- “Commission Regulation 1750/1999” means Commission Regulation (EC) No. 1750/1999(c) laying down detailed rules for the application of Council Regulation 1257/1999, as amended by Commission Regulation (EC) No. 2075/2000(d);
- “Commission Regulation 2342/1999” means Commission Regulation (EC) No. 2342/1999(e) laying down detailed rules for the application of Council Regulation (EC) No. 1254/1999 on the common organisation of the market in beef and veal as regards premium schemes, as last amended by Commission Regulation (EC) No. 1900/2000(f);
- “common land” means land the grazing of animals on which is shared;
- “compensatory allowance” means either—
- (a) a less favoured area compensatory allowance; or
- (b) in the case of a compensatory allowance payable in the year 2000 or earlier, a compensatory allowance payable in accordance with the Hill Livestock (Compensatory Allowances) Regulations;

(a) S.R. 1996 No. 230 amended by S.R. 1996 No. 498, S.R. 1997, No. 13, S.R. 1997 No. 486, S.R. 1998 No. 439, S.R. 1999 No. 68 and which cease to apply by virtue of S.R. 1999 No. 497

(b) S.R. 1999 No. 497

(c) O.J. No. L214, 13.8.1999, p. 31

(d) O.J. L246, 30.9.2000, p. 46

(e) O.J. L281, 4.11.1999, p. 30

(f) O.J. L228, 8.09.2000, p. 25

“Council Regulation 3508/1992” means Council Regulation (EEC) No. 3508/1992(a) establishing an integrated administration and control system for certain Community aid schemes, as last amended by Council Regulation 1593/2000(b);

Council Regulation 1254/1999” means Council Regulation (EC) No. 1254/1999(c) on the common organisation of the market in beef and veal;

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999(d) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF);

“cross-border holding” means a holding which is situate partly in Northern Ireland and partly in one or more of England, Scotland or Wales;

“the Department” means the Department of Agriculture and Rural Development;

“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” (except in the expression “severely disadvantaged land”) means land shown coloured blue on the designated map;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(e);

“eligible land” means land within the less favoured area or relevant afforested land;

“eligible forage area” means such part of the relevant forage area as lies within a less favoured area;

“ewe” means a female sheep which is at least one year old, or has lambed, on 1st January 2001;

“first compensatory allowance” means less favoured area compensatory allowance or, where a compensatory allowance has been paid under the Hill Livestock (Compensatory Allowances) Regulations, the first payment of that allowance;

“forage area” has the same meaning as in Article 12(2)(b) of Council Regulation 1254/1999;

“heifer” has the same meaning as in Article 3 of Council Regulation 1254/1999;

“Hill Livestock (Compensatory Allowances) Regulations” means the 1994 Regulations, the 1996 Regulations or the 1999 Regulations, as the case may be;

(a) O.J. No. L355, 5.12.92, p. 1

(b) O.J. L182, 21.7.2000, p. 4

(c) O.J. L160, 26.6.1999, p. 21

(d) O.J. No. L160, 26.6.1999, p. 80.

(e) 2000 c. 7

“holding” has the same meaning as in Article 1 of Council Regulation 3508/1992;

“individual reference quantity of milk” has the same meaning as in Article 31 of Commission Regulation 2342/1999;

“less favoured area” means all that land coloured blue or pink on the designated map;

“less favoured area compensatory allowance” means the compensatory allowance payable in accordance with regulations 7 and 8 and with Chapter V of Title II of Council Regulation 1257/1999;

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

- (a) one suckler cow or a heifer aged over 24 months;
- (b) 1.67 heifers aged between 8 months and 24 months; or
- (c) 6.67 ewes;

“notional livestock density” means the number of livestock units per hectare of eligible forage area, calculated as a fraction of which the numerator is the number of relevant animals expressed in livestock units and the denominator is the claimant’s eligible forage area expressed in hectares;

“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 compensatory allowance was paid in respect of the land under the 1975 Regulations, the 1979 Regulations or the 1984 Regulations before the date when the conversion to forest was completed, but land shall cease to be relevant afforested land for the purposes of these Regulations 15 years after the date on which such conversion was completed;

“relevant animals” means the suckler cows, heifers and ewes in respect of which a claimant, in the year 2000, applied for suckler cow premium or as the case may be, sheep annual premium;

“relevant forage area” means the claimed forage area or, in relation to a claimant in relation to whom regulation 9 applies, such part of the claimed forage area as results from the deductions made to the relevant forage area in accordance with that regulation;

“severely disadvantaged land” means land shown coloured pink on the designated map;

“sheep annual premium” means the premium payable under the Sheep Annual Premium Regulations (Northern Ireland) 1992(a);

“suckler cow” shall have the same meaning as in Article 3 of Council Regulation 1254/1999;

(a) S.R. 1992 No. 476 amended by S.R. 1994 No. 404, S.R. 1995 No. 403, S.R. 1996 No. 497, S.R. 1997 No. 485, S.R. 1999 No. 457 and S.R. 2000 No. 301

“suckler cow premium” means the premium payable under the Suckler Cow Premium Regulations (Northern Ireland) 1993(a); and

“undertaking” means an undertaking under regulation 5(a).

(2) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made.

(3) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.

Power to make payments

3. Subject to regulation 5, the Department shall make payments of less favoured area compensatory allowance in respect of the year 2001 to any claimant who is eligible under regulation 4 in respect of any eligible forage area.

Eligibility of producers for less favoured area compensatory allowance

4.—(1) Subject to Article 14.2 of Council Regulation 1257/1999 (third indent), and to regulation 5, a claimant shall be eligible for less favoured area compensatory allowance provided—

- (a) his claim is made in an area aid application submitted in the year 2000;
- (b) an area of at least three hectares of claimed forage area entered in that area aid application lies within a less favoured area; and
- (c) subject to paragraph (2), the notional livestock density on the eligible forage area is not less than 0.2 livestock units.

(2) The Department may determine that a notional livestock density of less than 0.2 livestock units is sufficient for the purposes of paragraph (1)(c) if it is reasonably satisfied that it is appropriate to do so in all the circumstances of the case, having regard, in particular, to the number of animals other than relevant animals kept on the eligible forage area and any other obligation of the claimant as to the number of animals that may be kept on the land comprising the eligible forage area.

(3) In order to enable it to consider whether to exercise its discretion under paragraph (2), the Department shall be provided with such information as it reasonably may require.

Conditions as to continued use of eligible land

5. Less favoured area compensatory allowance shall not be paid to a claimant unless—

- (a) he has given a written undertaking, in such form as the Department may reasonably require, that he will or would, for a period of five years from the date of payment of a first compensatory allowance, continue to use at least three hectares of eligible land for agriculture; and

(a) S.R. 1993 No. 280 amended by S.R. 1994 No. 211, S.R. 1995 No. 246, S.R. 1996 No. 229 and S.R. 1997 No. 53

(b) he is not in breach of that undertaking at the date of payment.

Release from undertaking

6. A claimant is released from the undertaking referred to in regulation 5—

- (a) if he is prevented from continuing to discharge that undertaking by reason of any material circumstance beyond his control; or
- (b) if he ceases farming and at least three hectares of the eligible land last used by him for the grazing of animals continue to be used for agriculture.

Rates of payment

7. Subject to regulations 8 and 9, payments of less favoured area compensatory allowance in respect of the descriptions of eligible forage area specified in column 1 of the Schedule shall be made—

- (a) in relation to the first 350 hectares of eligible forage area in respect of which the claim is made, at the rates specified in column 2 of the Schedule;
- (b) in relation to the next 150 hectares of eligible forage area in respect of which the claim is made, at one half of the rates specified in column 2 of the Schedule;
- (c) in relation to further hectares of eligible forage area in excess of 500 hectares in respect of which the claim is made, at one quarter of the rates specified in column 2 of the Schedule.

Increments to payment

8.—(1) After calculating the amount payable to each claimant as provided by regulation 7, the Department may, if it thinks fit, increase that amount by a fixed percentage provided that—

- (a) such increase does not exceed 20% of that amount; and
- (b) the percentage increase is the same for each claimant.

(2) If the amount payable to a claimant by virtue of regulation 7 and paragraph (1) is less than 90% of the compensatory allowance paid to that claimant in respect of the year 2000, he shall be paid, in addition to that sum, such further sum as is necessary to increase the total less favoured area compensatory allowance payable to him to 90% of the compensatory allowance paid to him in respect of that year, or, if less, such proportion of that further sum as relates to the claimed forage area which was entered in his area aid application for that year and which lies within a less favoured area.

Exclusion of forage area

9.—(1) Subject to paragraph (2), if, on 31st March 2000, a claimant had available to him an individual reference quantity of milk, his claimed forage area in Northern Ireland shall be reduced by 1 hectare per 10,000 litres of that quantity for the purposes of determining his relevant forage area.

(2) Where any holding in respect of which a claim has been made is a cross-border holding, the individual reference quantity of milk applicable to that part of the claimant's holding situate in Northern Ireland shall be calculated as follows:

$$\text{IRQ} = \text{TIRQ} \times X \div Y$$

where:

“X” is the claimed forage area in hectares of that part of the holding which is situate in Northern Ireland;

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

“TIRQ” is the 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 applicable to that part of the holding situate in Northern Ireland,

and the reduction, for the purposes of this regulation, of the claimed forage area in Northern Ireland shall be 1 hectare per 10,000 litres of the individual reference quantity of milk applicable to that part of the claimant's holding situate in Northern Ireland.

(3) Where paragraph (1) or (2) applies, the reduction in the claimed forage area in Northern Ireland shall first be applied to land which is not eligible land, followed by disadvantaged land, and lastly, severely disadvantaged land.

Powers of authorised persons

10.—(1) An authorised person may at all reasonable times, on producing, if so required, some duly authenticated document showing his authority, enter on any land, other than land used solely for the purpose of a dwelling-house—

- (a) to which a claim or an undertaking relates, or
- (b) on which he has reasonable grounds to believe that documents relating to a claim or an undertaking are being kept, for any of the purposes mentioned in paragraph (2).

(2) The purposes referred to in paragraph (1) are—

- (a) inspecting the land to which the claim or undertaking relates;
- (b) verifying the accuracy of any information provided by a claimant or a beneficiary relating to a claim or an undertaking; and
- (c) determining whether or not a beneficiary has complied with an undertaking.

(3) An authorised person who has entered any land under paragraph (1) may—

- (a) inspect the land and any document, record or equipment on it which he reasonably believes relates to a claim or an undertaking;
- (b) require the claimant or beneficiary, or any employee, servant or agent of such claimant or beneficiary, to produce, or secure the production of, any document or supply any additional information in his

possession or under his control relating to the claim or undertaking, as the case may be;

- (c) where any information referred to in sub-paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require that information to be reproduced in a form in which it is legible and can be taken away;
- (d) require copies of or extracts from any such document or other record referred to in sub-paragraph (a) or (b) to be produced;
- (e) retain a copy of any document produced to him;
- (f) seize and retain any document or other record which he reasonably believes may be required as evidence in proceedings under these Regulations; and
- (g) in so far as may be necessary for the purposes of paragraph (2)(b) or (c), inspect and count livestock on the land and may, for this purpose, require the claimant or beneficiary, or any employee, servant or agent of such beneficiary, to arrange for the collection, penning and securing of such livestock.

(4) A claimant or beneficiary and any employee, servant or agent of such claimant or beneficiary shall give an authorised person all reasonable assistance in relation to the exercise of his powers under paragraphs (1) and (3).

(5) An authorised person entering any land under paragraph (1) may be accompanied by—

- (a) any official of the Commission, and
- (b) such other persons as he considers necessary,

and paragraphs (3) and (4) shall apply in relation to any person referred to in sub-paragraph (b), when acting under the instructions of an authorised person, as if he were an authorised person.

Breaches of undertakings

11. Where—

- (a) any information furnished to the Department by the beneficiary is false or misleading,
- (b) the beneficiary is in breach of any of the terms of an undertaking, or
- (c) the beneficiary is in breach of any requirement to which he is subject under these Regulations, Council Regulation 1257/1999 or Commission Regulation 1750/1999,

the Department may exercise any of the powers specified in regulation 12.

Department's powers of recovery etc.

12.—(1) The powers conferred by regulation 11 are—

- (a) to withhold the whole or any part of the sums payable to the beneficiary; and

- (b) to recover on demand the whole or any part of the sums already paid to the beneficiary; and
- (c) to require the beneficiary to pay to the Department an additional sum equal to no more than 10% of the sums paid or payable to him.

(2) Where the Department takes any step specified in paragraph (1), it may also suspend or terminate the undertaking, and thereupon any entitlement of the beneficiary to payment in respect of the unexpired period of the undertaking shall likewise be suspended or terminated, as the case may be.

(3) The powers conferred on the Department by paragraph (2) shall be exercisable by a notice served on the beneficiary by post at his last known address.

(4) Before taking any step specified in paragraph (1) or (2) the Department shall—

- (a) give to the beneficiary a written explanation of the reasons for the step proposed to be taken;
- (b) afford the beneficiary the opportunity of making written representations within such time as the Department considers reasonable; and
- (c) consider any such representations.

Recovery of interest

13.—(1) Where the Department exercises the power conferred by regulation 12(1)(b), it may also recover on demand interest on the sum to be recovered, and the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(2) For the purposes of this regulation, “LIBOR” means the sterling three month London interbank offered rate in force during the period between the date on which the Department makes the payment to be recovered and the date on which it recovers the payment.

(3) In any proceedings relating to this regulation, a certificate of the Department stating the LIBOR applicable during a period specified in the certificate shall be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Department of that rate.

Sums payable to the Department to be recoverable as a debt

14. In any case where an amount falls to be paid to the Department by virtue of (or by virtue of action taken under) these Regulations, the amount so falling to be paid shall be recoverable as a debt.

Offences and penalties

15.—(1) A person is guilty of an offence if—

- (a) for the purposes of obtaining the whole or part of a less favoured area compensatory allowance for himself or any other person he knowingly or recklessly makes a statement which is false or misleading in a material particular; or

(b) he intentionally obstructs an authorised person (or a person accompanying him and acting under his instructions) in the exercise of his powers under regulation 10.

(2) A person guilty of an offence under paragraph (1)(a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under paragraph (1)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) No prosecution for an offence under paragraph (1) shall be commenced after the expiration of three years from the commission of the offence or one year from the date that, in the prosecutor's opinion, evidence sufficient to justify the proceedings came to his knowledge, whichever is the earlier.

(5) Where paragraph (4) applies—

(a) a statement of the date on which evidence sufficient in the prosecutor's opinion to justify the proceedings came to his knowledge is conclusive evidence of its contents if signed by or on behalf of the prosecutor; and

(b) such a statement purporting to be so signed shall be treated as being so signed unless the contrary is proved.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 21st February 2001.

(L.S.)

R. Jordan

Senior Officer of the Department of
Agriculture and Rural Development

SCHEDULE

regulation 7

Payment rates per hectare

<i>Column 1</i>	<i>Column 2</i>
1. Severely disadvantaged land (not being common land)	£40
2. Disadvantaged land (not being common land)	£20
3. Common land	£20

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement Commission Regulation 1750/1999 (O.J. L214, 13.8.99, p. 31) (“the Commission Regulation”) laying down detailed rules for the application of Council Regulation 1257/1999 (O.J. L160, 26.6.1999, p. 80) (“the Council Regulation”) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations. They also implement Measure 2 of the Northern Ireland Rural Development Programme approved by the Commission (Commission Decision No. C(2000) 3638) under Article 44 of the Council Regulation.

In particular the Regulations implement Articles 13, 14 and 15 of the Council Regulation (which deal with support for less favoured areas) by defining the conditions of eligibility for less favoured area compensatory allowance (regulations 3 to 6) and the rates at which it is to be paid (regulations 7 and 8 and the Schedule).

Regulation 9 provides for the exclusion of forage area in respect of claimants who held milk quota at 31st March 2000.

Regulation 10 confers powers of entry and inspection on persons authorised by the Department of Agriculture and Rural Development (“the Department”).

Regulations 11 and 12 implement Article 48(2) of the Commission Regulation (which requires Member States to determine a system of penalties to be imposed in the event of breaches of obligations) by granting the Department powers to withhold or recover payments and take certain other action in the event of a breach of an undertaking given by a claimant under these Regulations and in certain other events.

Regulation 13 provides for the recovery of interest on sums recovered.

Regulation 15 creates offences of making false or misleading statements and of obstructing persons authorised by the Department.

The Northern Ireland Rural Development Programme, together with a copy of Commission Decision C(2000) 3638 approving it, is available for inspection at the Offices of the Department of Agriculture and Rural Development, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB.

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