

2006 No. 225

AGRICULTURE, ENGLAND

The Hill Farm Allowance Regulations 2006

Made - - - - *1st February 2006*

Laid before Parliament *6th February 2006*

Coming into force - - *1st March 2006*

The Secretary of State, being 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, in exercise of the powers conferred upon her by that section(c), makes the following Regulations:

Title, commencement and application

1. These Regulations may be cited as the Hill Farm Allowance Regulations 2006, come into force on 1st March 2006, and apply only in relation to holdings situated wholly or partly in England.

Interpretation

2.—(1) 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;

“claimant” means any person who has made a claim for hill farm allowance and “claim” shall be construed accordingly;

“claimant’s less favoured area land” means land entered in the claimant’s single payment scheme application which is within a less favoured area;

“claimed forage area” means land in respect of which a claimant has claimed hill farm allowance or a related less favoured area allowance in a single payment scheme application;

“Commission Regulation 796/2004” means 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(d);

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

(b) 1972 c.68.

(c) The power of the Secretary of State to make regulations in relation to matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c.46).

(d) O.J. No. L141, 30.4.2004, p.18, as last amended by Commission Regulation (EC) No. 2184/2005, O.J. No. L347, 30.12.2005, p.61.

“Commission Regulation 1973/2004” means Commission Regulation (EC) No. 1973/2004 laying down detailed rules for the application of Council Regulation 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(a);

“common land” means any land which is registered as common land with grazing rights under the Commons Registration Act 1965(b);

“compensatory allowance” means any payment made under these Regulations, the Hill Farm Allowance Regulations 2005(c), the Hill Farm Allowance Regulations 2004(d), the Hill Farm Allowance Regulations 2003(e), the Hill Farm Allowance Regulations 2002(f), the Hill Farm Allowance Regulations 2001(g), the Hill Livestock (Compensatory Allowances) Regulations 1999(h), the Hill Livestock (Compensatory Allowances) Regulations 1996(i) or the Hill Livestock (Compensatory Allowances) Regulations 1994(j);

“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(k);

“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(l);

“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 as lies within a less favoured area;

“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 Nobel House, 17 Smith Square, London SW1P 3JR;

“ewe” means a female sheep which is at least one year old on 1st January 2006, or has 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 and with 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;

(a) O.J. No. L345, 20.11.2004, p.1, as last amended by Commission Regulation (EC) No. 2184/2005, O.J. No. L347, 30.12.2005, p.61.

(b) 1965 c.64.

(c) S.I. 2005/154.

(d) S.I. 2004/145.

(e) S.I. 2003/289.

(f) S.I. 2002/271.

(g) S.I. 2001/476.

(h) S.I. 1999/3316.

(i) S.I. 1996/1500, amended by S.I. 1997/33, 1998/206, 1999/375. S.I. 1996/1500 ceased to apply by virtue of S.I. 1999/3316.

(j) S.I. 1994/2740, amended by S.I. 1995/100, 1995/1481, 1995/2778 and 1996/27 and revoked by S.I. 1996/1500.

(k) O.J. No. L160, 26.6.1999, p.80, as last amended by Council Regulation (EC) No. 2223/2004, O.J. No. L379, 24.12.2004, p.1.

(l) O.J. No. L270, 21.10.2003, p.1, as last amended by Commission Regulation (EC) No. 2183/2005, O.J. No. L347, 30.12.2005, p.56.

“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
- (d) 6.67 ewes;

“moorland” means all the land which is shown as a less favoured area on the England LFA maps and which is also shown coloured pink in the three volumes of maps entitled “Moorland Map of England 1992” each volume being marked with the number of the volume, dated 20th February 2001, signed on behalf of the Minister of Agriculture, Fisheries and Food and deposited at the offices of the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London SW1P 3JR;

“notional livestock density” means the number of livestock units per hectare of the claimant’s eligible forage area, calculated in accordance with Schedule 1;

“other competent authority” means the Scottish Ministers, the National Assembly for Wales 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 pursuant to Article 6 of Council Regulation (EC) No. 1251/1999(a) and Article 54 of Council Regulation 1782/2003;

“qualifying forage area” means the relevant forage area or, in relation to a claimant to whom regulation 8 applies, such part of the relevant forage area as results from the deductions made to the relevant forage area in accordance with that regulation;

“related less favoured area” means, in relation to a claimant, all that claimed forage area in respect of which the Secretary of State has been advised by any other competent authority that the claimant is eligible for a related less favoured area allowance;

“related less favoured area allowance” means a compensatory allowance payable in relation to land situated in Northern Ireland, Scotland or Wales in accordance with 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;

“relevant forage area” means any claimed forage area situated in England;

“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 2005 in accordance with Article 34 of Council Regulation 1782/2003 and Title II of Part II of Commission Regulation 796/2004;

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

(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 capable of being subsequently reproduced.

(a) O.J. No. L160, 26.6.1999, as last amended by Council Regulation (EC) No. 1782/2003, O.J. No. L270, 21.10.2003, p.1.

Payment of hill farm allowance

3.—(1) The Secretary of State shall, subject to regulation 5, pay hill farm allowance in respect of 2006 to any claimant who is eligible under regulation 4.

(2) Hill farm allowance is payable to a claimant in respect of eligible forage area not exceeding 700 hectares.

Eligibility for hill farm allowance

4.—(1) Subject to Article 14(2) (third indent) and Article 14(3) of Council Regulation 1257/1999 a claimant is eligible for hill farm allowance provided—

- (a) his claim is made in a single payment scheme application;
- (b) the claimed forage area entered in that single payment scheme application—
 - (i) complies with one of the conditions specified in paragraph (2),
 - (ii) was available to be grazed or have a forage crop taken from it for a continuous period of seven months, starting on any date between 1st January 2005 and 31st March 2005 inclusive, and
 - (iii) 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 not less than four months; and
- (c) subject to paragraph (3), the notional livestock density is not less than 0.15.

(2) The conditions referred to in paragraph (1)(b)(i) are—

- (a) the claimed forage area lying within a less favoured area is at least ten hectares; and
- (b) where the claimed forage area lying within a less favoured area is at least one hectare but is less than ten hectares, the total claimed forage area includes land situated in a related less favoured area.

(3) The Secretary of State may determine that a notional livestock density of less than 0.15 is sufficient for the purposes of paragraph (1) if she is reasonably satisfied that it is appropriate to do so in all the circumstances of the case, including any obligation of the claimant as to the number of animals that may be kept on the land comprising the eligible forage area.

(4) In order to enable the Secretary of State to consider whether to exercise her discretion under paragraph (3), the claimant shall provide the Secretary of State with such information as she reasonably requires.

Condition as to continued use of land for the purposes of agriculture

5. Hill farm allowance shall not be paid to a claimant unless—

- (a) he gave an undertaking in writing, in such form as the Secretary of State reasonably required, that he would, for a period of five years from the date of the first payment to him of a compensatory allowance, continue to use for the purposes of agriculture at least three hectares of land which is situated either in a less favoured area or in a related less favoured area; and
- (b) he is not in breach of that undertaking at the date of payment.

Release from undertaking

6. A claimant is not in breach of 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 to farm, but at least three hectares of the land in respect of which the undertaking was given continue to be used for the purposes of agriculture.

Amount of payment

7.—(1) Subject to paragraphs (2) and (3) and regulation 8, payment of hill farm allowance in respect of the descriptions of land specified in column 1 of Schedule 2 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 Schedule 2;
- (b) in relation to the next 350 hectares of eligible forage area in respect of which the claim is made, at one half of the rates specified in column 2 of Schedule 2.

(2) The amount of the payment shall be increased by 10 per cent if the claimant satisfies any one of the following criteria, and by 20 per cent if he satisfies any two or more such criteria—

- (a) the claimant declared, in his single payment scheme application, both breeding cows and ewes for hill farm allowance for 2006, and at least 15 per cent of the total number, expressed in livestock units, of his relevant animals are breeding cows;
- (b) at least one hectare, or 5% (whichever is the smaller), of the claimant's less favoured area land is planted with arable crops in respect of which the claimant is not receiving any other financial support, and was not converted from permanent pasture after 1998;
- (c) at least one hectare, or 5% (whichever is the smaller), of the claimant's less favoured area land is planted with woodland in respect of which the claimant is not receiving any other financial support, and was not converted from permanent pasture after 1998.

(3) If the claimant submitted or amended his single payment scheme application after 16th May 2005, the amount of the payment shall be reduced in accordance with Article 21 of Commission Regulation 796/2004 as if that Article applied in relation to hill farm allowance.

(4) In sub-paragraphs (b) and (c) of paragraph (2), "other financial support" does not include financial support from the single payment scheme.

Deductions from relevant forage area

8. In relation to any claimant who has an individual reference quantity of milk available to him, the deductions specified in Schedule 3 apply to the relevant forage area for the purposes of determining the qualifying forage area.

Holdings situated partly outside England

9. The provisions of Schedule 4 apply in relation to holdings situated partly outside England.

Amendment of the England Rural Development Programme (Enforcement) Regulations 2000

10. In Part II of the Schedule to the England Rural Development Programme (Enforcement) Regulations 2000(a), at the end, add "The Hill Farm Allowance Regulations 2006".

1st February 2006

Jim Knight
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) S.I. 2000/3044, amended by S.I. 2001/431; there are other amending instruments but none is relevant.

SCHEDULE 1

Regulation 2(1)

Notional Livestock Density

Notional livestock density shall be calculated as follows—

$$\text{NLD} = (A - B) \div C$$

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”) and, for this purpose, any non-LFA land other than common land shall be treated as being grazed by 1.8 livestock units per hectare and any non-LFA land which is common land shall be treated as being grazed by 1.0 livestock units per hectare;

“C” is the claimant’s eligible forage area expressed in hectares;

“NLD” is the notional livestock density on the claimant’s eligible forage area.

SCHEDULE 2

Regulation 7(1)

Payment Rates Per Hectare

<i>Column 1</i>	<i>Column 2</i>
1. Severely disadvantaged land (other than moorland or common land)	£30.82
2. Disadvantaged land (other than moorland or common land)	£16.66
3. Moorland or common land	£11.66

SCHEDULE 3

Regulation 8

Deductions from Relevant Forage Area

1. If, on 31st March 2005, a claimant had available to him an individual reference quantity of milk, the relevant forage area shall, subject to paragraph 5 of Schedule 4, be subject to the deductions specified in paragraph 4 of this Schedule.

2. The deductions shall be 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 shall be calculated as follows—

$$\text{TLU} = \text{IRQ} \div 5730$$

where—

“IRQ” is the individual reference quantity of milk (expressed in litres) available to the claimant in relation to his 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 to relevant forage area shall be made as follows—
- (a) X hectares shall be deducted from A, where X is equal to the lesser of—
 - (i) $TLU \div 1.8$; and
 - (ii) A;
 - (b) if TLU is greater than 1.8X, Y hectares shall be deducted from B, where Y is equal to the lesser of—
 - (i) $(TLU - 1.8X) \div 1.4$; and
 - (ii) B;
 - (c) if TLU is greater than $1.8X + 1.4Y$, Z hectares shall be deducted from C, where Z is equal to the lesser of—
 - (i) $TLU - (1.8X + 1.4Y)$; and
 - (ii) C;

where—

“A” is the number of hectares of relevant forage area not within a less favoured area;

“B” is the number of hectares of relevant forage area which is disadvantaged land or severely disadvantaged land, in each case other than moorland or common land;

“C” is the number of hectares of relevant forage area which is moorland or common land; and

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

SCHEDULE 4

Regulation 9

Holdings situated partly outside England

Agency arrangements

1. In relation to holdings situated partly in Scotland, the Secretary of State and the Scottish Ministers may, with the agreement of the other, arrange for—

- (a) in the case of the Secretary of State, her functions under these Regulations to be exercised on her behalf by the Scottish Ministers; and
- (b) in the case of the Scottish Ministers, their functions under any regulations made by them in implementation of Chapter V of Title II of Council Regulation 1257/1999 to be exercised on their behalf by the Secretary of State.

2. Any such arrangement must be in writing and be signed by or on behalf of the Secretary of State and the Scottish Ministers and any such arrangement may be subject to such conditions (including conditions as to costs and charges for costs) as may be agreed from time to time.

Set-off

3. 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 by the Secretary of State, whether as principal or on behalf of such competent authority.

Apportionment of livestock units

4. Where any 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 which is situated in England shall be calculated as follows—

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

where—

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

Apportionment of individual reference quantity of milk

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

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

where—

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

SCHEDULE 5

Regulation 2(1)

Relevant animals

Breeding cows

1.—(1) Subject to paragraph 4, a breeding cow is a relevant animal for the purposes of these Regulations if—

- (a) it is declared by the claimant in his single payment scheme application;
- (b) it is of a meat breed, or is a crossbreed, or the offspring of a crossbreed;
- (c) it is entered by the claimant into the register referred to in regulation 29(3) of the Cattle Identification Regulations 1998(a), and the claimant complies with those Regulations in respect of that register;
- (d) it was, throughout the relevant period, part of a herd used for rearing calves for meat production only;
- (e) it was, throughout the relevant period, owned by the claimant, or leased to him under a leasing agreement in writing, and throughout that period the claimant had economic responsibility for it; and

(a) S.I. 1998/871, to which there are amendments not relevant to these Regulations.

(f) it was kept on the claimant's holding throughout the relevant period.

(2) In this paragraph—

- (a) “crossbred” means a bovine animal with at least one parent of a meat breed;
- (b) “meat breed” means any bovine breed which is not listed in Annex XV to Commission Regulation 1973/2004.

(3) In this paragraph and in paragraph 3, “the relevant period” means a period of six consecutive months, starting on any date between 1st July 2005 and 31st December 2005 inclusive.

2.—(1) For the purposes of paragraph 1(1)(e), a claimant had economic responsibility for a breeding cow if he—

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

(2) In this paragraph, “cattle passport” and “keeper” have the same meaning as in regulation 2(1) of the Cattle Identification Regulations 1998(a).

3. The condition in paragraph 1(1)(f) continues to be met if—

- (a) the breeding cow was replaced during the relevant period by another breeding cow and the conditions in paragraph 1(1)(a) to (e) are met in respect of that breeding cow; and
- (b) the replacement breeding cow was kept on the claimant's holding for the remainder of the relevant period.

4. Where—

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

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

Ewes

5. A ewe is a relevant animal for the purposes of these Regulations if—

- (a) it is declared by the claimant in his single payment scheme application;
- (b) it is entered by the claimant into the documents and records referred to in articles 4 and 12 of the Sheep and Goats Identification and Movement (Interim Measures) (England) (No 2) Order 2002(b) and articles 14, 17 and 20 of the Sheep and Goats (Records, Identification and Movement) (England) Order 2005(c), and the claimant complies with those Orders in respect of those records;
- (c) it formed part of a flock kept on the holding for a period of 100 consecutive days starting on any day between 1st January 2005 and 22nd September 2005 inclusive; and
- (d) it was, throughout that period, owned by the claimant, or leased to him under a leasing agreement in writing.

(a) S.I. 1998/871, to which there are amendments not relevant to these Regulations.

(b) S.I. 2002/2153, amended by S.I. 2003/29, 2003/502, 2003/1728.

(c) S.I. 2005/3100.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Regulation (EC) No. 1257/1999 (O.J. L160, 26.6.1999, p.80) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (“the Rural Development Regulation”), as amended by Council Regulation (EC) No. 1783/2003 (O.J. No. L270, 21.10.2003, p.70), in so far as the Rural Development Regulation relates to less favoured areas. These Regulations also implement Chapter 9 of the England Rural Development Programme approved by the European Commission (Commission Decision No. C(2000) 3003) under Article 44 of the Rural Development Regulation.

In particular, these Regulations implement Articles 13, 14 and 15 of the Rural Development Regulation (which deal with support for less favoured areas) by defining the conditions of eligibility for hill farm allowance (*regulations 3-6*) and giving the rates at which it is to be paid (*regulation 7 and Schedule 2*).

One of the eligibility conditions is that the notional livestock density must be not less than 0.15, unless the Secretary of State exercises her discretion to allow a notional livestock density of less than 0.15 (*regulation 4*). In previous years, only suckler cows, heifers and ewes which had received suckler cow premium or sheep annual premium in the preceding year counted towards the notional livestock density. As these schemes were replaced in 2005 by the single payment scheme, the eligibility conditions for suckler cows, heifers and ewes are now set out expressly in Schedule 5.

The Regulations apply only in relation to holdings situated wholly or partly in England. Schedule 4 makes provision for holdings situated partly outside England. Paragraphs 1 and 2 of Schedule 4 enable the Secretary of State and the Scottish Ministers, in respect of holdings that are situated partly in Scotland, to agree that the Secretary of State’s functions under these Regulations be exercised on her behalf by the Scottish Ministers, and to agree that the Scottish Ministers’ functions under the regulations which implement the relevant provisions of the Rural Development Regulation in Scotland, be exercised on their behalf by the Secretary of State.

Paragraph 3 of Schedule 4 provides for the setting off of sums payable to the Secretary of State, as principal or agent, against hill farm allowance, or the equivalent in Scotland, Wales or Northern Ireland, payable by her as principal or agent. Paragraphs 4 and 5 of Schedule 4 provide for the apportionment of livestock units and individual reference quantity of milk in relation to the part of the holding situated in England.

These Regulations also amend the England Rural Development Programme (Enforcement) Regulations 2000 (S.I. 2000/3044, amended by S.I. 2001/431) (“the ERDP Regulations”) by adding a reference to these Regulations to Part II of the Schedule to the ERDP Regulations. The ERDP Regulations thus apply to these Regulations and, amongst other things, give authorised officers powers of entry to verify compliance, give the Secretary of State power to recover payments in the event of a breach of requirements under the Rural Development Regulation and these Regulations, and create offences of, and stipulate penalties for, making false or misleading statements and obstruction of an authorised officer.

Copies of the England Rural Development Programme, and Commission Decision No. C(2000) 3003 approving it, are available for inspection at the offices of the Department for Environment, Food and Rural Affairs, 17 Smith Square, London SW1P 3JR or on the internet at <http://www.defra.gov.uk/erdp>.

A full regulatory impact assessment has not been prepared for this instrument as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

2006 No. 225

AGRICULTURE, ENGLAND

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