STATUTORY RULES OF NORTHERN IRELAND

2018 No. 18

AGRICULTURE

The Areas of Natural Constraint Regulations (Northern Ireland) 2018

Made - - - - 30th January 2018

Coming into operation 1st March 2018

The Department of Agriculture, Environment and Rural Affairs is a Northern Ireland department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy of the European Union and matters relating to the promotion of rural development.

The Department of Agriculture, Environment and Rural Affairs makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1. These Regulations may be cited as the Areas of Natural Constraint Regulations (Northern Ireland) 2018 and come into operation on 1st March 2018.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"active farmer" has the same meaning as it has in Article 9 of the Direct Payment Regulation;

"agriculture" means 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 includes the use of woodland provided that use is ancillary to the use of the land for other agricultural purposes; and "agricultural" shall be construed accordingly;

(**1**) S.I. 2000/2812 and S.I. 2000/3238 to which there are amendments not relevant to the subject matter of these Regulations

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)

(**3**) 1954 c.33 (N.I)

"ANC allowance" means a payment made by the Department under Article 31(5) of the Rural Development Regulation and in accordance with Measure 13 as described in the Northern Ireland Rural Development Programme 2014 - 2020(**4**);

"authorised person" means any person who is authorised by the Department, either generally or specifically, to act in relation to matters arising under these Regulations, whether or not the authorised person is an officer of the Department;

"beneficiary" means a person who has received payment for ANC allowance;

"breeding female deer" means a female of the Red, Fallow or Sika species that is at least a six months old breeding female managed on a forage area of a holding enclosed by a deer-proof barrier and which is kept by way of business for the primary purpose of the production of meat;

"breeding female goat" means a female of the caprine species that is at least a one year old breeding female which is kept by way of business for the primary purpose of the production of milk or fibre;

"claim" means a claim for an ANC allowance;

"claimant" means a person who has made a claim;

"common land" means land the grazing of animals on which is shared between two or more holdings;

"deer-proof barrier" means a barrier which will, to the satisfaction of the Department, and having regard to the character and nature of the land, prevent the escape of deer from or, as the case may be, the entry of deer on to any land;

"the Department" means the Department of Agriculture, Environment and Rural Affairs;

"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 for Northern Ireland and deposited at the Offices of the Department at Dundonald House, Upper Newtownards Road, Ballymiscaw, Belfast BT4 3SB;

"the Direct Payment Regulation" means Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009(**5**)

"eligible dairy stocking unit" means a dairy breed cow that has calved at least once or any female dairy breed animal of at least 30 months which is not recorded as having calved;

"ewe" means any female of the ovine species having lambed at least once or that is at least one year old;

"forage area" means the area of the holding, including common land, situated in Northern Ireland, available to the claimant throughout the minimum grazing period and used for rearing livestock, including areas used to produce grass hay, grass silage, sainfoin, clover, lucerne and forage vetches, but not including buildings, ponds, paths and woods, other than land used for woodlands where that use is ancillary to the use of land for other agricultural purposes;

"heifer" means a female beef breed bovine from the age of eight months which has not yet calved;

"holding" has the meaning given by Article 4 (1) (b) of the Direct Payment Regulation;

"the Horizontal Delegated Regulation" means Commission Delegated Regulation (EU) No. 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and

(**4**) https://www.daera-ni.gov.uk/articles/2014-2020-rural-development-programme
(**5**) OJ L 347, 20.12.2013, p. 608

control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance(**6**);

"the Horizontal Implementing Regulation" means Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the council with regard to the integrated administration and control system, rural development measures and cross compliance(**7**);

"the Horizontal Regulation" means Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy(**8**);

"keeper" has—

(a) in relation to the keeping of suckler cows, heifers and eligible dairy stock, the meaning given by Council Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products(**9**);

(b) in relation to the keeping of sheep and goats, the meaning given by Council Regulation (EC) No 21/2004 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC(**10**) as amended by Commission Regulation (EC) No 759/2009(**11**);

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

(i) 1 suckler cow;

(ii) 1 heifer aged over 24 months;

(iii) 1.67 heifers aged between 8 months and 24 months;

(iv) 6.67 ewes;

(v) 6.67 breeding female goats;

(vi) 3.3 breeding female deer aged 27 months and over; or

(vii) 5 breeding female deer aged at least 6 months but less than 27 months;

"minimum grazing period" means the seven month period 1st April to 31st October 2017;

"notional livestock density" means the number of livestock units per hectare of 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 forage area expressed in hectares;

"qualifying forage area" means the forage area or, in relation to a claimant in relation to whom regulation 6 applies, such part of the forage area as results from the reductions made to the forage area in accordance with that regulation;

"relevant animals" means—

(a) the number of suckler cows and heifers for which the claimant is the keeper and which produces the lowest number of livestock units on any one of a number of dates determined by the Department during the minimum grazing period;

(b) the number of ewes and breeding female goats as declared on the claimant's single application and accepted by the Department and for which the claimant is the keeper; and

(**6**) OJ L 181, 20.6.2014, p. 48
(**7**) OJ L 227 31.7.2014, p. 69
(**8**) OJ L 347, 20.12.2013, p. 549
(**9**) OJ L 117 07.5.1997, p. 1
(**10**) OJ L 5 09.01.2004, p. 8
(**11**) OJ L 215 20.08.2009, p. 3

(c) the number of breeding female deer as declared on the claimant's single application and accepted by the Department and owned by the claimant and for which the claimant makes the final decisions regarding, and paying for, feeding, bedding, housing and veterinary requirements;

"the Rural Development Regulation" means Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development(**12**);

"severely disadvantaged area" means the land shown coloured pink on the designated map;

"single application" means the application for direct payments in respect of the Basic Payment Scheme and other area-related aid schemes;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"suckler cow" means a cow belonging to a beef breed or born of a cross with a beef breed, and belonging to a herd intended for rearing calves for meat production;

(3) Any reference in these Regulations to an EU instrument is a reference to that instrument as amended at the date on which these Regulations are made.

Payment of ANC allowance

3. The Department may pay an ANC allowance in respect of the year 2017 if—

(a) the claimant is eligible under regulation 4; and

(b) the land in respect of which the claim is made is eligible under regulation 5.

Claimant eligibility for ANC allowance

4.—(1) A claimant is eligible for ANC allowance if, and only if,—

(a) the claimant is an active farmer;

(b) the claim is made in the single application submitted for the year 2017; and

(c) subject to paragraph (2) the notional livestock density relating to the forage area on the claimant's holding does not fall below 0.2 on any one of a number of dates determined by the Department during the minimum grazing period.

(2) The Department may determine that a notional livestock density of less than 0.2 is sufficient to meet the eligibility requirement 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 sensitivity of the land in question to a stocking density of more than 0.2 and any obligation of the claimant under or in pursuance of any statutory provision in relation to the maintenance of a stocking density of less than 0.2.

(3) For the purposes of calculating notional livestock density in any case the number of heifers to be taken into account shall not exceed a number equal to two thirds of the number of suckler cows.

(4) A claimant shall provide such information as the Department may reasonably require to enable it to make a determination under paragraph (2).

(5) Article 13 of the Horizontal Delegated Regulation (late submission) applies to a claim made in a single application submitted after 15th May 2017.

(**12**) OJ L 347 20.12.2013, p.487

Land eligibility for ANC allowance

5. Land is eligible for ANC allowance if, and only if, the land—

(a) is a qualifying forage area;

(b) lies within the severely disadvantaged area;

(c) has been entered in the single application at column H under either of the land use codes in column 1 of Schedule 1 and satisfies the corresponding description set out in column 2; and

(d) is at least three hectares.

Exclusion of forage area

6.—(1) For the purpose of determining the qualifying forage area, a claimant's forage area shall be reduced by 1 hectare for every 1.71 of the average number of eligible dairy stocking units for which the claimant is the keeper over a number of dates determined by the Department during the minimum grazing period.

(2) Where paragraph (1) applies, the reduction in the forage area shall first be applied to that part of the forage area which is not within the severely disadvantaged area, followed by the part within the severely disadvantaged area.

Amount of ANC allowance

7. Subject to regulation 4(5) and Articles 91, 92 and 93 of the Horizontal Regulation, the amount of ANC allowance payable by the Department to a claimant in respect of an area of land eligible under regulation 5 shall be calculated in accordance with the rate specified in column 2 of Schedule 2 opposite the qualifying forage area specified in column 1.

Transfer of holdings

8. For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee shall inform the Department of the transfer and request payment under regulation 3 is 90 days beginning with the first day after the date of the transfer.

Breaches of commitment

9. The Department may, in relation to a claim, exercise any of the powers conferred by regulation 10 if—

(a) any information furnished to the Department by the claimant or beneficiary is false or misleading; or

(b) the claimant or beneficiary is in breach of any requirement to which he is subject under these Regulations or the Rural Development Regulation.

Department's powers of recovery

10. Where regulation 9 applies, the Department may—

(a) withhold the whole or part of any ANC allowance payable to the claimant; and

(b) recover on demand the whole or part of any ANC allowance already paid to the beneficiary.

Recovery of interest

11.—(1) Where the Department exercises the power conferred by regulation 10(b), it may also recover on demand interest on the sum to be recovered in respect of each day of the period referred