STATUTORY RULES OF NORTHERN IRELAND

2008 No. 473

AGRICULTURE

The Less Favoured Area Compensatory Allowances (No. 2) Regulations (Northern Ireland) 2008

Made - - - - 27th November 2008

Coming into operation 1st January 2009

The Department of Agriculture and Rural Development is a 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 Community and in relation to matters relating to the promotion of rural development. The Department of Agriculture and Rural Development makes the following Regulations in exercise of the powers conferred by that section.

Citation and commencement

1. These Regulations may be cited as the Less Favoured Area Compensatory Allowances (No. 2) Regulations (Northern Ireland) 2008 and shall come into operation on 1st January 2009.

Interpretation

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

(2) In these Regulations—

"the 1994 Regulations" means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1994(**4**);

"the 1996 Regulations" means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1996(**5**);

"the 1999 Regulations" means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1999(**6**);

(**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
(**3**) 1954 c. 33 (N.I.)
(**4**) 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
(**5**) 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. 34, S.R. 1998 No. 439, S.R. 1999 No. 68 and which cease to apply by virtue of S.R. 1999 No. 497
(**6**) S.R. 1999 No. 497

"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;

"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 less favoured area compensatory allowance;

"claimed forage area" means land which has been entered at column J of the field data sheet in a single application for the year 2008;

"the Commission" means the Commission of the European Communities;

"Commission Regulation 796/2004" means Commission Regulation (EC) No. 796/2004(**7**) laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in 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;

"Commission Regulation 1973/2004" means Commission Regulation (EC) No. 1973/2004(**8**) 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;

"common land" means land the grazing of animals on which is shared;

"compensatory allowance", in relation to land situated in Northern Ireland, means either—

(a) any payment made under these Regulations, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2001(**9**), the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2002(**10**), the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2003(**11**), the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2004(**12**), the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2005(**13**), the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2006(**14**), the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2007(**15**), the Less Favoured Area Compensatory Allowances (No. 2) Regulations (Northern Ireland) 2007(**16**) or the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2008(**17**); or

(b) in the case of a compensatory allowance payable in the year 2000 or earlier, any payment made under the Hill Livestock (Compensatory Allowances) Regulations;

(**7**) O.J. No. L141, 30.04.2004, p. 18 as last amended by Commission Regulation (EC) No. 972/2007 (O.J. No. L216, 21.08.2007, p. 3)
(**8**) O.J. No. L345, 20.11.2004, p. 1 as last amended by Commission Regulation (EC) No. 993/2002, (O.J. No. L222, 28.08.2007, p. 10)
(**9**) S.R. 2001 No. 71
(**10**) S.R. 2002 No. 72
(**11**) S.R. 2003 No. 162
(**12**) S.R. 2004 No. 495
(**13**) S.R. 2005 No. 106
(**14**) S.R. 2006 No. 52
(**15**) S.R. 2007 No. 27
(**16**) S.R. 2007 No. 361
(**17**) S.R. 2008 No. 34

"Council Regulation 1257/1999" means Council Regulation (EC) No. 1257/1999(**18**) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations;

"Council Regulation 1782/2003" means Council Regulation (EC) No. 1782/2003(**19**) establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending certain Regulations;

"Council Regulation 1698/2005" means Council Regulation (EC) No. 1698/2005(**20**) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);

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

"deer" means deer of the Red, Fallow or Sika species managed on a holding enclosed by a deer-proof barrier and kept by way of business for the primary purpose of the production of meat;

"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 entry of deer on to or, as the case may be, the escape of deer from any land;

"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 the land shown coloured blue on the designated map;

"electronic communication" has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001(**21**);

"eligible forage area" means such part of the qualifying forage area that has been entered in a single application at column G under either of the land use codes in column 1 of Schedule 1 and as lies within a less favoured area;

"eligible land" means land within the less favoured area;

"ewe" has the same meaning as in Article 112(a) of Council Regulation 1782/2003;

"the first compensatory allowance", in relation to a claimant, means the first payment of compensatory allowance to him (whether payable under these Regulations, the Hill Livestock (Compensatory Allowances) Regulations, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2001, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2002, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2003, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2004, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2005, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2006, the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2007, the Less Favoured Area Compensatory Allowances (No. 2) Regulations (Northern Ireland) 2007 or the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2008);

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

(**18**) O.J. No. L160, 26.06.1999, p. 80 as last amended by Council Regulation (EC) No. 1698/2005 (O.J. No. L277, 21.10.2005, p. 1)
(**19**) O.J. No. L270, 21.10.2003, p. 1 as last amended by Commission Regulation (EC) No. 552/2007 (O.J. No. L131, 23.05.2007, p. 10 and derogated in Council Regulation (EC) No. 1107/2007 (O.J. No. L253, 28.09.2007, p. 1)
(**20**) O.J. No. L277, 21.10.2005, p. 1 as last amended by Council Regulation (EC) No. 2012/2006 (O.J. No. L384, 29.12.2006, p. 8)
(**21**) 2001 c. 9 (N.I.); the definition of "electronic communication" contained in section 4(1) was amended by section 406(1) of, and paragraph 170 of Schedule 17 to, the Communications Act 2003 (c. 21)

"goat" means any goat (of any species) which is kept by way of business for the primary purpose of the production of milk or fibre;

"heifer" has the same meaning as in Article 122(e) of Council Regulation 1782/2003;

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

"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 all the land shown coloured blue or pink on the designated map;

"less favoured area compensatory 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;

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

(c) 6.67 ewes;

(d) 6.67 breeding female goats;

(e) 3.3 breeding female deer over 27 months; or

(f) 5 breeding female deer over 6 months but less than 27 months;

"minimum grazing period" means the seven month period 1st April 2008 to 31st October 2008;

"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;

"other competent authority" means the Secretary of State, the Scottish Ministers, or the Welsh Ministers;

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

"related less favoured area" in relation to a claimant, means all that claimed forage area, excluding less favoured area, in respect of which the Department 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 England, Scotland or Wales in accordance with Articles 36(a)(i) or (ii) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999;

"relevant animals" means—

(a) the number of suckler cows, heifers and ewes present on a claimant's holding for at least the minimum grazing period in the year 2008;

(b) the average number of breeding female deer present on a claimant's holding on a number of dates determined by the Department; and

(c) the average number of breeding female goats present on a claimant's holding on a number of dates determined by the Department;

"relevant forage area" means any claimed forage area situated in Northern Ireland;

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

"single application" has the meaning given by Article 2(11) of Commission Regulation 796/2004;

"suckler cow" has the same meaning as in Article 122(d) of Council Regulation 1782/2003;

"undertaking" means an undertaking under regulation 5(a).

(3) 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.

(4) 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.

Payment of less favoured area compensatory allowance

3. Subject to regulation 5, the Department shall pay less favoured area compensatory allowance for the year 2009 to any claimant who is eligible under regulation 4 in respect of any eligible forage area.

Eligibility for less favoured area compensatory allowance

4.—(1) Subject to Article 51 of Council Regulation 1698/2005 (reduction or cancellation of payments) and regulation 5, a claimant shall be eligible for less favoured area compensatory allowance if, and only if—

(a) his claim is made in a single application submitted in the year 2008;

(b) the claimed forage area entered in that single application complies with one of the conditions specified in paragraph (3); and

(c) subject to paragraph (4), the notional livestock density is not less than 0.2.

(2) Article 21 of Commission Regulation 796/2004 (late submission) shall apply to a claim made in a single application submitted after 15th May 2008.

(3) The conditions are that—

(a) the claimed forage area lying within the less favoured area is not less than three hectares; or

(b) where the claimed forage area lying within the less favoured area is not less than one hectare but is less than three hectares, the total claimed forage area includes land situated in a related less favoured area which is eligible for related less favoured area allowance.

(4) The Department may determine that a notional livestock density of less than 0.2 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 kept on the eligible forage area and any obligation of the claimant as to the number of animals that may be kept on the land comprising the eligible forage area.

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

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 would, for a period of at least five years from the date of payment of the first compensatory allowance, continue to use for the purposes of agriculture at least three hectares of land which is either eligible land or related less favoured area; and