STATUTORY RULES OF NORTHERN IRELAND

2004 No. 495

AGRICULTURE

Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2004

Made - - - -	*1st December 2004*
Coming into operation	*1st December 2004*

The Department of Agriculture and Rural Development, being 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, 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) 2004 and shall come into operation on 1st December 2004.

Interpretation

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

"area aid application" has the same meaning as in Article 6 of Council Regulation 3508/92;

"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 as forage area in an area aid application for the year 2003;

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

"Commission Regulation 2342/1999" means Commission Regulation (EC) No. 2342/1999(**7**) 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;

"Commission Regulation 2419/2001" means Commission Regulation (EC) No. 2419/2001(**8**) laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No. 3508/92;

"Commission Regulation 817/2004" means Commission Regulation (EC) No. 817/2004(**9**) laying down detailed rules for the application of Council Regulation 1257/1999;

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

"compensatory allowance" means either –

(a) any payment made under these Regulations, the Less Favoured Area Compensatory Allowances (Northern Ireland) 2001(**10**), the Less Favoured Area Compensatory Allowances (Northern Ireland) 2002(**11**), or the Less Favoured Area Compensatory Allowances (Northern Ireland) 2003(**12**); 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;

"Council Regulation 3508/92" means Council Regulation (EEC) No. 3508/92(**13**) establishing an integrated administration and control system for certain Community aid schemes;

"Council Regulation 1254/1999" means Council Regulation (EC) No. 1254/1999(**14**) on the common organisation of the market in beef and veal;

(**7**) O.J. No. L281, 04.11.1999, p. 30. as last amended by Commission Regulation (EC) No. 1473/2003 (O.J. No. L211, 21.08.2003, p. 12)
(**8**) O.J. No. L327, 12.12.01, p. 11 as last amended by Commission Regulation (EC) No. 118/2004 (O.J. No. L017, 24.01.2004 p. 7)
(**9**) O.J. No. L153, 30.04.2004, p. 30: Corrigendum O.J. No. L231, 30.06.2004, p. 24
(**10**) S.R. 2001 No. 71
(**11**) S.R. 2002 No. 72
(**12**) S.R. 2003 No. 162
(**13**) O.J. No. L355, 05.12.92, p. 1 as last amended by Commission Regulation (EC) No. 495/2001 (O.J. No. L72, 14.03.01, p. 6). Council Regulation (EC) No. 3508/92 was repealed by Article 153 (1) of Council Regulation (EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p. 1) but continues to apply to applications for direct payments in respect of calendar years preceding 2005
(**14**) O.J. No. L160, 26.06.1999, p. 21 as last amended by Council Regulation (EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p. 1)

"Council Regulation 1257/1999" means Council Regulation (EC) No. 1257/1999(**15**) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations;

"cross-border holding" means a holding which is situate 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 land shown coloured blue on the designated map;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000(**16**);

"eligible forage area" means such part of the qualifying forage area as lies within a less favoured area;

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

"ewe" means a female sheep which is at least one year old on 1st January 2004, or has lambed by that date;

"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 or the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2003);

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

"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 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;

"holding" has the same meaning as in Article 1 of Council Regulation 3508/92;

"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 these Regulations and with Chapter V of Title II of Council Regulation 1257/1999;

(**15**) O.J. No. L160, 26.06.1999, p. 80 as last amended by Council Regulation (EC) No. 567/2004 (O.J. No. L90, 27.03.2004, p. 1)
(**16**) 2000 c. 7

"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;

(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;

"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 for Environment, Food and Rural Affairs, the Scottish Ministers, or the National Assembly for Wales;

"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" means, in relation to a claimant, 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) in relation to England, the Hill Farm Allowance;

(b) in relation to Scotland, the Less Favoured Area Support Scheme; and

(c) in relation to Wales, the Tir Mynydd Scheme;

"relevant animals" means –

(a) the suckler cows, heifers and ewes in respect of which a claimant, in the year 2003, was paid suckler cow premium or, as the case may be, sheep annual premium;

(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;

"retention period" means the six month retention period referred to in Article 6.2 of Council Regulation 1254/1999;

"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(**17**);

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

"suckler cow premium" means the premium payable under the Suckler Cow Premium Regulations (Northern Ireland) 2001(**18**); and

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

(**17**) 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. 1998 No. 440, S.R. 1999 No. 457, S.R. 2000 No. 301, S.R. 2001 No. 411 and S.R. 2002 No. 368

(**18**) S.R. 2001 No. 362

(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.

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 2004 to any claimant who is eligible under regulation 4 in respect of any eligible forage area.

Eligibility of claimants 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 if, and only if, –

(a) his claim is made in an area aid application submitted in the year 2003;

(b) the claimed forage area entered in that area aid 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 13 of Commission Regulation 2419/2001 (late submission) shall apply to a claim made in an area aid application submitted after 15th May 2003.

(3) The conditions are –

(a) that 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 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 other than relevant 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) In order to enable it to consider whether to exercise its discretion under paragraph (4), the claimant shall provide the Department 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 would, for a period of 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

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

Release from undertaking

6. A claimant shall not be taken to be in breach of the undertaking referred to in regulation 5 –