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STATUTORY RULES OF NORTHERN IRELAND

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**2002 No. 72**

**Less Favoured Area Compensatory Allowances  
Regulations (Northern Ireland) 2002**

**Citation and commencement**

1. These Regulations may be cited as the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2002 and shall come into operation on 6th March 2002.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(1) 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(2);

“the 1979 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1979(3);

“the 1984 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1984(4);

“the 1994 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1994(5);

“the 1996 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1996(6);

“the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1999(7);

“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;

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(1) 1954 c. 33 (N.I.).

(2) 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

(3) 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

(4) 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

(5) 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

(6) 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

(7) S.R. 1999 No. 497

“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 2001;

“Commission” means the Commission of the European Communities;

“Commission Regulation 1750/1999” means Commission Regulation (EC) No. 1750/1999<sup>(8)</sup> laying down detailed rules for the application of Council Regulation 1257/1999, as last amended by Commission Regulation (EC) No. 1763/2001<sup>(9)</sup>;

“Commission Regulation 2342/1999” means Commission Regulation (EC) No. 2342/1999<sup>(10)</sup> 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. 2088/2001<sup>(11)</sup>;

“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;

“Council Regulation 3508/92” means Council Regulation (EEC) No. 3508/92<sup>(12)</sup> establishing an integrated administration and control system for certain Community aid schemes, as last amended by Council Regulation 495/2001<sup>(13)</sup>;

“Council Regulation 1254/1999” means Council Regulation (EC) No. 1254/1999<sup>(14)</sup> on the common organisation of the market in beef and veal, as last amended by Council Regulation 1512/2001<sup>(15)</sup>;

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999<sup>(16)</sup> 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<sup>(17)</sup>;

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<sup>(8)</sup> O.J. No. L214, 13.8.1999, p. 31

<sup>(9)</sup> O.J. No. L239, 07.09.2001, p. 10

<sup>(10)</sup> O.J. No. L281, 04.11.1999, p. 30

<sup>(11)</sup> O.J. No. L282, 26.10.2001, p. 39

<sup>(12)</sup> O.J. No. L355, 5.12.92, p. 1

<sup>(13)</sup> O.J. No. L72, 14.03.2001, p. 4

<sup>(14)</sup> O.J. No. L160, 26.06.1999, p. 21

<sup>(15)</sup> O.J. No. L201, 26.07.2001, p. 1

<sup>(16)</sup> O.J. No. L160, 26.06.1999, p. 80

<sup>(17)</sup> 2000 c. 7

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

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

“ewe” means a female sheep which is at least one year old on 1st January 2002, or has lambed by that date;

“first compensatory allowance” means the first payment of less favoured area compensatory allowance (whether payable under these Regulations or under the Less Favoured Area Compensatory Allowances Regulations (Northern Ireland) 2001(18)) 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;

“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 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;

“other competent authority” means the Secretary of State for Environment, Food and Rural Affairs, the Scottish Ministers, or the National Assembly for Wales;

“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—

in relation to England, the Hill Farm Allowance;

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

in relation to Wales, the Tir Mynydd Scheme;

“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 such 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 2001, 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(19);

“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(20); 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 2002 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 2001;
- (b) the claimed forage area entered in that area aid application complies with one of the conditions specified in paragraph (2); and

subject to paragraph (3), the notional livestock density on the eligible forage area is not less than 0·2 livestock units.

(2) 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.

(3) 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

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(19) 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, S.R. 2000 No. 301 and S.R. 2001 No. 411

(20) S.R. 2001 No. 362

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.

(4) In order to enable it to consider whether to exercise its discretion under paragraph (3), 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—
- (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, and at least three hectares of the eligible land, or of any related less favoured area, last used by him for the grazing of animals continue to be used for the purposes of 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 basic amount, the Department may, if it thinks fit, increase that amount by a percentage not exceeding 20% of the basic amount, provided that the same percentage is applied in relation to each claimant.

(2) Subject to paragraph (3), if the basic amount, as supplemented by any increment under paragraph (1), is less than 80% of the relevant amount, the Department may pay the claimant such additional sum as would increase the total less favoured area compensatory allowance payable to him to an amount equal to 80% of—

- (a) where the relevant area in 2001 is less than the relevant area in the year 2000 such proportion of the relevant amount as related to the lesser of those relevant areas; and
- (b) in any other case, the relevant amount.

(3) In relation to a claimant whose holding, in the year 2000, was located partly outside Northern Ireland, the Department shall make the payment referred to in paragraph (2) only in relation to that proportion of the holding located in Northern Ireland.

(4) In this regulation—

- (a) “the basic amount” means the amount payable to a claimant in accordance with regulation 7;
- (b) “the relevant amount” means the compensatory allowance paid to the claimant in the year 2000; and
- (c) “the relevant area” means the total of the less favoured area, together with any related less favoured area, entered in the claimant’s application for the year in question.

### **Exclusion of forage area**

9.—(1) Subject to paragraph (2), if, on 31st March 2001, 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:

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

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 a beneficiary is false or misleading,
- (b) a beneficiary is in breach of any of the terms of an undertaking, or
- (c) a 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;
- (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.

### **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.



**Amendment**

16. In regulation 4(b) of the Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001(21) after “2001” there shall be inserted the words “or the Less Favoured Areas Compensatory Allowances Regulations (Northern Ireland) 2002”.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 1st March 2002.

L.S.

*R. Jordan*  
A senior officer of the  
Department of Agriculture and Rural  
Development