

## 1995 No. 239

## AGRICULTURE

**Moorland (Livestock Extensification) Regulations  
(Northern Ireland) 1995**

*Made* . . . . . 2nd June 1995

*Coming into operation* . . . . . 10th July 1995

The Department of Agriculture, being a Department 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 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 Moorland (Livestock Extensification) Regulations (Northern Ireland) 1995 and shall come into operation on 10th July 1995.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

“application” means an application under regulation 4;

“authorised person” means a person (whether or not an officer of the Department) authorised by the Department in accordance with regulation 9;

“beneficiary” means—

(a) a person whose application has been accepted; or

(b) a person who occupies a holding or part of a holding following a change of occupation of that holding or part and who has given an undertaking to comply with extensification obligations relating to that holding or part assumed by the previous occupier;

“compensatory allowance” means the annual compensatory allowance paid under the Hill Livestock (Compensatory Allowances)

(a) S.I. 1972/1811

(b) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.I. 1994/2795 (N.I. 15)

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

(d) S.I. 1984/2024 amended by S.I. 1985/2075 and revoked, insofar as it formed part of the law of Northern Ireland, by S.R. 1987 No. 92

Regulations 1984(d), the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1987(a), the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1992(b), the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1993(c) or the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1994(d) in respect of sheep;

“the Department” means the Department of Agriculture for Northern Ireland;

“eligible moorland” means land which is—

- (a) comprised in a moorland grazing unit on which heather covers more than 25 per cent of the land;
- (b) included in the area coloured pink on any of the maps in the volume of maps marked “Moorland Map of Northern Ireland 1992/93” and deposited at the offices of the Department of Agriculture for Northern Ireland, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB;
- (c) not in an environmentally sensitive area designated under Article 3 of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987(e).

“eligible person” means a person who on the date of his application—

- (a) is the occupier of a production unit containing at least 5 hectares of eligible moorland and has occupied that production unit for a period of at least 12 months, and
- (b) has received compensatory allowances for his flock in respect of 1994 and any subsequent year in respect of which such allowances may be paid;

“ewe” means a female sheep which was at least one year old on the last preceding qualifying date;

“extensification obligations” means the obligations assumed by a beneficiary by virtue of the undertakings referred to in regulation 3 or 7;

“extensification period” means the period of five consecutive years commencing on the day before the first day of the first winter after the acceptance by the Department of an application;

“heather” means common heather (*Calluna vulgaris*), and includes bell heather (*Erica cinerea*), cross-leaved heath (*Erica tetralix*), crowberry (*Empetrum nigrum*), bilberry (*Vaccinium myrtillus*), bog myrtle (*Myrica gale*), Cranberry (*Vaccinium oxycoccos*) and other ericaceous

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- (a) S.R. 1987 No. 92 amended by S.R. 1987 No. 445, S.R. 1990 No. 36, S.R. 1991 No. 58 and S.R. 1991 No. 286, and revoked by S.R. 1992 No. 68
  - (b) S.R. 1992 No. 68 amended by S.R. 1993 No. 16 and revoked with savings by S.R. 1993 No. 449
  - (c) S.R. 1993 No. 449 amended by S.R. 1993 No. 474 and revoked with savings by S.R. 1994 No. 417
  - (d) S.R. 1994 No. 417 amended by S.R. 1995 No. 22
  - (e) S.I. 1987/458 (N.I. 3) amended by S.R. 1994 No. 419. At the date of making these Regulations, no land in the area coloured pink on the “Moorland Map of Northern Ireland 1992/93” had been so designated

dwarf shrub species when growing in association with common heather;

“holding” means all the production units farmed by an applicant or beneficiary;

“landlord” means, in relation to any land occupied by a tenant, any person who is entitled for the time being to receive the rents or profits of the land;

“livestock unit” means—

(a) 6.66 ewes, or

(b) 6.66 goats, or

(c) 1 bovine animal more than two years old, or

(d) 1.66 bovine animals from six months old to two years old inclusive, or

(e) 1 horse or pony more than six months old, or

(f) 4.35 farmed deer;

“moorland” means land with predominantly semi-natural upland vegetation, or comprising predominantly rock outcrops and semi-natural upland vegetation, used primarily for rough grazing;

“moorland grazing unit” means an area of moorland on which stock management and numbers can be controlled by existing boundaries or by shepherding;

“occupier” includes a person who has a right to use eligible moorland for the purpose of grazing ewes;

“overgrazing” means grazing land with livestock in such numbers as adversely to affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree;

“participating production unit” means a production unit—

(a) which contains at least 5 hectares of eligible moorland,

(b) which on the date of an application has been occupied by the applicant for a period of at least 12 months, and

(c) in respect of which an undertaking is given to comply with the obligations described in regulation 3(a) to (e);

“production unit” means land farmed in Northern Ireland by an applicant or beneficiary as a single unit having regard to supplies of machinery, livestock, feeding-stuffs and manpower;

“qualifying date” means—

(a) 20th February where an applicant or a beneficiary has not submitted a claim for compensatory allowances in respect of that year or has not submitted such a claim on or before the date which is the qualifying day for the purposes of those allowances, and

(b) in all other cases, the date which is the qualifying day for the purposes of those allowances;

“reference flock” means the smallest of the following, namely—

- (a) where an applicant or beneficiary received compensatory allowances in respect of 1994, the number of ewes for which he received the allowances,
- (b) where an applicant or beneficiary received compensatory allowances in respect of the year prior to submission of his application, the number of ewes for which he received the allowances, and
- (c) where the Department has notified the applicant of a number of ewes in accordance with paragraph (3), the number of ewes so notified;

“relevant livestock” means cattle, goats, horses, ponies and farmed deer;

“specified stocking density” means zero livestock units per hectare in winter and 0.30 livestock units per hectare in summer;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“summer” means the period between 28th February or, in the case of a leap year, 29th February and 31st October;

“tenant” includes sub-tenant and any person deriving title from the original tenant or sub-tenant;

“unsuitable supplementary feeding methods” means feeding methods which include providing supplementary feed (other than to maintain livestock during abnormal weather conditions) in such a manner as to result in damage to vegetation through excessive trampling or poaching of the land by animals or excessive rutting by vehicles;

“winter” means the period between 31st October and 28th February, or in the case of a leap year, 29th February.

(3) Where the Department forms the opinion that (taking account of the need to avoid overgrazing) there is a maximum number of ewes which should be grazed on the holding of an applicant, the Department may notify the applicant of that number.

(4) Any reference in these Regulations to the date of an application is a reference to the date of receipt of that application by the Department.

#### *Aid for moorland extensification*

3. Subject to the provisions of these Regulations, the Department may make payments of aid to any eligible person who undertakes for the duration of the extensification period—

- (a) to ensure that the stocking density of ewes and relevant livestock on eligible moorland on each participating production unit does not exceed the specified stocking density;
- (b) to use for the purposes of grazing or forage during the summer, on each participating production unit, an area of land at least equal in size to the largest area used by him for grazing or forage on that unit during the last summer which ended before the date of his application;

- (c) to observe in relation to each participating production unit the management requirements in the Schedule;
- (d) to manage eligible moorland on each participating production unit in accordance with a management plan or management plans agreed in advance with the Department;
- (e) to ensure that the numbers of relevant livestock kept on each participating production unit do not exceed the highest respective numbers of them kept there during the last summer and winter which ended before the date of his application;
- (f) where sheep were away wintered from any participating production unit in the last winter which ended before the date of his application, to ensure that in any winter a number of sheep are away wintered not being less than the "minimum number" calculated as follows—

$$\text{minimum number} = \frac{ab}{c}$$

where—

- a* is the number of sheep in the eligible person's flock in the winter in respect of which the calculation is made,
  - b* is the number of sheep away wintered from the participating production unit in the last winter which ended before the date of the eligible person's application, and
  - c* is the number of sheep in the eligible person's flock in the last winter which ended before the date of the eligible person's application;
- (g) to ensure that the number of ewes kept on his holding does not exceed the reference flock, reduced by 10 or by a larger figure, specified in the undertaking, which will enable the eligible person to comply with the undertaking given by virtue of paragraph (a) and will result in significant environmental benefit for an area of at least 5 hectares of eligible moorland;
  - (h) to ensure that any reduction in the number of ewes kept on his holding in order to enable him to comply with the undertaking given by virtue of paragraph (a) in respect of summer is achieved by reducing the number of ewes in his flock.

#### *Applications for aid*

4.—(1) An application for aid under these Regulations shall be made at such time and in such form, and shall include or be accompanied by such information as the Department reasonably may require to enable it to decide whether to accept the application.

(2) If required by the Department, the applicant shall provide evidence showing the nature of his estate or interest in or other right to graze ewes or relevant livestock on his holding.

(3) The Department shall acknowledge in writing the receipt of any application including the date of receipt by the Department of that application.

*Restrictions on acceptance of applications*

5.—(1) The Department shall not accept an application unless it is satisfied that, having regard to—

- (a) the condition of the eligible moorland on the applicant's holding;
- (b) the management plan or plans which have been proposed in relation to that moorland; and
- (c) the right of any other person to use the holding for grazing,

compliance with the undertakings proposed in connection with the application will result in significant environmental benefit for an area of at least 5 hectares of eligible moorland.

(2) The Department shall not accept an application where it is satisfied that the proposals for reduction in stocking density contained in the application will result in undergrazing of any eligible moorland.

(3) The Department may refuse an application where it is satisfied that the applicant is or is likely to be, for the whole or any part of the extensification period, unable to comply with the extensification obligations.

(4) The Department shall not accept an application from a tenant or licensee to undertake extensification obligations in relation to any land unless it is satisfied that the tenant or licensee has notified the landlord or, as the case may be, the licensor in writing of his intention to make the application.

(5) The Department may refuse to accept an application to undertake extensification obligations where it is satisfied that—

- (a) the implementation of any part of those undertakings would frustrate the purposes of any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community; or
- (b) the payment of aid under these Regulations would duplicate any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Community.

*Applications to increase ewe numbers*

6.—(1) A beneficiary may increase the number of ewes kept on his holding above the number required by virtue of regulation 3(g) where he has permission from the Department in accordance with this regulation and the increase is in accordance with such permission.

(2) A beneficiary may apply to the Department for permission to increase the numbers of ewes to be kept on his holding where such increase is or would arise as a result of the enlargement of the beneficiary's holding during the extensification period.

(3) An application under paragraph (2) shall be made in such form and shall contain or be accompanied by such information as the Department reasonably may require.

(4) The Department shall not accept an application under paragraph (2) unless it is satisfied that the proposed increase will not frustrate the fulfilment of the extensification obligations assumed by the beneficiary.

(5) Without prejudice to the generality of paragraph (4), the Department shall not accept an application under paragraph (2) where the proposed increase exceeds the maximum number of ewes which were kept on the acquired land in any of the three years preceding the acquisition of that land by the beneficiary and for which compensatory allowances were received in respect of any of those three years.

(6) In paragraph (5), "acquired land" means the land the acquisition of which has resulted or would result in the enlargement of the beneficiary's holding referred to in paragraph (2).

#### *Change of occupation*

7.—(1) Where there is a change of occupation, during the extensification period, of the whole or any part of a beneficiary's holding by reason of the devolution of that holding or part on the death of that beneficiary, or otherwise—

(a) the beneficiary (or, if he has died, his personal representative) shall within 3 months (or, where the beneficiary has died and a personal representative is not appointed within three months, as soon as is practicable) notify the Department in writing of the change of occupation, and shall supply to the Department such information relating to that change of occupation in such form and within such period as the Department reasonably may determine;

(b) subject to the provisions of this regulation, the new occupier of that holding or part may give an undertaking to the Department to comply, for the remainder of the extensification period, with the extensification obligations assumed by the original occupier relating to that holding or part.

(2) The Department shall not accept an undertaking from a new occupier of a holding or part of a holding to comply with extensification obligations assumed by the original occupier relating to that holding or part where any original participating production unit comprised in that holding has been divided into parts or has ceased to be farmed as a separate unit.

(3) Where there is a change of occupation of part of a holding, or a holding is divided into parts on the death of the beneficiary, the Department may—

(a) determine the undertakings which it reasonably believes should be given in respect of each part of the holding so as to ensure the environmental benefit for which undertakings were given by the original occupier is achieved; and

(b) apportion the entitlement to payments under these Regulations between the occupiers of the parts of the holding.

(4) A new occupier who gives an undertaking to comply with the extensification obligations assumed by the original occupier shall supply to the Department such information in such form and within such period following the change of occupation as the Department reasonably may require.

(5) Where the Department has accepted an undertaking from a new occupier to comply with the extensification obligations undertaken by the original occupier—

- (a) the new occupier shall be deemed to be a beneficiary; and
- (b) his undertaking to comply with those extensification obligations shall be deemed to take effect on the date of the acceptance by the Department of that undertaking.

(6) Where within 3 months from the date of change of occupation of the whole or any part of a beneficiary's holding an undertaking has not been given under this regulation to comply with the extensification obligations assumed by the original occupier in relation to each original participating production unit comprised in that holding (including any undertaking from the original occupier revised to take account of a determination by the Department under paragraph (3)), the Department may—

- (a) withhold the whole or any part of any payments due to the original occupier in so far as they relate to any such unit in respect of which an undertaking has not been given; and
- (b) recover from the original occupier or his personal representatives the whole or any part of any payments of aid already made to him in so far as they related to any such unit in respect of which an undertaking has not been given.

(7) Paragraph (6) shall not apply where the change of occupation of a holding or part of a holding is the result of—

- (a) the death of the original occupier, and
  - (i) that original occupier occupied that holding or part under a tenancy, lease or licence; and
  - (ii) that tenancy, lease or licence determined on the death of that original occupier or was terminated by the landlord, or as the case may be, licensor, following that death; or
- (b) the compulsory purchase of that holding or part.

(8) Where all or part of the land which has been compulsorily purchased was used for grazing or forage on a participating production unit, the area so used shall be subtracted, at the request of the beneficiary in writing, from the total area required to be used for the purposes of grazing or forage by the beneficiary.

(9) In this regulation, in relation to any change of occupation, "original occupier" means the occupier immediately before such change.

#### *Amounts of aid and claims*

8.—(1) Subject to the provisions of these Regulations, payments of aid shall be made in respect of each year in the extensification period.

(2) The amount of each yearly payment shall be £25 multiplied by the number specified in the undertaking given by virtue of regulation 3(g).

(3) The rate of payment specified in paragraph (2) may be reviewed by the Department each year.



(4) A claim for payment of aid under these Regulations shall be made at such time and in such form and shall contain such information as the Department may reasonably require.

*Obligation to permit entry and inspection*

9.—(1) A beneficiary shall permit any person duly authorised by the Department, accompanied by such other persons acting under the Department's instructions as appear to the authorised person to be necessary for the purpose, at all reasonable times and on production on demand of the authorised person's authority, to enter upon the beneficiary's holding in order to inspect any land, building, livestock, document or record, with a view to verifying—

- (a) the accuracy of any particulars given in any application under regulation 4 or 6(2) or any claim under regulation 8(4) or in connection with any undertaking given by a new occupier pursuant to regulation 7(1)(b); and
- (b) compliance with the extensification obligations.

(2) A beneficiary shall render all reasonable assistance to the authorised person in relation to the matters mentioned in paragraph (1), and in particular shall—

- (a) produce such document or record as may be required by the authorised person for inspection; and
- (b) at the request of the authorised person, accompany him in making the inspection of any land and identify any area of land which is concerned in any application or claim mentioned in paragraph (1) or in any undertaking given by a new occupier under regulation 7 to comply with the extensification obligations undertaken by the original occupier.

*Withholding and recovery of aid and termination*

10.—(1) Where any person, with a view to obtaining the payment of aid under these Regulations to himself or any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the Department may withhold the whole or any part of any aid payable to that person or to such other person, and may recover the whole or any part of any aid already paid to that person or to such other person.

(2) Where a beneficiary—

- (a) fails to comply with any of the extensification obligations; or
- (b) fails without reasonable excuse to permit entry or inspection by an authorised person or to render all reasonable assistance to such authorised person as required by regulation 9;

the Department may withhold the whole or any part of any aid payable to that beneficiary, and may recover the whole or any part of any aid already paid to him.

(3) In addition to withholding or recovering aid under paragraph (1) or (2), the Department may treat as terminated the undertakings given by the beneficiary under these Regulations.

(4) The Department may treat the undertakings given by any beneficiary as terminated where the beneficiary receives or is entitled to receive any assistance out of moneys provided by or under any statutory provision or by the European Community and the Department is satisfied that such assistance would duplicate the payment of aid under these Regulations.

(5) Nothing in paragraph (4) entitles the Department to withhold any aid payable or to recover any aid already paid in respect of a period before the Department acted under that paragraph.

(6) Before withholding or recovering any aid under paragraph (2)(a) or treating an undertaking as terminated under paragraph (4), the Department shall—

- (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery of aid;
- (b) afford the beneficiary an opportunity of appearing before and being heard by a person appointed for that purpose by the Department; and
- (c) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

*False statements*

11. If any person, for the purposes of obtaining for himself or any other person any aid under these Regulations, knowingly or recklessly makes a statement which is false in a material particular, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 2nd June 1995.

(L.S.)

*G. Lavery*

Assistant Secretary

**Management Requirements**

1. As regards all moorland comprised in participating production units—
  - (a) the beneficiary shall not use fungicides or insecticides;
  - (b) the beneficiary shall not apply herbicides except where necessary to control bracken, nettles, spear thistle, creeping or field thistle, curled dock, broadleaved dock or ragwort or to carry out stump treatment of cleared scrub. Herbicides used for any of these purposes other than to control bracken shall be applied by means of a weed wiper or spot treatment;
  - (c) the beneficiary shall not plough, excavate, level, re-seed, chain-harrow, roll or otherwise cultivate the land;
  - (d) the beneficiary shall not apply any inorganic or organic fertiliser;
  - (e) the beneficiary shall not erect any fencing without the prior written approval of the Department;
  - (f) the beneficiary shall not install any new land drainage system and shall not modify any existing land drainage system so as to bring about increased drainage.
  
2. As regards all land (including moorland) comprised in or forming the boundary of participating production units—
  - (a) the beneficiary shall not damage, destroy or remove stockproof walls, hedges, banks, traditional weatherproof farm buildings, features of historical or archaeological interest or value, lakes, ponds or streams or other watercourses;
  - (b) the beneficiary shall not damage or destroy species-rich meadows and pastures, wetlands or other areas of high conservation value;
  - (c) the beneficiary shall not damage, destroy or remove woodland or field and hedgerow trees;
  - (d) the beneficiary shall not overgraze any land or use unsuitable supplementary feeding methods.

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

1. These Regulations allow the Department of Agriculture ("the Department") to make payments of aid, in accordance with the Regulations, to farmers who reduce their flocks of ewes (regulation 3). The Regulations comply with Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p. 85) on agricultural methods compatible with the requirements of protection of the environment and the maintenance of the countryside ("the Agri-environmental Regulation"). The aid scheme provided for by these Regulations is part of the zonal programme relating to Northern Ireland submitted by the United Kingdom to the Commission pursuant to Articles 3 and 7 of the Agri-environmental Regulation.

2. Payment will be at the rate of £25 for each ewe by which the flock is reduced, calculated in accordance with the Regulations (regulation 8). The rate of payment may be reviewed.

3. Aid will be available to farmers who have participating production units (defined in regulation 2(2)) which are within the areas indicated on maps deposited at the offices of the Department of Agriculture, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB. The areas included are all "disadvantaged land" or "severely disadvantaged land" for the purposes of the Hill Livestock (Compensatory Allowances) Regulations (Northern Ireland) 1994 (S.R. 1994 No. 417 as amended by S.R. 1995 No. 22) but do not include any environmentally sensitive area designated under Article 3 of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987.

4. Applicants for aid are required to give undertakings to the Department set out in regulation 3 and the Schedule. The undertakings relate to the stocking density of specified animals on "eligible moorland" on "participating production units"; to the management of "participating production units" and "eligible moorland" on them, and to the number of "ewes" kept. The undertakings are for an "extensification period" of 5 years (all quoted terms are defined in regulation 2(2)). The number of ewes kept on the holding may be increased above the level specified in the undertakings only with the permission of the Department given in accordance with regulation 6.

5. Regulation 4 provides for information and evidence which should be included in or accompany applications. The Department must acknowledge applications. Regulation 5 specifies circumstances in which the Department can or must refuse to accept an application.

6. Regulation 7 makes provision for changes in occupation of the land subject to the undertakings (including on the death of the person who gave the undertakings). It enables the Department, in accordance with the regulation, to accept undertakings from a new occupier for the remainder of the extensification period. It specifies circumstances where the Department

may treat the undertakings by the original occupier as terminated and recover all or part of any aid already paid if undertakings are not given by the new occupier within 3 months of a change of occupation.

7. By regulation 9, successful applicants for aid and those who have given undertakings under regulation 7 must allow a person authorised by the Department and specified other persons to enter the land for the purpose of monitoring of compliance by farmers with the undertakings; reasonable assistance must be rendered to such persons.

8. Where a person who has given undertakings fails to comply with them, or there is failure without reasonable excuse to comply with the requirements of regulation 9, the Department may treat the undertakings as terminated and withhold or recover all or part of any aid due or paid. In the case of failure to comply with an undertaking, the Department may only withhold or recover aid after providing written reasons for its proposed action, affording an opportunity to be heard by a person appointed by the Department for the purpose, and considering the report of the appointed person (regulation 10). In accordance with regulation 10(4) and (5), the Department may also treat the undertakings as terminated — but not recover or withhold aid in respect of a period which has passed — where it is satisfied that the aid would duplicate other assistance. Regulation 11 creates an offence in relation to making false statements.