

2016 No.15

AGRICULTURE

**The Areas of Natural Constraint Regulations (Northern Ireland)
2016**

Made - - - - *22nd January 2016*

Coming into operation - *1st March 2016*

The Department of Agriculture and Rural Development is 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 Union 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 section 2(2) of that Act.

Citation and commencement

1. These Regulations may be cited as The Areas of Natural Constraint Regulations (Northern Ireland) 2016 and shall come into operation on 1st March 2016.

Interpretation

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

(2) In these regulations—

“active farmer” has the same meaning as in Article 9 of the Direct Payment Regulation;

“agriculture” comprises 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;

“ANC allowance” means any payment made under Regulation 3;

“beneficiary” has the meaning given by sub-paragraph (1) of Article 2(1) of the Horizontal Delegated Regulation;

(a) S.I. 2000/2812 and S.I. 2000/3238 to which there are amendments not relevant to the subject matter of these Regulations
(b) 1972 c. 68
(c) 1954 c.33 (N.I)

“breeding female deer” means any 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 kept by way of business for the primary purpose of the production of meat;

“breeding female goat” means any 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 any 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 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 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(a);

“electronic communication” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001(b);

“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, woods, ponds, paths;

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

“holding” has the same meaning as it has in Article 4 (1) (b) of the Direct Payment Regulation;

“the Horizontal Delegated Regulation” means Commission Delegated Regulation (EU) No. 640/2014(c) of 11 March 2014 supplementing Regulation (EU) No 1306/2013(d) of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance;

a OJ L 347, 20.12.2013, p. 608

b 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)

(c) OJ L 181, 20.6.2014, p. 48–73

(d) OJ L 347 20.12.2013, p. 549–607

“the Horizontal Implementing Regulation” means Commission Implementing Regulation (EU) No. 809/2014^(a) 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;

“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;

“keeper” insofar as it relates to the keeper of suckler cows, heifers and eligible dairy stock is as defined in The Cattle Identification (Enforcement) Regulations (Northern Ireland) 1998 and, insofar as it relates to the keeper of sheep or goats, is as defined in The Sheep and Goats (Records, Identification and Movement) Order (Northern Ireland) 2009;

“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 aged 27 months and over; or
- (f) 5 breeding female deer at least 6 months but less than 27 months;

“minimum grazing period” means the seven month period 1st April to 31st October 2015;

“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 7 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
- (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^(b);

“severely disadvantaged land” 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;

“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;

(a) OJ L 227 31.7.2014, p. 69–124

(b) OJ No. L 347, 20.12.2013, p.487, amended by Regulation (EU) No. 1310/2013 of the European Parliament and of the Council (OJ No L. 347, 20.12.2013, p.865).

(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 ANC allowance

3. The Department may pay an ANC allowance to any claimant who is eligible under regulation 4 in respect of land that meets the conditions of regulation 5.

Claimant eligibility for ANC allowance

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

- (a) the claimant is an active farmer;
- (b) the claim is made on the single application;
- (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; and
- (d) the area of land complying with regulation 5 is at least three hectares.

(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) shall apply to a claim made in a single application after 15th May 2015.

Land eligibility for ANC allowance

5. Land shall be eligible for payment if, and only if—

- (a) it complies with the definition of qualifying forage area;
- (b) it lies within the severely disadvantaged area; and
- (c) it has been entered in the single application at column H under either of the land use codes in column 1 of Schedule 1.

Rates of payment

6. Subject to regulation 4 and Articles 91, 92 and 93 of the Horizontal Regulation, payment of an ANC allowance for an area of land that complies with regulation 5 and which falls within the qualifying forage area specified in column 1 of Schedule 2 shall be paid at the rate specified opposite thereto in column 2.

Exclusion of forage area

7.—(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 he 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 the forage area which is not severely disadvantaged land, followed by severely disadvantaged land.

Transfer of holdings

8. For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee must 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. Where—

- (a) any information furnished to the Department by a claimant or beneficiary is false or misleading;
- (b) a claimant or beneficiary is in breach of any requirement to which he is subject under these Regulations or the Rural Development Regulation; or
- (c) a claimant or beneficiary is not an active farmer

the Department may exercise any of the powers specified in regulation 10.

Department's powers or recovery

10. The powers conferred by regulation 9 are—

- (a) to withhold the whole or part of any payment payable to the claimant; and
- (b) to recover on demand the whole or part of any such payment 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 to in Article 7(2) of the Horizontal Implementing Regulation, and the rate of interest applicable on any day is one percentage point above the Bank of England base rate.

(2) In this regulation, “Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998^(a) is in force, any equivalent rate determined by the Treasury under that section.

(3) For the purposes of this regulation, interest shall be charged from the payment deadline as recorded in the recovery notice issued by the Department.

(4) For the purposes of paragraph (3), the payment deadline shall be set at 60 days from the date of the recovery notice issued by the Department.

(5) In any proceedings relating to this regulation, a certificate of the Department stating the Bank of England base rate applicable during the period specified in the certificate shall be

(a) 1998, c.11.

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.

Sum payable to the Department recoverable as a debt

12. 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.

Set-off

13. The amount of—

- (a) any sum payable by the Department or its agent under Title IV of Council Regulation 1698/2005;
- (b) any sum payable by the Department or its agent under Title III of the Rural Development Regulation;
- (c) any sum payable by the Department or its agent under Title III of the Direct Payment Regulation;
- (d) any sum payable by the Department under Council Regulation (EC) No. 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers^(a) or 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^(b);
- (e) any sum payable under these Regulations;

may be set-off against the amount of any sum recoverable by the Department under Regulation 9 or 10.

Powers of entry

14.—(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 a building used solely as a dwelling-house—

- (a) to which a claim relates; or
- (b) on which he has reasonable grounds to believe that documents relating to a claim 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 relates; and
- (b) verifying the accuracy of any information provided by a claimant or a beneficiary relating to a claim.

(3) 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 paragraph (1).

(4) An authorised person entering on any land under paragraph (1) may be accompanied by—

- (a) any official of the European Commission; and

(a) O.J. No. L 30, 31.1.2009, p.16, as last amended by Commission Implementing Regulation (EU) No. 320/2014 (O.J. No. L 93, 28.3.2014, p.81) and repealed on 1st January 2015 by Article 72(2) of the Direct Payments Regulation

(b) O.J. No. L 270, 21.10.2003, p.1, as last amended by Council Regulation (EC) No. 1009/2008 (O.J. No. L 276, 17.10.2008, p.1) and repealed on 1st January 2009 by Council Regulation (EC) No. 73/2009 (O.J. No. L 30.1.2009, p.16).

- (b) such other persons as he considers necessary for any of the purposes mentioned in paragraph (2).

Powers of an authorised person

- 15.—**(1) An authorised person who has entered any land under regulation 14 may—
- (a) inspect the land, premises, buildings and any document, record or equipment thereon which he reasonably believes relates to a claim;
 - (b) require the claimant or beneficiary, or any employee or agent of such claimant or beneficiary, to produce, or secure the production of, any document or record or supply any additional information in his possession or under his control relating to the claim;
 - (c) where any document, record or information referred to in sub-paragraph (b) is kept by means of a computer, have access to and inspect any computer and any associated apparatus or material which is or has been used in connection with that document, record or information;
 - (d) require copies of, or extracts from, any document, record or information relating to the claim to be produced;
 - (e) remove and retain for a reasonable period any document, record or information relating to the claim which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such document, record or information is kept by means of a computer, require it to be produced in a form in which it may be taken away and in which it is visible and legible;
 - (f) if necessary for the purposes of regulation 14(1)—
 - (i) inspect and count livestock on the land and premises, and
 - (ii) require the claimant or beneficiary, or any employee or agent of such claimant or beneficiary, to arrange for the collection, penning and securing of such livestock.
 - (g) require an applicant or beneficiary, or any employee or agent of such applicant or beneficiary, to give an authorised person all reasonable assistance in relation to the matters mentioned in this regulation.

(2) Paragraph (1) applies in relation to a person referred to in regulation 14(4)(b) when such person is acting under the instructions of an authorised person, as if such a person were an authorised person.

Offences and penalties

- 16.—**(1) It is an offence for any person to—
- (a) intentionally obstruct any person acting in the execution of these Regulations;
 - (b) without reasonable cause, proof of which lies with that person, fail to give any person acting in the execution of these Regulations any assistance or information that that person may reasonably require under these Regulations; or
 - (c) knowingly or recklessly furnish to any person acting in the execution of these Regulations any information that is false or misleading in any material particular.

(2) Nothing in paragraph 1(b) shall be construed as requiring any person to answer any question if to do so might incriminate him.

(3) A person guilty of an offence under paragraph (1)(a) or (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A person guilty of an offence under paragraph (1)(c) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(5) Subject to paragraph (6), for an offence under paragraph (1) proceedings must be brought within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to the prosecutor's knowledge.

(6) No proceedings for an offence under paragraph (1) may begin more than two years after the date of the commission of the offence.

(7) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient, in the opinion of the prosecutor, to justify the proceedings came to their knowledge is conclusive of that fact.

Offences by bodies corporate, partnerships or unincorporated associations

17.—(1) Proceedings for an offence under regulation 16 alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the partnership or association were a body corporate, and
- (b) section 18 of the Criminal Justice Act (Northern Ireland) 1945(a) and Schedule 4 to the Magistrates' Court (Northern Ireland) Order 1981(b) apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) If an offence under regulation 16 committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to the negligence of an officer,

the officer, as well as the body corporate, is guilty of an offence.

(5) If the affairs of a body corporate are managed by its members, paragraph (3) applies to the acts and omissions of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(6) If an offence under regulation 16 committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to the negligence of a partner,

that partner, as well as the partnership, is guilty of an offence.

(7) If an offence under regulation 16 committed by an unincorporated association is proved—

- (a) to have been committed with the consent or connivance of an officer or member of the governing body of the association or other person having management responsibilities in respect of the association, or
- (b) to be attributable to the negligence of that officer, member or other person,

that officer, member or other person, as well as the association, is guilty of an offence.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 22nd January 2016

(a) 1945 c. 15

(b) S.I. 1981/1675 (N.I. 26)



Norman Fulton
A senior officer of the
Department of Agriculture and Rural Development

SCHEDULE 1

Regulation 2(2)

ELIGIBLE LAND USE CODES

<i>Column 1</i>	<i>Column 2</i>
FR1	Grass (grass for grazing, hay and silage, rough grazing, grazed heather, sainfoin, clover, lucerne and forage vetches.
OT3	<p>Non-commercial grazed orchards, grazed woodlands or areas in agroforestry.</p> <p>Grazed woodland or grazed orchards with more than 50 trees per hectare may be considered eligible if:</p> <ul style="list-style-type: none"> • the tree density does not exceed 50 trees per hectare; and • agricultural activities can be carried out in a similar way compared to a situation where trees are not present i.e. the trees have no significant impact on agricultural activity. <p>If there are single trees, a line of trees or a small clump of trees with grazing available right up to the trees, no deduction needs to be made for the tree trunks.</p> <p>Agroforestry is having agriculture and tree growing on the same land. Agroforestry is eligible in the initial stages of tree establishment if agricultural activities remain predominant and are not significantly affected by the presence of the trees.</p>

SCHEDULE 2

Regulation 6

PAYMENT RATES PER HECTARE

<i>Column 1</i>	<i>Column 2</i>
1. Severely disadvantaged land (including common land) up to and including 200 hectares per holding	£56.47
2. Severely disadvantaged land (including common land) above 200 hectares per holding	£42.35

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a domestic legal framework for the implementation of Article 31 of 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 and specifically the payment of an ANC allowance. These Regulations also provide for the implementation of Measure 13 of the Northern Ireland Rural Development Programme 2014-2020 approved on 25 August 2015 by Commission Decision CCI: 2014UK06RDRP002.

The Regulations define the conditions of eligibility for an ANC allowance (regulations 3 to 5) and the rate at which it is to be paid (regulation 6 and Schedule 2).

Regulation 7 provides for the exclusion of forage area in respect of claimants who had dairy cows on their holding in the minimum grazing period (1 April to 31 October 2015).

Regulation 8 sets the maximum time (90 days) which beneficiaries have to notify the Department of a transfer of a holding.

Regulations 9 and 10 grant the Department power to withhold or recover payments and take certain other action in the event of a breach under these Regulations and in certain other circumstances.

Regulation 11 sets out how interest to be charged on amount owed to the Department will be calculated.

Regulation 12 allows for payments owed to the Department by beneficiaries to be treated by the Department as debt.

Regulation 13 provides for debts owed to the Department to be deducted from future payments to that beneficiary.

Regulation 14 provides the powers of entry to land and premises for the purpose of enforcing these regulations to persons authorised by the Department.

Regulation 15 sets out the powers of inspection of such authorised persons.

Regulations 16 and 17 make it an offence to obstruct, fail to provide information without reasonable cause or furnish false or misleading information to a person acting to implement these Regulations and establishes the penalties which may be imposed.

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