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STATUTORY INSTRUMENTS

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**2002 No. 271**

**AGRICULTURE, ENGLAND**

**The Hill Farm Allowance Regulations 2002**

*Made* - - - - *11th February 2002*  
*Laid before Parliament* *13th February 2002*  
*Coming into force* - - *8th March 2002*

The Secretary of State for Environment, Food and Rural Affairs, being a Minister<sup>(1)</sup>, designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup>, as regards the common agricultural policy of the European Community, in exercise of the powers conferred upon her by that section<sup>(3)</sup>, and of all other powers enabling her in that behalf, hereby makes the following Regulations:

**Title, commencement and extent**

1.—(1) These Regulations may be cited as the Hill Farm Allowance Regulations 2002, shall come into force on 8th March 2002 and, subject to paragraph (2), shall apply to England.

(2) Paragraph 1 of Schedule 3, and regulation 10 in so far as it relates to that paragraph, shall also apply to Scotland.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1975 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1975<sup>(4)</sup>;

“the 1979 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1979<sup>(5)</sup>;

“the 1984 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1984<sup>(6)</sup>;

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(1) S.I. 1972/1811 and S.I. 1995/751.

(2) 1972 c. 68.

(3) The power of the Minister to make regulations in relation to matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).

(4) 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.

(5) 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;

(6) 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. (N.I.) 1987 No. 92 and, insofar as they applied to Great Britain, by S.I. 1992/269.

“the 1994 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1994(7);

“the 1996 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1996(8);

“the 1999 Regulations” means the Hill Livestock (Compensatory Allowances) Regulations 1999(9);

“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, and “agricultural” shall be construed accordingly;

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

“claimant” means any person who has made a claim for compensatory allowance and “claim” shall be construed accordingly;

“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(10) laying down detailed rules for the application of Council Regulation 1257/1999;

“Commission Regulation 2316/1999” means Commission Regulation (EC) No. 2316/1999(11) laying down detailed rules for the application of Council Regulation (EC) No. 1251/1999(12);

“Commission Regulation 2342/1999” means Commission Regulation (EC) No. 2342/1999(13) 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;

“common land” means any land which is registered as common land with grazing rights under the Commons Registration Act 1965(14);

“Council Regulation 3508/92” means Council Regulation (EEC) No. 3508/92(15), establishing an integrated administration and control system for certain Community aid schemes;

“Council Regulation 1254/1999” means Council Regulation (EC) No. 1254/1999(16) on the common organisation of the market in beef and veal;

“Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999(17) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF);

(7) S.I. 1994/2740, amended by S.I. 1995/100, 1481, 2778 and S.I. 1996/27 and revoked by S.I. 1996/1500.

(8) S.I. 1996/1500, amended by S.I. 1997/33, 1998/206, 1999/375; S.I. 1996/1500 ceased to apply by virtue of S.I. 1999/3316.

(9) S.I. 1999/3316.

(10) O.J. No. L214, 13.8.1999, p. 31, as last amended by Commission Regulation (EC) No. 1763/2001 (O.J. No. L239, 7.9.2001, p. 10).

(11) O.J. L280, 30.10.1999, p. 43, as last amended by Commission Regulation (EC) No. 1157/2001 (O.J. No. L157, 14.6.2001, p. 8).

(12) O.J. L160, 26.6.1999, p. 1, as last amended by Council Regulation (EC) No. 1038/2001 (O.J. No. L145, 31.5.2001, p. 16).

(13) O.J. L281, 04.11.1999, p. 30, as last amended by Commission Regulation (EC) No. 2088/2001 (O.J. No. L282, 26.10.2001, p. 39).

(14) 1965 c. 64.

(15) O.J. No. L355, 5.12.92, p. 1, as last amended by Council Regulation (EC) No. 495/2001 (O.J. No. L72, 14.3.2001, p. 6).

(16) O.J. L160, 26.06.1999, p. 21, as last amended by Council Regulation (EC) No. 1512/2001 (O.J. No. L201, 26.7.2001, p. 1).

(17) O.J. No. L160, 26.6.1999, p. 80.

“disadvantaged land” (except in the expression “severely disadvantaged land”) means land shown coloured blue on the England LFA maps;

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

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

“the England LFA maps” means the three volumes of maps numbered 1 to 3, each volume being marked “Volume of maps of less-favoured farming areas in England”, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food and deposited at the offices of the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London SW1P 3JR;

“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 hill farm allowance (whether payable under these Regulations or under the Hill Farm Allowance Regulations 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 farm allowance” means the compensatory allowance payable in accordance with regulations 7 and 8 of these Regulations and with Chapter V of Title II of Council Regulation 1257/1999;

“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 England LFA maps except land situated in the Isles of Scilly;

“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 24 months or over;
- (b) 1.67 heifers under the age of 24 months; or
- (c) 6.67 ewes;

“Minister” means the Secretary of State for Environment, Food and Rural Affairs;

“moorland” means all that land which is shown as less favoured area on the England LFA maps and which is also coloured pink in the three volumes of maps entitled “Moorland Map of England 1992” each volume being marked with the number of the volume, dated 20th February 2001, signed by the Minister of State and deposited at the offices of the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London, SW1P 3JR;

“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;

“Organic Farming schemes” means the aid schemes made under the Organic Farming (Aid) Regulations 1994<sup>(19)</sup>, the Organic Farming Regulations 1999<sup>(20)</sup> or the Organic Farming (England Rural Development Programme) Regulations<sup>(21)</sup>, as the case may be;

“other competent authority” means the Scottish Ministers, the National Assembly for Wales or, in Northern Ireland, the Department of Agriculture and Rural Development;

“permanent pasture” has the meaning specified in Article 2.1 of, and Annex 1 to, Commission Regulation 2316/1999;

“qualifying forage area” means the relevant forage area or, in relation to a claimant in relation to whom regulation 9 applies, such part of the relevant forage area as results from the deductions made to the relevant forage area in accordance with that regulation;

“registered organic farmer” means a claimant who is registered with UKROFS or with an organisation that is itself registered with UKROFS and who, in the year 2001, was—

- (a) not in receipt of aid under one of the Organic Farming schemes; or
- (b) not undergoing conversion to organic farming;

“related less favoured area” means, in relation to a claimant, all that claimed forage area, excluding less favoured area, in respect of which the Minister 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 Northern Ireland, the Less Favoured Area Compensatory 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 Minister, 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 fifteen years after the date on which such conversion was completed;

“relevant animals” means, in relation to a claimant, the suckler cows, heifers and ewes in respect of which the claimant, in the year 2001, was paid for suckler cow premium or, as the case may be, sheep annual premium;

“relevant forage area” means any claimed forage area situated in England;

“severely disadvantaged land” means land shown coloured pink on the England LFA maps except land situated in the Isles of Scilly;

“sheep annual premium” means the premium payable under the Sheep Annual Premium Regulations 1992<sup>(22)</sup>;

“suckler cow” has 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<sup>(23)</sup>; and

“UKROFS” means the United Kingdom Register of Organic Food Standards.

(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.

<sup>(19)</sup> S.I. 1994/1712, amended by S.I. 1996/3109, S.I. 1998/1606 and S.I. 1999/590.

<sup>(20)</sup> S.I. 1999/590, amended by S.I. 1999/2735 and 2933.

<sup>(21)</sup> S.I. 2001/432, amended by S.I. 2001/3139.

<sup>(22)</sup> S.I. 1992/2677, amended by S.I. 1994/2741, S.I. 1995/2779, S.I. 1996/49, S.I. 1997/2500 and S.I. 2001/281.

<sup>(23)</sup> S.I. 2001/1370.

(3) Any reference in these Regulations to a numbered regulation (with no corresponding reference to a specific instrument) is a reference to the regulation so numbered in these Regulations and any reference to a numbered Schedule is a reference to a Schedule so numbered to these Regulations.

(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 Minister shall make payments of hill farm allowance in respect of the year 2002 to any claimant who is eligible under regulation 4 in respect of eligible forage area not exceeding the areas specified in regulation 7(1).

### **Eligibility of producers for hill farm 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 hill farm 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
- (c) subject to paragraph (3), the notional livestock density on the eligible forage area is not less than 0.15.

(2) The conditions are—

- (a) that the claimed forage area lying within the less favoured area is not less than ten hectares; or
- (b) where the claimed forage area lying within the less favoured area is not less than one hectare but less than ten 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 Minister may determine that a notional livestock density of less than 0.15 is sufficient for the purposes of paragraph (1)(c) if she 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 for 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 her to consider whether to exercise her discretion under paragraph (3), the claimant shall provide the Minister with such information as she reasonably may require.

### **Conditions as to continued use of eligible land**

5. Hill farm allowance shall not be paid to a claimant unless—

- (a) he has given a written undertaking, in such form as the Minister 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.—(1) Subject to paragraphs (2) and (3) and to regulations 8 and 9, payments of hill farm allowance in respect of the descriptions of eligible forage area specified in column 1 of Schedule 1 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 Schedule 1;
- (b) in relation to the next 350 hectares of eligible forage area in respect of which the claim is made, at one half of the rates specified in column 2 of Schedule 1.

(2) Subject to regulation 4(1)(c), if the notional livestock density is less than 1.0, the payment shall be increased by 20 per cent.

(3) Except where paragraph (2) applies, the total amount payable to a claimant shall be increased by 10 per cent if the claimant satisfies any one of the following criteria, and by 20 per cent if he satisfies any two or more such criteria—

- (a) the claimant is a registered organic farmer;
- (b) the claimant—
  - (i) in the year 2001, submitted applications for both sheep annual premium and suckler cow premium; and
  - (ii) the number of cattle in respect of which he was paid suckler cow premium in that year is equal to at least 15 per cent of the relevant animals;
- (c) the notional livestock density is less than 1.2;
- (d) at least one hectare, or 5 per cent (whichever is the smaller), of the claimant's eligible land is planted with arable crops or woodland in respect of which the claimant is not receiving any other financial support, and was not converted from permanent pasture after the year 1998.

### **Increments to payment**

8.—(1) After calculating the basic amount, the Minister may, if she thinks fit, increase that amount by a percentage not exceeding 20 per cent 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 per cent of the relevant amount, the Minister may pay the claimant such additional sum as would increase the total hill farm allowance payable to him to an amount equal to 80 per cent of—

- (a) where the relevant area in the year 2000 is less than the relevant area in the preceding year, or the relevant area in 2001 is less than the relevant area in one or both of the two preceding years, such proportion of the relevant amount as related to the area corresponding to the lesser or (as the case may be) least 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 situated partly outside England, the Minister shall make the payment referred to in paragraph (2) only in relation to that proportion of the holding situated in England.

(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 less favoured area, together with any related less favoured area, entered in the claimant’s application for the year in question.

#### **Deductions from forage area**

9. In relation to any claimant who has an individual reference quantity of milk available to him, the deductions specified in Schedule 2 shall apply to the relevant forage area for the purposes of determining the qualifying forage area.

#### **Holdings situated partly outside England**

10. The provisions of Schedule 3 shall apply in relation to holdings situated partly outside England.

#### **Amendment of the England Rural Development Programme (Enforcement) Regulations 2000**

11. In Part II of the Schedule to the England Rural Development Programme (Enforcement) Regulations 2000(24), there shall be inserted “The Hill Farm Allowance Regulations 2002”.

*Alun Michael*  
Minister of State  
Department for Environment, Food and Rural  
Affairs

11th February 2002

## SCHEDULE 1

regulation 7(1)

## PAYMENT RATES PER HECTARE

<i>Column 1</i>	<i>Column 2</i>
1. Severely disadvantaged land (not being moorland or common land)	£31.49
2. Disadvantaged land (not being moorland or common land)	£17.03
3. Moorland or common land	£11.91

## SCHEDULE 2

regulation 9

## DEDUCTIONS FROM RELEVANT FORAGE AREA

1. If, on 31st March 2001, a claimant had available to him an individual reference quantity of milk, the relevant forage area shall, subject to paragraph 4 of Schedule 3, be subject to the deductions specified in paragraph 4.

2. The deductions shall be calculated by reference to the number of livestock units deemed to constitute the dairy herd kept by the claimant on land in England (“the notional dairy herd”), determined in accordance with paragraph 3.

3. The notional dairy herd shall be calculated as follows—

$$TLU = IRQ \div 5730$$

where—

“IRQ” is the individual reference quantity of milk (expressed in litres) available to the claimant in relation to his land in England;

“TLU” is the number of livestock units in the notional dairy herd; and

“5730” is the number of litres of milk deemed to be equivalent to the annual production of one dairy cow.

4. The deductions to relevant forage area shall be made as follows—

(a) X hectares shall be deducted from A, where X is equal to the lesser of—

(i)  $TLU \div 2$ ; and

(ii) A;

(b) if TLU is greater than 2X, Y hectares shall be deducted from B, where Y is equal to the lesser of—

(i)  $(TLU - 2X) \div 1.4$ ; and

(ii) B;

(c) if TLU is greater than  $2X + (1.4 \times Y)$ , Z hectares shall be deducted from C, where Z is equal to the lesser of—

(i)  $TLU - (2A + (1.4 \times Y))$ ; and

(ii) C;

where—



“A” is the number of hectares of relevant forage area not within a less favoured area;  
“B” is the number of hectares of relevant forage area which is disadvantaged land or severely disadvantaged land, in each case other than moorland or common land;  
“C” is the number of hectares of relevant forage area which is moorland or common land; and  
“TLU” is the total number of livestock units in the notional dairy herd.

## SCHEDULE 3

regulation 10

### HOLDINGS SITUATED PARTLY OUTSIDE ENGLAND

#### Agency arrangements

1.—(1) The Minister may arrange for any of her functions under these Regulations in relation to any claim in respect of a holding situated partly in Scotland to be exercised on her behalf by the Scottish Ministers, and may agree to exercise any corresponding functions on behalf of the Scottish Ministers.

(2) Any such arrangement shall be in writing and be signed by or on behalf of the Minister and the Scottish Ministers and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

#### Set-off

2. In relation to a holding situated partly outside England, the amount of any sum payable by the Minister by way of a hill farm allowance, whether as principal or on behalf of any other competent authority, may, without prejudice to the amount of any sum payable by the Minister to any other competent authority, be set off against the amount of any sum recoverable by the Minister, whether as principal or on behalf of such competent authority.

#### Apportionment of livestock units

3. Where any holding in respect of which a claim has been made is situated partly outside England, the number of livestock units grazed on that part of the holding which is situated in England shall be calculated as follows:

$$N = \frac{TLU \times X}{Y}$$

where—

“X” is the claimed forage area in hectares of that part of the holding which is situated in England;

“Y” is the total claimed forage area in hectares of that holding;

“TLU” is the total number of livestock units grazed on that holding; and

“N” is the number of livestock units grazed on that part of the holding situated in England.

#### Apportionment of individual reference quantity of milk

4. Where any holding in respect of which a claim has been made is situated partly outside England, the individual reference quantity of milk which shall be treated as available to a claimant in relation to his land in England shall be calculated as follows:

$$IRQ = \frac{IRQ \times X}{Y}$$

*Status: This is the original version (as it was originally made).*

where—

“X” is the claimed forage area in hectares of that part of the holding which is situated in England;

“Y” is the claimed forage area in hectares of that holding;

“TIRQ” is the total 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 available in respect of that part of the holding which is situated in England.

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### **EXPLANATORY NOTE**

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

These Regulations, which apply to England, implement Commission Regulation 1750/1999 (O.J. L214, 13.8.99, p.31) (“the Commission Regulation”) laying down detailed rules for the application of Council Regulation 1257/1999 (O.J. L160, 26.6.1999, p.80) (“the rural development Regulation”) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations. They also implement Chapter 9 of the England Rural Development Programme approved by the Commission (Commission Decision No. C(2000) 3003) under Article 44 of the Council Regulation.

In particular they implement Articles 13, 14 and 15 of the Council Regulation (which deal with support for less favoured areas) by defining the conditions of eligibility for hill farm allowance (regulations 3–6) and the rates at which it is to be paid (regulations 7–8 and Schedule 1).

Regulation 10 and Schedule 3 enable the Minister, in respect of holdings that are situated partly in England and partly in Scotland, to arrange for her functions under these Regulations to be exercised on her behalf by the Scottish Ministers and to agree to exercise any corresponding functions on their behalf, and to set off sums payable as principal against sums recoverable as agent, and vice versa. They also provide for the apportionment of eligible forage area and livestock units in relation to such holdings.

Penalties in respect of an over-declaration of land area are provided by Article 48(1) and (3) of the rural development Regulation. The England Rural Development Programme (Enforcement) Regulations 2000 (S.I.2000/3044) give the Minister power to recover payments in the event of a breach of an undertaking referred to in regulation 5, and create offences of making false or misleading statements and of obstruction of an authorised officer.

The England Rural Development Programme, together with a copy of Commission Decision No. C(2000) 3003 approving it, is available for inspection at the offices of the Department for Environment, Food and Rural Affairs, 17 Smith Square, London, SW1P 3JR.

No Regulatory Impact Assessment has been prepared in respect of these Regulations.