

2007 No. 619

AGRICULTURE, ENGLAND

The Hill Farm Allowance Regulations 2007

Made - - - - *1st March 2007*

Laid before Parliament *5th March 2007*

Coming into force - - *26th March 2007*

The Secretary of State has been 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 and measures relating to the promotion of rural development.

He makes the following Regulations under the powers conferred by that section:

Title, commencement and application

1. These Regulations—

- (a) may be cited as the Hill Farm Allowance Regulations 2007;
- (b) come into force on 26th March 2007; and
- (c) apply only in relation to holdings situated wholly or partly in England.

Interpretation

2. In these Regulations—

“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;

“breeding cow” means a suckler cow or a heifer;

“claim” means a claim for hill farm allowance made in a single payment scheme application or a hill farm allowance declaration;

“claimant” means a person who has made a claim for hill farm allowance;

“claimant’s less favoured area land” means land in a less favoured area which is entered in the claimant’s single payment scheme application or hill farm allowance application;

“claimed forage area” means land in respect of which a claimant has claimed hill farm allowance or a related less favoured area allowance in a single payment scheme application, hill farm allowance application or related less favoured area allowance application;

(a) S.I. 1972/1811 and S.I. 1995/751.
(b) 1972 c.68.

“Commission Regulation 796/2004” means Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003(a);

“common land” means land registered as common land with grazing rights under the Commons Registration Act 1965(b);

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

“Council Regulation 1698/2005” means Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(d);

“Council Regulation 1782/2003” means 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 and amending certain Regulations(e);

“disadvantaged land” (except in the expression “severely disadvantaged land”) means any area of 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;

“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 Ergon House, Horseferry Road, London SW1P 2AL;

“ewe” means a female sheep which was at least one year old on 1st January 2007, or had lambed by that date;

“forage area” has the same meaning as in Article 131(2)(b) of Council Regulation 1782/2003;

“heifer” means a female bovine animal aged 8 months or over which has not yet calved;

“hill farm allowance” means the compensatory allowance payable in accordance with these Regulations, Article 36(a)(ii) of Council Regulation 1698/2005 and Chapter V of Title II of Council Regulation 1257/1999;

“hill farm allowance declaration” means a declaration made by a claimant that he wishes to claim hill farm allowance in respect of 2007, made in the form sent to him by the Secretary of State;

“holding” has the same meaning as in Article 2(b) of Council Regulation 1782/2003;

“individual reference quantity of milk” has the same meaning as in Article 117(2) of Commission Regulation (EC) No. 1973/2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials(f);

“less favoured area” means any area of land shown coloured blue or pink on the England LFA maps;

(a) O.J. No. L141, 30.4.2004, p.18, as corrected by O.J. No. L 37, 10.2.2005, p. 22, and to which the last relevant amendment is Commission Regulation (EC) No. 659/2006 (O.J. No. L116, 29.4.2006, p. 20).

(b) 1965 c.64.

(c) O.J. No. L160, 26.6.1999, p.80, as last amended by Council Regulation 1698/2005.

(d) O.J. No. L277, 21.10.2005, p.1, to which there is an amendment not relevant to these Regulations.

(e) O.J. No. L270, 21.10.2003, p.1, as last amended by Commission Regulation (EC) No 1156/2006 (O.J. No. L 208, 29.7.2006, p. 3).

(f) O.J. No. L345, 20.11.2004, p.1, as last amended by Commission Regulation (EC) No 1156/2006 (O.J. No. L 208, 29.7.2006, p. 3).

“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitutes a single livestock unit—

- (a) one suckler cow;
- (b) one heifer aged 24 months or over;
- (c) 1.67 heifers under the age of 24 months; and
- (d) 6.67 ewes;

“moorland” means all the land coloured pink in the three volumes of maps entitled “Moorland Map of England 2006”, each volume being marked with the number of the volume, dated 13th February 2006, signed on behalf of the Secretary of State for Environment, Food and Rural Affairs and deposited at the offices of the Department for Environment, Food and Rural Affairs at Ergon House, Horseferry Road, London SW1P 2AL;

“notional livestock density” means the number of livestock units per hectare of the claimant’s eligible forage area, calculated in accordance with Schedule 1;

“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” means non-rotational land used for grass production (sown or natural) on a permanent basis (five years or longer) excluding land set aside pursuant to Article 6 of Council Regulation (EC) No. 1251/1999(a) and Article 54 of Council Regulation 1782/2003;

“qualifying forage area” means the relevant forage area or, in relation to a claimant to whom regulation 7 applies, such part of that area as remains following deductions made to it in accordance with that regulation;

“related less favoured area” means, in relation to a claimant, all that claimed forage area in respect of which the Secretary of State has been advised by any other competent authority that the claimant is eligible for a related less favoured area allowance;

“related less favoured area allowance” means a compensatory allowance payable in relation to land situated in Northern Ireland, Scotland or Wales in accordance with Chapter V of Title II of Council Regulation 1257/1999 or Article 36(a)(ii) of Council Regulation 1698/2005;

“relevant animals” means, in relation to a claimant, the breeding cows and ewes determined as relevant animals in accordance with Schedule 5;

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

“severely disadvantaged land” means any area of land shown coloured pink on the England LFA maps;

“single payment scheme” means the support scheme established under Title III of Council Regulation 1782/2003;

“single payment scheme application” means an application to the single payment scheme submitted in 2006 in accordance with Article 34 of Council Regulation 1782/2003 and Title II of Part II of Commission Regulation 796/2004;

“suckler cow” has the same meaning as in Article 122(d) of Council Regulation 1782/2003.

Payment of hill farm allowance

3.—(1) Subject to regulation 5, the Secretary of State must pay hill farm allowance in respect of 2007 to any claimant who is eligible under regulation 4.

(2) The Secretary of State must only pay hill farm allowance to a claimant in respect of eligible forage area not exceeding 700 hectares.

(a) O.J. No. L160, 26.6.1999, as last amended by Council Regulation (EC) No. 1782/2003.

Eligibility for hill farm allowance

4.—(1) Subject to Article 51 of Council Regulation 1698/2005, a claimant is eligible for hill farm allowance provided—

- (a) his claim was received by the Secretary of State on or before 2nd March 2007;
- (b) he made a hill farm allowance declaration, received by the Secretary of State on or before 2nd March 2007;
- (c) the claimed forage area—
 - (i) complies with one of the conditions specified in paragraph (2);
 - (ii) was available to be grazed or have a forage crop taken from it for a continuous period of seven months, starting on any date from 1st January 2006 to 31st March 2006 inclusive; and
 - (iii) during that seven month period, was available to the claimant to be grazed or have a forage crop taken from it for a period, or periods in total, of four months or more; and
- (d) subject to paragraph (3), the notional livestock density is not less than 0.15.

(2) The conditions referred to in paragraph (1)(c)(i) are—

- (a) at least ten hectares of the claimed forage area are in England, within a less favoured area; or
- (b) at least one hectare of the claimed forage area is in England, within a less favoured area, and the rest of the claimed forage area is in another part of the United Kingdom, in a related less favoured area.

(3) If he considers it appropriate, given the circumstances of a particular case, the Secretary of State may determine that a notional livestock density of less than 0.15 is sufficient for the purposes of paragraph (1)(d).

(4) A claimant must provide to the Secretary of State such information as the Secretary of State reasonably requires to enable him to make a determination under paragraph (3).

(5) The Secretary of State must notify the claimant of his determination in writing.

Condition as to continued use of land for the purposes of agriculture

5.—(1) The Secretary of State must not pay hill farm allowance to a claimant who has breached his undertaking as to continued agricultural use.

(2) But the Secretary of State may pay hill farm allowance if, having considered the reasons for such breach, he considers it reasonable to do so in all the circumstances of the case.

(3) A claimant is not in breach of his undertaking if he ceases to farm, provided that at least ten hectares of the land in respect of which the undertaking was given continue to be used for the purposes of agriculture.

(4) In this regulation—

- (a) “undertaking as to continued agricultural use” means the undertaking given by a claimant in his hill farm allowance application or hill farm allowance declaration to continue to use at least ten hectares of land in a less favoured area or a related less favoured area for the purposes of agriculture for five years from the date of the first payment to him of a compensatory allowance; and
- (b) “compensatory allowance” means any payment made under these Regulations or any of the Hill Farm Allowance Regulations 2001 to 2006(a).

(a) S.Is. 2001/476, 2002/271, 2003/289, 2004/145, 2005/154 and 2006/225 as amended by S.I. 2006/518.

Amount of payment

6.—(1) The Secretary of State must pay a claimant hill farm allowance in respect of the land specified in column 1 of Schedule 2—

- (a) in relation to the first 350 hectares of qualifying forage area, at the rates specified in column 2 of Schedule 2;
- (b) in relation to the next 350 hectares of qualifying forage area, at half the rates specified in column 2 of Schedule 2.

(2) The amount of the payment referred to in paragraph (1) must be increased by 5 per cent if one of the following criteria is met, and by 10 per cent if both are met—

- (a) at least one hectare, or 5% (whichever is the smaller), of the claimant's less favoured area land is—
 - (i) planted with arable crops in respect of which the claimant is not receiving any other financial support; and
 - (ii) was not converted from permanent pasture after 1998;
- (b) at least one hectare, or 5% (whichever is the smaller), of the claimant's less favoured area land is—
 - (i) planted with woodland in respect of which the claimant is not receiving any other financial support; and
 - (ii) was not converted from permanent pasture after 1998.

(3) The Secretary of State may increase by a percentage of up to and including 10% the amount to which a claimant is entitled under paragraphs (1) and (2) if—

- (a) the condition set out in paragraph (5) is met; and
- (b) the same percentage increase is applied in respect of each claimant's payment.

(4) The Secretary of State may decrease by a percentage of up to and including 10% the amount to which a claimant is otherwise entitled under paragraphs (1) and (2) if—

- (a) the condition set out in paragraph (6) is met; and
- (b) the same percentage decrease is applied in respect of each claimant's payment.

(5) The condition referred to in paragraph (3)(a) is that the fund available for hill farm allowance is greater than anticipated by the Secretary of State because—

- (a) the amount of eligible forage area in respect of which hill farm allowance is payable is smaller than he anticipated; or
- (b) the budget allocation for the Rural Development Programme for England 2007-2013 is or is likely to be greater than he anticipated.

(6) The condition referred to in paragraph (4)(a) is that the fund available for hill farm allowance is smaller than anticipated by the Secretary of State because—

- (a) the amount of eligible forage area in respect of which hill farm allowance is payable is greater than he anticipated; or
- (b) the budget allocation for the Rural Development Programme for England 2007-2013 is or is likely to be smaller than he anticipated.

(7) Paragraphs (1) to (3) are subject to any duty of the Secretary of State to reduce a sum payable under paragraphs (1) and (2) under Article 51 of Council Regulation 1698/2005.

(8) In paragraph (2), "other financial support" does not include financial support from the single payment scheme.

(9) "The Rural Development Programme for England 2007-2013" is the Programme for England which is the subject of the Rural Development National Strategy Plan for the United

Kingdom, submitted to the European Commission on 21st December 2006 under Article 12 of Council Regulation 1698/2005(a).

Deductions from relevant forage area

7. In relation to any claimant who has an individual reference quantity of milk available to him, the deductions specified in Schedule 3 apply to the relevant forage area for the purposes of determining the qualifying forage area.

Holdings situated partly outside England

8. The provisions of Schedule 4 apply in relation to holdings situated partly outside England.

1st March 2007

Jeff Rooker
Minister of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 2(1)

Notional Livestock Density

Notional livestock density shall be calculated as follows—

$$\text{NLD} = (A - B) \div C$$

where—

“A” is the number, expressed in livestock units, of relevant animals on the claimant’s qualifying forage area;

“B” is the number of livestock units grazed on so much of the claimant’s qualifying forage area as does not fall within a less favoured area (“non-LFA land”). For this purpose, any non-LFA land other than common land shall be treated as being grazed by 1.8 livestock units per hectare and any non-LFA land which is common land shall be treated as being grazed by 1.0 livestock units per hectare;

“C” is the claimant’s eligible forage area expressed in hectares;

“NLD” is the notional livestock density on the claimant’s eligible forage area.

SCHEDULE 2

Regulation 6(1)

Payment Rates Per Hectare

<i>Column 1</i>	<i>Column 2</i>
1. Severely disadvantaged land (other than moorland or common land)	£35.20
2. Disadvantaged land (other than moorland or common land)	£19.03
3. Moorland or common land	£13.32

(a) The Rural Development National Strategy Plan for the United Kingdom is available at www.defra.gov.uk/corporate/publications/default.htm and from the Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.

SCHEDULE 3

Regulation 7

Deductions from Relevant Forage Area

1. If, on 31st March 2006, a claimant had available to him an individual reference quantity of milk, the relevant forage area is 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—

$$\text{TLU} = \text{IRQ} \div 5730$$

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) $\text{TLU} \div 1.8$; and

(ii) A;

(b) if TLU is greater than $1.8X$, Y hectares shall be deducted from B, where Y is equal to the lesser of—

(i) $(\text{TLU} - 1.8X) \div 1.4$; and

(ii) B;

(c) if TLU is greater than $1.8X + 1.4Y$, Z hectares shall be deducted from C, where Z is equal to the lesser of—

(i) $\text{TLU} - (1.8X + 1.4Y)$; 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 4

Regulation 8

Holdings situated partly outside England

Agency arrangements

1. In relation to holdings situated partly in Scotland, the Secretary of State and the Scottish Ministers may, with the agreement of the other, arrange for—

(a) in the case of the Secretary of State, his functions under these Regulations to be exercised on his behalf by the Scottish Ministers; and

(b) in the case of the Scottish Ministers, their functions under any regulations made by them in implementation of Article 36(a)(i) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999 to be exercised on their behalf by the Secretary of State.

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

3. In relation to holdings situated partly in Wales, the Secretary of State and the National Assembly for Wales may, with the agreement of the other, arrange for—

(a) in the case of the Secretary of State, his functions under these Regulations to be exercised on his behalf by the National Assembly for Wales; and

(b) in the case of the National Assembly for Wales, its functions under any regulations made by it in implementation of Article 36(a)(i) of Council Regulation 1698/2005 or Chapter V of Title II of Council Regulation 1257/1999 to be exercised on its behalf by the Secretary of State.

4. Any such arrangement must be in writing and be signed by or on behalf of the Secretary of State and the National Assembly for Wales and any such arrangement may be subject to such conditions (including conditions as to costs) as may be agreed from time to time.

Set-off

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

Apportionment of livestock units

6. 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—

$$N = \text{TLU} \times X \div Y$$

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 which is situated in England.

Apportionment of individual reference quantity of milk

7. 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—

$$\text{IRQ} = \text{TIRQ} \times X \div Y$$

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;

“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.

Apportionment of hectarage of land used for the purposes of agriculture

8. Where any holding in respect of which a claim has been made is situated partly outside England, the hectarage of land which must be used for the purposes of agriculture under regulation 5(3) shall be reduced by a percentage equal to the percentage of the land which is outside England.

SCHEDULE 5

Regulation 2(1)

Relevant animals

Breeding cows

1.—(1) Subject to paragraph 4, a breeding cow is a relevant animal for the purposes of these Regulations if—

- (a) it is declared by the claimant in his single payment scheme application or hill farm allowance application;
- (b) it is of a meat breed, or is a crossbreed, or the offspring of a crossbreed;
- (c) it is entered by the claimant into the register referred to in regulation 29(3) of the Cattle Identification Regulations 1998(a), and the claimant complies with those Regulations in respect of that register;
- (d) it was, throughout the relevant period, part of a herd used for rearing calves for meat production only;
- (e) it was, throughout the relevant period, owned by the claimant, or leased to him under a leasing agreement in writing, and throughout that period the claimant had economic responsibility for it; and
- (f) it was kept on the claimant’s holding throughout the relevant period.

(2) In this paragraph—

- (a) “crossbreed” means a bovine animal with at least one parent of a meat breed;
- (b) “meat breed” means any bovine breed which is not listed in Annex XV to Commission Regulation (EC) No. 1973/2004(b).

(3) In this paragraph and in paragraph 3, “the relevant period” means a period of six consecutive months, starting on any date from 1st July 2006 to 31st December 2006 inclusive.

2.—(1) For the purposes of paragraph 1(1)(e), a claimant had economic responsibility for a breeding cow if he—

- (a) was the keeper of the breeding cow;
- (b) made the final decisions regarding, and paid for, the feeding, bedding, housing and veterinary requirements of the breeding cow; and
- (c) was in possession of the cattle passport relating to the breeding cow.

(a) S.I. 1998/871, as amended by S.I. 2006/1538. There are other amending instruments but none is relevant.

(b) O.J. No. L345, 20.11.2004, p.1, as corrected by O.J. No. L34, 8.2.2005. Other amendments are not relevant to these Regulations.

(2) In this paragraph, “cattle passport” and “keeper” have the same meaning as in regulation 2(1) of the Cattle Identification Regulations 1998.

3. The condition in paragraph 1(1)(f) continues to be met if—

- (a) the breeding cow was replaced during the relevant period by another breeding cow and the conditions in paragraph 1(1)(a) to (e) are met in respect of that breeding cow; and
- (b) the replacement breeding cow was kept on the claimant’s holding for the remainder of the relevant period.

4. Where—

- (a) the claimant’s breeding cows which meet the conditions in paragraph 1(1) include heifers, and
- (b) the number of such heifers, expressed in livestock units, is more than 40% of the total number of breeding cows which meet those conditions,

the number of heifers which are relevant animals shall be reduced so that no more than 40%, expressed in livestock units, of the claimant’s breeding cows which are relevant animals are heifers.

Ewes

5. A ewe is a relevant animal for the purposes of these Regulations if—

- (a) it is declared by the claimant in his single payment scheme application or hill farm allowance application;
- (b) it is entered by the claimant into the documents and records referred to in articles 4 and 12 of the Sheep and Goats Identification and Movement (Interim Measures) (England) (No 2) Order 2002^(a) and articles 14, 17 and 20 of the Sheep and Goats (Records, Identification and Movement) (England) Order 2005^(b), and the claimant complies with those Orders in respect of those records;
- (c) it formed part of a flock kept on the holding for a period of 100 consecutive days starting on any day from 1st January 2006 to 22nd September 2006 inclusive; and
- (d) it was, throughout that period, owned by the claimant, or leased to him under a leasing agreement in writing.

^(a) S.I. 2002/2153, as amended by S.Is. 2003/29, 2003/502 and 2003/1728.

^(b) S.I. 2005/3100, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Regulation (EC) No. 1698/2005 (O.J. No. L 277, 21.10.2005, p.1) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and Council Regulation (EC) No. 1257/1999 (O.J. No. L160, 26.6.1999, p.80) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), in so far as those Regulations relate to less favoured areas.

In particular, these Regulations implement Article 36(a)(ii) of Council Regulation 1698/2005 and Articles 13, 14 and 15 of Council Regulation 1257/1999, which deal with support for less favoured areas, by defining the conditions of eligibility for hill farm allowance (*regulations 3-5*) and giving the rates at which it is to be paid (*regulation 6 and Schedule 2*).

The Regulations apply only in relation to holdings situated wholly or partly in England. Schedule 4 makes provision for holdings situated partly outside England.

Provisions relating to the enforcement of these Regulations are contained in the Rural Development (Enforcement) (England) Regulations 2007 (S.I. 2007/75).

Copies of the Rural Development National Strategy Plan for the United Kingdom are available at www.defra.gov.uk/corporate/publications/default.htm and from the Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.

A regulatory impact assessment has not been prepared because the changes to the existing hill farm allowance scheme introduced by these Regulations will have a negligible impact on business and the voluntary sector.

STATUTORY INSTRUMENTS

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