

2011 No. 135

AGRICULTURE

The Uplands Transitional Payment Regulations 2011

Made - - - - *24th January 2011*

Laid before Parliament *27th January 2011*

Coming into force - - *17th February 2011*

The Secretary of State is a Minister 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.

The Secretary of State makes the following Regulations under the powers conferred by that section.

Title, commencement, extent and application

1. —(1) These Regulations may be cited as the Uplands Transitional Payment Regulations 2011 and come into force on 17th February 2011.

(2) These Regulations, except for regulation 9, apply only in England.

Interpretation

2. In these Regulations—

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

“claim” means a claim for uplands transitional payment made in a single payment scheme application;

“claimed forage area” means land included as forage land in a single payment scheme application or related less favoured area allowance application;

“common land” means land registered as common land with grazing rights under the Commons Registration Act 1965^(c) or the Commons Act 2006^(d);

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

(b) 1972 c. 68. The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order (S.I. 2002/794). The power of the Secretary of State as a designated Minister, to make regulations which extend to Scotland, Wales and Northern Ireland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46); article 4(4) of the European Communities (Designation) (No. 3) Order 2005 (S.I. 2005/2766); and article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812) respectively.

(c) 1965 c. 64.

(d) 2006 c. 26.

“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(a);

“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)(b);

“Council Regulation 73/2009” means 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, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(c);

“CSS Agreement” means an agreement made under regulation 3(1) of the Countryside Stewardship Regulations 2000(d);

“eligible forage area” means such part of the qualifying forage area that is severely disadvantaged land;

“the England LFA maps” means the four volumes of maps numbered 1 to 4, each volume being marked “Less Favoured Area Map of England 2009”, dated 29th January 2010, 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;

“ESA Agreement” means an agreement made under section 18(3) of the Agriculture Act 1986(e);

“ewe” means a female sheep which was at least one year old on 1st January 2011, or had lambed by that date;

“forage area” has the same meaning as in Article 2(k) of Commission Regulation (EC) No 1120/2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation 73/2009(f);

“holding” has the same meaning as in Article 2(b) of Council Regulation 73/2009;

“individual quota” has the same meaning as in Article 65(i) of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(g);

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

“moorland” means all the land shown coloured brown in the three volumes of maps entitled “Moorland Map of England 2009”, each volume being marked with the number of the volume, dated 29th January 2010, 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;

“qualifying forage area” means the claimed forage area or, where deductions are made under Schedule 2 (availability of individual quotas: deductions from claimed forage area), such part of that area as remains following those deductions;

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

(a) OJ No L 160, 26.6.1999, p80, last amended by Council Regulation 1698/2005.

(b) OJ No L 277, 21.10.2005, p1, last amended by Council Regulation (EC) No 473/2009 (OJ No L 144, 9.6.2009, p3).

(c) OJ No L 30, 31.1.2009, p16.

(d) S.I. 2000/3048, last amended by S.I. 2006/991.

(e) 1986, c. 49.

(f) OJ No L 316, 2.12.2009, p1.

(g) OJ No L 299, 116.11.2007, p1, last amended by Council Regulation (EC) No 1140/2009 (OJ No L 312, 27.11.2009, p4).

“relevant animal” means, in relation to a claimant, a breeding cow or ewe determined as a relevant animal in accordance with Schedule 1 (relevant animals);

“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 73/2009;

“single payment scheme application” means an application to the single payment scheme submitted in 2010 in accordance with Article 19 of Council Regulation 73/2009 and Title II of Part II of Commission Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation 73/2009 as regards cross-compliance, modulation and the integrated administration and control system under the direct support schemes for farmers provided for in that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector^(a);

“suckler cow” has the same meaning as in Article 109(d) of Council Regulation 73/2009;

“uplands transitional payment” 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.

Uplands transitional payment

3.—(1) The Secretary of State must pay an uplands transitional payment for 2011 to a claimant who is eligible under regulation 4.

(2) The Secretary of State must only make such a payment in respect of eligible forage area that does not exceed 700 hectares.

Eligibility for uplands transitional payment

4.—(1) A claimant who satisfies the conditions in paragraph (2) is eligible for an uplands transitional payment.

(2) The conditions are that—

- (a) the claim relates to at least—
 - (i) ten hectares of severely disadvantaged land, or
 - (ii) one hectare of severely disadvantaged land, where the claimant is eligible for a related less favoured area allowance in another part of the United Kingdom;
- (b) at least one relevant animal is on land that is—
 - (i) less favoured area, and
 - (ii) in the claimant’s holding;
- (c) the land referred to in sub-paragraphs (a) and (b)—
 - (i) 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 2010 to 31st March 2010 inclusive, and
 - (ii) 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 at least four months;
- (d) the claimant farms at least one parcel that is—
 - (i) severely disadvantaged land, and
 - (ii) subject to an ESA Agreement or a CSS Agreement that did not expire before 1st January 2011;

(a) OJ No L 316, 2.12.2009, p65.

- (e) the claimant—
 - (i) made an eligible claim for hill farm allowance under the Hill Farm Allowance Regulations 2010(a), or
 - (ii) after 10 June 2009 the claimant took over land and an ESA Agreement or a CSS Agreement relating to all or part of that land that did not expire before 1st January 2011; and
- (f) where all or part of the claim relates to common land, that common land is subject to an ESA Agreement or a CSS Agreement that did not expire before 1st January 2011.

(3) But a claimant who is in breach of the agricultural undertaking is not eligible for an uplands transitional payment, unless the Secretary of State considers it reasonable in all the circumstances that the breach should not affect the claimant's eligibility.

(4) A claimant who ceases to farm does not breach the undertaking referred to in paragraph (3) 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.

(5) Where a holding in respect of which a claim has been made is situated partly outside England, the area of land which must be used for the purposes of agriculture under paragraph (4) is reduced by a percentage equal to the percentage of the land which is outside England.

(6) For the purposes of paragraph (2)(c), land is taken to be available to be used for grazing or to have a forage crop taken from it if it is not so available only as a result of an agri-environment agreement.

(7) In this regulation—

- (a) “agricultural undertaking” means the undertaking given by the claimant pursuant to Article 14(2) of Council Regulation 1257/1999 or Article 37(2) of Council Regulation 1698/2005 to pursue farming activity in a less favoured area for at least five years from the date of the first payment to that person in a claim made under these Regulations or any of the Hill Farm Allowance Regulations 2006 to 2010(b);
- (b) “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;
- (c) “agri-environment agreement” means—
 - (i) an agreement made as part of a scheme made under Article 39 of Council Regulation 1698/2005, or
 - (ii) such other agreement involving environmental commitments as the Secretary of State thinks fit;
- (d) “parcel” means a continuous area of land, declared by one claimant, which does not cover more than one single crop group;
- (e) “crop group” has the same meaning as in the second sub-paragraph of article 16(1) of Commission Regulation (EC) No 1975/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(c).

Payment

5.—(1) The Secretary of State must pay any uplands transitional payment at the rates specified in this regulation.

(a) S.I. 2010/167.

(b) S.I. 2006/225 (as amended by 2006/518), 2007/619, 2008/51, 2009/138 and 2010/167.

(c) OJ No L 368, 23.12.2006, p74, last amended by Commission Regulation (EC) No 484/2009 (OJ No L 145, 10.6.2009, p25).

(2) For the qualifying forage area of severely disadvantaged land which is moorland or common land, the payment rate per hectare is—

- (a) £14.78 for the first 350 hectares; and
- (b) £7.39 for the next 350 hectares.

(3) For the qualifying forage area of severely disadvantaged land other than severely disadvantaged land which is moorland or common land, the rate payable per hectare is—

- (a) £39.02 for the first 350 hectares; and
- (b) £19.51 for the next 350 hectares.

Increase in amount of payment

6.—(1) The Secretary of State must increase the amount of any payment under regulation 5 by 5% if either condition A or condition B is met, and by 10% if both those conditions are met.

(2) Condition A is that at least one hectare or 5% (whichever is the smaller) of the claimant's severely disadvantaged land—

- (a) is planted with arable crops in respect of which the claimant is not receiving any other financial support, and
- (b) was not converted from permanent pasture in or after 2005.

(3) Condition B is that at least one hectare or 5% (whichever is the smaller) of the claimant's severely disadvantaged land—

- (a) is planted with woodland in respect of which the claimant is not receiving any other financial support, and
- (b) was not converted from permanent pasture in or after 2005.

(4) In this regulation—

- (a) “other financial support” does not include financial support from the single payment scheme;
- (b) “permanent pasture” means non-rotational land used for sown or natural grass production for periods of five or more years.

Shortfalls and surpluses in the fund

7.—(1) The Secretary of State may increase the amount of any payment made under these Regulations by up to 10% if the fund available for uplands transitional payment is greater than anticipated because—

- (a) the amount of eligible forage area in respect of which such payments are payable is smaller than anticipated, or
- (b) the budget allocation for the Rural Development Programme for England 2007-2013, or that part of that budget available for uplands transitional payments, is or is likely to be greater than anticipated.

(2) The Secretary of State may decrease the amount of any payment made under these Regulations by up to 10% if that fund is smaller than anticipated by the Secretary of State because—

- (a) the amount of eligible forage area in respect of which such payments are payable is greater than anticipated, or
- (b) the budget allocation for the Rural Development Programme for England 2007-2013, or that part of that budget available for uplands transitional payments, is or is likely to be smaller than anticipated.

(3) Any increase applied under paragraph (1) or decrease applied under paragraph (2) must be applied in the same proportion to each claimant's payment.

(4) The “Rural Development Programme for England 2007-2013” is the Programme for England approved by the European Commission on 7th December 2007 under Article 18(4) of Council Regulation 1698/2005.

Deductions from claimed forage area

8. Schedule 2 (availability of individual quotas: deductions from claimed forage area) has effect.

Revocation

9. The Hill Livestock (Compensatory Allowances) (Enforcement) Regulations 1999(a) and the Hill Livestock (Compensatory Allowances) Regulations 1999(b) are revoked.

24th January 2011

James Paice
Minister of State for Agriculture and Food
Department for Environment, Food and Rural Affairs

SCHEDULE 1 Regulation 2

Relevant Animals

Breeding cows

- 1.—(1) Subject to paragraph 3, a breeding cow is a relevant animal if—
- (a) it is declared in, or subsequently accepted by the Secretary of State as being included in, the claimant’s claim;
 - (b) it is of a meat breed, or is a crossbreed, or the offspring of a crossbreed;
 - (c) it is registered in accordance with Schedule 2 to the Cattle Identification Regulations 2007(c);
 - (d) throughout a period of six consecutive months starting on any date from 1st July 2010 to 31st December 2010 inclusive—
 - (i) it was part of a herd used for rearing calves for meat production only,
 - (ii) it was owned by, or leased under a written leasing agreement to, the claimant,
 - (iii) the claimant had economic responsibility for it, and
 - (iv) it was kept on the claimant’s holding.
- (2) The condition in sub-paragraph (1)(d)(iv) continues to be met if—
- (a) the breeding cow was replaced with another one during that six-month period;
 - (b) the conditions in sub-paragraph (1)(a) to (d)(iii) are met in respect of that replacement; and
 - (c) that replacement was kept on the claimant’s holding for the remainder of that period.
- (3) In this paragraph—
- (a) “crossbreed” means a bovine animal with at least one parent of a meat breed;

(a) S.I. 1999/3315.

(b) S.I. 1999/3316.

(c) S.I. 2007/529, to which there are amendments not relevant to these Regulations.

- (b) “meat breed” means any bovine breed not listed in Annex XV to Commission Regulation 1973/2004(a).

2.—(1) For the purposes of paragraph 1(1)(d)(iii), a claimant had economic responsibility for a breeding cow if, in relation to that cow, the claimant—

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

(2) In sub-paragraph (1), “cattle passport” and “keeper” have the same meaning as in regulation 2(1) of the Cattle Identification Regulations 2007.

3. 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, exceeds 40% of the total number of breeding cows which meet those conditions,

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

Ewes

4. A ewe is a relevant animal if—

- (a) it is declared in, or subsequently accepted by the Secretary of State as being included in, the claimant’s claim;
- (b) the requirements of articles 21, 22 and 24 of the Sheep and Goats (Records, Identification and Movement) (England) Order 2009(b) (which relate to holding registers, movement documents and inventories) were complied with in relation to that ewe;
- (c) it formed part of a flock kept on the holding for a consecutive period of 100 days starting on any day from 1st January 2010 to 22nd September 2010 inclusive; and
- (d) it was, throughout that period, owned by, or leased under a written agreement to, the claimant.

SCHEDULE 2

Regulation 8

Availability of Individual Quotas: Deductions from Claimed Forage Area

1. If an individual quota was available to a claimant on 31st March 2010, the claimed forage area is subject to the deductions specified in paragraph 4.

2. The deductions are 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 is calculated as follows—

$$TLU = IQ \div 5730$$

where—

(a) OJ No L 345, 20.11.2004, p1, last amended by Commission Regulation (EC) No 316/2009 (OJ L 100, 18.4.2009, p3).
(b) S.I. 2009/3219.

“IQ” is the individual quota (expressed in litres) available to the claimant in relation to the claimant’s 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 are made as follows—

- (a) S hectares are deducted from A, where S is equal to the lesser of—
 - (i) $TLU \div 1.8$, and
 - (ii) A;
- (b) if TLU is greater than 1.8S, T hectares are deducted from B, where T is equal to the lesser of—
 - (i) $TLU - 1.8S$, and
 - (ii) B;
- (c) If TLU is greater than $1.8S + T$, U hectares are deducted from C, where U is equal to the lesser of—
 - (i) $(TLU - (1.8S + T)) \div 1.4$, and
 - (ii) C;
- (d) if TLU is greater than $1.8S + T + 1.4U$, V hectares are deducted from D, where V is equal to the lesser of—
 - (i) $TLU - (1.8S + T + 1.4U)$, and
 - (ii) D;
- (e) If TLU is greater than $1.8S + T + 1.4U + V$, W hectares are deducted from E, where W is equal to the lesser of—
 - (i) $TLU - (1.8S + T + 1.4U + V) \div 1.4$, and
 - (ii) E;
- (f) If TLU is greater than $1.8S + T + 1.4U + V + 1.4W$, X hectares are deducted from F, where X is equal to the lesser of—
 - (i) $(TLU - (1.8S + T + 1.4U + V + 1.4W)) \div 1.4$, and
 - (ii) F;
- (g) if TLU is greater than $1.8S + T + 1.4U + V + 1.4W + X$, Y hectares are deducted from G, where Y is equal to the lesser of—
 - (i) $(TLU - (1.8S + T + 1.4U + V + 1.4W + X))$, and
 - (ii) G;
- (h) if TLU is greater than $1.8S + T + 1.4U + V + 1.4W + X + Y$, Z hectares are deducted from H, where Z is equal to the lesser of—
 - (i) $(TLU - (1.8S + T + 1.4U + V + 1.4W + X + Y)) \div 1.4$, and
 - (ii) H;

where—

“A” is the number of hectares of claimed forage area not within a less favoured area which is not common land;

“B” is the number of hectares of claimed forage area not within a less favoured area which is common land;

“C” is the number of hectares of claimed forage area within the disadvantaged land;

“D” is the number of hectares of claimed forage area within the disadvantaged land that is either moorland or common land;

“E” is the number of hectares of claimed forage area within the severely disadvantaged land that is not subject to an ESA Agreement or CSS Agreement in respect of any part that area;

“F” is the number of hectares of claimed forage area within the severely disadvantaged land that is either moorland or common land and that is not subject to an ESA Agreement or CSS Agreement in respect of any part of that area;

“G” is the number of hectares of claimed forage area within the severely disadvantaged land that is either moorland or common land and that is subject to an ESA Agreement or CSS Agreement in respect of any part of that area;

“H” is the number of hectares of claimed forage area within the severely disadvantaged land that is subject to an ESA Agreement or CSS Agreement in respect of any part of that area; and

“TLU” is the total number of livestock units in the notional dairy herd.

5. Where a holding in respect of which a claim has been made is situated partly outside England, the individual quota which is treated as available to a claimant in relation to the claimant’s land in England is calculated as follows—

$$IQ = (TIQ \times X) \div Y$$

where—

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

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

“TIQ” is the total individual quota available to the claimant in respect of that holding; and

“IQ” is the individual quota which is treated as available in respect of that part of the holding situated in England.

6. In this Schedule—

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

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

(i) one suckler cow,

(ii) one heifer aged 24 months or over,

(iii) 1.67 heifers under the age of 24 months, and

(iv) 6.67 ewes,

and in this definition “heifer” means a female bovine animal aged 8 months or over which has not yet calved.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations partially implement Council Regulation (EC) No 1698/2005 (OJ No L 277, 21.10.05, p1) on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and Council Regulation (EC) No 1257/1999 (OJ No L 160, 26.6.99, p80) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), in so far as those Council Regulations relate to less favoured areas.

Regulation 4 defines the conditions of eligibility for an uplands transitional payment. Such payment is payable only in relation to severely disadvantaged land (and for not more than 700 hectares), at the rates set out in regulations 5, 6 and 7. “Severely disadvantaged land” is defined in regulation 2.

Copies of the Rural Development Programme for England 2007-2013 are available at <http://www.defra.gov.uk/rural/rdpe/progdoc.htm> and from the Department for Environment, Food and Rural Affairs, Information Resource Centre, Ergon House, Horseferry Road, London SW1P 2AL.

An impact assessment has not been prepared, because the changes to the hill farm allowance scheme replaced by these Regulations will have a negligible additional impact on business and the voluntary sector.

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STATUTORY INSTRUMENTS

2011 No. 135

AGRICULTURE

The Uplands Transitional Payment Regulations 2011

£5.75