

2018 No. 18

AGRICULTURE

**The Areas of Natural Constraint Regulations (Northern Ireland)
2018**

Made - - - - - *30th January 2018*

Coming into operation - - - - - *1st March 2018*

The Department of Agriculture, Environment and Rural Affairs is a Northern Ireland 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 matters relating to the promotion of rural development.

The Department of Agriculture, Environment and Rural Affairs makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1. These Regulations may be cited as the Areas of Natural Constraint Regulations (Northern Ireland) 2018 and come into operation on 1st March 2018.

Interpretation

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

(2) In these Regulations—

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

“agriculture” means 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 includes the use of woodland provided that use is ancillary to the use of the land for other agricultural purposes; and “agricultural” shall be construed accordingly;

“ANC allowance” means a payment made by the Department under Article 31(5) of the Rural Development Regulation and in accordance with Measure 13 as described in the Northern Ireland Rural Development Programme 2014 - 2020(d);

(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. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)
(c) 1954 c.33 (N.I.)
(d) <https://www.daera-ni.gov.uk/articles/2014-2020-rural-development-programme>

“authorised person” means any person who is authorised by the Department, either generally or specifically, to act in relation to matters arising under these Regulations, whether or not the authorised person is an officer of the Department;

“beneficiary” means a person who has received payment for ANC allowance;

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

“breeding female goat” means a 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 a 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, Environment and Rural Affairs;

“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)

“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, ponds, paths and woods, other than land used for woodlands where that use is ancillary to the use of land for other agricultural purposes;

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

“holding” has the meaning given by Article 4 (1) (b) of the Direct Payment Regulation;

“the Horizontal Delegated Regulation” means Commission Delegated Regulation (EU) No. 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 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(b);

(a) OJ L 347, 20.12.2013, p. 608

(b) OJ L 181, 20.6.2014, p. 48

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

“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^(b);

“keeper” has—

- (a) in relation to the keeping of suckler cows, heifers and eligible dairy stock, the meaning given by Council Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products^(c);
- (b) in relation to the keeping of sheep and goats, the meaning given by Council Regulation (EC) No 21/2004 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC^(d) as amended by Commission Regulation (EC) No 759/2009^(e);

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

- (i) 1 suckler cow;
- (ii) 1 heifer aged over 24 months;
- (iii) 1.67 heifers aged between 8 months and 24 months;
- (iv) 6.67 ewes;
- (v) 6.67 breeding female goats;
- (vi) 3.3 breeding female deer aged 27 months and over; or
- (vii) 5 breeding female deer aged at least 6 months but less than 27 months;

“minimum grazing period” means the seven month period 1st April to 31st October 2017;

“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 6 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;

(a) OJ L 227 31.7.2014, p. 69
(b) OJ L 347, 20.12.2013, p. 549
(c) OJ L 117 07.5.1997, p. 1
(d) OJ L 5 09.01.2004, p. 8
(e) OJ L 215 20.08.2009, p. 3

“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^(a);

“severely disadvantaged area” 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;

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

“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;

(3) Any reference in these Regulations to an EU instrument is a reference to that instrument as amended at the date on which these Regulations are made.

Payment of ANC allowance

3. The Department may pay an ANC allowance in respect of the year 2017 if—

- (a) the claimant is eligible under regulation 4; and
- (b) the land in respect of which the claim is made is eligible under regulation 5.

Claimant eligibility for ANC allowance

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

- (a) the claimant is an active farmer;
- (b) the claim is made in the single application submitted for the year 2017; and
- (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.

(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) applies to a claim made in a single application submitted after 15th May 2017.

Land eligibility for ANC allowance

5. Land is eligible for ANC allowance if, and only if, the land—

- (a) is a qualifying forage area;
- (b) lies within the severely disadvantaged area;

(a) OJ L 347 20.12.2013, p.487

- (c) has been entered in the single application at column H under either of the land use codes in column 1 of Schedule 1 and satisfies the corresponding description set out in column 2; and
- (d) is at least three hectares.

Exclusion of forage area

6.—(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 the claimant 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 that part of the forage area which is not within the severely disadvantaged area, followed by the part within the severely disadvantaged area.

Amount of ANC allowance

7. Subject to regulation 4(5) and Articles 91, 92 and 93 of the Horizontal Regulation, the amount of ANC allowance payable by the Department to a claimant in respect of an area of land eligible under regulation 5 shall be calculated in accordance with the rate specified in column 2 of Schedule 2 opposite the qualifying forage area specified in column 1.

Transfer of holdings

8. For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee shall 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. The Department may, in relation to a claim, exercise any of the powers conferred by regulation 10 if—

- (a) any information furnished to the Department by the claimant or beneficiary is false or misleading; or
- (b) the claimant or beneficiary is in breach of any requirement to which he is subject under these Regulations or the Rural Development Regulation.

Department's powers of recovery

10. Where regulation 9 applies, the Department may—

- (a) withhold the whole or part of any ANC allowance payable to the claimant; and
- (b) recover on demand the whole or part of any ANC allowance 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 shall be 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 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 (EC) 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(b);
- (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(c) 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(d);
- (e) any sum payable under these Regulations or the Areas of Natural Constraint Regulations (Northern Ireland) 2016(e) or the Areas of Natural Constraint Regulations (Northern Ireland) 2017(f);

may be set-off against the amount of any sum recoverable by the Department under regulation 10 and 11.

(a) 1998, c.11.

(b) OJ No L277, 21.10.2005, p. 1 as last amended by Regulation (EU) No. 1312/2011 of the European Parliament and of the Council (OJ No. L339, 21.12.2011, p. 1) and repealed on 1st January 2014 by Article 88 of the Rural Development Regulation

(c) 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

(d) 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, 31.1.2009, p.16).

(e) S.R. 2016 No. 15.

(f) S.R. 2017 No. 8.

Powers of entry

14.—(1) For any of the purposes mentioned in paragraph (2), an authorised person may at all reasonable times, and on producing, if so required, some duly authenticated document showing the person's 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 the authorised person has reasonable grounds to believe that documents relating to a claim are being kept.

(2) The purposes 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 the authorised person's 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
- (b) such other persons as the authorised person 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 the authorised person reasonably believes relates to a claim;
- (b) require the claimant or beneficiary, or any employee or agent of the claimant or beneficiary, to produce, or secure the production of, any document or record or supply any additional information in their possession or under their 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 the authorised person 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 the claimant or beneficiary, to arrange for the collection, penning and securing of such livestock.
- (g) require the claimant or beneficiary, or any employee or agent of the claimant or beneficiary, to give the 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 a 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 a person to answer any question if to do so might incriminate the person.

(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) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, proceedings for an offence under paragraph (1) which is triable only summarily may be brought at any time within six months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the prosecutor's knowledge; but no such proceedings shall be brought by virtue of this paragraph more than two years after the date of the commission of the offence.

(6) For the purposes of paragraph (5), 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 shall be brought in the name of the partnership or association, and not in the name of any of the partners or members.

(2) In proceedings for an offence brought against a partnership or an incorporated association—

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

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

(4) For the purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words "the liability of whose members is limited" and where the affairs of a body corporate are managed by its members, applies in relation to the acts and omissions of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(5) 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

(a) 1945 c. 15

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

(b) to be attributable to the negligence of a partner,
the partner, as well as the partnership, is guilty of an offence and liable to be proceeded against and punished accordingly.

(6) If an offence under regulation 16 committed by an unincorporated association (other than a partnership) 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 neglect on the part of the officer, member or other person,
the officer, member or other person, as well as the association, is guilty of an offence and liable to be proceeded against and punished accordingly.

Revocation and Saving

18.—(1) Subject to paragraph (2), the Areas of Natural Constraint Regulations (Northern Ireland) 2017 (“the 2017 Regulations”) are revoked.

(2) Paragraph (1) does not affect the continuing application of the 2017 Regulations in relation to —

(a) any claim for, or payment of, ANC allowance under those Regulations; or

(b) the exercise of any function in relation to the enforcement of the Regulations or recovery of payment under those Regulations.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on
30th January 2018



Seamus McErlean
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

SCHEDULE 1

Regulation 5(c)

ELIGIBLE LAND USE CODES

In this Schedule—

“agroforestry” means having agriculture and tree growing on the same land.

<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. Grazed woodland or grazed orchards 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>Agroforestry (including agroforestry with more than 50 trees per hectare) 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> <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>

SCHEDULE 2

Regulation 7

PAYMENT RATES FOR ANC ALLOWANCE

<i>Column 1</i>	<i>Column 2</i>
1. For the first 200 hectares of land in the qualifying forage area which lies within the severely disadvantaged area.	£26.57 per hectare
2. For each hectare of land in the qualifying forage area which lies within the severely disadvantaged area in excess of 200 hectares where the qualifying forage area in the claimant's holding which lies within the severely disadvantaged area is more than 200 hectares.	£19.93 per hectare

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a domestic legal framework for the implementation of Article 31(5) 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 19th December 2017 by Commission Decision CCI: 2014UK06RDRP002.

The Regulations define the conditions of eligibility for an ANC allowance (regulations 3 to 6) and the rate at which it is to be paid (regulation 7 and Schedule 2).

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 amounts 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.

Regulation 18 revokes with savings the Areas of Natural Constraint Regulations (Northern Ireland) 2017.

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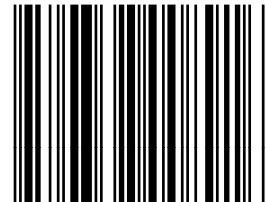
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