

# Statutory Instrument 2004 No. 145

## The Hill Farm Allowance Regulations 2004

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### STATUTORY INSTRUMENTS

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**2004 No. 145**

### **AGRICULTURE, ENGLAND**

#### The Hill Farm Allowance Regulations 2004

<i>Made</i>	<i>26th January 2004</i>
<i>Laid before Parliament</i>	<i>26th January 2004</i>
<i>Coming into force</i>	<i>18th February 2004</i>

The Secretary of State, being designated<sup>[1]</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>[2]</sup> in relation to the common agricultural

policy of the European Community, in exercise of the powers conferred upon her by that section<sup>[3]</sup>, hereby makes the following Regulations:

### **Title, commencement and extent**

1. - (1) These Regulations may be cited as the Hill Farm Allowance Regulations 2004, shall come into force on 18th February 2004 and, subject to paragraph (2), shall apply to England.

(2) Paragraphs 1 and 2 of Schedule 4, and regulation 9 in so far as it relates to those paragraphs, shall also apply to Scotland.

### **Interpretation**

2. - (1) 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;

"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 hill farm 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 2003;

"Commission Regulation 2316/1999" means Commission Regulation (EC) No. 2316/1999<sup>[4]</sup> laying down detailed rules for the application of Council Regulation (EC) No. 1251/1999<sup>[5]</sup> ;

"Commission Regulation 2342/1999" means Commission Regulation (EC) No. 2342/1999<sup>[6]</sup> 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<sup>[7]</sup>;

"compensatory allowance" means any payment made under these Regulations, the Hill Farm Allowance Regulations 2003<sup>[8]</sup>, the Hill Farm Allowance Regulations 2002<sup>[9]</sup>, the Hill Farm Allowance Regulations 2001<sup>[10]</sup>, the Hill Livestock (Compensatory Allowances) Regulations 1999<sup>[11]</sup>, the Hill Livestock (Compensatory Allowances) Regulations 1996<sup>[12]</sup> or the Hill Livestock (Compensatory Allowances) Regulations 1994<sup>[13]</sup>;

"Council Regulation 2092/91" means Council Regulation (EEC) No. 2092/91<sup>[14]</sup> on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs;

"Council Regulation 3508/92" means Council Regulation (EEC) No. 3508/92<sup>[15]</sup> 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) and amending and repealing certain Regulations;

"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 Nobel House, 17 Smith Square, London SW1P 3JR;

"ewe" means a female sheep which is at least one year old on 1st January 2004, or has lambed by that date;

"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 these Regulations and with Chapter V of Title II of Council Regulation 1257/1999;

"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 any area of land shown coloured blue or pink on the England LFA maps;

"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 aged 8 months or over, but under the age of 24 months; and

(d) 6.67 ewes;

"moorland" means all the land which is shown as a less favoured area on the England LFA maps and which is also shown 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 on behalf of 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;

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

"organic farmer" means a claimant who -

(a) throughout 2003 -

(i) produced, with a view to subsequent marketing, livestock and unprocessed livestock products as referred to in Article 1(1)(a) of Council Regulation 2092/91; and

(ii) complied with any more stringent rules applying to the production of livestock or livestock products in the United Kingdom in accordance with Article 12 of Council Regulation 2092/91; and

(b) did not at any time in 2003 receive aid under the Organic Farming (Aid) Regulations 1994<sup>[18]</sup>, the Organic Farming Regulations 1999<sup>[19]</sup>, the Organic Farming (England Rural Development Programme) Regulations 2001<sup>[20]</sup> or the Organic Farming (England Rural Development Programme) Regulations 2003<sup>[21]</sup>;

"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 I to, Commission Regulation 2316/1999;

"qualifying forage area" means the relevant forage area or, in relation to a claimant to whom regulation 8 applies, such part of the relevant forage area as results from the deductions made to the relevant forage area in accordance with that regulation;

"related less favoured area" means, in relation to a claimant, all that claimed forage area, excluding any less favoured 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) in relation to Northern Ireland, the Less Favoured Area Compensatory Allowance;

(b) in relation to Scotland, the Less Favoured Area Support Scheme; and

(c) in relation to Wales, the Tir Mynydd Scheme;

"relevant animals" means, in relation to a claimant, the suckler cows, heifers and ewes in respect of which the claimant was paid suckler cow premium or sheep annual premium in 2003;

"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;

"sheep annual premium" means the premium payable under the Sheep Annual Premium Regulations 1992[22];

"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 2001[23].

(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.

(3) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is capable of being subsequently reproduced.

### **Payment of hill farm allowance**

3. - (1) The Secretary of State shall, subject to regulation 5, pay hill farm allowance in respect of 2004 to any claimant who is eligible under regulation 4.

(2) Hill farm allowance shall be payable to a claimant in respect of eligible forage area not exceeding 700 hectares.

### **Eligibility for hill farm allowance**

4. - (1) Subject to Article 14.2 of Council Regulation 1257/1999 (third indent) a claimant shall be eligible for hill farm allowance provided -

(a) his claim is made in an area aid application submitted in 2003;

(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 is not less than 0.15.

(2) The conditions are -

(a) the claimed forage area lying within a less favoured area is at least ten hectares; or

(b) where the claimed forage area lying within a less favoured area is at least one hectare but is 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 Secretary of State may determine that a notional livestock density of less than 0.15 is sufficient for the purposes of paragraph (1) if she is reasonably satisfied that it is appropriate to do so in all the circumstances of the case, including any obligation of 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 the Secretary of State to consider whether to exercise her discretion under paragraph (3), the claimant shall provide the Secretary of State with such information as she reasonably may require.

#### **Condition as to continued use of eligible land or related less favoured area**

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

(a) he has given a written undertaking, in such form as the Secretary of State may reasonably require, that he would, for a period of five years from the date of the first payment to him of a compensatory allowance, continue to use for the purposes of agriculture at least three hectares of land which is situated either in a less favoured area 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 land in respect of which the undertaking was given continue to be used for the purposes of agriculture.

#### **Amount of payment**

**7.** - (1) Subject to paragraphs (2) and (3) and to regulation 8, payment of hill farm allowance in respect of the descriptions of land specified in column 1 of Schedule 2 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 2;

(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 2.

(2) If the notional livestock density is less than 1.0, the amount of the payment shall be increased by 20 per cent.

(3) Except where paragraph (2) applies, the amount of the payment 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 an organic farmer;
- (b) the claimant -
  - (i) submitted applications in 2003 for both sheep annual premium and suckler cow premium; and
  - (ii) the number, expressed in livestock units, of suckler cows and heifers in respect of which he was paid suckler cow premium in that year is equal to at least 15 per cent of the number, expressed in livestock units, of relevant animals;
- (c) the notional livestock density is less than 1.2;
- (d) at least one hectare, or 5% (whichever is the smaller), of the claimant's eligible land is planted with arable crops in respect of which the claimant is not receiving any other financial support, and was not converted from permanent pasture after 1998;
- (e) at least one hectare, or 5% (whichever is the smaller), of the claimant's eligible land is planted with woodland in respect of which the claimant is not receiving any other financial support, and was not converted from permanent pasture after 1998.

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

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

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

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

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

10. 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 2004".

*Alun Michael*

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

26th January 2004

#### 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") and, 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 7(1)

## Payment Rates Per Hectare

<i>Column 1</i>	<i>Column 2</i>
<b>1.</b> Severely disadvantaged land (not being moorland or common land)	£38.14
<b>2.</b> Disadvantaged land (not being moorland or common land)	£20.62
<b>3.</b> Moorland or common land	£14.44

## SCHEDULE 3

regulation 8

## Deductions from Relevant Forage Area

1. If, on 31st March 2003, a claimant had available to him an individual

reference quantity of milk, the relevant forage area shall, subject to paragraph 5 of Schedule 4, be subject to the deductions specified in paragraph 4 of this Schedule.

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  $1.8X + (1.4 \times Y)$ , Z hectares shall be deducted from C, where Z is equal to the lesser of -

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

regulation 9

#### Holdings situated partly outside England

##### **Agency arrangements**

1. The Secretary of State 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 Secretary of State 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**

3. 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, 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**

4. 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 -

$$N = TLU \times X \div Y$$

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 situated in England.

##### **Apportionment of individual reference quantity of milk**

5. 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.

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## EXPLANATORY NOTE

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

These Regulations implement Commission Regulation 445/2002 (O.J. L74, 15.3.02, p.1, as last amended by Council Regulation (EC) No 963/2003 (O.J. No. L138, 5.6.2003, p.32)) laying down detailed rules for the application of Council Regulation 1257/1999 (O.J. L160, 26.6.1999, p.80 as last amended by Council Regulation (EC) No 1783/2003 (O.J. No. L270, 21.10.2003, p.70)) ("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 European Commission (Commission Decision No. C(2000) 3003) under Article 44 of the Council Regulation.

In particular, the Regulations implement Articles 13, 14 and 15 of the rural development 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 (*regulation 7 and Schedule 2*).

The Regulations apply only to England, except for regulation 9 and Schedule 4. These provisions enable the Secretary of State, in respect of holdings that are situated partly in England and partly in Scotland, to arrange for her functions under the Regulations to be exercised on her behalf by the Scottish Ministers and to agree to exercise any corresponding functions on their behalf. Provision is also made in relation to such holdings for the setting off of 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, amended by S.I. 2001/431) give the Secretary of State 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.

A full regulatory impact assessment has not been prepared for this instrument as it has no impacts on the cost of business.

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*Notes:*

[1] S.I. 1972/1811 and S.I. 1995/751.[back](#)

[2] 1972 c. 68.[back](#)

[3] The power of the Secretary of State 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).[back](#)

[4] O.J. No. L280, 30.10.1999, p.43, as last amended by Commission Regulation (EC) No. 1035/2003 (O.J. No. L150, 18.6.2003, p.24).[back](#)

[5] O.J. No. L160, 26.6.1999, p.1, as last amended by Council Regulation (EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p.1).[back](#)

[6] O.J. No. L281, 04.11.1999, p.30, as last amended by Commission Regulation (EC) No 1473/2003 (O.J. No. L211, 21.8.2003, p.12).[back](#)

[7] 1965 c. 64.[back](#)

[8] S.I. 2003/289.[back](#)

[9] S.I. 2002/271.[back](#)

[10] S.I. 2001/476.[back](#)

[11] S.I. 1999/3316.[back](#)

[12] 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.[back](#)

[13] S.I. 1994/2740, amended by S.I. 1995/100, 1995/1481, 1995/2778 and 1996/27 and revoked by S.I. 1996/1500.[back](#)

[14] O.J. No. L198, 22.7.1991, p.1, as last amended by Council Regulation (EC) No. 2277/2003 (O.J. No. L336, 23.12.2003, p.68).[back](#)

[15] O.J. No. L355, 5.12.1992, p.1, as last amended by Council Regulation (EC) No. 495/2001 (O.J. No. L72, 14.3.2001, p.6). Council Regulation (EEC) No. 3508/92 was repealed by Article 153(1) of Council Regulation (EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p.1), but continues to apply to applications for direct payments in respect of the calendar years preceding 2005.[back](#)

[16] O.J. No. L160, 26.06.1999, p.21, as last amended by Council Regulation

(EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p.1).[back](#)

[17] O.J. No. L160, 26.6.1999, p.80, as last amended by Council Regulation (EC) No. 1783/2003 (O.J. No. L270, 21.10.2003, p.70).[back](#)

[18] S.I. 1994/1712, amended by S.I. 1996/3109, 1998/1606 and 1999/590.[back](#)

[19] S.I. 1999/590, amended by S.I. 1999/2735 and 1999/2933.[back](#)

[20] S.I. 2001/432, amended by S.I. 2001/3139.[back](#)

[21] S.I. 2003/1235.[back](#)

[22] S.I. 1992/2677, amended by S.I. 1994/2741, 1995/2779, 1996/49, 1997/2500 and 2001/281.[back](#)

[23] S.I. 2001/1370.[back](#)

[24] S.I. 2000/3044, amended by S.I. 2001/431; there are other amending instruments but none is relevant.[back](#)

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