

*Draft Regulations laid before Parliament under sections 29(10) and 50(6)(a) of the Agriculture Act 2020, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2024 No.**

**AGRICULTURE**

**The Fair Dealing Obligations (Milk) Regulations 2024**

*Made* - - - - **\*\*\***  
*Coming into force* - - **\*\*\***

The Secretary of State, in exercise of the powers conferred by sections 29 and 50(3) of the Agriculture Act 2020<sup>(1)</sup>, makes the following Regulations.

In accordance with sections 29(10) and 50(6)(a) of the Agriculture Act 2020, a draft of this instrument has been laid before Parliament and approved by a resolution of each House.

**PART 1**

**General**

**Citation, commencement, extent and application**

- 1.—(1) These Regulations may be cited as the Fair Dealing Obligations (Milk) Regulations 2024.
- (2) They come into force on the commencement date.
- (3) They extend to England and Wales, Scotland and Northern Ireland.
- (4) Subject to paragraphs (5) and (6), these Regulations apply in relation to milk purchase contracts.
- (5) They do not apply in relation to any quantity of milk that the business purchaser<sup>(2)</sup> takes possession of before the transition date under a milk purchase contract that was in force immediately before the commencement date.
- (6) Part 4, excluding regulations 9 and 10, does not apply to a milk purchase contract—
  - (a) where the terms that relate to the price of milk supplied under it were agreed to on behalf of the producer by a representative organisation, of which the producer is a member; or

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(1) 2020 c. 21.

(2) For the meaning of “business purchaser” see section 29(3)(a) of the Agriculture Act 2020.

(b) where the business purchaser has an internal democratic structure and the contract relates to the purchase of milk from a producer member.

(7) In this regulation—

“the commencement date” is the day after the expiry of 12 weeks, beginning with the day on which these Regulations are made;

“the transition date” is the day after the expiry of 12 months, beginning with the commencement date.

## Interpretation

2. In these Regulations—

“fixed-duration contract” has the meaning given in regulation 5(2);

“fixed price” has the meaning given in regulation 7(2);

“internal democratic structure”, in relation to a business purchaser, means an organisational structure—

(a) which is established in the business purchaser’s constitution; and

(b) within which is a decision-making body—

(i) the membership of which includes a majority of individuals who are democratically elected by the producer members of the business purchaser; and

(ii) which has ultimate decision-making authority in relation to contracts for the purchase of milk;

“milk” means cow’s milk;

“milk constituent” means a substance contained in, or which can be extracted from, milk;

“milk purchase contract” means a contract made by a business purchaser for the purchase of milk from a producer;

“notice of intent” has the meaning given in regulation 23(2);

“producer” means a qualifying seller falling within section 29(3)(b)(i) of the Agriculture Act 2020;

“producer member” means a producer that has an ownership interest in the business purchaser in question;

“representative organisation” is—

(a) a producer organisation or an association of producer organisations recognised under Chapter 3 of Title 2 of Part 2 of [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013<sup>(3)</sup> establishing a common organisation of the markets in agricultural products; or

(b) a pre-commencement society, within the meaning of section 150 of the Co-operative and Community Benefit Societies Act 2014<sup>(4)</sup>, that does not carry out processing activities<sup>(5)</sup>;

“the parties” in relation to a milk purchase contract, means the business purchaser and the producer who are party to the contract;

“variable price” has the meaning given in regulation 8(2).

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<sup>(3)</sup> EUR 2013/1308; amended by [S.I. 2019/828](#). There are other amending instruments but none is relevant.

<sup>(4)</sup> 2014 c. 14.

<sup>(5)</sup> For the meaning of “processing activities” see section 29(11) of the Agriculture Act 2020.

## PART 2

### Requirement to use a milk purchase contract

#### **Requirement to use a milk purchase contract and general provisions**

**3.—**(1) A business purchaser may not purchase milk from a producer unless the purchase is made under a milk purchase contract that complies with the requirements of these Regulations.

(2) A milk purchase contract must contain all the express terms relating to the purchase.

(3) A milk purchase contract must contain a term that requires the business purchaser to act in good faith in relation to the contract.

(4) A milk purchase contract may not contain any terms that are contrary to the provisions of these Regulations.

(5) A milk purchase contract containing terms agreed to by a representative organisation on behalf of the producer must contain the name of the representative organisation.

## PART 3

### Format and duration of milk purchase contract

#### **Format of a milk purchase contract**

**4.—**(1) A milk purchase contract must—

- (a) be in writing; and
- (b) be signed by all parties to the contract.

(2) An electronic signature is sufficient to satisfy the requirement in paragraph (1)(b).

(3) An “electronic signature” is so much of anything in electronic form as—

- (a) is incorporated into or logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purposes of being used in establishing the authenticity of the communication or data, the integrity of the data, or both.

#### **Duration of milk purchase contract**

**5.—**(1) A milk purchase contract must be—

- (a) a fixed-duration contract; or
- (b) an evergreen contract.

(2) A “fixed-duration contract” is a milk purchase contract that will terminate—

- (a) on the expiry of a specific period; or
- (b) on a specified date.

(3) An “evergreen contract” is a milk purchase contract that will continue until one of the parties terminates it.

(4) The milk purchase contract must state whether it is a fixed-duration contract or an evergreen contract.

(5) A milk purchase contract must specify the date on which the obligation to supply milk commences, if this is different from the date on which it is signed.

## PART 4

### Pricing and payment

#### Permitted pricing

6. A milk purchase contract must use—
- (a) a fixed price;
  - (b) a variable price; or
  - (c) a combination of a fixed price and a variable price.

#### Use of a fixed price

7.—(1) Where a milk purchase contract uses a fixed price (whether or not in combination with a variable price), it must do so in accordance with this regulation.

- (2) A “fixed price” is a price, set out in the milk purchase contract, that—
- (a) is expressed per unit of milk or milk constituent; and
  - (b) will be paid by the business purchaser to the producer for milk supplied under the contract.
- (3) The milk purchase contract may set out more than one fixed price within the duration of the contract.
- (4) The milk purchase contract must specify—
- (a) the period within the duration of the contract to which each price relates; and
  - (b) the date on which each period begins and ends.
- (5) The milk purchase contract must set out a procedure by which the price may be reviewed where exceptional market conditions occur.
- (6) The milk purchase contract must set out what constitutes exceptional market conditions for the purpose of the procedure referred to in paragraph (5).
- (7) The procedure referred to in paragraph (5) must provide that, where requested by the producer, the business purchaser must, within 30 days beginning with the date on which the request was made, invite the producer to enter into a discussion with the purpose of—
- (a) reviewing the price payable under the milk purchase contract at the time of the exceptional market condition occurring; and
  - (b) where both parties agree, changing that price.

#### Use of a variable price

8.—(1) Where a milk purchase contract uses a variable price (whether or not in combination with a fixed price), it must do so in accordance with this regulation.

- (2) A “variable price” is a price per unit of milk or milk constituent that is not fixed at the point that the milk purchase contract is made but is determined—
- (a) in accordance with; or
  - (b) by the business purchaser with reference to,
- factors set out in the milk purchase contract.

(3) Where the milk purchase contract makes provision in accordance with paragraph (2)(b), it must provide that the business purchaser must have due regard, as far as it is reasonably practicable to do so, to only the factors set out in the milk purchase contract when determining the price per unit of milk or milk constituent.

(4) The milk purchase contract may provide for the price per unit of milk or milk constituent to be determined by reference to more than one set of factors within the duration of the contract.

(5) Where the milk purchase contract accords with paragraph (4), it must specify—

- (a) the period within the duration of the contract to which each set of factors relates; and
- (b) the date on which each period begins and ends.

(6) The milk purchase contract must provide how often the price per unit of milk or milk constituent is to be determined, which is to be—

- (a) not more frequently than monthly; and
- (b) not less frequently than every three months.

(7) After the price per unit of milk or milk constituent is determined under the milk purchase contract, the producer may by written notice request that the business purchaser give them a written explanation as to—

- (a) how the price was determined; and
- (b) where the price per unit of milk or milk constituent is to be determined by the business purchaser, how the factors to which the business purchaser is to have due regard influenced the price.

(8) The notice described in paragraph (7) may be given once each time the price is determined.

(9) The business purchaser must give the explanation requested in the notice within 7 days beginning with the date on which the notice described in paragraph (7) was given.

### **Tiered pricing**

9.—(1) An exclusive milk purchase contract may not include any provision that purports to provide that the price to be paid for milk under the contract changes if the amount of milk provided by the producer exceeds a certain volume.

(2) An “exclusive milk purchase contract” is a milk purchase contract that provides that the producer may not make a milk purchase contract with another business purchaser.

### **Method and frequency of payment**

10. A milk purchase contract must set out—

- (a) the first day on which;
- (b) the method by which; and
- (c) the frequency with which,

the business purchaser will pay the producer for milk under the contract.

### **Referral of relevant variable price to independent third party**

11.—(1) A milk purchase contract that uses a relevant variable price must include a third-party verification procedure.

(2) A “a third-party verification procedure” is a procedure which enables a producer to refer an explanation given in accordance with regulation 8(9) to an independent person—

- (a) for the purpose of seeking their professional opinion as to the extent to which any references to business-sensitive data are accurate; and
- (b) to confirm that, in the reasonable, professional opinion of the independent person, the explanation is supported by the business-sensitive data.

- (3) The business purchaser must—
- (a) cooperate with the independent person, to such extent as is reasonably requested by the person; and
  - (b) provide such information or specified documents as are reasonably requested by the person.
- (4) Paragraph (3) does not apply if the independent person does not confirm to the business purchaser that they will not share business-sensitive data without the business purchaser’s consent.
- (5) The milk purchase contract must—
- (a) provide that the independent person engaged to verify business-sensitive data is to be agreed upon by the business purchaser and producer; and
  - (b) provide for the costs of the independent person to be apportioned between the parties.
- (6) But the milk purchase contract must provide that the producer may not be apportioned a greater share of the costs of engaging the independent person than is apportioned to the business purchaser.
- (7) In this regulation,
- “business-sensitive data” is data—
    - (a) the source of which is the business purchaser; and
    - (b) that is of a confidential nature;
  - “relevant variable price” means a variable price which is determined with reference to business-sensitive data.
- (8) Data is of a confidential nature if it is stated as being so in the milk purchase contract.

## PART 5

### Volumes

#### **Fixed volume contracts**

- 12.**—(1) This regulation applies to a milk purchase contract that specifies a fixed volume of milk.
- (2) A milk purchase contract specifies a fixed volume of milk if it provides that the producer is to supply a fixed, pre-determined volume of milk over a given period.
- (3) The milk purchase contract must—
- (a) set out the period, of no longer than 12 months, over which the volume of milk is to be supplied; and
  - (b) set out upper and lower acceptable supply volumes applicable to that period.
- (4) “Acceptable supply volumes” are volumes of milk which fall above and below the fixed volume of milk specified in the contract but which nevertheless are subject to the same pricing terms as the fixed volume.
- (5) The milk purchase contract must also include provision setting out the remedies available to the business purchaser where the producer provides a volume of milk that is below the lower acceptable supply volume for the applicable period.
- (6) An exclusive milk purchase contract may not specify a fixed volume of milk.
- (7) “Exclusive milk purchase contract” has the meaning given in regulation 9(2).

## PART 6

### Miscellaneous

#### Collection of milk

**13.**—(1) A milk purchase contract must provide that milk supplied under the contract will be collected from the producer by, or on behalf of, the business purchaser.

(2) The milk purchase contract must specify when, and how frequently, collections will occur.

#### Force majeure

**14.**—(1) A milk purchase contract must contain a provision setting out the effect on the business purchaser and producer of a force majeure event occurring.

(2) A milk purchase contract must set out specifically the acts, events or circumstances that constitute a force majeure event.

#### Notices under a milk purchase contract

**15.**—(1) A milk purchase contract must provide that any notice given under it must be—

- (a) in writing;
- (b) sent by electronic mail or a method of post that requires the recipient to sign on receipt; and
- (c) where the notice is given by post, properly addressed and pre-paid.

(2) The milk purchase contract must provide that where the notice complies with the provision required by paragraph (1), service is deemed to be effected at the time at which the notice would be delivered—

- (a) where electronic mail is used, in the ordinary course of using the electronic mail service; or
- (b) where the notice is given by post, in the ordinary course of post.

(3) The milk purchase contract must state that the address for service by post for the parties is their ordinary business address unless a party specifies an alternative address.

#### Variation of terms

**16.**—(1) A milk purchase contract must provide that the milk purchase contract's terms may be varied only on agreement in writing between the business purchaser and—

- (a) the producer; or
- (b) where the producer is represented by a representative organisation, the representative organisation.

(2) Paragraph (1) does not apply to a milk purchase contract made by a business purchaser which has an internal democratic structure when purchasing milk from a producer member.

## PART 7

### Dispute resolution

#### Dispute resolution

17.—(1) A milk purchase contract must set out a procedure according to which a producer may make a complaint to the business purchaser relating to the milk purchase contract.

(2) The procedure must provide—

- (a) that the producer must make the complaint by giving a notice to the business purchaser;
- (b) the contact details of a person to whom the producer may give the notice; and
- (c) that, upon receiving the notice, the business purchaser must investigate, and take all reasonable steps to resolve, the complaint.

## PART 8

### Termination

#### Cooling off period

18.—(1) A milk purchase contract must provide that the producer may, at any time before the expiry of the cooling off period, terminate the contract without any penalty or liability.

(2) The milk purchase contract must provide that the termination under paragraph (1) is to have immediate effect.

(3) The milk purchase contract must provide that a producer is not required to give any reason for terminating a milk purchase contract before the expiry of the cooling off period.

(4) The “cooling off period” is a period of 21 days beginning with the date on which the contract was made.

#### Termination

19.—(1) Unless it is a fixed-duration contract with a duration of 12 months or less, a milk purchase contract must set out a process in accordance with which the contract can be terminated (“the termination process”).

(2) The termination process must provide that the business purchaser must not give less than 12 months’ notice to terminate the contract without—

- (a) the consent of the producer to the termination; or
- (b) there being a material breach of the milk purchase contract by the producer.

(3) The termination process must not operate in any way that requires a producer to give more than 12 months’ notice to terminate the milk purchase contract.

(4) A milk purchase contract must provide that the producer may immediately terminate the contract without the consent of the business purchaser by giving the business purchaser a written notice—

- (a) where the business purchaser is insolvent;
- (b) within 14 days of the producer becoming aware of there having been a material breach of the milk purchase contract by the business purchaser except for a failure to make a payment in accordance with the contract (in respect of which, see sub-paragraphs (c) and (d));



- (c) where—
    - (i) the business purchaser fails to make a payment in accordance with the milk purchase contract;
    - (ii) the producer gives notice to the business purchaser of that failure; and
    - (iii) the payment is not made within seven days of that notice being given, within 21 days of that notice being given;
  - (d) within 14 days of the third occasion on which the business purchaser fails to make a payment in accordance with the milk purchase contract, whether or not any previous failures to pay have been remedied;
  - (e) within 14 days of the death of a relevant person; or
  - (f) within 14 days beginning with the day on which a requirement to pay a civil penalty or compensation is imposed on the business purchaser in respect of the milk purchase contract under regulation 21(1).
- (5) A “relevant person” is a person named in the milk purchase contract whose death enables the milk purchase contract to be immediately terminated in accordance with paragraph (4)(e).
- (6) A milk purchase contract may not contain any provision that—
- (a) purports to allow the business purchaser to alter the pricing method or price per unit of milk or milk constituent under the contract as a consequence of notice to terminate the contract having been given; or
  - (b) purports to restrict the ability of a producer to give notice on a particular day.
- (7) Where the milk purchase contract is a fixed-duration contract with a duration of 12 months or less, it may not make any provision for the business purchaser to give less than 12 months’ notice to terminate the contract before the end of the fixed-duration term without—
- (a) the consent of the producer to the termination; or
  - (b) there being a material breach of the milk purchase contract by the producer.
- (8) This regulation is subject to regulation 18 (cooling off period).

## PART 9

### Enforcement

#### Referral of complaint to the Secretary of State

- 20.**—(1) A producer may refer a relevant complaint to the Secretary of State.
- (2) A “relevant complaint” is a complaint that—
- (a) a milk purchase contract to which the producer is a party is not compliant with the obligations of these Regulations; or
  - (b) the business purchaser has failed to comply with the obligation to provide an explanation in accordance with regulation 8(9) following a request by the producer under regulation 8(7) (request for explanation regarding pricing).
- (3) To refer a relevant complaint, a producer must give a written notice to the Secretary of State that includes—
- (a) the details of the alleged failure to comply;
  - (b) any evidence of the alleged failure to comply;

- (c) a statement as to whether the producer is seeking compensation from the business purchaser concerned;
  - (d) the amount of any compensation sought; and
  - (e) the reasons why such compensation is sought.
- (4) A relevant complaint may not be referred to the Secretary of State unless—
- (a) the producer has made the complaint, or, in the opinion of the Secretary of State, a substantially similar complaint, to the business purchaser under the milk purchase contract's dispute resolution procedure (see regulation 17) and 28 days have passed beginning with the day on which the complaint was made to the business purchaser; or
  - (b) the milk purchase contract makes no provision for a dispute resolution procedure or otherwise fails to comply with regulation 17.
- (5) A producer may not refer a relevant complaint to the Secretary of State that the Secretary of State has already decided unless—
- (a) new evidence is available; and
  - (b) the decision made by the Secretary of State was that no requirement was to be imposed under regulation 21(1).
- (6) After receiving the relevant complaint, the Secretary of State must give a notice to the business purchaser that—
- (a) includes the relevant complaint;
  - (b) asks the business purchaser to respond to the allegations made in the complaint; and
  - (c) gives a date by which the business purchaser must reply.
- (7) The Secretary of State may—
- (a) investigate a case where a relevant complaint is referred to the Secretary of State;
  - (b) require the parties to the milk purchase contract to submit evidence relating to the relevant complaint;
  - (c) consider other failures to comply with these Regulations that did not form part of the complaint made to the business purchaser.
- (8) Evidence able to be requested by the Secretary of State includes—
- (a) documents, including those in digital format, in the possession, or under the control, of the party;
  - (b) witness evidence, whether provided by way of a written statement or orally; and
  - (c) any other evidence the Secretary of State considers relevant.
- (9) A request for evidence under paragraph (7)(b) must be in writing and include—
- (a) a statement that the request is made under paragraph (7)(b);
  - (b) the name, or a description, of the person from whom the evidence is being requested;
  - (c) a description of the evidence being requested;
  - (d) the method by which the evidence is required to be submitted;
  - (e) the address to which the evidence is to be sent;
  - (f) the period within which the evidence is to be provided; and
  - (g) a statement that failing to comply with the request—
    - (i) may cause the Secretary of State to draw an adverse inference against the person in respect of the complaint; or

(ii) may lead to civil proceedings being brought to obtain the evidence (in respect of which, see paragraph (12)).

(10) The address referred to in paragraph (9)(e) may be an electronic address.

(11) The business purchaser must cooperate with an investigation of the Secretary of State under paragraph (7)(a).

(12) The Secretary of State may enforce the requirement to provide evidence by bringing civil proceedings to obtain—

(a) in England and Wales or Northern Ireland, an injunction;

(b) in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988(6).

### **Power to impose a civil penalty or require compensation**

**21.**—(1) Where the Secretary of State finds that a business purchaser has failed to comply with a requirement under these Regulations, the Secretary of State may require the business purchaser to pay either, or both, of the following—

(a) a civil penalty;

(b) compensation to the producer.

(2) A business purchaser may be required to pay a civil penalty or compensation in respect of each and every failure to comply with these Regulations.

(3) The maximum amount of a civil penalty is 1% of the business purchaser's turnover.

(4) The Secretary of State may recover any unpaid civil penalty as a debt.

(5) Sums received by the Secretary of State as payment for civil penalties are to be paid into the consolidated fund.

(6) A business purchaser's "turnover" is the business purchaser's applicable turnover for the business year preceding the date of the notice of decision under regulation 25.

(7) Where the business year preceding the date of the decision notice did not equal twelve months, the turnover is the business purchaser's applicable turnover for that business year divided by the number of months in that business year and multiplied by twelve.

(8) Where there was no preceding business year, the turnover is the applicable turnover for the twelve months ending on the last day of the month preceding the month in which the Secretary of State gave the decision notice to the business purchaser.

(9) Where in the application of paragraph (8) the business purchaser has turnover for a period of less than twelve months, the turnover is the applicable turnover in that period divided by the number of months in that period and multiplied by twelve.

(10) In this regulation—

"applicable turnover" is the sum of—

(a) all amounts derived by the business purchaser from the provision of goods and services falling within the business purchaser's ordinary activities in the United Kingdom; and

(b) all other amounts received by the business purchaser in the course of the business purchaser's ordinary activities in the United Kingdom by way of gift, grant, subsidy or membership fee,

after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received;

“business year” means a period of more than six months in respect of which a business purchaser published accounts or, if no such accounts were published for the period, prepared accounts.

(11) Amounts are to be calculated in conformity with generally accepted accounting principles and practices.

### **Requirement of the Secretary of State to publish guidance**

**22.**—(1) The Secretary of State must publish guidance relating to the imposition of a requirement under regulation 21(1).

(2) The guidance must include—

- (a) the matters to be taken into account in determining the amount of the civil penalty or compensation payable;
- (b) the rights of the business purchaser and producer to make representations under regulation 24;
- (c) the right of the business purchaser and producer to appeal against a decision to impose a requirement.

(3) The guidance must be reviewed and revised from time to time.

(4) The Secretary of State must have regard to the guidance when exercising the power in regulation 21(1).

### **Notice of intent**

**23.**—(1) Where the Secretary of State proposes to require a business purchaser to pay a civil penalty or pay compensation, the Secretary of State must first give them a notice of intent.

(2) A “notice of intent” is a written notice including—

- (a) a description of the breach which the Secretary of State considers has been committed;
- (b) the evidence being relied upon;
- (c) the requirement under regulation 21(1) the Secretary of State proposes to impose; and
- (d) a statement that the business purchaser has a right to make representations in accordance with regulation 24 and how to make such representations.

(3) Before the expiry of 7 days beginning with the day after the day on which the Secretary of State gives a notice of intent, the Secretary of State must send—

- (a) a copy of the notice of intent to the producer; and
- (b) where the Secretary of State proposes to require the business purchaser to pay compensation to a producer, a written notice setting out that producer’s right to make representations in respect of the compensation.

### **Representations**

**24.**—(1) A business purchaser to whom a notice of intent is given may, within 28 days beginning with the day on which the notice was received, make written representations to the Secretary of State in relation to the proposed requirement to pay a civil penalty or pay compensation.

(2) A producer who is notified under regulation 23(3)(b) that the Secretary of State proposes to require the business purchaser to pay compensation to them may, within 28 days beginning with the day on which the notice was received, make written representations to the Secretary of State in relation to the amount of that compensation.

## Notice of decision

**25.**—(1) After the expiry of both periods within which the business purchaser and producer may make representations under regulation 24, the Secretary of State must decide whether to impose a requirement under regulation 21(1).

(2) Where the Secretary of State decides to impose a requirement, it may be that set out in the notice of intent, or a different requirement.

(3) A business purchaser required to pay a civil penalty or pay compensation under regulation 21(1) must do so within 28 days of receiving a notice of decision under paragraph (4).

(4) Where the Secretary of State makes a decision under paragraph (1), the Secretary of State must give a written notice (a “notice of decision”) to the business purchaser setting out—

- (a) where the decision is to impose a requirement under regulation 21(1)—
  - (i) the requirement being imposed;
  - (ii) the reasons for imposing the requirement;
  - (iii) the amount to be paid by the business purchaser in respect of each requirement imposed under regulation 21(1);
  - (iv) an explanation as to how the amount has been calculated;
  - (v) how payment may be made;
  - (vi) that payment is due within 28 days of the receipt of the notice of decision;
  - (vii) information about the right to appeal against the imposition of a requirement under regulation 26; and
  - (viii) where the Secretary of State decides to impose a civil penalty, that the Secretary of State is entitled to recover any unpaid civil penalty as a debt; or
- (b) where the decision is not to impose a requirement under regulation 21(1)—
  - (i) that decision; and
  - (ii) the reasons for reaching the decision.

(5) Before the expiry of 7 days beginning with the day after the day on which the Secretary of State gives a notice of decision, the Secretary of State must send a copy of the notice to the producer.

(6) Where the Secretary of State—

- (a) requires the business purchaser to pay compensation to a producer; or
- (b) decides not to impose a requirement under regulation 21(1) on the business purchaser,

the Secretary of State must include with the copy of the notice of decision under paragraph (5) a written notice setting out the producer’s right to appeal under regulation 26(2).

## Appeals

**26.**—(1) A business purchaser on whom a requirement has been imposed under regulation 21(1) may appeal against—

- (a) the imposition of the requirement;
- (b) the amount of any civil penalty they have been ordered to pay; or
- (c) the amount of any compensation they have been ordered to pay.

(2) A relevant producer may appeal against—

- (a) a decision of the Secretary of State under regulation 25(1) not to impose a requirement on a relevant business purchaser; or
- (b) the amount of any compensation a relevant business purchaser has been ordered to pay.

- (3) An appeal under paragraph (1) or (2) is to be made to the First-Tier Tribunal.
- (4) The time limit for payment of a civil penalty or compensation under regulation 25(3) is paused until the appeal is concluded.
- (5) Paragraph (6) applies where, following an appeal under this regulation, the First-Tier Tribunal affirms the decision of the Secretary of State or orders the business purchaser to pay any amount to the Secretary of State or producer.
- (6) The business purchaser must make the payment before the expiry of 28 days beginning with the date of the First-Tier Tribunal’s judgment, minus the number of days that expired (if any) between the date on which the business purchaser received the notice of decision and the date on which the appeal was filed.
- (7) An appeal under this regulation may be determined having regard to matters of which the Secretary of State was unaware.
- (8) In this regulation—
- “notice of decision” has the meaning given in regulation 25(4);
- “relevant producer” means the producer who referred the complaint to the Secretary of State that resulted in the Secretary of State making a decision under regulation 25(1) and “relevant business purchaser” means the business purchaser against whom the complaint was made.

## PART 10

### Review

#### Review

- 27.—(1) The Secretary of State must from time to time—
- (a) carry out a review of the regulatory provision contained in these Regulations; and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before the expiry of 5 years, beginning with the commencement date.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(7) requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision contained in these Regulations;
  - (b) assess the extent to which those objectives are achieved;
  - (c) assess whether those objectives remain appropriate; and
  - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (5) In this regulation—
- “the commencement date” has the meaning given in regulation 1;
- “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32(4) of that Act).

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(7) 2015 c. 26.

## PART 11

### Amendment of Regulation (EU) No 1308/2013

#### Amendment of Regulation (EU) No 1308/2013

**28.**—(1) Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products is amended as follows.

(2) Omit Article 148.

(3) In Article 149—

(a) in paragraph 1, omit “within the meaning of the third subparagraph of Article 148(1)”.

(b) after paragraph 1, insert—

“**1A.** For the purposes of this Article, a “collector” means an undertaking which transports raw milk from a farmer or another collector to a processor of raw milk or another collector, where the ownership of the raw milk is transferred in each case.”.

(4) In Article 151, in the second unnumbered paragraph, omit “and Article 148”.

(5) In Article 157, in paragraph 1(c)(v), for “Articles 148 and” substitute “Article”.

(6) In Article 168, in paragraph 1, omit “Article 148 concerning the milk and milk products sector and”.

Date

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

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## EXPLANATORY NOTE

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

These Regulations make provision in respect of commercial contracts for the purchase of milk between persons purchasing milk in the course of carrying on their business (business purchasers) and producers.

Regulation 3 requires a business purchaser to use a “milk purchase contract” that complies with these Regulations when purchasing milk from a producer, and makes general provision about the use of milk purchase contracts, including that the terms relating to the purchase of milk must all be included in the milk purchase contract.

Regulation 4 makes provision about the format of the milk purchase contract. Regulation 5 provides that the duration of the milk purchase contract must either be fixed or evergreen (as defined).

Regulation 6 sets out the permitted pricing models.

Regulation 7 makes provision in relation to fixed price milk purchase contracts, including that different periods within the duration of the contract may have different fixed prices. It further makes provision about the review of the fixed price in exceptional market conditions.

Regulation 8 makes provision in relation to variable price milk purchase contracts. It imposes a requirement that the milk purchase contract must set out the factors to which the business purchaser must have due regard when determining the price. It makes further provision, including that different sets of factors may relate to different periods within the duration of the contract, limits on the frequency at which the price can be determined and the ability of the producer to request an explanation as to how a price was arrived at by the business purchaser.

Regulation 9 provides that certain milk purchase contracts may not use a pricing model that purports to provide that the price to be paid for milk under the contract changes if the amount of milk provided by the producer exceeds a certain volume.

Regulation 10 makes provision about the method and frequency of payment.

Regulation 11 provides that where business-sensitive data (as defined) is used in relation to a variable price, the milk purchase contract must provide that the producer may refer the explanation given under regulation 8 to an independent person for verification.

Regulation 12 makes provision in relation to milk purchase contracts that specify the supply of a fixed volume of milk over a given period. The milk purchase contract may not specify a period of longer than 12 months over which the milk is to be supplied. It also must specify “acceptable supply volumes”, i.e. volumes of milk above and below the fixed volume which are subject to the same pricing structure and remedies that are available to the business purchaser when the amount of milk is below the lower acceptable supply volume.

Regulation 13 makes provision for the terms relating to the collection of milk by the business purchaser. Regulation 14 requires milk purchase contracts to contain force majeure clauses. Regulation 15 makes provision for the requirements in milk purchase contracts relating to the giving of notices under them. Regulation 16 makes provision for the variation of terms of a milk purchase contract.

Regulation 17 requires milk purchase contracts to contain a dispute resolution procedure.

Regulation 18 makes provision requiring a milk purchase contract to provide that a producer may terminate the milk purchase contract without penalty within the first 21 days of the contract being made.



Regulation 19 provides that milk purchase contracts with a duration of over 12 months must include a process by which the contract can be terminated. The business purchaser must give at least 12 months' notice, unless the milk purchase contract is of less than 12 months duration. The producer may not be required to give more than 12 months' notice to terminate. This regulation also provides that the milk purchase contract must set out certain specific circumstances in which notice to terminate immediately can be given.

Regulation 20 provides that a producer may refer a complaint relating to the compliance of the milk purchase contract with the requirements of these Regulations to the Secretary of State. It sets out the procedure and conditions the producer must comply with in order to refer a complaint to the Secretary of State. It sets out certain powers the Secretary of State has in relation to investigating a complaint and enforcing compliance with a request made by the Secretary of State under this regulation.

Regulation 21 gives the Secretary of State power to impose a civil penalty on a business purchaser found to have failed to comply with their obligations under these Regulations. It further empowers the Secretary of State to require that business purchaser to pay compensation to the producer concerned.

Regulation 22 requires the Secretary of State to publish guidance relating to the requirement to pay a civil penalty or compensation under regulation 21.

Regulation 23 requires the Secretary of State to give a business purchaser a notice (a "notice of intent") where the Secretary of State proposes to require them to pay a civil penalty or compensation under regulation 21.

Regulation 24 enables the business purchaser who has received a notice of intent, and the producer concerned in the matter, to make representations regarding the imposition of a requirement to pay a civil penalty or compensation under regulation 21.

Regulation 25 requires the Secretary of State, after the business purchaser and producer have had an opportunity to make representations, to decide whether to impose a requirement to pay a civil penalty or compensation under regulation 21. The Secretary of State must give the business purchaser a notice informing them of the decision (a "notice of decision"), which must be copied to the producer.

Regulation 26 makes provision in relation to appeals against a decision of the Secretary of State to impose a requirement to pay a civil penalty or compensation under regulation 21.

Regulation 27 makes provision for the Secretary of State to review the regulatory provision made by these Regulations.

Regulation 28 makes related amendments to [Regulation \(EU\) No 1308/2013](#).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. A de minimis assessment has been prepared as this instrument is likely to entail some costs for businesses but the net impact is estimated to be below £5 million per year. It is available from the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London, SW1P 4DF.