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STATUTORY INSTRUMENTS

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**2005 No. 465**

**FOOD**

**The Dairy Produce Quotas Regulations 2005**

<i>Made</i>	- - - -	<i>1st March 2005</i>
<i>Laid before Parliament</i>		<i>4th March 2005</i>
<i>Coming into force</i>	- -	<i>31st March 2005</i>

The Secretary of State is a Minister designated (1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the common agricultural policy of the European Community: In accordance with section 56(1) of the Finance Act 1973(3), the Treasury consents to the making of these Regulations:

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 56(1) of the Finance Act 1973:

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Dairy Produce Quotas Regulations 2005 and shall come into force on 31st March 2005.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Commission Regulation” means Commission Regulation (EC) No. 595/2004 laying down detailed rules for applying Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector(4);

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(1) S.I. 1972/1811, to which there are no relevant amendments. The power of the Secretary of State, as a Minister designated in relation to the common agricultural policy of the European Community, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (1998 c. 46). The Secretary of State’s power, as a Minister so designated, to make regulations which apply to Wales is confirmed by article 3(4) of the European Communities (Designation) (No. 3) Order 1999 (S.I. 1999/2788).

(2) 1972 c. 68.

(3) 1973 c. 51.

(4) OJ No. L94, 31.3.2004, p.22.

“Commission Regulation 1756/93” means Commission Regulation (EEC) No. 1756/93 fixing the operative events for the agricultural conversion rate applicable to milk and milk products<sup>(5)</sup>;

“the Community legislation” means the Council Regulation, the Commission Regulation and Commission Regulation 1756/93;

“competent authority” has the meaning given by regulation 2 of the General Provisions Regulations;

“consent or sole interest notice” means a notice, in relation to a holding, which states that—

- (a) the person providing the notice is the occupier of that holding and that no other person has an interest in that holding or part of that holding; or
- (b) every person having an interest in that holding or any part of it, the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates, agrees to that apportionment or prospective apportionment;

“converted quota” means quota converted by the Secretary of State following an application made under regulation 21;

“the Council Regulation” means Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector<sup>(6)</sup>;

“cow” includes a heifer that has calved;

“dairy enterprise” means an area stated by the occupier of that area to be run as a self-contained dairy produce business;

“dairy produce” means produce, expressed in kilograms or litres (one kilogram being 0.971 litres), in respect of which levy is payable;

“delivery” has the same meaning as in Article 5(f) of the Council Regulation, and “deliver” shall be construed accordingly;

“direct sale” has the same meaning as in Article 5(g) of the Council Regulation;

“direct sales quota” means the quantity of dairy produce which may be sold or transferred free of charge by direct sale by a producer in a quota year without that producer being liable to pay levy;

“direct sales quota holder” means a person in whose name direct sales quota is registered pursuant to regulation 4;

“direct seller” means a producer who produces milk and treats that milk or processes it into milk products on his holding and subsequently sells or transfers free of charge that milk or those milk products without their having been further treated or processed by a different undertaking which treats or processes milk or milk products;

“electronic communication” has the same meaning as in section 15 of the Electronic Communications Act 2000<sup>(7)</sup>;

“the General Provisions Regulations” means the Dairy Produce Quotas (General Provisions) Regulations 2002<sup>(8)</sup>;

“holding” has the same meaning as in Article 5(d) of the Council Regulation;

“interest” includes a licence to occupy land and the interest of a mortgagee and a trustee, but does not include the interest of a beneficiary under a trust or settlement;

<sup>(5)</sup> OJ No.L161, 2.7.1993, p.48, as last amended by Commission Regulation (EC) No. 569/1999 (OJ No. L70, 17.3.1999, p.12).

<sup>(6)</sup> OJ No. L270, 21.10.03, p.123, as corrected by corrigendum OJ No. L94, 31.3.2004, p. 71.

<sup>(7)</sup> 2000 c. 7.

<sup>(8)</sup> S.I. 2002/458, as amended by S.I. 2005/466.

“levy” means the levy payable under the Community legislation and these Regulations to the Secretary of State;

“milk” has the same meaning as in Article 5(a) of the Council Regulation;

“national reserve” has the meaning given it by regulation 2 of the General Provisions Regulations;

“occupier”, in relation to land, includes the person entitled to grant occupation of that land to another, and, during the currency of an interest mentioned in regulation 16(1), the person entitled to grant occupation when that interest terminates, and “occupation” shall be construed accordingly;

“producer” has the same meaning as in Article 5(c) of the Council Regulation;

“prospective apportionment”, in relation to quota in respect of a holding, means an apportionment of quota between the persons with an interest in the holding for the purposes of ascertaining the quota referable to a part of that holding in the event of a transfer of that part;

“purchaser” means a purchaser within the meaning of Article 5(e) of the Council Regulation and, other than in regulation 5(1) to (4) and regulation 31(7), approved by the Secretary of State pursuant to regulation 5 and Article 23 of the Commission Regulation;

“purchaser quota” means the quantity of milk which may be delivered to a purchaser during a quota year without any liability for levy arising;

“quota” means direct sales quota or wholesale quota, as the case may be;

“quota holder”, in relation to quota, means the person in whose name the quota is registered;

“quota year” means any of the periods of 12 months referred to in Article 1(1) of the Council Regulation (which concerns the introduction of the levy);

“registered wholesale quota” means wholesale quota registered pursuant to regulation 4(3) and (4);

“relevant competent authority” has the meaning given by regulation 3 of the General Provisions Regulations;

“relevant person” means a producer, a purchaser, any employee or agent of a producer or of a purchaser, any milk haulier, any person undertaking butterfat testing for purchasers in a laboratory, a processor of milk or milk products, or any other person involved in the buying, selling or supply of milk or milk products obtained directly from a producer or purchaser, but does not include a consumer of milk or milk products;

“Scottish Islands area” means either—

- (a) the islands of Orkney except for the island of Stronsay; or
- (b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae, the Kintyre peninsula south of Tarbert and the areas of land within the Argyll and Bute District comprising those parts of the parishes of Dunoon and Kilmun and Inverchaolain shown bounded by a red line on a map marked “Map referred to in sub-paragraph (b) of the definition of Scottish Islands area in regulation 2(1) of the Dairy Produce Quotas Regulations 2005”, dated 31st January 2005, signed on behalf of the Secretary of State and deposited at the offices of the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London SW1P 3JR;

“the Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“transferee” means—

- (a) where quota is transferred with a holding or part of a holding, a person who replaces another as occupier of that holding or part of a holding; and
- (b) in any other case, the person to whom quota is transferred;

“transferor” means—

- (a) where quota is transferred with a holding or part of a holding, a person who is replaced by another occupier of that holding or part of a holding; and
- (b) in any other case, the person from whom quota is transferred;

“unused quota” means quota remaining unused after any direct sales or deliveries have been taken into account, following such adjustment (if any) as is required by Article 10(1) of the Commission Regulation (which concerns the fat content of milk), and “used quota” shall be construed accordingly;

“wholesale producer” means a producer who delivers milk to a purchaser;

“wholesale quota” means the quantity of milk which may be delivered to a purchaser by a producer in a quota year without that producer being liable to pay levy;

“wholesale quota holder” means a person in whose name wholesale quota is registered pursuant to regulation 4; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(9)</sup>.

(2) In these Regulations any reference 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.

(3) Other expressions which are used—

- (a) in these Regulations; and
- (b) in the Community legislation,

shall have the same meaning as in the Community legislation and cognate expressions shall be construed accordingly.

### **Application**

**3.** Except as otherwise provided, these Regulations apply to relevant persons in respect of whom the Secretary of State is the relevant competent authority.

## **PART 2**

### **REGISTRATION OF QUOTA**

#### **Registers and notices to be maintained and prepared by the Secretary of State**

**4.—(1)** The Secretary of State must—

- (a) maintain a direct sales register; and
- (b) send to each direct seller a copy of the entry in the direct sales register relating to him.

(2) The direct sales register must contain an entry in respect of each direct seller setting out in particular—

- (a) his name;
- (b) his trading address;
- (c) a reference number which serves to identify him;
- (d) the direct sales quota available to him for the quota year; and

<sup>(9)</sup> 1971 c. 80.

- (e) the details of his direct sales.
- (3) The Secretary of State must—
  - (a) maintain a wholesale register;
  - (b) send to each wholesale producer a copy of the entry in the wholesale register relating to him; and
  - (c) send to each purchaser named in the list referred to in paragraph (4)(e) a copy of that part of the entry relating to his purchaser quota.
- (4) The wholesale register must contain an entry in respect of each wholesale producer setting out in particular—
  - (a) his name;
  - (b) his trading address;
  - (c) a reference number which serves to identify him;
  - (d) the wholesale quota available to him for the quota year; and
  - (e) a list of the name and address of each purchaser whose purchaser quota will be calculated to take into account all or part of that wholesale producer's total wholesale quota, and of the wholesale quota registered with each purchaser, showing the representative fat content base of that quota calculated in accordance with Article 7 of the Commission Regulation.
- (5) The Secretary of State must—
  - (a) maintain a register of purchasers; and
  - (b) send to each purchaser a copy of the purchaser entry relating to him.
- (6) The register of purchasers must contain an entry in respect of each purchaser setting out in particular—
  - (a) his name; and
  - (b) his purchaser quota.
- (7) For the purposes of paragraphs (1) to (4), where the holding of a quota holder comprises more than one dairy enterprise, that quota holder may, after submitting to the Secretary of State a consent or sole interest notice in respect of that holding, agree with the Secretary of State the partition of the quota available to that quota holder relating to that holding between separate direct sales register entries or separate wholesale register entries, as the case may be.
- (8) The Secretary of State—
  - (a) may make such enquiries as she reasonably considers necessary for the purposes of ensuring the accuracy of the registers which she is required to maintain under this regulation;
  - (b) must amend the registers—
    - (i) to record any allocation or adjustments made under or by virtue of these Regulations, or
    - (ii) to make any correction or amendment which she reasonably considers to be necessary; and
  - (c) must notify any person affected by any correction or amendment made by her.
- (9) Notwithstanding that a person is no longer a producer, he must—
  - (a) remain registered pursuant to this regulation; and
  - (b) for the purposes of this regulation and regulations, 6, 7(a) and 33(1), continue to be regarded as a producer,

until the start of the quota year following the year in which the quota available to him has been transferred or until the quota has been withdrawn under Article 15 of the Council Regulation.

(10) The obligation under paragraphs (1)(b), (3)(b) and (c) and (5)(b) is an obligation to send a copy of—

- (a) an entry; or
- (b) part of an entry,

as the case may be, as it has effect on 1st April in each year.

### **Approval of purchasers**

5.—(1) For the purposes of Article 23 of the Commission Regulation (which concerns the approval of purchasers), a purchaser must make an application to the Secretary of State for approval in such form as the Secretary of State may reasonably require.

(2) An application under paragraph (1) must state the purchaser's trading address, or, if there is more than one such address, each such address and his principal trading address.

(3) For the purposes of Article 23(2) of the Commission Regulation (which permits member States to lay down stricter rules on the approval of purchasers), the Secretary of State may only approve a purchaser if the purchaser has complied with the requirements of paragraph (4).

(4) The requirements referred to in paragraph (3) are that the purchaser—

- (a) has given an undertaking to the Secretary of State to comply with the provisions of these Regulations and the Community legislation;
- (b) has not materially contravened the provisions of any scheme for support in the agricultural sector derived from legislation; and
- (c) either—
  - (i) by submitting to the Secretary of State such information as she may reasonably require, has demonstrated to the reasonable satisfaction of the Secretary of State that he has a sound financial basis upon which to operate, or
  - (ii) if the Secretary of State considers that the purchaser has not been trading long enough for that to be so demonstrated, has provided such security as the Secretary of State may reasonably require.

(5) Each purchaser must inform the Secretary of State of—

- (a) any change in his trading address, or, where there is more than one such address, any change in any such trading address, any additional trading address and any change in his principal trading address; and
- (b) any factor or change in circumstances which the Secretary of State might reasonably consider materially to affect any matter that was relevant to her consideration of his application for approval, or which affects his ability to comply with the undertaking referred to in paragraph (4)(a).

(6) Each purchaser must—

- (a) confirm to each producer supplying him that he is approved pursuant to Article 23 of the Commission Regulation and this regulation and provide details of the approval if requested; and
- (b) notify each producer supplying him if the approval is withdrawn.

### **Obligations of producers and purchasers with respect to registration and deliveries**

6.—(1) Every—

- (a) direct seller; and
- (b) wholesale producer,

must register his quota with the Secretary of State.

(2) Each purchaser must maintain, in respect of all wholesale producers whose register entries include that purchaser's name on the list referred to in regulation 4(4)(e)—

- (a) a register corresponding to that maintained by the Secretary of State under regulation 4(3) in respect of that part of his purchaser quota attributable to each of those producers;
- (b) a register of particulars of deliveries from each of those producers to that purchaser; and
- (c) the information required by paragraphs 2 to 4 of Article 24 of the Commission Regulation (which concerns the records required in connection with levy assessment).

(3) Each person who holds registered wholesale quota, including any producer who has temporarily ceased or who intends temporarily to cease making deliveries, must register his quota with a purchaser.

(4) A wholesale producer may supply milk only to a purchaser.

(5) Each purchaser must maintain a system approved by the Secretary of State for—

- (a) sampling the milk of each wholesale producer whose register entries include the purchaser's name on the list referred to in regulation 4(4)(e); and
- (b) determining its fat content.

(6) Each purchaser must amend the register referred to in paragraph (2)(a) on each occasion when he is notified by the Secretary of State that the equivalent register maintained by the Secretary of State has been amended in relation to wholesale producers registered in that purchaser's register.

### **Inspection of entries in the Secretary of State's registers**

7. If a request—

- (a) is made in respect of a register entry referred to in regulation 4(2) or (4) by any person who—
  - (i) is the quota holder identified in that entry,
  - (ii) gives the Secretary of State a statement in writing that he has an interest in the holding of the quota holder identified in that entry, or
  - (iii) is the agent of a person referred to in sub-paragraph (i) or (ii); or
- (b) is made by a purchaser in respect of an entry in the register referred to in regulation 4(6) relating to himself,

the Secretary of State may, on payment of a reasonable charge, supply to the person making the request a copy of the register entry.

### **Registers as evidence**

8. In any proceedings, any entry in a register which the Secretary of State is required by these Regulations to maintain is evidence of the matters stated in it.

## PART 3

### TRANSFERS OF QUOTA

#### **Transfer of quota with transfer of land: general**

**9.**—(1) Subject to regulations 14 and 16, this regulation applies for the purposes of Article 17 of the Council Regulation (which concerns the transfer of quota with a holding when the holding is sold, leased, transferred by inheritance or subjected to other cases of transfer involving comparable legal effects for producers) in respect of a transfer of a holding or part of a holding.

(2) The transferee of the holding or the part of the holding must submit to the Secretary of State—

- (a) a notice of transfer in such form; and
- (b) such other information relating to the transfer,

as the Secretary of State may reasonably require.

(3) The notice of transfer must reach the Secretary of State—

- (a) in the case of a transfer made by lease, no later than 1st March in the quota year in which the transfer takes place; and
- (b) in the case of a transfer made otherwise than by lease, no later than 31st March in the quota year in which the transfer takes place.

(4) The information referred to in paragraph (2)(b) must reach the Secretary of State within such time as the Secretary of State may reasonably require.

(5) The notice of transfer must include—

- (a) statements from the transferor and transferee specifying the amounts of used and unused quota transferred;
- (b) in the case of a transfer of part of a holding—
  - (i) statements from the transferor and transferee to the effect that they have agreed that the quota is to be apportioned taking account of the areas used for milk production as specified in the notice of transfer or that no such apportionment has been agreed, and
  - (ii) where such an apportionment has been agreed, a consent or sole interest notice, provided by the transferor in respect of the holding; and
- (c) in the case of a transfer of the whole of a holding, a consent or sole interest notice, provided by the transferor in respect of the holding.

#### **Transfer of part of holding**

**10.**—(1) Subject to regulations 14 and 16, this regulation applies where there is a transfer of part of a holding.

(2) Subject to regulations 11(4) and (5) and 12, where a notice of transfer has been duly submitted in accordance with regulation 9, an apportionment of the quota relating to the holding must—

- (a) be made in accordance with the agreed apportionment set out in that notice; or
- (b) if there is no such agreement, be determined by arbitration in accordance with Schedule 1.

(3) Subject to paragraph (4) and regulations 11(4) and (5) and 12, any dairy produce which has been—

- (a) the subject of a direct sale; or
- (b) delivered,



from the holding during the quota year in which the change of occupation takes place and prior to the transfer of the part of the holding is treated for the purposes of any levy calculation as if it was sold, transferred free of charge or delivered, as the case may be, from each part of the holding in proportion to the apportionment under paragraph (2).

(4) Paragraph (3) does not apply if the parties agree otherwise and submit to the Secretary of State a notice of that agreement.

(5) A notice referred to in paragraph (4) must be submitted—

- (a) in such form as the Secretary of State may reasonably require; and
- (b) at the same time as the submission of the notice of transfer in accordance with regulation 9.

### **Prospective apportionment of quota**

**11.**—(1) Where the occupier of a holding requires a prospective apportionment of quota relating to that holding, he must apply for such an apportionment to the Secretary of State in such form as the Secretary of State may reasonably require, requesting either—

- (a) that a prospective apportionment of quota relating to the holding be made taking account of areas used for milk production as set out in the application; or
- (b) that a prospective apportionment of quota be determined by arbitration in accordance with Schedule 1.

(2) A request for a prospective apportionment may be withdrawn by a notice in writing given to the Secretary of State by the person who made the request.

(3) If the occupier of a holding—

- (a) requests that a prospective apportionment be made in accordance with paragraph (1)(a); or
- (b) gives notice of the withdrawal of such a request in accordance with paragraph (2),

the request or notice must be accompanied by a consent or sole interest notice in respect of the holding.

(4) Subject to paragraph (6), where there is a change of occupation of part of a holding and within the period of six months ending with the date of that change of occupation—

- (a) the occupier of the holding—
  - (i) has requested a prospective apportionment of quota in respect of that part of the holding, and
  - (ii) has duly submitted a notice of transfer in accordance with regulation 9, indicating that an apportionment of quota has been agreed; or
- (b) a prospective apportionment of quota relating to that part of that holding has been or is in the process of being determined by arbitration under Schedule 1,

paragraph (5) applies.

(5) The apportionment of quota must be carried out in accordance with—

- (a) the prospective apportionment of quota relating to that part of that holding made or determined following a request under paragraph (1) unless the request for that prospective apportionment was withdrawn before the change of occupation to which it relates takes place; or
- (b) if no such prospective apportionment has been made or determined, but one is in the process of being made or determined, the prospective apportionment of quota relating to that part of that holding which is in the process of being made or determined under paragraph (1); or
- (c) in any other case, regulation 10(2).

(6) Paragraph (4) does not apply to a change of occupation to which regulation 16(1) applies.

### **Cases where apportionment of quota by arbitration is required**

**12.**—(1) This regulation applies where—

- (a) there is a transfer of part of a holding; and
- (b) the Secretary of State has reasonable grounds for believing that the areas used for milk production on the holding—
  - (i) are not as specified in a notice duly submitted pursuant to regulation 9 or an application duly submitted pursuant to regulation 11(1)(a), or
  - (ii) in a case where no such notice or no such application have been duly submitted, were not fully taken into account by the parties at the time of apportionment.

(2) The Secretary of State may give notice that she has reasonable grounds for believing the matters referred to in paragraph (1)(b)—

- (a) to the person who submitted the notice or application referred to in paragraph (1)(b)(i); or,
- (b) in the case where neither was submitted, to the quota holder of the holding in question.

(3) Where the Secretary of State gives a notice under paragraph (2), the apportionment or prospective apportionment of the quota concerned is to be determined by arbitration in accordance with Schedule 1.

### **Transfer of quota without transfer of land**

**13.**—(1) This regulation is subject to regulation 16(2) and (3).

(2) This regulation applies where the competent authorities in England, Wales, Scotland and Northern Ireland have jointly determined, in accordance with paragraphs (1)(e) and (2) of Article 18 of the Council Regulation, that within each United Kingdom quota region transfer of quota without transfer of the corresponding land is authorised.

(3) A transferee of quota for whom the Secretary of State is the relevant competent authority must submit to her a notice of any such transfer within the general quota region in such form as the Secretary of State may reasonably require.

(4) The notice must reach the Secretary of State no later than 31st March in the quota year in which the transfer takes place and must include—

- (a) statements by the transferor and transferee that they have agreed to the transfer of quota, stating the amounts of used and unused quota transferred;
- (b) a consent or sole interest notice given by the transferor in respect of the holding from which the quota is to be transferred; and
- (c) a statement by the transferee that he is a producer.

(5) Where the Secretary of State has received a notice pursuant to paragraph (3), she may require the transferor or transferee to produce such other information relating to the transfer, and within such time, as the Secretary of State may reasonably require.

(6) In this regulation—

- (a) “general quota region” means the United Kingdom other than the Scottish Islands area; and
- (b) “United Kingdom quota region” means a Scottish Islands area or the general quota region.

### **Retention of quota at the end of a tenancy**

**14.**—(1) This regulation has effect as respects tenancies ending after 31st March 2005.

- (2) Where—
- (a) a tenant of any land in a holding has quota registered as available to him;
  - (b) the quota is so registered by virtue of a transfer referred to in regulation 13 the cost of which was not borne by the tenant's landlord;
  - (c) the tenancy of the land in question expires without any possibility of renewal on similar terms;
  - (d) the tenant and his landlord have not agreed that, after the expiry of the tenancy, the quota should no longer be available to the tenant; and
  - (e) the tenant continues to be a producer after the expiry of the tenancy in relation to—
    - (i) another holding, or
    - (ii) another part of the holding of which the land formed part,the tenant may submit a notice to the Secretary of State that the quota is to be available to him by virtue of his occupation of that other holding or that other part of the holding of which the land formed part.
- (3) A notice submitted pursuant to paragraph (2) must—
- (a) be in such form as the Secretary of State may reasonably require;
  - (b) reach the Secretary of State no later than 31st March in the quota year in which the tenancy expires; and
  - (c) include a statement by the tenant—
    - (i) that he and his landlord have not agreed that, after the expiry of the tenancy, the quota should be registered in relation to the holding which then comprises or, as the case may be, includes, the land, stating the amounts of used and unused quota involved, and
    - (ii) that he continues to be a producer.
- (4) Where a tenant submits a notice pursuant to this regulation, he shall not be entitled to receive compensation under paragraph 1 of Schedule 1 to the Agriculture Act 1986<sup>(10)</sup> on the termination of the tenancy in question.

### **Temporary transfer of quota**

**15.**—(1) Subject to regulation 16(2), for the purposes of Article 16 of the Council Regulation (which concerns the temporary transfer of quota), a producer may agree with another producer to make a temporary transfer to that other producer of any unused quota which is registered under regulation 4 as permanently held by the producer if other quota (whether or not unused) remains so registered.

(2) Quota may only be temporarily transferred pursuant to paragraph (1) for such period as shall end on the 31st March in the quota year in which the transfer takes place.

(3) The Secretary of State may require a reasonable charge to be paid for the registration of any temporary transfer of quota if, before the quota year in which the transfer takes place, she has announced that she intends to make such a charge in respect of such transfers in that year in such a manner as she considers likely to come to the attention of producers.

(4) Where there is an agreement to make a temporary transfer pursuant to paragraph (1), the transferee must submit to the Secretary of State notice of the agreement, together with any charge payable under paragraph (3), so that the notice and any charge reach her no later than 31st March in the quota year in which the transfer takes place.

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<sup>(10)</sup> 1986 c. 49.

(5) A notice referred to in paragraph (4) must be in such form as the Secretary of State may reasonably require.

#### **Restrictions on transfer of quota**

**16.**—(1) No person may transfer quota on the grant or termination of—

- (a) a licence to occupy land; or
- (b) a tenancy of any land under which a holding, or part of a holding, is occupied for a period of less than ten months.

(2) No person may transfer quota if the transfer would result in an increase or reduction in the total wholesale quota or the total direct sales quota available for use by dairy enterprises located within a Scottish Islands area.

(3) No person may transfer quota that is necessary to cover—

- (a) deliveries, after an adjustment for fat content; and
- (b) direct sales,

made by him before the date of the transfer.

#### **Consequences of failure duly to submit a transfer notice**

**17.**—(1) This regulation applies if a notice of transfer is not duly submitted in accordance with regulation 9 or 13.

(2) Any unused quota transferred is not to be treated as a part of the transferee's quota entitlement for the relevant quota year, but is to be treated as if it remained unused quota and available where appropriate for reallocation by the Secretary of State in that quota year in accordance with regulation 27 or 30.

(3) The transfer of quota has effect only from the beginning of the quota year in which the notice of transfer is received.

(4) The amount of quota, if any, which has been reallocated to the transferee under regulations 27 or 30 for the relevant quota year (or any subsequent year) shall not be varied to take the transfer into account until the quota year in which the transfer notice is received.

(5) In this regulation “relevant quota year” means—

- (a) in the case of a notice that should have been submitted in accordance with regulation 9, the quota year in which the transfer of the holding or the part of the holding takes effect; and
- (b) in the case of a notice that should have been submitted in accordance with regulation 13, the quota year in which the transfer of quota takes effect.

## **PART 4**

### **ALLOCATIONS AND ADJUSTMENTS OF QUOTA**

#### **Allocation from national reserve**

**18.** The Secretary of State may make allocations from the national reserve in accordance with the Community legislation.

### Temporary reallocation of quota

19.—(1) This regulation applies where a producer has quota registered as his in relation to a holding which—

- (a) at any time during a quota year is in whole or in part subject to a notice served, or declaration made, under an order made pursuant to section 17(1) of the Animal Health Act 1981<sup>(11)</sup> prohibiting or regulating the movement of dairy cows; or
- (b) is situated wholly or partly within an area which at any time during a quota year has been designated by an order made pursuant to section 1 of the Food and Environment Protection Act 1985<sup>(12)</sup>.

(2) For the purposes of the reallocation of quota referred to in Article 10(3) of the Council Regulation and subject to paragraph (10), the Secretary of State may award to a producer a temporary reallocation of an amount of any surplus quota in accordance with the provisions of paragraphs (3) to (5).

(3) An award may only be made for a quota year in which the notice, declaration or order referred to in paragraph (1) has effect or remains in force.

(4) The amount of any such award is the lower of—

- (a) the amount equal to 16 litres per qualifying cow per qualifying day in the quota year referred to in paragraph (3); and
- (b) the amount by which the producer's production exceeds his quota entitlement in that quota year.

(5) An award to a producer under this regulation is not available in respect of a quota year during which the producer—

- (a) transfers unused quota pursuant to regulation 9 or 13;
- (b) makes a temporary transfer of quota pursuant to regulation 15; or
- (c) purchases cows or in-calf heifers for dairy purposes,

unless the Secretary of State is satisfied that the agreement to transfer, temporarily to transfer or to purchase, was entered into before the service of the notice or the making of the declaration referred to in paragraph (1)(a) or, as the case may be, the coming into force of the order referred to in paragraph (1)(b).

(6) If a producer requires an award of a temporary reallocation of quota under this regulation, he must submit to the Secretary of State an application in such form as the Secretary of State may reasonably require.

(7) An application referred to in paragraph (6) must reach the Secretary of State no later than 30<sup>th</sup> April following the end of the quota year in which the holding, or part of the holding, in question, was—

- (a) subject to a relevant notice or a relevant declaration; or
- (b) situated in an area designated by a relevant order.

(8) If the Secretary of State awards to a producer a temporary reallocation of an amount of any surplus quota in accordance with this regulation, the Secretary of State must notify each purchaser to whom the producer makes deliveries of that reallocation.

(9) The Secretary of State can make an award of a temporary reallocation of quota only from the aggregate of the amounts of quota referred to in regulation 27(3)(a) and 30(9)(a) once the aggregate has been determined under those regulations.

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(11) 1981 c. 22.

(12) 1985 c. 48; section 1 was amended by the Food Safety Act 1991 (c. 16), section 51(2), by the Food Standards Act 1999 (c. 28), section 40(1) and Schedule 5, paragraph 6(1) and (3), by S.I. 1999/1756 and by S.I. 2000/2040.

(10) An eligible heifer which is a qualifying cow for the purposes of a quota year shall not be a qualifying cow for the purposes of any subsequent quota year.

(11) In this regulation—

- (a) “eligible heifer” means a qualifying heifer which calves for the first time on a relevant calving day;
- (b) “qualifying cow”, for the purposes of a quota year, means an eligible heifer which calves for the first time at a time when the number of eligible heifers exceeds the replacement number, whether or not the time of such calving falls during that quota year;
- (c) “qualifying heifer” means a heifer which either—
  - (i) at the date of service of a relevant notice or the making of a relevant declaration, was on land subject to that notice or, as the case may be, that declaration; or
  - (ii) at the date of the coming into force of a relevant order, was on land subject to that order;
- (d) “qualifying day”, in relation to any qualifying cow, means the day on which it calves and each later day or part of a later day during which the relevant notice, the relevant declaration or the relevant order in question has effect or, as the case may be, remains in force;
- (e) “relevant declaration” means a declaration referred to in paragraph (1)(a);
- (f) “relevant notice” means a notice referred to in paragraph (1)(a);
- (g) “relevant order” means an order referred to in paragraph (1)(b).

(12) In this regulation, “relevant calving day”, in relation to a qualifying heifer, means a day which falls—

- (a) in a case where the relevant notice, the relevant declaration or the relevant order in question has effect or is in force for a period which expires at or before the end of the quota year during which it is served or, as the case may be, made, within the period of twelve months ending with the date on which that notice, declaration or order ceases to have effect or, as the case may be, to be in force; and
- (b) in any other case, within the quota year during which the relevant notice, the relevant declaration or the relevant order is served or made or at any later time when the relevant notice, the relevant declaration or the relevant order has effect or is in force.

(13) In this regulation, “replacement number” means the nearest whole number to 20% of the total number of dairy cows on land—

- (a) in a case where the land is subject to a relevant notice or a relevant declaration, as at the date of service of that notice or declaration; or
- (b) in a case where the land is subject to a relevant order, as at the date of the coming into force of that order,

and where 20% of the total number is half way between two whole numbers, the nearest even whole number is deemed to be the nearest one.

### **Special allocation of quota**

**20.**—(1) This regulation applies if by reason of a mistake made by the Secretary of State—

- (a) a person has not been allocated any quota; or
- (b) has been allocated a smaller quantity of quota than he would have been allocated if the mistake had not been made.

(2) The Secretary of State may allocate to that person from the national reserve such quota as will compensate, in whole or in part, for that mistake.

### **Conversion of quota: general**

**21.**—(1) For the purposes of—

- (a) the provisions of Article 6(2) and (5) of the Council Regulation (which concern changes from direct sales to delivery and vice versa); and
- (b) Article 11(2) of the Council Regulation (which concerns replacements of purchasers and changes of purchasers by producers),

a producer may apply to convert direct sales quota to wholesale quota or wholesale quota to direct sales quota either temporarily or permanently.

(2) If a producer wishes to convert quota in any quota year, he must submit to the Secretary of State an application in such form as the Secretary of State may reasonably require—

- (a) stating—
    - (i) the amount (if any) of that producer's direct sales quota, wholesale quota, direct sales and deliveries for the quota year in which the application is made,
    - (ii) the amount of unused quota which he holds at the time of the application, and
    - (iii) the amount which he wishes the Secretary of State to convert; and
  - (b) including such other information as the Secretary of State may reasonably require in order to assess whether the requirements of Article 6(2) and (5) of the Council Regulation and Article 7 of the Commission Regulation (which concerns representative fat content) are met.
- (3) The application must reach the Secretary of State—
- (a) in the case of a permanent conversion of quota, not later than 31st December in the quota year in which the conversion is intended to take effect; and
  - (b) in the case of a temporary conversion of quota, not later than 14th May in the year following the end of the quota year in which that temporary conversion is intended to take effect.

### **Conversion of quota: restriction on transfers of converted quota in conversion year**

**22.**—(1) This regulation does not apply to permanently converted quota which is transferred with a holding pursuant to Article 17 of the Council Regulation.

(2) Subject to paragraphs (3) and (6), where a producer has permanently converted quota in any quota year, he must not transfer later in that quota year quota of the type to which he has converted, whether temporarily or otherwise.

(3) Where a producer who has permanently converted quota in any quota year applies to the Secretary of State for a release from the restriction in paragraph (2), the Secretary of State, being satisfied as to the matters set out in paragraph (5), may release that producer from that restriction.

(4) A release from the restriction in paragraph (2) shall be to the extent necessary to allow the transfer of the amount of quota that the Secretary of State considers has remained unused in the particular case.

(5) The matters referred to in paragraph (3) are—

- (a) that, as regards the producer, exceptional circumstances have resulted in a significant fall in milk production or a significant failure to achieve a planned increase in milk production; and

- (b) those circumstances could not have been foreseen or avoided by the producer at the time of his permanent conversion of quota.
- (6) The restriction in paragraph (2) does not apply if—
  - (a) in a case where the permanent conversion is from direct sales quota to wholesale quota, the producer temporarily converted direct sales quota to wholesale quota in the immediately preceding quota year; or
  - (b) in a case where the permanent conversion is from wholesale quota to direct sales quota, the producer temporarily converted wholesale quota to direct sales quota in the immediately preceding quota year.
- (7) The following are examples of circumstances which are to be taken to be exceptional for the purposes of paragraph (5)—
  - (a) the death of the producer or his inability to conduct his business for a prolonged period as a result of the onset of ill-health, injury or disability;
  - (b) a natural disaster seriously affecting the holding;
  - (c) the accidental destruction of buildings used for the purposes of milk production;
  - (d) an outbreak of illness or disease seriously affecting the dairy herd;
  - (e) the serving of a notice or the making of a declaration under an order made pursuant to section 17(1) of the Animal Health Act 1981 or the making of an order pursuant to section 1 of the Food and Environment Protection Act 1985;
  - (f) the loss of a significant proportion of the forage area as a result of the compulsory purchase of the holding or a part of the holding; and
  - (g) where the transferee is a tenant, the serving of a notice to quit coming within any case specified in Part I of Schedule 3 to the Agricultural Holdings Act 1986(13).

### **Adjustment of purchaser quota**

**23.**—(1) Where a quota holder's wholesale quota is increased or reduced in accordance with the Community legislation or these Regulations, the purchaser quota of any purchaser to whom that wholesale quota is applicable is correspondingly increased or reduced.

(2) As regards a transaction to which Article 11(2) of the Council Regulation applies (which concerns replacements of purchasers and changes of purchasers by producers), a purchaser whose purchaser quota has been increased by virtue of such a transaction must submit to the Secretary of State an application for his purchaser quota to be increased by the specified amount.

- (3) An application referred to in paragraph (2) must include—
  - (a) a statement setting out the particulars of the transaction; and
  - (b) a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the application referred to in paragraph (2).
- (4) The application referred to in paragraph (2)—
  - (a) must reach the Secretary of State no later than 14th May in the quota year immediately following that in which the transaction took place; and
  - (b) must be made in such form as the Secretary of State may reasonably require.
- (5) The specified amount must not include the remaining registered wholesale quota except so far as the increase registered in pursuance of paragraph (8) includes that quota.

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(13) 1986 c. 5; Part I of Schedule 3 was amended by the Agricultural Holdings (Amendment) Act 1990 (c. 15), section 1.



(6) The remaining registered wholesale quota shall remain available to the original purchaser.

(7) If insufficient quota is registered with the original purchaser to cover deliveries made by the producer before the date of change of purchaser, any additional quota obtained by a producer is to be allocated to the original purchaser until all deliveries to the original purchaser made by the producer before that date are covered after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(8) At the beginning of the quota year immediately following the quota year in which the increase referred to in paragraph (2) took place, the purchaser quota of the purchaser with whom the producer is newly registered is to be increased by such part of the remaining registered wholesale quota of the producer as is included in the specified amount.

(9) If the amount of quota necessary to cover the deliveries made to an original purchaser is affected by—

- (a) a transfer of quota to the producer under these Regulations; or
- (b) an adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation,

then, subject to paragraph (10), the Secretary of State must make such adjustments in the purchaser quota of the original purchaser, and of the purchaser with whom the producer is newly registered, as are required to ensure that sufficient quota is registered with the original purchaser to cover deliveries made.

(10) The Secretary of State must make an adjustment pursuant to paragraph (9) after the end of the quota year in question.

(11) Where a producer has quota registered with two or more purchasers, the producer may apply to the Secretary of State temporarily to change the quota registered between them, except so far as the quota registered with each of them is necessary to cover the deliveries made by him before the date of the transfer after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(12) A producer who makes an application to the Secretary of State pursuant to paragraph (11) must submit with his application—

- (a) a statement setting out particulars of the quota to be temporarily re-registered; and
- (b) a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement.

(13) The statement and declaration referred to in paragraph (12)—

- (a) must be in such form as the Secretary of State may reasonably require; and
- (b) must reach the Secretary of State no later than 15th June in the quota year immediately following the quota year for which the temporary re-registration is requested.

(14) In this regulation—

- (a) “remaining registered wholesale quota” means the amount of quota necessary to cover the deliveries made by a producer before the date of the change of purchaser (adjusted in accordance with Article 10(1) of the Commission Regulation); and
- (b) “specified amount” means an amount equivalent to so much of a producer’s registered wholesale quota as is specified by that producer.

### **Restriction on use of quota in Scottish Islands Area**

**24.—**(1) Quota registered under regulation 4 to quota holders within a Scottish Islands area may be used by producers and purchasers only against direct sales or deliveries of milk produced within that Scottish Islands area.

(2) If a quota holder has a part of his dairy enterprise outside a Scottish Islands area, he is treated for the purposes of this regulation as a quota holder within a Scottish Islands area if he has 50% or more of his dairy enterprise within that area.

(3) Paragraph (1) does not apply to the reallocation of quota undertaken in accordance with regulations 27 and 30.

## PART 5

### THE LEVY

#### **Determination whether reduction in downward butterfat adjustment is required in relation to deliveries**

**25.**—(1) After the end of each quota year, the Secretary of State must make a determination of—

- (a) the total volume of deliveries to purchasers; and
- (b) the total volume of such deliveries after an adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(2) The determination under paragraph (1) must be made by reference to the summaries purchasers are required to submit to the Secretary of State for the purposes of Article 8(2) of the Commission Regulation.

(3) If for any quota year a purchaser has not submitted the summaries so required or is unable to provide such proof of the volume of milk delivered to him in that year as the Secretary of State may reasonably require for the purposes of these Regulations, the Secretary of State must for the purposes of paragraph (1)—

- (a) make her own determination of that volume of milk based on all the information available to her for the purposes of calculating any levy payable on deliveries made to that purchaser; and
- (b) inform the purchaser of her determination.

(4) If the volume referred to in paragraph (1)(a) exceeds that referred to in paragraph (1)(b), the Secretary of State must calculate the proportionate reduction required to be made in all downward butterfat adjustments that have previously been made in order to increase the volume referred to in paragraph (1)(b) so that it equals the volume referred to in paragraph (1)(a).

(5) If paragraph (4) applies, the Secretary of State must—

- (a) notify all purchasers that any downward butterfat adjustments made by them in the deliveries to them are reduced; and
- (b) specify the reduction.

(6) If the volume referred to in paragraph (1)(b) equals or exceeds that referred to in paragraph (1)(a), the Secretary of State must notify all purchasers that no such reduction need be made.

(7) In this regulation, “downward butterfat adjustment”, in relation to deliveries to a purchaser, means an adjustment of the volume of the deliveries for butterfat content that results in that volume being reduced for the purposes of the levy calculation in accordance with Article 10(2) of the Council Regulation.

#### **Determination whether levy on deliveries is payable**

**26.**—(1) Where the total amount of the wholesale quota of producers, including converted quota, together with the total amount of wholesale quota in the national reserve exceeds whichever is the higher of—

(a) the total volume of deliveries referred to in regulation 25(1)(a); or  
(b) the total volume of deliveries referred to in regulation 25(1)(b),  
the Secretary of State must determine that no levy is payable on deliveries.

(2) The Secretary of State must notify all purchasers of a determination made under paragraph (1).

(3) Where the total amount of the wholesale quota of producers, including converted quota, together with the total amount of wholesale quota in the national reserve is less than whichever is the higher of—

- (a) the total volume of deliveries referred to in regulation 25(1)(a); or
- (b) the total volume of deliveries referred to in regulation 25(1)(b),

the Secretary of State must notify all purchasers that levy is payable on the higher volume of deliveries.

### **Reallocation of producers' quota**

**27.**—(1) This regulation applies for the purposes of Article 10(3) of the Council Regulation (which concerns the calculation of levy on deliveries).

(2) After the end of each quota year, the Secretary of State must determine for each producer the amount, if any, of unused quota available to that producer, taking into account any adjustment required under regulation 25(4) and the amount of any converted quota.

(3) If the Secretary of State determines, pursuant to paragraph (2), that a producer has unused quota, she must—

- (a) add the total amount of unused quota to the national reserve;
- (b) subject to paragraph (4), make an award of any temporary reallocation of quota in accordance with regulation 19; and
- (c) having made such an award, reallocate any remaining amount of unused quota to any producers whose deliveries are in excess of their quotas in proportion to their respective quotas.

(4) The amount of an award made under paragraph (3)(b) shall be reduced proportionately if there is insufficient quota after the Secretary of State has complied with paragraph (3)(a) to make a full award to all producers who are eligible to receive a temporary allocation of quota under regulation 19.

(5) Subject to paragraph (6), if the total amount of unused quota available for reallocation to a producer under paragraph (3)(c) is not required by that producer to cover his butterfat-adjusted deliveries, the Secretary of State must reallocate the amount of unused quota not required amongst all producers whose butterfat-adjusted deliveries are in excess of their quota in proportion to their respective quotas.

(6) No producer may receive any unused quota under paragraph (5) in excess of the amount of quota required by him to cover the amount by which his butterfat-adjusted deliveries exceed his quota.

(7) In this regulation, “butterfat-adjusted deliveries” means deliveries adjusted for butterfat content in accordance with Article 10(1) of the Commission Regulation.

### **Determination of liability for levy on deliveries**

**28.**—(1) This regulation applies for the purposes of Article 10(3) of the Council Regulation (which concerns the calculation of levy on deliveries).

(2) After the end of each quota year, the Secretary of State must—

- (a) ascertain which producers have made deliveries which exceed the quota allocated to them after taking into account any adjustments made under regulations 25 and 27; then
- (b) establish the total amount of the levy payable by each such producer at the rate of levy set in Article 2 of the Council Regulation; and then
- (c) establish the total amount of levy payable by each purchaser on deliveries made to that purchaser.

#### **Notification of levy liability**

**29.** After the end of each quota year, the Secretary of State must—

- (a) notify each purchaser of the total amount of levy payable on deliveries made to that purchaser; and
- (b) give details to that purchaser of the amount of levy attributable to each producer who has made deliveries to that purchaser.

#### **Determination of liability for levy on direct sales**

**30.**—(1) This regulation applies for the purposes of Article 12 of the Council Regulation (which concerns the calculation of levy on direct sales).

(2) After the end of each quota year, the Secretary of State must make a determination of the total quantity of dairy produce sold or transferred free of charge by direct sellers in the quota year in question.

(3) A determination under paragraph (2) must be made by reference to the declarations direct sellers are required to submit to the Secretary of State in accordance with Article 11(2) of the Commission Regulation.

(4) If for any quota year a direct seller has not submitted to the Secretary of State a declaration in accordance with that Article or is unable to provide such proof of the quantities of dairy produce sold or transferred free of charge by him in that year as the Secretary of State may reasonably require for the purposes of these Regulations, the Secretary of State must for the purposes of paragraph (2)—

- (a) make her own determination of such quantities based on all the information available to her for the purposes of calculating any levy payable by that direct seller, and
- (b) inform the direct seller of her determination.

(5) Where, in respect of a quota year—

- (a) the total amount of direct sales quota of direct sales quota holders, including any converted quota; and
- (b) the total amount of direct sales quota in the national reserve,

together exceed the total quantity determined by the Secretary of State under paragraph (2), the Secretary of State must determine that no levy in respect of direct sales is payable.

(6) The Secretary of State must notify all direct sales quota holders of her determination made under paragraph (5).

(7) Where, in respect of a quota year—

- (a) the total amount of direct sales quota of direct sales quota holders, including any converted quota; and
- (b) the total amount of direct sales quota in the national reserve,

together are less than the total quantity determined by the Secretary of State under paragraph (2), the Secretary of State must notify all direct sellers that levy is payable.

(8) After the end of each quota year, the Secretary of State must determine in respect of each direct sales quota holder the amount of any unused direct sales quota available to that direct sales quota holder in the quota year in question, taking into account any converted quota.

(9) If the Secretary of State determines under paragraph (8) that a direct sales quota holder has unused direct sales quota, she must—

- (a) add that unused quota to the national reserve; and
- (b) subject to paragraph (10), make such awards of temporary reallocation of quota under regulation 19 as she considers it appropriate to make.

(10) If, after the Secretary of State has complied with paragraph (9)(a), there is insufficient direct sales quota to make a full award under regulation 19 to each direct sales quota holder who is eligible to receive such an award, the amount of each award under paragraph (9)(b) shall be reduced proportionately.

(11) In respect of the quota year in question, the Secretary of State must then establish—

- (a) the amount by which the total quantity referred to in paragraph (2) exceeds the total of—
  - (i) the direct sales quota of all direct sales quota holders, including converted quota, and
  - (ii) the direct sales quota in the national reserve;
- (b) the total amount of levy payable by direct sales quota holders by multiplying the amount determined under sub-paragraph (a) by the rate of levy set in Article 2 of the Council Regulation; and
- (c) the amount by which the total quantity referred to in paragraph (2) exceeds all the direct sales quota of the direct sales quota holders whose direct sales are greater than their quota.

(12) The Secretary of State must establish the rate of levy per litre to be paid by each direct sales quota holder by dividing the amount determined in accordance with paragraph (11)(b) by the amount determined in accordance with paragraph (11)(c).

(13) The Secretary of State must—

- (a) ascertain which direct sales quota holders have sold or transferred free of charge dairy produce in excess of the quota available to them including any converted quota and any quota temporarily reallocated by an award under paragraph (9)(b);
- (b) establish the total amount of levy payable by each such direct sales quota holder at the rate of levy established in accordance with paragraph (12); and
- (c) notify each direct sales quota holder of the total amount of levy payable by him.

(14) If a direct seller fails to submit to the Secretary of State in accordance with Article 11(2) of the Commission Regulation a declaration of the total quantity of dairy produce sold or transferred free of charge by him in a quota year, the rate of levy per litre to be paid by that direct seller on the quantity not notified or determined under paragraph (4) is the rate set in Article 2 of the Commission Regulation.

### **Payment and recovery of levy**

**31.—**(1) In respect of the collection of levy, the Secretary of State is the competent authority for the purposes of the Community legislation.

(2) For the purposes of—

- (a) Article 11(1) of the Council Regulation (which concerns payment of levy by purchasers in respect of deliveries);
- (b) Article 12(4) of the Council Regulation (which concerns payment of levy by direct sellers);

- (c) Article 8 of the Commission Regulation (which concerns statements by purchasers of deliveries by producers); and
- (d) Article 11 of the Commission Regulation (which concerns declarations of direct sales by producers),

the levy and penalties referred to in those provisions must be paid to the Secretary of State.

(3) Paragraph (4) applies for the purposes of Article 11(3) of the Council Regulation (which concerns deduction of levy liability) where a producer making deliveries to a purchaser exceeds his wholesale quota.

(4) Following any adjustment of the quantity delivered in accordance with Article 10(1) of the Commission Regulation, the purchaser may immediately deduct from the sums owed to the producer in respect of the deliveries an amount corresponding to the amount of levy that would otherwise be payable by him in respect of the excess.

(5) Where any part of the levy remains unpaid after 1st September in any year, the Secretary of State may recover the amount of the levy outstanding at that date together with interest in respect of each day after that date until that amount is recovered—

- (a) from the direct seller or, as the case may be, the purchaser; or
- (b) from the producer, in a case within paragraph (4) where—
  - (i) the purchaser has not paid the levy, and
  - (ii) the producer has not paid the purchaser the levy either directly or by deduction and the purchaser is not taking steps to recover it from him.

(6) Interest under paragraph (5) is payable at the rate of one percentage point above the sterling three month London interbank offered rate.

(7) If—

- (a) a purchaser has not been approved pursuant to regulation 5; or
- (b) a purchaser has had his approval withdrawn by the Secretary of State pursuant to Article 23(3) of the Commission Regulation,

subject to paragraph (8), the Secretary of State may require any levy payable by the purchaser that has not been paid by him to be paid in such proportions as she may reasonably require by any producers whose deliveries to that purchaser have given rise to the liability for levy.

(8) Paragraph (7) does not apply in respect of a producer who has paid the purchaser in question, either directly or by deduction, the levy payable by that producer.

### **Prevention of avoidance of levy**

32.—(1) Subject to paragraphs (2) and (3), if—

- (a) a producer (“A”) makes sales or deliveries of milk or milk products in any quota year from milk produced by any cows; and
- (b) later in the same quota year another producer (“B”) makes sales or deliveries of milk or milk products from milk produced by any or all of the same cows,

B is deemed for the purposes of these Regulations to have made those sales or deliveries as agent of A.

(2) Paragraph (1) does not apply if—

- (a) an agreement has been entered into by A for the sale or lease of the cows in question to B;
- (b) the cows are kept on B’s holding; and
- (c) after the making of the agreement—

- (i) B is actively involved in the management of the herd which the cows mentioned in paragraph (1)(b) comprise and production from it, and
  - (ii) A has no further involvement in that management and production.
- (3) Paragraph (1) does not apply if—
- (a) B has inherited the cows in question from A; and
  - (b) the cows are kept on B's holding.

## PART 6

### INFORMATION AND RECORDS

#### **Information**

**33.**—(1) Every relevant person must provide such information to the Secretary of State as the Secretary of State may reasonably require to perform her functions under these Regulations and the Community legislation.

(2) Each purchaser must provide the Secretary of State with such information as she may reasonably require relating to deliveries made or to be made to the purchaser by such person or persons as the Secretary of State may identify for the purpose of monitoring deliveries in relation to the total national reference quantity for the United Kingdom referred to in Article 1(3) and Annex I of the Council Regulation.

- (3) The information referred to in paragraph (2) must be provided—
- (a) for such periods; and
  - (b) in such form,

as the Secretary of State may reasonably require.

(4) The information referred to in paragraph (2) must be submitted so as to reach the Secretary of State before the expiry of the period of three working days beginning with the end of the period to which the information relates or within seven working days beginning with the date of notification of the requirement, whichever is the later.

(5) Each purchaser must provide the Secretary of State with a list of those quota holders registered with that purchaser at 31<sup>st</sup> March in each quota year (whether they have been so registered for the whole or part of that quota year) who—

- (a) hold quota in respect of that quota year that has not been acquired by temporary transfer for that quota year; and
- (b) have not made deliveries to that purchaser during that quota year,

and ensure that the list reaches her no later than 14th May following the end of that quota year.

(6) The Secretary of State must provide each purchaser with a copy of such information as the purchaser may reasonably require for the purposes of—

- (a) that purchaser's registration obligations under regulation 6; and
- (b) Article 8 of the Commission Regulation (which concerns the submission of summaries of producers' statements of deliveries or declarations that no deliveries have been received).

#### **Keeping and retention of records**

**34.**—(1) For the purposes of Article 17 of the Commission Regulation (which requires member States to take all necessary measures to ensure that the levy is correctly charged), a relevant person

must comply with the requirements of paragraph (2) in addition to meeting any relevant requirement of paragraphs 2 to 6 of Article 24 of the Commission Regulation (which concerns record keeping obligations of purchasers and producers).

(2) The requirements referred to in paragraph (1) are—

- (a) to keep and retain such records; and
- (b) to comply with sub-paragraph (a) for such periods,

as are specified in Schedule 2.

(3) Paragraph (1) is without prejudice to regulation 3 of the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992<sup>(14)</sup>.

### **Annual declarations and summaries**

**35.**—(1) If—

- (a) a producer in whose name any direct sales quota is registered pursuant to regulation 4 fails to submit to the Secretary of State any declaration which he is required to submit by Article 11(2) of the Commission Regulation so that the declaration reaches her on or before 14th May in any year; or
- (b) a purchaser fails to submit any summary which he is required to submit to her by Article 8(2) of the Commission Regulation so that the summary reaches her on or before 14th May in any year,

the Secretary of State may recover a reasonable charge from that producer or that purchaser, as the case may be, in respect of any visit to any premises which she reasonably considers an authorised officer should make in order to obtain the declaration or summary in question.

(2) If the Secretary of State sends to a purchaser a revised version of a summary submitted by him in accordance with Article 8(2) of the Commission Regulation, the purchaser must submit either—

- (a) confirmation that the revised version is agreed; or
- (b) amendments to the revised version,

so that such confirmation or amendments, as the case may be, reach the Secretary of State before the expiry of the period of ten working days beginning with the date on which the revised version was sent to the purchaser.

(3) In this regulation, “authorised officer” means a person (whether or not an officer of the Secretary of State) who is authorised by the Secretary of State, either generally or specifically, to act in matters arising under these Regulations and the Community legislation.

## **PART 7**

### **PENALTIES AND MISCELLANEOUS PROVISIONS**

#### **Administrative penalties**

**36.**—(1) Subject to the provisions of Article 23(4) of the Commission Regulation (which authorises member States not to impose penalties in certain circumstances) and paragraph (5), purchasers are subject to the administrative penalties specified in paragraphs (2) and (3).

(2) Where a purchaser fails to provide or submit to the Secretary of State—

<sup>(14)</sup> S.I. 1992/314; relevant amending instrument is S.I. 2001/3686.



- (a) an application, statement or declaration concerning the adjustment of purchaser quota in accordance with regulation 23(2) to (4);
- (b) information in accordance with regulation 33(2) to (4); or
- (c) a confirmation or amendments relating to a revised version of a summary in accordance with regulation 35(2),

he is liable to pay to the Secretary of State a penalty equivalent to the theoretical amount of levy that would be due on 0.01% of the quantity by volume of milk covered by that application, statement, declaration or revised version, or that information, for each day of the period of delay in the submission reaching the Secretary of State.

(3) Where a purchaser fails to maintain accurate and updated records pursuant to Article 24(2) of the Commission Regulation and regulation 34, he is liable to pay to the Secretary of State a penalty equivalent to the theoretical amount of the levy that would be due on 0.5% of the quantity by volume of milk concerned.

(4) For the purposes of the third sub-paragraph of Article 11(3) of the Commission Regulation (which requires member States to impose proportionate penalties where producers submit incorrect declarations), and subject to the provisions of Article 11(5) of that Regulation (which authorises member States not to impose penalties in certain circumstances) and to paragraph (5), where a direct seller submits an annual declaration which overstates or understates the volume of direct sales for the quota year covered by that declaration, he is liable to pay to the Secretary of State—

- (a) in the case of an overstatement, a penalty equivalent to the theoretical amount of levy that would be due on 0.5% of the quantity by volume of the milk which comprises the overstatement;
- (b) in the case of an understatement, a penalty equivalent to the theoretical amount of levy that would be due on 0.5% of the quantity by volume of the milk which comprises the understatement,

except in any case where, for the quota year covered by the declaration, he is liable to pay to the Secretary of State levy which exceeds that amount.

(5) Notwithstanding anything in paragraphs (2) to (4), the penalties referred to in those paragraphs—

- (a) in the case of purchasers and direct sellers, are not to be less than £60;
- (b) in the case of purchasers, are not to exceed £60,000; and
- (c) in the case of direct sellers, are not to exceed £600.

(6) Subject to paragraph (7), if a purchaser fails to submit a summary required to be submitted under Article 8(2) of the Commission Regulation before 1<sup>st</sup> July in the year in which it is required to be submitted, he is liable to pay to the Secretary of State a penalty equivalent to the theoretical amount of levy that would be due on 0.01% of the quantity by volume of milk covered by that declaration for each day of the period of the delay in the submission reaching the Secretary of State.

(7) A purchaser is not liable to pay a penalty under paragraph (6) if, in the opinion of the Secretary of State, the failure—

- (a) was neither deliberate nor the result of serious negligence;
- (b) is negligible in terms of the functioning of the scheme or the effectiveness of the checks; or
- (c) is attributable to force majeure.

### **Withholding or recovery of compensation**

37.—(1) Where—

- (a) a producer has submitted an application for compensation in accordance with the Community compensation scheme; and
- (b) it appears to the Secretary of State that the producer has—
  - (i) made a false or misleading statement in his application, or
  - (ii) failed to comply with any of the requirements of the scheme,
 the Secretary of State may withhold, or recover on demand from that producer, the whole or any part of the compensation payable or paid to him.

(2) In this regulation, “Community compensation scheme” means the scheme instituted by Council Regulation (EC) No. 2330/98 providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade<sup>(15)</sup> and Commission Regulation (EC) No. 2647/98 laying down detailed rules for the application of Council Regulation (EC) No. 2330/98<sup>(16)</sup>.

### **Confiscation of quota**

**38.**—(1) In pursuance of Article 15 of the Council Regulation (which relates to the confiscation and restoration of quota in cases of inactivity), the Secretary of State must notify a quota holder that his quota has been taken into the national reserve if it appears from information available to the Secretary of State that he has made no deliveries or direct sales during the previous quota year.

(2) In pursuance of Article 11(4) of the Commission Regulation (which relates to the confiscation of quota in cases of failure to submit declarations of direct sales before 1st July), the Secretary of State must notify any direct sales quota holder who contravenes Article 11 of that Regulation, by failing to submit an annual declaration to the Secretary of State so that the annual declaration reaches her before 1st July, that his quota will be taken into the national reserve 30 days after notification.

(3) Any quota withdrawn pursuant to Article 15 of the Council Regulation must be placed in the national reserve with effect from 1st April following the quota year for which information became available to the Secretary of State indicating to her that no deliveries or no direct sales, as the case may be, were made.

(4) A wholesale quota holder or direct sales quota holder who receives a notification of confiscation under paragraph (1) or, as the case may be, paragraph (2) must notify any person with an interest in the land comprised in the holding in question of the contents of that notification before the expiry of the period of 28 days beginning with the day on which he received it.

### **Restoration of quota**

**39.**—(1) Subject to the second sub-paragraph of Article 15(1) of the Council Regulation (which specifies the time limit for quota restoration), a person whose quota has been taken into the national reserve may request the Secretary of State to restore to him the quota in respect of the holding from which it was confiscated or in respect of part of that holding if he is a producer.

- (2) Subject to paragraph (3), a request under paragraph (1)—
  - (a) must reach the Secretary of State—
    - (i) no later than the end of the quota year to which it relates, or
    - (ii) in the case of confiscation of quota notified by virtue of regulation 38(2), no later than the end of the quota year before the quota year in which the quota is to be restored; and

<sup>(15)</sup> OJ No. L291, 30.10.98, p.4.

<sup>(16)</sup> OJ No. L335, 10.12.98, p.33.

- (b) in a case falling within sub-paragraph (a)(ii), must include the declaration which the person making the request failed to submit under Article 11 of the Commission Regulation.

(3) Where—

- (a) there is a change of occupation of all or part of the holding in respect of which quota has been taken into the national reserve; and
- (b) the new occupier is a producer,

the new occupier may submit a request to the Secretary of State to restore to him the quota relating to that holding or part holding before the expiry of the time limit for quota restoration specified by the second sub-paragraph of Article 15(1) of the Council Regulation.

(4) A request for restoration of quota to part of a holding made under paragraph (1) or (3) must include—

- (a) a statement of the agreed apportionment of quota taking account of the areas used for milk production, signed by every person with an interest in the land comprised in the holding; or
- (b) a statement requesting apportionment of the quota in accordance with an arbitration under paragraphs 1(5), 3(2), 4 and 6 to 34 of Schedule 1.

(5) Where quota is restored to part of a holding in accordance with a request made under paragraph (1) or (3), the amount of quota to be restored to that part must be determined in accordance with the apportionment referred to in paragraph (4)(a) or (b).

#### **Offences and criminal penalties**

**40.**—(1) A person is guilty of an offence if—

- (a) being a relevant person, he fails without reasonable excuse to comply with a requirement imposed on him by or under these Regulations or the Community legislation; or
- (b) in connection with these Regulations or the Community legislation, he—
  - (i) makes or causes to be made a statement, or uses or causes to be used a document, which he knows to be false in a material particular, or
  - (ii) recklessly makes or causes to be made a statement, or recklessly uses or causes to be used a document, which is false in a material particular; or
- (c) disposes of quota which he knows or might reasonably be expected to know is incorrectly registered in his name.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding three months, or to both; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.

(3) The Secretary of State may, following any conviction under paragraph (1)(b) against which there is no subsisting right of appeal or further appeal, by notice served on the person whose quota that conviction relates withdraw from him such quota as may reasonably be regarded by the Secretary of State as obtained by him by reason of the falsehood upon which the conviction was founded.

(4) A notice served under paragraph (3) may not be served after the expiry of the period of twelve months beginning with the first day on which the notice may be served.

(5) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, the provisions of paragraphs (1) and (2) apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(7) In this regulation “requirement” does not include any restriction or obligation in or under regulations 11(1) and (3), 14(3), 16, 19(6) and (7), 21(2) and (3), 22(2), 23(12) and (13) and 39(2) and (4).

### **Revocations and amendments**

**41.**—(1) The Dairy Produce Quotas Regulations 2002(**17**) and the Dairy Produce Quotas (Amendment) Regulations 2004(**18**) are revoked.

(2) In article 8(3)(b) of the Milk Development Council Order 1995(**19**), for the words “the Dairy Produce Quotas Regulations 2002” there are substituted “the Dairy Produce Quotas Regulations 2005(**20**)”.

*Whitty*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

16th February 2005

We consent

*Jim Murphy*  
*Joan Ryan*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

1st March 2005

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(17) S.I. 2002/457.

(18) S.I. 2004/312.

(19) S.I. 1995/356; relevant amending instrument is S.I. 2004/964.

(20) S.I. 2005/466.

SCHEDULE 1

Regulations 10(2) 11, 12(3) and 39(4)

APPORTIONMENT AND PROSPECTIVE APPORTIONMENT BY ARBITRATION

*Appointment and remuneration of arbitrator*

1.—(1) Subject to sub-paragraph (2), in any case where an apportionment is to be carried out by arbitration, an arbitrator must be appointed by agreement between the transferor and transferee, and the transferee must give notice of the appointment of the arbitrator to the Secretary of State.

(2) The transferor or the transferee may at any time make an application to the President of the Royal Institution of Chartered Surveyors (referred to in this Schedule as “the President”) for the appointment of an arbitrator from amongst the members of the panel referred to in paragraph 7, and the person who makes such an application to the President must give notice of that fact to the Secretary of State.

(3) If an arbitrator has not been appointed by agreement between the transferor and the transferee and no application has been made to the President under sub-paragraph (2), the Secretary of State may make an application to the President for the appointment of an arbitrator.

(4) Where the Secretary of State gives a notice pursuant to regulation 12(2), she must make an application to the President for the appointment of an arbitrator and the Secretary of State must be a party to the arbitration.

(5) Where an apportionment under regulation 39(4)(b) is to be carried out by arbitration, the producer must either appoint an arbitrator by agreement with all persons with an interest in the holding or make an application to the President for the appointment of an arbitrator from amongst the members of the panel referred to in paragraph 7.

2.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbitrator must be appointed—

(a) where regulation 11(1)(b) or (4)(b) applies, by agreement between the occupier of the relevant holding and any other interested party, or, in default, by the President on an application by the occupier; and

(b) where regulation 12(3) applies, by the President.

(2) Where sub-paragraph (1)(a) applies, the occupier must give notice to the Secretary of State of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator.

3.—(1) An arbitrator appointed in accordance with paragraph 1(1) to (4) or 2 must conduct the arbitration in accordance with this Schedule and must base his award on findings made by him as to areas used for milk production in the last five-year period during which production took place before the change of occupation, or, in the case of a prospective apportionment, in the last five-year period during which production took place before the appointment of the arbitrator.

(2) An arbitrator appointed in accordance with paragraph 1(5) must conduct the arbitration in accordance with this Schedule and must base his award on findings made by him as to the areas used for milk production in the last five-year period during which production took place before the appointment of the arbitrator.

(3) An arbitrator appointed under any paragraph of this Schedule must base his award on findings made by him in accordance with the law in force at the time the event giving rise to an application for arbitration took place.

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**4.—(1)** No application may be made to the President for an arbitrator to be appointed by him under this Schedule unless the application is accompanied by the appropriate fee for such an application; but once the fee has been paid in connection with any such application no further fee is payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).

(2) In sub-paragraph (1), the “appropriate fee” means such reasonable fee as the President may direct having regard to, and in no case exceeding, such fee as is for the time being prescribed under paragraph 1(2) of Schedule 11 to the Agricultural Holdings Act 1986<sup>(21)</sup>.

**5.** Where the Secretary of State makes an application to the President under paragraph 1(3) or (4), the fee payable to the President in respect of that application referred to in paragraph 4 is recoverable by the Secretary of State as a debt due from the other parties to the arbitration jointly or severally.

**6.** Any appointment of an arbitrator by the President must be made by him as soon as possible after receiving the application.

**7.** For the purposes of paragraph 1(2) the panel of arbitrators is the panel appointed by the Lord Chancellor under paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986.

**8.** If the arbitrator dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

**9.** No party to the arbitration may revoke the appointment of the arbitrator without the consent of any other party, and his appointment is not revoked by the death of any party.

**10.** Every appointment, application, notice, revocation and consent under paragraph 1, 2, 8 or 9 must be in writing.

**11.—(1)** The remuneration of the arbitrator—

(a) in a case where he is appointed by agreement between the parties, is such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the registrar of the county court (subject to an appeal to the judge of the court) on an application made by the arbitrator or any party;

(b) in a case where he is appointed by the President, is such amount as may be agreed upon by the arbitrator and the parties or, in default of agreement, fixed by the President.

(2) The remuneration of the arbitrator is recoverable by the arbitrator as a debt due from the parties to the arbitration, jointly or severally.

#### *Conduct of proceedings and witnesses*

**12.—(1)** Subject to sub-paragraph (2), in any arbitration to which this Schedule applies, the arbitrator may join as a party to the arbitration any person having an interest in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

(2) Where an apportionment pursuant to a request in a statement under regulation 39(4)(b) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign such a statement as is referred to in regulation 39(4)(a) must be a party to the arbitration.

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(21) 1986 c. 5.

**13.** Within 35 days of the appointment of the arbitrator, or within such further period as the arbitrator may determine, the parties to the arbitration must deliver to him a statement of their respective cases with all necessary particulars and—

- (a) no amendment or addition to the statement or particulars delivered is allowed after the expiry of the 35 days, or such further period as the arbitrator may determine, except with the consent of the arbitrator; and
- (b) a party to the arbitration is confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

**14.** The parties to the arbitration and all persons claiming through them must, subject to any legal objection, submit to being examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute and must, subject to any such objection, produce before the arbitrator all samples and documents within their possession or power which may be required or called for, and do such other things as the arbitrator reasonably may require for the purposes of the arbitration.

**15.** Any person having an interest in the holding to which the arbitration relates is entitled to make representations to the arbitrator.

**16.** Witnesses appearing at the arbitration must, if the arbitrator thinks fit, be examined on oath or affirmation, and the arbitrator may administer oaths to, or take the affirmation of, the parties and witnesses appearing.

**17.** The provisions of county court rules as to the issuing of witness summonses apply, subject to such modifications as may be prescribed by such rules, for the purposes of the arbitration as if it were an action or matter in the county court.

**18.—(1)** Subject to sub-paragraphs (2) and (3), any person who—

- (a) having been summoned in pursuance of county court rules as a witness in the arbitration refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or
- (b) having been so summoned or being present at the arbitration and being required to give evidence, refuses to be sworn or give evidence,

forfeits such fine as the judge of the county court may direct.

(2) A judge may not direct under sub-paragraph (1) that a person forfeits a fine of an amount exceeding £400.

(3) No person summoned in pursuance of county court rules as a witness in the arbitration forfeits a fine under this paragraph unless there has been paid or tendered to him at the time of the service of the summons such reasonable sum in respect of his expenses as the arbitrator may direct (including, in appropriate cases, compensation for loss of time), having regard to such sums payable in such cases as may be prescribed for the purposes of section 55 of the County Courts Act 1984<sup>(22)</sup>.

(4) The judge of the county court may at his discretion direct that the whole or any part of any such fine, after deducting costs, is applicable towards indemnifying a party injured by the refusal or neglect.

**19.—(1)** Subject to sub-paragraph (2), upon application by any party to the arbitration, the judge of the county court may, if he thinks fit, issue an order under his hand for bringing before the arbitrator any person (in this paragraph referred to as “the prisoner”) confined in any place under any sentence or under committal for trial or otherwise, to be examined as a witness in the arbitration.

(2) No such order may be made with respect to a person confined under process in any civil action or matter.

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(22) 1984 c. 28.

*Status: This is the original version (as it was originally made).*

(3) Subject to sub-paragraph (4), the prisoner mentioned in any such order must be brought before the arbitrator under the same custody, and dealt with in the same manner in all respects, as a prisoner required by a writ of habeas corpus to be brought before the High Court and examined there as a witness.

(4) The person having the custody of the prisoner is not bound to obey the order unless there is tendered to him a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner in going to, remaining at, and returning from, the place where the arbitration is held.

**20.** The High Court may order that a writ of habeas corpus ad testificandum must issue to bring a prisoner for examination before the arbitrator, if that prisoner is confined in any prison under process in any civil action or matter.

#### *Award*

**21.—**(1) Subject to sub-paragraph (2), the arbitrator must make and sign his award within 56 days of his appointment.

(2) The President may from time to time extend the time limited for making the award, whether that time has expired or not.

(3) The arbitrator must notify the terms of his award to the Secretary of State within eight days of delivery of that award.

(4) The award must fix a date not later than one month after the delivery of the award for the payment of any costs awarded under paragraph 25.

**22.** The award is final and binding on the parties and any persons claiming under them.

**23.** The arbitrator may correct any clerical mistake or error in the award arising from any accidental slip or omission.

#### *Reasons for award*

**24.** Where the arbitrator is requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award, the arbitrator must furnish such a statement.

#### *Costs*

**25.** The costs of and incidental to the arbitration and award are in the discretion of the arbitrator who may direct to and by whom and in what manner the costs, or any part of the costs, are to be paid. The costs for the purposes of this paragraph include any fee paid to the President in respect of the appointment of an arbitrator and any sum paid to the Secretary of State pursuant to paragraph 5.

**26.** On the application of any party, any such costs are taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the arbitrator under paragraph 25 or, in the absence of any such direction, by the county court.

**27.—**(1) The arbitrator must, in awarding costs, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of the amount or otherwise;
- (b) any unreasonable demand for particulars or refusal to provide particulars; and
- (c) generally all the circumstances of the case.



(2) The arbitrator may disallow any costs which he considers to have been unnecessarily incurred, including the costs of any witness whom he considers to have been called unnecessarily.

*Special case, setting aside award and remission*

**28.** The arbitrator—

- (a) may state at any stage of the proceedings; and
- (b) must state, upon a direction in that behalf given by the judge of the county court following an application made by any party,

any question of law arising in the course of the arbitration and any question as to the jurisdiction of the arbitrator in the form of a special case for the opinion of the county court.

**29.**—(1) Where the arbitrator has misconducted himself, the county court may remove him.

(2) Where—

- (a) the arbitrator has misconducted himself; or
- (b) an arbitration or award has been improperly procured; or
- (c) there is an error of law on the face of the award,

the county court may set the award aside.

**30.**—(1) The county court may from time to time remit the award, or any part of the award, to the arbitrator for reconsideration.

(2) Paragraph (3) applies in any case where it appears to the county court that there is an error of law on the face of the award.

(3) Instead of exercising its power of remission under sub-paragraph (1), the court may vary the award by substituting for so much of it as is affected by the error such award as the court considers that it would have been proper for the arbitrator to make in the circumstances.

(4) An award varied pursuant to paragraph (3) has effect as so varied.

(5) Where remission is ordered under sub-paragraph (1), the arbitrator must, unless the order otherwise directs, make and sign his award within 30 days of the date of the order.

(6) If the county court is satisfied that the time for making the award is for any good reason insufficient, the court may extend or further extend that time for such period as it thinks proper.

*Miscellaneous*

**31.** Any amount paid, in respect of the remuneration of the arbitrator by any party to the arbitration in excess of the amount, if any, directed by the award to be paid by him in respect of the costs of the award, is recoverable from the other party or jointly from the other parties.

**32.** For the purposes of this Schedule, an arbitrator appointed by the President must be taken to have been so appointed at the time when the President executed the instrument of appointment, in accordance with the law in force at the time of such execution and in the case of any such arbitrator the periods mentioned in paragraphs 13 and 21 accordingly run from that time.

**33.** Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraph 1, 2, 6, 11 or 21 and to be signed by or on behalf of the President is to be taken to be such an instrument or document unless the contrary is shown.

34. The Arbitration Act 1996(23) does not apply to an arbitration determined in accordance with this Schedule.

## SCHEDULE 2

Regulation 34(2)

### KEEPING AND RETENTION OF RECORDS

#### *Records to be kept by purchasers*

1. In respect of each quota year, a purchaser must keep, and retain for the relevant period, records comprising—

- (a) details of each producer making deliveries to him, including—
  - (i) that producer's name and address,
  - (ii) the wholesale quota available to that producer at the beginning and end of each quota year,
  - (iii) the representative fat content (butterfat base) of the milk delivered by that producer, and
  - (iv) the total quota available for all the producers who make deliveries to the purchaser and the weighted butterfat of that quota;
- (b) details, in terms of each delivery and each month, of the quantities of milk which each producer has delivered to him;
- (c) details of the cumulative total of the quantities delivered to him each month by all producers;
- (d) details of the average fat content of each producer's deliveries per month;
- (e) details of the weighted average fat content of the cumulative total referred to in subparagraph (c);
- (f) a list of purchasers and other undertakings which supply treated or processed milk or milk products to him;
- (g) details, in terms of each such purchaser or undertaking and each month, of the quantities supplied to him by that purchaser or undertaking;
- (h) details of the use to which milk and milk products collected from him has been put;
- (i) records of individual deliveries and supplies and accompanying collection documents identifying each delivery or supply by producer, purchaser or other undertaking; and
- (j) all books, registers, accounts, correspondence, commercial data, vouchers and supporting documents relating to his business activities.

#### *Records to be kept by producers*

2.—(1) In respect of each quota year, a direct seller must keep, and retain for the relevant period, records comprising—

- (a) details of the quota held by him, including any permanent and temporary transfers of quota if appropriate;

- (b) his herd records (comprising number and breed of cows and calved heifers in dairy herd with details of number of cows in milk and number of cows dry);
  - (c) daily records of milk produced;
  - (d) invoices of any feed purchased;
  - (e) details recorded as a result of his participation in the National Milk Recording Scheme or other similar recording scheme;
  - (f) details of quantities of milk processed, methods of processing and quantities and type of milk products produced;
  - (g) details of quantities of whole milk used in the production of milk products (with conversion rates applied);
  - (h) details of quantities and types of milk and milk products which are produced and used on his holding for stock feeding and human consumption;
  - (i) details of quantities and types of milk and milk products which are disposed of (other than under paragraph (h)) or wasted on the holding;
  - (j) without prejudice to paragraph (i), details of any milk or milk products which—
    - (i) were transported from his holding to be destroyed elsewhere for sanitary purposes pursuant to a decision of the Secretary of State or the Secretary of State for Health,
    - (ii) were so destroyed, and
    - (iii) as a consequence, are to be excluded from the levy calculation,including information about the reason why such destruction was necessary and details of where, when and how such destruction occurred;
  - (k) details of quantities and types of milk and milk products sold directly to the consumer or transferred free of charge from his holding (including milk and milk products sold on his holding);
  - (l) details of quantities and types of milk and milk products purchased, exchanged or otherwise received by him, and records relating to their disposal; and
  - (m) details of stocks of milk and milk products held by him on a monthly basis.
- (2) Where a direct seller also delivers milk or milk products to a purchaser, he must, in respect of each quota year, also keep, and retain for the relevant period, records comprising—
- (a) details of quantities and types of milk and milk products delivered by him and the name and address of any purchaser involved;
  - (b) the payment slips issued in respect of any such purchaser; and
  - (c) where there is a discrepancy between a purchaser's payment slip and the relevant tanker receipt, that tanker receipt.
- 3.** A wholesale quota holder who makes deliveries to a purchaser must, in respect of each quota year, keep, and retain for the relevant period, records, comprising—
- (a) details of the quota held by him, showing permanent and temporary transfers of quota if appropriate;
  - (b) his herd records (comprising number and breed of cows and calved heifers in dairy herd with details of number of cows in milk and number of cows dry);
  - (c) daily records of milk produced;
  - (d) invoices of any feed purchased;
  - (e) details of quantities of milk delivered by him, and the name and address of the purchaser involved;

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- (f) the payment slips issued in respect of any such purchaser;
- (g) where there is a discrepancy between a purchaser's payment slip and the relevant tanker receipt, that tanker receipt;
- (h) details recorded as a result of his participation in the National Milk Recording Scheme or other similar recording scheme;
- (i) details of quantities of milk produced and used on his holding for stock feeding and human consumption;
- (j) details of quantities of milk which are disposed of (other than under sub-paragraph (i)) or wasted on the holding;
- (k) without prejudice to sub-paragraph (j), details of any milk which—
  - (i) was transported from his holding to be destroyed elsewhere for sanitary purposes pursuant to a decision of the Secretary of State or the Secretary of State for Health,
  - (ii) was so destroyed, and
  - (iii) as a consequence, is to be excluded from the levy calculation,including information about the reason why such destruction was necessary and details of where, when and how such destruction occurred;
- (l) details of quantities and types of milk and milk products transferred free of charge from his holding;
- (m) details of quantities of milk purchased, swapped or otherwise received, and records relating to its disposal; and
- (n) details of stocks of milk produced on his holding.

*Records to be kept by any person undertaking butterfat testing in a laboratory*

4. Any person undertaking butterfat testing for a purchaser in a laboratory must keep, and retain for the relevant period, records comprising details of all samples of milk analysed, showing—
- (a) the time and date the sample was taken on the holding;
  - (b) the time and date of his receipt of the sample;
  - (c) the time and date of the analysis;
  - (d) the identity of the purchaser concerned;
  - (e) the identity of the producer concerned (by name or reference number);
  - (f) the butterfat content of each sample recorded to two decimal places;
  - (g) the method of analysis used; and
  - (h) the results of any repeat analyses undertaken.

*Records to be kept by hauliers*

5. Any haulier collecting milk or milk products on behalf of a purchaser must keep, and retain for the relevant period, records comprising details of all quantities of milk or milk products so collected, showing—
- (a) the time and date of collection from each producer;
  - (b) the time and date of sampling of the milk or milk products of each producer;
  - (c) the identity of the producer concerned;
  - (d) the volume of milk collected (including a copy of the tanker receipt in the cases referred to in paragraphs 2(2)(c) and 3(g));

- (e) the identity of the purchaser concerned;
- (f) the volume of milk delivered, and the name and address of each reception site;
- (g) the sources of all the milk carried on each tanker; and
- (h) details of any malfunction in any equipment used by him.

*Records to be kept by processors*

6. Any processor in receipt of milk or milk products for processing or treating must keep, and retain for the relevant period, records comprising details of all quantities of milk or milk products received, showing—

- (a) the time and date of their delivery;
- (b) their volume or weight per delivery (including copies of tanker receipts and weighbridge tickets in the cases referred to in paragraphs 2(2)(c) and 3(g));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their vendor or donor;
- (e) the quantities of milk processed, types of processing undertaken, and quantities and types of milk products produced;
- (f) the quantities of milk used in the production of milk products (if not ascertainable from the information provided under sub-paragraph (e));
- (g) the calculated stocks of milk and milk products held by that processor at the end of each month and details of actual stocks physically held as at 31st March each year; and
- (h) the quantities of milk or milk products sold or otherwise disposed of, with the date of supply or disposal, and the names and addresses of the buyers or recipients concerned.

*Records to be kept by persons buying, selling or supplying milk or milk products obtained directly from a producer or purchaser*

7. Any person who in the course of a business buys, sells or supplies milk or milk products obtained directly from a producer or purchaser must keep, and retain for the relevant period, records comprising details of all quantities of milk or milk products received, showing—

- (a) the time and date of their receipt;
- (b) their volume or weight per delivery (including copies of tanker receipts or invoices in the cases referred to in paragraphs 2(2)(c) and 3(g));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their vendor or donor;
- (e) the quantities of milk or milk products sold or supplied, with the date of sale or supply, and the names and addresses of the buyers or recipients concerned other than the consumers of such milk or milk products; and
- (f) the quantities of milk or milk products returned to the producer or purchaser unsold or unused, and the date of that return.

8. In this Schedule, in relation to any records—

“the relevant period” means the remainder of the year of record and a period of at least three years thereafter; and

“the remainder of the year of record” means, following the making of the records, the remainder of the year in which they were made.

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## EXPLANATORY NOTE

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

These Regulations, which come into force on 31st March 2005, revoke and replace the Dairy Produce Quotas Regulations 2002 (S.I. 2002/457) (“the 2002 Regulations”) as amended by the Dairy Produce Quotas (Amendment) Regulations 2004 (S.I. 2004/312).

These Regulations implement Council Regulation (EC) No. 1788/2003 (OJ No. L279, 21.10.2003 p.123) establishing a levy in the milk and milk products sector (“the Council Regulation”) and Commission Regulation (EC) No. 595/2004 (OJ No. L94, 31.3.2004, p.22) laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (“the Commission Regulation”). The Council Regulation and the Commission Regulation revoke and replace earlier legislation relating to the levy.

Under the Community legislation, as defined in regulation 2(1), a levy continues to be payable on dairy produce sold by direct sale by a producer or delivered by him wholesale to a dairy business, unless the sales or deliveries are within a reference quantity described in that legislation. The Community legislation establishes the system of what are commonly called “milk quotas” and in these Regulations the term “quota”, which is defined in regulation 2(1), is used to refer to the reference quantity described in the Community legislation.

These Regulations apply in relation to relevant persons, including producers and purchasers, in relation to whom the Secretary of State for Environment, Food and Rural Affairs (“the Secretary of State”) is the competent authority under the Dairy Produce Quotas (General Provisions) Regulations 2002 (S.I. 2002/458). The terms “relevant person”, “producer” and “purchaser” are defined in regulation 2(1). The Secretary of State is the competent authority in relation to those relevant persons whose trading address is in England. The holdings of producers to whom these Regulations apply may comprise land in parts of the United Kingdom outside England. Amendments to the Dairy Produce Quotas (General Provisions) Regulations 2002 also come into force on 31st March 2005; see S.I. 2005/466.

Apart from drafting changes and the revocation of spent provisions, the new provisions included in these Regulations are as follows:

- (a) Before approving a purchaser, the Secretary of State may oblige the purchaser to lodge such security as the Secretary of State may reasonably require (regulation 5(4)).
- (b) Provisions relating to butterfat-adjusted deliveries and the liability of producers for levy on deliveries (regulations 25 and 27).
- (c) A direct seller who does not provide a declaration of his sales in a quota year (as defined in regulation 2(1)) by 14<sup>th</sup> May immediately following the end of that quota year and who is liable to pay levy in respect of such sales will pay levy at the full rate (regulation 30(14)).
- (d) Unless he has already paid levy, in certain circumstances a producer will be liable for the payment of levy to the Secretary of State where his purchaser has failed to do so (regulation 31).
- (e) Article 21 of the Commission Regulation requires that checks be made on the compatibility between deliveries and direct sales of milk on the one hand and production capacity on the other. Consequently, a producer is required to keep invoices of feed purchased by him (regulation 34(2) and paragraphs 2(1)(d) and 3(d) of Schedule 2).

- (f) Article 6 of the Commission Regulation provides that milk which is destroyed off-farm for sanitary reasons will not be taken into account when calculating levy. Consequently, a producer is required to keep records of such milk (regulation 34(2) and paragraphs 2(1) (j) and 3(k) of Schedule 2).
- (g) Where a person has to submit a document to the Secretary of State in accordance with these Regulations, the operative date is the date by when the Secretary of State receives the document, not the date of despatch to the Secretary of State.
- (h) New provision is also made—
  - (i) enabling a tenant who buys quota to retain that quota at the end of his tenancy in certain circumstances (regulation 14);
  - (ii) relating to the conversion of quota (regulation 22);
  - (iii) to prevent the avoidance of levy (regulation 32);
  - (iv) imposing a penalty for failure to submit a summary under Article 8(2) of the Commission Regulation by 1st July (regulation 36(6)); and
  - (v) for the confiscation of quota (regulation 38).

A copy of the map referred to in the definition of “Scottish Islands area” is available for inspection at the offices of the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

A regulatory impact assessment of the effect which this instrument will have on the costs of business has been prepared and copies can be obtained from the Department for Environment, Food and Rural Affairs, Area 5d, 9 Millbank, c/o Nobel House, 17 Smith Square, London SW1P 3JR. A copy of the assessment has been placed in each House of Parliament.