

**2004 No. 118**

**FOOD**

**The Dairy Produce Quotas (Scotland) Amendment Regulations  
2004**

<i>Made</i> - - - -	<i>10th March 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>11th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Dairy Produce Quotas (Scotland) Amendment Regulations 2004 and shall come into force on 1st April 2004.

**Interpretation**

2. In these Regulations, “the principal Regulations” means the Dairy Produce Quotas (Scotland) Regulations 2002(b).

**Amendment of the principal Regulations**

3. The principal Regulations shall be amended in accordance with regulations 4 to 22 below.

**Amendment of regulation 2**

4. In regulation 2 (interpretation)–

- (a) in the definition of “delivery” for “Article 9(g)” substitute “Article 5(f)”;
- (b) in the definition of “direct sale” for “Article 9(h)” substitute “Article 5(g)”;
- (c) after “direct sales quota” insert–  
    ““direct sales quota holder” means a person in whose name direct sales quota is registered;”;
- (d) in the definition of “holding” for “Article 9(d)” substitute “Article 5(d)”;
- (e) in the definition of “producer” for “Article 9(c)” substitute “Article 5(c)”;
- (f) in the definition of “purchaser” for “Article 9(e)” substitute “Article 5(e)”;

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(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.  
(b) S.S.I. 2002/110, amended by S.S.I. 2002/228.

- (g) in the definition of “quota year” for “Article 1” substitute “Article 1(1)”;
- (h) for the definition of “Scottish Islands area” substitute–
  - ““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 comprising those parts of the parishes of Dunoon and Kilmun and of Inverchaolain in the Argyll and Bute District 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 of the Dairy Produce Quotas (Scotland) Regulations 2002, as amended by regulation 4(h)(b) of the Dairy Produce Quotas (Scotland) Amendment Regulations 2004” dated 5 March 2004, signed on behalf of the Scottish Ministers and deposited at the offices of the Scottish Executive Environment and Rural Affairs Department at Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TY;”;
- (i) at the end of the definition of “wholesale quota” insert–
  - “;
  - “wholesale quota holder” means a person in whose name wholesale quota is registered.”.

#### **Amendment of regulation 4**

- 5. For regulation 4 (Scottish Islands area) substitute–

##### **“Scottish Islands area**

4.—(1) Subject to paragraph (3), quota registered to direct sales quota holders and wholesale quota holders within a Scottish Islands area may only be used by producers and purchasers against direct sales or wholesale deliveries of milk produced within that Scottish Islands area.

(2) Where a direct sales quota holder or wholesale quota holder has a part of the dairy enterprise of that quota holder outside a Scottish Islands area, that quota holder shall be treated for the purposes of this regulation as a direct sales quota holder or wholesale quota holder within a Scottish Islands area if 50 per cent or more of the dairy enterprise of that quota holder is within that area.

(3) Paragraph (1) shall not apply to the reallocation of quota undertaken in accordance with Schedule 3.”.

#### **Amendment of regulation 5**

- 6. In regulation 5 (determination of levy) for “Article 2(1)” substitute “Article 10(3)”.

#### **Amendment of regulation 7**

7. In regulation 7(2) (adjustment of purchaser quota) for “the second sub-paragraph of Article 2(2)” substitute “Article 11(2)”.

#### **Amendment of regulation 8**

- 8. In regulation 8 (transfer of quota with transfer of land)(a)–
  - (a) in paragraph (1) for “Article 7” substitute “Article 17”; and
  - (b) in paragraph (1)(a)(i) omit “before 1st March” where it first appears.

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(a) Regulation 8 was amended by S.S.I. 2002/228, regulation 2(3).

## **Amendment of regulation 12**

9. For regulation 12 (transfer of quota without transfer of land) substitute—

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

**12.**—(1) 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.

(2) A transferee of quota for whom the Scottish Ministers are the relevant competent authority shall submit a notice of any such transfer within the general quota region in such form as they may reasonably require to reach them no later than 31<sup>st</sup> March in the quota year in which the transfer takes place.

(3) The notice referred to in paragraph (2) shall 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 from the transferor in respect of the entire holding from which the quota is to be transferred; and
- (c) a statement from the transferee that the transferee is a producer.

(4) Where the Scottish Ministers have received a notice pursuant to paragraph (2), they may require that the transferor or transferee shall produce such other information relating to the transfer, and within such time, as they may reasonably determine.

(5) In this regulation—

- (a) “competent authorities” shall be construed in accordance with regulation 2 of the Dairy Produce Quotas (General Provisions) Regulations 2002;
- (b) “general quota region” means the United Kingdom other than the Scottish Islands areas; and
- (c) “United Kingdom quota region” means a Scottish Islands area or the general quota region.”.

## **Amendment of regulation 13**

10. In regulation 13(1) (temporary transfer of quota) for “Article 6” substitute “Article 16”.

## **Amendment of regulation 14**

11. In regulation 14(1) (temporary reallocation of quota)(a) for “Article 2(1)” substitute “Article 10(3)”.

## **Amendment of regulation 16**

12. In regulation 16 (conversion of quota)—

- (a) in paragraph (1)—
  - (i) for “Article 4(2)” substitute “Article 6(2) and (5)”; and
  - (ii) for “the second sub-paragraph of Article 2(2)” substitute “Article 11(2)”; and
- (b) in paragraph (2)(b) for “Article 4(2)” substitute “Article 6(2) and (5)”; and
- (c) in paragraph (3)(b) for “any” substitute “the”.

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(a) Regulation 14(1) was amended by S.S.I. 2002/228, regulation 2(8).

### **Amendment of regulation 18**

13. In regulation 18 (reallocation of quota and calculation of levy liability) for “Article 2(1)” substitute “Article 10(3)”.

### **Amendment of regulation 20**

14. In regulation 20 (payment of levy)–

- (a) in paragraph (1)–
  - (i) for “Article 2(3)” substitute “Article 12(4)”; and
  - (ii) for “Article 2(2)” substitute “Article 11(1)”; and
- (b) in paragraph (3)–
  - (i) for “the third sub-paragraph of Article 2(2)” substitute “Article 11(3)”; and
  - (ii) and for “adjustment of that quota” substitute “adjustment of the quantity delivered”.

### **Amendment of regulation 22**

15. In regulation 22 (registers to be prepared and maintained by the Scottish Ministers)–

- (a) in paragraph (1)(b)(ii) omit “or, where there is more than one such address, each such address and the principal trading address of each direct seller”;
- (b) in paragraph (2)(b)(ii) omit “or, where there is more than one address, each such address and the principal trading address of each producer”; and
- (c) for paragraph (6) substitute–

“(6) Notwithstanding that a person no longer produces and markets milk and for that reason is not a direct seller or producer, that person shall remain registered under paragraph (1) or (2) and, for the purposes of this regulation and regulations 23(a), 25 and 27(1), continue to be regarded as a direct seller or producer, as the case may be, until the quota allocated or issued to that person has been transferred or has been withdrawn under Article 15 of the Council Regulation.”.

### **Amendment of regulation 25**

16. In regulation 25(2) (obligations of producers and purchasers with respect to registration and deliveries) omit “(within the extended meaning conferred by regulation 22(6))”.

### **Amendment of regulation 27**

17. In regulation 27(2) (information) for “Article 3(2)” substitute “Article 1(3) and Annex I”.

### **Amendment of regulation 30**

18. In regulation 30 (administrative penalties)–

- (a) in paragraph (3) after “overstatement” in each place where it appears insert “or an understatement”; and
- (b) for paragraph (5) substitute the following paragraph–

“(5) For the purposes of the third sub-paragraph of Article 6(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 6(5) of that Regulation (which requires member States not to impose penalties in certain circumstances) and paragraph (6) of this regulation, 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, that direct seller shall be liable to pay to the Scottish Ministers–

- (a) in the case of an overstatement, a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement; or
- (b) in the case of an understatement, a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the understatement, except in any case where, for the quota year covered by the declaration, the direct seller is liable to pay to the Scottish Ministers levy which exceeds that amount.”.

### **Amendment of regulation 32**

**19.** For regulation 32 (provisions in connection with confiscation and restoration of quota)(a) substitute—

#### **“Provision in connection with confiscation and restoration of quota**

**32.**—(1) On or before 14th May following the end of each quota year, each purchaser shall supply to the Scottish Ministers a list of those wholesale quota holders registered with that purchaser (whether for the whole or part of the quota year) who have not made deliveries to that purchaser during that quota year.

(2) Pursuant to Article 15 of the Council Regulation (which concerns the confiscation and restoration of quota), the Scottish Ministers shall notify—

- (a) any wholesale quota holder or direct sales quota holder who, from information available to the Scottish Ministers, appears to have made neither deliveries nor direct sales during the previous quota year; and
- (b) any direct sales quota holder who, in contravention of Article 6 of the Commission Regulation, has failed to submit to the Scottish Ministers a declaration within 30 days of service of a notice by the Scottish Ministers in accordance with Article 6(4) of that Regulation,

that the quota of that quota holder has been taken into the national reserve.

(3) Any quota withdrawn pursuant to Article 15 of the Council Regulation shall be placed in the national reserve with effect from the beginning of the quota year following—

- (a) the quota year for which the list referred to in paragraph (1) was supplied;
- (b) the quota year to which the declaration indicating no direct sales were made relates; or
- (c) the quota year for which no declaration was submitted,

as the case may be.

(4) A wholesale quota holder or direct sales quota holder who receives a notification of confiscation under paragraph (2) shall within 28 days of receipt of that notification notify any person with an interest in the land comprised in the holding of the content of that notification.

(5) Subject to the second sub-paragraph of Article 15(1) of the Council Regulation (which specifies the time limit for quota restoration) and to paragraphs (6) and (7), a person whose quota has, pursuant to Article 15(1), been taken into the national reserve may request the Scottish Ministers to restore to that person the quota in respect of the holding from which it was confiscated or in respect of part of that holding provided that—

- (a) that person is a producer;
- (b) the Scottish Ministers receive the request by the end of the quota year to which the request relates; and

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(a) Regulation 32 was amended by S.S.I. 2002/228, regulation 2(5).

- (c) in the case of confiscation of quota notified by virtue of paragraph (2)(b), the Scottish Ministers have received the required declaration by the end of the quota year preceding the quota year in which the quota is to be restored.

(6) Where there is a change of occupation of all or part of the holding to which the quota relates, the new occupier may, in accordance with paragraph (5), request the Scottish Ministers to restore to the new occupier the quota relating to that holding or part holding, provided that the request is received by the Scottish Ministers before expiry of the time limit for quota restoration specified by the second sub-paragraph of Article 15(1) of the Council Regulation.

(7) A request for restoration of quota to part of a holding made under paragraph (5) or, following a change of occupation of part of a holding, under paragraph (6) shall 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, 2, 3(4) and 5 to 28 of Schedule 2.

(8) Where quota is restored to part of a holding in accordance with a request made under paragraph (5), or following a change of occupation of part of a holding pursuant to paragraph (6), the amount of quota to be restored to that part shall be determined in accordance with the apportionment referred to in paragraph (7)(a) or (b).”.

#### **Amendment of Schedule 1**

**20.** In Schedule 1 (interpretation) for the definition of “the Council Regulation” substitute—

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

#### **Amendment of Schedule 2**

**21.** In paragraph 3(4) of Schedule 2 (apportionments and prospective apportionments by arbitration or the Scottish Land Court) for “regulation 32(4)(b)(iii)” substitute “regulation 32(7)(b)”.

#### **Amendment of Schedule 3**

**22.** In each of paragraphs 9, 17 and 19 of Schedule 3 (reallocation of quota and calculation of levy liability) for “Article 1” substitute “Article 2”.

*ALLAN WILSON*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
10th March 2004

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(a) O.J. No. L 270, 21.10.2003, p.123.

## EXPLANATORY NOTE

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

These Regulations come into force on 1st April 2004 and amend the Dairy Produce Quotas (Scotland) Regulations 2002 (S.I. 2002/110) (“the principal Regulations”).

The Regulations implement Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector (O.J. No. L 270, 21.10.2003, p.123) (“the Council Regulation”) and also the European Court of Justice’s judgment in case C-401/99 Peter Heinrich Thomsen v Amt für ländliche Räume Husum [2002] ECR I-5775. The Thomsen judgment confirmed, in relation to a lessor on expiry of a lease, that milk quota may generally be held only by a “producer” within the meaning of what is now Article 5(c) of the Council Regulation.

The Regulations amend the principal Regulations to–

- (a) replace the definition of “Scottish Islands area” (regulation 4);
- (b) continue to restrict quota held within Scottish Island areas to use within those areas (regulation 5);
- (c) make general provision for the transfer, within each United Kingdom quota region, of quota without transfer of land (regulation 9);
- (d) maintain the registration obligations of those no longer producing and marketing milk until their quota has been transferred or withdrawn (regulations 15 and 16);
- (e) extend to understatements the administrative penalties for inaccurate summaries from purchasers, and incorrect declarations from direct sellers, which currently apply only to overstatements (regulation 18);
- (f) revise the provisions on confiscation and restoration of quota by applying the time limit prescribed for restoration by the Council Regulation by restricting quota holding to producers, by updating the references to the Council Regulation, and by making administrative changes (regulations 19);
- (g) replace the definition of “the Council Regulation” (regulation 20); and
- (h) update references to the Council Regulation.

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Reference Centre. Copies of the map referred to in the definition of Scottish Islands area inserted in the principal Regulations by regulation 4 and the Regulatory Impact Assessment are available from the Scottish Executive Environment and Rural Affairs Department at Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TY.

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