
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 91

The Dairy Produce Quotas (Scotland) Regulations 2005

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 Scottish Ministers shall 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) shall be made by reference to the summaries purchasers are required to submit to the Scottish Ministers 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 that purchaser in that year as the Scottish Ministers may reasonably require for the purposes of these Regulations, the Scottish Ministers shall for the purposes of paragraph (1)—

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

(4) If the volume referred to in paragraph (1)(a) exceeds that referred to in paragraph (1)(b), the Scottish Ministers shall 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 Scottish Ministers shall—

- (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 Scottish Ministers shall 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.

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Commencement Information

II [Reg. 25](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Determination whether levy on deliveries is payable

26.—(1) Where the total amount of the wholesale quota of wholesale 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 Scottish Ministers shall determine that no levy is payable on deliveries.

(2) The Scottish Ministers shall notify all purchasers of a determination made under paragraph (1).

(3) Where the total amount of the wholesale quota of wholesale 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 Scottish Ministers shall notify all purchasers that levy is payable on the higher volume of deliveries.

Commencement Information

I2 [Reg. 26](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Reallocation of wholesale producers' wholesale quota

27.—(1) This regulation applies for the purpose 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 Scottish Ministers shall determine for each wholesale producer the amount, if any, of unused quota available to that wholesale producer, taking into account any adjustment required under regulation 25(4), the amount of any converted quota and wholesale quota transferred in accordance with regulations 9, 13 or 15 or restored under regulation 39.

(3) If the Scottish Ministers determine pursuant to paragraph (2) that a wholesale producer has unused quota, they shall—

- (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 wholesale quota in accordance with regulation 19; and
- (c) having made such an award, reallocate any remaining amount of unused quota to any wholesale producers whose deliveries are in excess of their wholesale quota in proportion to their respective wholesale quotas.

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

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

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

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

Commencement Information

I3 [Reg. 27](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Determination of liability for levy on deliveries

28.—(1) This regulation applies for the purpose 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 Scottish Ministers shall—

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

Commencement Information

I4 [Reg. 28](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Notification of levy liability

29. After the end of each quota year, the Scottish Ministers shall—

- (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 wholesale producer who has made deliveries to that purchaser.

Commencement Information

I5 [Reg. 29](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Determination of liability for levy on direct sales

30.—(1) This regulation applies for the purpose 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 Scottish Ministers shall 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) shall be made by reference to the declarations direct sellers are required to submit to the Scottish Ministers in accordance with Article 11(2) of the Commission Regulation.

(4) If for any quota year a direct seller has not submitted to the Scottish Ministers 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 the direct seller in that year as the Scottish Ministers may reasonably require for the purposes of these Regulations, the Scottish Ministers shall for the purposes of paragraph (2)—

- (a) make their own determination of such quantities based on all the information available to them for the purposes of calculating any levy payable by that direct seller; and
- (b) inform the direct seller of their 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 Scottish Ministers under paragraph (2), the Scottish Ministers shall determine that no levy in respect of direct sales is payable.

(6) The Scottish Ministers shall notify all direct sellers of their 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 Scottish Ministers under paragraph (2), the Scottish Ministers shall notify all direct sellers that levy is payable.

(8) After the end of each quota year, the Scottish Ministers shall determine in respect of each direct sales quota holder the amount of any unused quota available to that direct sales quota holder in the quota year in question, taking into account any converted quota and direct sales quota transferred in accordance with regulations 9, 13 or 15 or restored under regulation 39.

(9) If the Scottish Ministers determine under paragraph (8) that a direct sales quota holder has unused quota, they shall—

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

(10) If, after the Scottish Ministers have 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 Scottish Ministers shall 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 sellers 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 direct sales quota.

(12) The Scottish Ministers shall establish the rate of levy per litre to be paid by each direct seller by dividing the amount determined in accordance with paragraph (11)(b) by the amount determined in accordance with paragraph (11)(c).

(13) The Scottish Ministers shall—

- (a) ascertain which direct sellers have sold or transferred free of charge dairy produce in excess of the direct sales quota available to that direct seller including any converted quota, any direct sales quota temporarily reallocated by an award in accordance with paragraph (9) (b) and direct sales quota transferred in accordance with regulations 9, 13 or 15 or restored under regulation 39;
- (b) establish the total amount of levy payable by each such direct seller at the rate of levy established in accordance with paragraph (12); and
- (c) notify each direct seller of the total amount of levy payable by that direct seller.

(14) If a direct seller fails to submit to the Scottish Ministers 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 the direct seller 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) shall be the rate set in Article 2 of the Council Regulation.

Commencement Information

16 [Reg. 30](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Payment and recovery of levy

31.—(1) In respect of the collection of levy, the Scottish Ministers are 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 shall be paid to the Scottish Ministers.

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

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(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 wholesale producer in respect of the deliveries an amount corresponding to the amount of levy that would otherwise be payable by that wholesale producer in respect of the excess.

(5) Where any part of the levy remains unpaid after 1st September in any year, the Scottish Ministers 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 wholesale producer, in a case within paragraph (4) where—
 - (i) the purchaser has not paid the levy; and
 - (ii) the wholesale producer has not paid the purchaser the levy either directly or by deduction and the purchaser is not taking steps to recover it from the wholesale producer.

(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 their approval withdrawn by the Scottish Ministers pursuant to Article 23(3) of the Commission Regulation,

subject to paragraph (8), the Scottish Ministers may require any levy payable by the purchaser that has not been paid by the purchaser to be paid in such proportions as they may reasonably require by any wholesale producers whose deliveries to that purchaser have given rise to the liability for levy.

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

Commencement Information

I7 [Reg. 31](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

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.

Commencement Information

18 [Reg. 32](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

Status:

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