

2011 No. 83

FOOD

**The Dairy Produce Quotas (Scotland) Amendment
Regulations 2011**

Made - - - - *9th February 2011*
Laid before the Scottish Parliament *11th February 2011*
Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for the references in these Regulations, and in the Regulations which these Regulations amend, to—

- (a) (i) Article 55(1)(a);
(ii) Article 55(2), in so far as it relates to milk and other milk products; and
(iii) the provisions of, or referred to in, Section III of Chapter III of Part II, of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(b); and
- (b) 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(c),

to be construed as references to those Articles and provisions and to that Commission Regulation as amended from time to time.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The function conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and amended by the 2008 Act, Schedule, Part 1.

(b) O.J. L 299, 16.11.07, p.1, as last amended by Regulation (EU) 1234/2010 (O.J. L 346, 30.12.10, p.11).

(c) O.J. L 94, 31.3.04, p.22, as last amended by Commission Regulation (EC) 793/2009 (O.J. L 228, 1.9.09, p.7). Although Council Regulation (EC) No 1788/2003 (O.J. L 270, 21.10.03, p.123) was repealed on 1st April 2008 by virtue of Article 201(1)(b) of Council Regulation (EC) No 1234/2007 (“the Single CMO Regulation”), the reference to Council Regulation (EC) No 1788/2003 is to be read as a reference to the Single CMO Regulation by virtue of Article 202 of the Single CMO Regulation.

Citation and commencement

1. These Regulations may be cited as the Dairy Produce Quotas (Scotland) Amendment Regulations 2011 and come into force on 1st April 2011.

Amendment of the Dairy Produce Quotas (Scotland) Regulations 2005

2. The Dairy Produce Quotas (Scotland) Regulations 2005(a) are amended in accordance with the Schedule.

Consequential amendments

3. In the Dairy Produce Quotas (Scotland) Amendment Regulations 2007(b), omit regulation 3.

4. In the Schedule to the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004(c), in the entry relating to “Milk Quotas Scheme” for “(EC) No 1788/2003 establishing a levy in the milk and milk products sector” substitute—

“Article 55(1)(a) and (2), in so far as it relates to milk and other milk products, and the provisions of, or referred to in, Section III of Chapter III of Part II of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(d), as amended from time to time”.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
9th February 2011

(a) S.S.I. 2005/91, as amended by S.S.I. 2006/119 and S.S.I. 2007/118.

(b) S.S.I. 2007/118.

(c) S.S.I. 2004/278.

(d) O.J. L 299, 16.11.07, p.1, as last amended by Regulation (EU) 1234/2010 (O.J. L 346, 30.12.10, p.11).

Amendments to the Dairy Produce Quotas (Scotland) Regulations 2005

1. In regulation 2 (interpretation), for paragraph (1), substitute—

“(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^(a);

“the Community legislation” means the Commission Regulation and—

(a) Article 55(1)(a);

(b) Article 55(2), in so far as it relates to milk and other milk products; and

(c) the provisions of, or referred to in, Section III of Chapter III of Part II, of the Council Regulation;

“competent authority” has the meaning given by regulation 2(1) 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 Scottish Ministers following an application made under regulation 21;

“the Council Regulation” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)^(b);

“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 65(f) of the Council Regulation, and “deliver” shall be construed accordingly;

“direct sale” has the same meaning as in Article 65(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;

(a) O.J. L 94, 31.3.04 p.22, as last amended by Commission Regulation (EC) 793/2009 (O.J. L 228, 1.9.09, p.7). Although Council Regulation (EC) No 1788/2003 (O.J. L 270, 21.10.03, p.123) was repealed on 1st April 2008 by virtue of Article 201(1)(b) of Council Regulation (EC) No 1234/2007 (“the Single CMO Regulation”), the reference to Council Regulation (EC) No 1788/03 is to be read as a reference to the Single CMO Regulation by virtue of Article 202 of the Single CMO Regulation.

(b) O.J. L 299, 16.11.07, p.1, as last amended by Regulation (EU) 1234/2010 (O.J. L 346, 30.12.10, p.11).

“direct seller” means a producer who produces milk and treats that milk or processes it into milk products on the holding of that person 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(a);

“the General Provisions Regulations” means the Dairy Produce Quotas (General Provisions) Regulations 2002(b);

“holding” has the same meaning as in Article 65(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;

“levy” means the surplus levy payable to the Scottish Ministers under the Community legislation and these Regulations;

“milk” has the same meaning as in Article 65(a) of the Council Regulation;

“national reserve” has the meaning given it by regulation 4 of the General Provisions Regulations;

“occupier” includes, in relation to land in respect of which there is no occupier, 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 65(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 65(e) of the Council Regulation and, other than in regulations 5(1) to (4) and 31(7), approved by the Scottish Ministers 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 twelve months referred to in Article 66(1) of the Council Regulation;

“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;

(a) 2000 c.7. Section 15 is amended by Schedule 17, paragraph 158 of the Communications Act 2003 (2003 c.21).

(b) S.I. 2002/458, as amended by S.I. 2005/466, S.I. 2007/477, and S.I. 2008/438.

“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 (Scotland) Regulations 2005”, dated 10th February 2005, signed on behalf of the Scottish Ministers and deposited at the offices of the Scottish Government Rural and Environment Directorate, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD;

“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 wholesale 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(a).

(1A) References in these Regulations to—

- (a) Article 55(1)(a);
- (b) Article 55(2), in so far as it relates to milk and other milk products; and
- (c) the provisions of, or referred to in, Section III of Chapter III of Part II,

of the Council Regulation, and to the Commission Regulation, are references to those Articles and provisions and to the Commission Regulation as amended from time to time.”.

2. In regulation 4(9) (registers and notices to be maintained and prepared by the Scottish Ministers), for “Article 15 of the Council Regulation” substitute “Article 72 of the Council Regulation”.

3. In regulation 9(1) (transfer of quota with transfer of land: general), for “Article 17 of the Council Regulation” substitute “Article 74 of the Council Regulation”.

4. In regulation 13(2) (transfer of quota without transfer of land), for “Article 18 of the Council Regulation” substitute “Article 75 of the Council Regulation”.

(a) 1971 c.80 as amended by St Andrew’s Day Bank Holiday (Scotland) Act 2007 asp 2, section 1.

5. In regulation 15(1) (temporary transfer of quota), for “Article 16 of the Council Regulation” substitute “Article 73 of the Council Regulation”.

6. In regulation 19(2) (temporary reallocation of quota), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”.

7. In regulation 21 (conversion of quota: general)—

(a) in paragraphs (1)(a) and (2)(b), for “Article 6(2) and (5) of the Council Regulation”, substitute “Article 67(2) and (5) of the Council Regulation”; and

(b) in paragraph (1)(b), for “Article 11(2) of the Council Regulation” substitute “Article 81(2) of the Council Regulation”.

8. In regulation 22(1) (conversion of quota: restriction on transfers of converted quota in conversion year), for “Article 17 of the Council Regulation” substitute “Article 74 of the Council Regulation”.

9. In regulation 23(2) (adjustment of purchaser quota), for “Article 11(2) of the Council Regulation” substitute “Article 81(2) of the Council Regulation”.

10. In regulation 25 (determination whether reduction in downward butterfat adjustment is required in relation to deliveries), omit paragraphs (4) to (7).

11. In regulation 26 (determination whether levy on deliveries is payable)—

(a) for paragraph (1) substitute—

“(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 the total volume of deliveries referred to in regulation 25(1)(b), the Scottish Ministers shall determine that no levy is payable on deliveries.”; and

(b) for paragraph (3) substitute—

“(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 the total volume of deliveries referred to in regulation 25(1)(b), the Scottish Ministers shall notify all purchasers that levy is payable on that volume of deliveries.”.

12. In regulation 27 (reallocation of wholesale producers’ wholesale quota)—

(a) in paragraph (1), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”; and

(b) in paragraph (2), omit “any adjustment required under regulation 25(4),”.

13. In regulation 28 (determination of liability for levy on deliveries)—

(a) in paragraph (1), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”; and

(b) in paragraph (2)(b), for “Article 2 of the Council Regulation” substitute “Article 78(1) of the Council Regulation”.

14. In regulation 30 (determination of liability for levy on direct sales)—

(a) in paragraph (1), for “Article 12 of the Council Regulation” substitute “Article 83 of the Council Regulation”; and

(b) in paragraphs (11)(b) and (14), for “Article 2 of the Council Regulation” substitute “Article 78(1) of the Council Regulation”.

15. In regulation 31 (payment and recovery of levy)—

(a) in paragraph (2)—

(i) in sub-paragraph (a), for “Article 11(1) of the Council Regulation” substitute “Article 81(1) of the Council Regulation”; and

- (ii) in sub-paragraph (b), for “Article 12(4) of the Council Regulation” substitute “Article 83(4) of the Council Regulation”; and
- (b) in paragraph (3), for “Article 11(3) of the Council Regulation” substitute “Article 81(3) of the Council Regulation”.

16. In regulation 33(2) (information), for “the total national reference quantity” to the end, substitute “the total national quota for the United Kingdom referred to in Article 66(3) and Annex IX of the Council Regulation.”.

17. In regulation 38 (confiscation of quota), in paragraphs (1) and (3), for “Article 15 of the Council Regulation”, substitute “Article 72 of the Council Regulation”.

18. In regulation 39 (restoration of quota), in paragraphs (1) and (3), for “Article 15(1) of the Council Regulation” substitute “Article 72(1) of the Council Regulation”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Dairy Produce Quotas (Scotland) Regulations 2005 (“the principal Regulations”).

The principal Regulations implement Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (O.J. No L 270, 21.10.03, p.123) (“the 2003 Regulation”) and 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 (O.J. No. L 94, 31.3.04, p.22).

The 2003 Regulation was repealed and replaced by Article 55(1)(a) and (2), in so far as it relates to milk and other milk products, and Section III of Chapter III of Part II (Articles 65 to 84) of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

These Regulations replace references in the principal Regulations to the provisions of the 2003 Regulation with the corresponding references to the replacement provisions of the Single CMO Regulation.

Article 66(1) and Annex IX of the Single CMO Regulation fix the amount of national quotas, and Article 66(3) provides that these amounts may be reviewed. These provisions replace Article 1(1) and (3) and Annex I of the 2003 Regulation. The national quotas for the United Kingdom for the period 1st April 2008 to 1st April 2015 are increased in the Single CMO Regulation. These Regulations amend regulation 33(2) of the principal Regulations to refer to Article 66(3) of, and Annex IX of the Single CMO Regulation instead of Article 1(3) and Annex I of the 2003 Regulation (paragraph 16 of the Schedule).

Article 10(1) of the 2003 Regulation provided that in order to draw up the definitive levy statement, the quantities delivered by each producer had to be increased or reduced to reflect any difference between the real fat content and the reference fat content. Article 10(2) provided that the levy had to be calculated on the greater of the sum of the actual deliveries or the sum of the deliveries as adjusted. It also provided that if the sum of the actual deliveries was greater than the sum of the adjusted deliveries, downwards adjustments which had been made to individual deliveries should be proportionately reduced to bring the sum of the adjusted deliveries into line with the sum of the actual deliveries. Article 80(1) of the Single CMO Regulation restates Article 10(1) of the 2003 Regulation, but now provides that the levy shall in all cases be calculated on the basis of the sum of the adjusted deliveries. There is no longer a requirement to reduce downwards adjustments made to individual deliveries. These Regulations amend regulation 25 of the principal Regulations to remove the requirement to reduce downwards adjustments where the sum of the actual deliveries is greater than the sum of the adjusted deliveries, and make a consequential amendment to regulation 27 of the principal Regulations. They also amend regulation 26 of the principal Regulations to provide that the levy is payable if the sum of the deliveries as adjusted is greater than the total amount of wholesale quota available to wholesale producers (paragraphs 10 to 12 of the Schedule).

These Regulations also make some minor changes to the definitions in the principal Regulations of direct sale, holding, levy, milk, producer, purchaser, quota year and registered wholesale quota to incorporate references to the provisions of the Single CMO Regulation. There is also a change to the definition of “national reserve” to correct an error in the principal Regulations.

These Regulations also re-enact definitions in regulation 2(1) of the principal Regulations.

These Regulations add a new regulation 2(1A) in the principal Regulations which provides that the references to certain provisions of the Single CMO Regulation and references to Commission Regulation (EC) No 595/2004 are references to those provisions and to that Commission Regulation as amended from time to time. They also amend the Schedule to the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 to replace the reference to the 2003 Regulation with a reference to provisions of the Single CMO Regulation

as amended from time to time. Any amendments to those provisions and that Commission Regulation will be published on the Europa website, (http://europa.eu/documentation/legislation/index_en.htm). Additionally the Scottish Government will publish relevant information on the Scottish Government website (www.scotland.gov.uk) and updates will be sent to interested parties where considered appropriate.

A Business and Regulatory Impact Assessment has not been produced for this instrument, as there will be no cost to business.

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