

**2015 No. 1896**

**AGRICULTURE**

**The Single Common Market Organisation (Emergency Aid for Milk Producers) Regulations 2015**

<i>Made</i>	- - - -	<i>10th November 2015</i>
<i>Laid before Parliament</i>		<i>12th November 2015</i>
<i>Coming into force</i>	- -	<i>16th November 2015</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common agricultural policy(b).

The Secretary of State makes these Regulations under the powers conferred by section 2(2) of the European Communities Act 1972.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Single Common Market Organisation (Emergency Aid for Milk Producers) Regulations 2015.

(2) These Regulations come into force on 16th November 2015.

**Interpretation**

2.—(1) In these Regulations—

“2014-2015 milk quota year” means the period from 1st April 2014 to 31st March 2015;

“authorised person” means any person who is authorised by any of the competent authorities, either generally or specifically, whether or not an officer or employee of that authority, to act in relation to matters arising under these Regulations;

“available aid” means the amount in the entry for “UK” in the Annex to Commission Regulation (EU) 2015/1853 minus the Northern Ireland uplift;

“Commission Regulation (EU) 2015/1853” means Commission Delegated Regulation (EU) 2015/1853 providing for temporary exceptional aid to farmers in the livestock sectors(c);

“competent authorities” means—

(a) in relation to England, the Secretary of State;

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(a) 1972 c.68; section 2 was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(b) The power of the Secretary of State to make regulations that extend to Scotland and Northern Ireland and apply in Wales remains exercisable by virtue of the Scotland Act 1998 (c.46), section 57(1), the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812), article 3(2) and the European Communities (Designation) (No. 5) Order 2010 (S.I. 2010/2690), article 6, respectively.

(c) OJ No L 271, 16.10.15, p 25.

- (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Wales, the Welsh Ministers;
  - (d) in relation to Northern Ireland, the Department of Agriculture and Rural Development;
- “the Direct Payments Regulation” means Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy(a);
- “farmer” has the same meaning as in the Direct Payments Regulation;
- “markets” means to deliver or make direct sales of milk or other milk products;
- “milk” means the product of the milking of one or more cows;
- “milk equivalent” means the quantity of milk used to manufacture a milk product;
- “milk producer” means—
- (a) a Northern Ireland milk producer; or
  - (b) a farmer—
    - (i) who produces and markets milk; and
    - (ii) whose name was listed for part or all of the 2014-2015 milk quota year, in one or more registers maintained—
      - (aa) in respect of England, by the Secretary of State in accordance with regulation 4(1)(a) and (3)(a) of the Dairy Produce Quota Regulations 2005(b);
      - (bb) in respect of Scotland, by the Scottish Ministers in accordance with regulation 4(1)(a) and (3)(a) of the Dairy Produce Quotas (Scotland) Regulations 2005(c);
      - (cc) in respect of Wales, by the National Assembly of Wales in accordance with regulation 4(1)(a) and (3)(a) of the Dairy Produce Quotas (Wales) Regulations 2005(d);
- “Northern Ireland milk producer” means a farmer—
- (a) who produces and markets milk; and
  - (b) whose name was listed for part or all of the 2014-2015 milk quota year, in one or more of the registers maintained, in respect of Northern Ireland, by the Department of Agriculture and Rural Development in accordance with regulation 4(1)(a) and (3)(a) of the Dairy Produce Quotas Regulations (Northern Ireland) 2005(e);
- “Northern Ireland uplift” means the sum of €1.5 million to be shared amongst Northern Ireland milk producers;
- “operative exchange rate” means the rate of exchange applied as a result of Article 1(2) of Commission Regulation (EU) 2015/1853;
- “partnership” includes a Scottish partnership.
- (2) In paragraph (1)—
- “other milk products” means any milk product other than milk, in particular skimmed milk, cream, butter, yoghurt and cheese.

### **Emergency payments to milk producers**

**3.—(1)** The Secretary of State must make a payment (“the emergency payment”) to every milk producer using the following formula—

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- (a) OJ No L 347, 20.12.13, p 608, as last amended by Commission Delegated Regulation (EU) 2015/851 (OJ No L 135, 2.6.2015, p 8).
  - (b) S.I. 2005/465, as last amended by S.I. 2008/439.
  - (c) S.S.I. 2005/91, to which there are amendments not relevant to these Regulations.
  - (d) S.I. 2005/537 (W.47), to which there are amendments not relevant to these Regulations.
  - (e) S.R. 2005/70, to which there are amendments not relevant to these Regulations.

$$EP = \frac{(AA - CR)}{UKTP} \times LP$$

where—

- “EP” is the emergency payment;
- “AA” is the available aid;
- “CR” is the contingency reserve, which is an amount of the available aid reserved at the discretion of the Secretary of State, that may be paid out to correct any errors in the amount of emergency payments made;
- “UKTP” is the total volume in litres of milk and milk equivalent produced and marketed in the United Kingdom during the 2014-2015 milk quota year;
- “LP” is the total volume of milk and milk equivalent notified to any of the competent authorities as having been produced and marketed by that milk producer during the 2014-2015 milk quota year.

(2) The Secretary of State may make the emergency payment in pounds sterling after applying the operative exchange rate or in euro.

#### **Additional payments to Northern Ireland milk producers**

4.—(1) The Secretary of State must make an additional payment to every Northern Ireland milk producer (“the Northern Ireland additional payment”) using the following formula—

$$NP = \frac{NIU}{NITP} \times LP$$

where—

- “NP” is the Northern Ireland additional payment;
- “NIU” is the Northern Ireland uplift;
- “NITP” is the total volume in litres of milk and milk equivalent produced and marketed in Northern Ireland during the 2014-2015 milk quota year;
- “LP” is the total volume of milk and milk equivalent notified to the Department of Agriculture and Rural Development as having been produced and marketed by that milk producer during the 2014-2015 milk quota year.

(2) The Secretary of State may make the Northern Ireland additional payment in pounds sterling after applying the operative exchange rate or in euro.

#### **Minimum payments**

5. Regulations 3 and 4 do not apply where—

- (a) the emergency payment, or
- (b) the sum of the emergency payment and any Northern Ireland additional payment,

equals less than €108.33.

#### **Recovery of undue payments**

6.—(1) The Secretary of State may recover on demand any sum paid to any person in excess of—

- (a) any emergency payment, or
- (b) the sum of any emergency payment and any Northern Ireland additional payment,

due to that person under these Regulations.

(2) Any sum recoverable under paragraph (1) is recoverable as a debt.

## Interest

7.—(1) Interest may be charged in respect of each day of the period beginning with the date after the date of the demand made in accordance with regulation 6(1) and ending with (and including) the date on which the Secretary of State receives full payment of the sum recoverable under that regulation.

(2) For the purpose of paragraph (1), the rate of interest applicable on any day is one percentage point above the Bank of England base rate.

(3) In paragraph (2), “the Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England<sup>(a)</sup> for the time being in force as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or
- (b) if an order under section 19 of the Bank of England Act 1998 (Treasury’s reserve powers)<sup>(b)</sup> is in force, any equivalent rate determined by the Treasury under that section.

## Set-off

8. The Secretary of State may set off any sum recoverable under regulation 6(1) (including any interest charged in accordance with regulation 7(1)) against any sum payable by any of the competent authorities under the Direct Payments Regulation or Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)<sup>(c)</sup>.

## Powers of entry

9.—(1) An authorised person may exercise any of the powers specified in this regulation for the purpose of ascertaining whether any person has made any statement or made use of any document which is false in a material particular.

(2) An authorised person, on producing, if so required, a duly authenticated document showing that person’s authority, may at any reasonable hour enter any land or premises other than premises used wholly or mainly as a private dwelling.

(3) A justice of the peace may by signed warrant permit an authorised person to enter any land or premises, if necessary by reasonable force, if the justice, on sworn information in writing (or, in Scotland, by evidence on oath, or, in Northern Ireland, on a sworn complaint in writing) is satisfied that—

- (a) there are reasonable grounds for an authorised person to enter the land or premises for the purpose mentioned in paragraph (1); and
- (b) one or more of the conditions in paragraph (4) is met.

(4) The conditions are that—

- (a) entry to the land or premises has been refused, or is likely to be refused, and—
  - (i) notice of the intention to apply for a warrant has been served on the occupier, or
  - (ii) no such notice has been served on the occupier because serving such a notice would interfere with the purpose or effectiveness of the entry;
- (b) entry is required urgently;
- (c) the premises are unoccupied or the occupier is temporarily absent.

(5) A warrant is valid for three months.

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<sup>(a)</sup> The Monetary Policy Committee was established under section 19 of the Bank of England Act 1998 (c.11).

<sup>(b)</sup> 1998, c.11.

<sup>(c)</sup> OJ No L 347, 20.12.2013, p 487, as last amended by Commission Delegated Regulation (EU) 2015/791 (OJ No L 127, 22.5.2015, p 1).

(6) An authorised person entering any land or premises by virtue of this regulation may be accompanied by—

- (a) any representative of the European Commission; and
- (b) such other persons as the authorised person considers necessary for any purpose mentioned in paragraph (1).

(7) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before entry.

(8) In paragraph (3), a reference to a justice of the peace—

- (a) in Scotland, includes a sheriff;
- (b) in Northern Ireland, is a reference to a lay magistrate.

### **Powers of inspection etc.**

**10.**—(1) An authorised person who has entered any land or premises in exercise of a power conferred by regulation 9 may—

- (a) carry out any inquiries or checks;
- (b) inspect the land or premises;
- (c) inspect any livestock, machinery or equipment;
- (d) mark any item for identification purposes;
- (e) have access to, inspect, copy and print any documents or records (in whatever form) or remove such documents to enable them to be copied or retained as evidence;
- (f) have access to, inspect and check the operation of any computer and any associated apparatus or material which is or has been in use in connection with the documents or records;
- (g) take a photograph, or a record in digital form, of anything on the land or premises;
- (h) remove anything reasonably believed to be evidence of any non-compliance with these Regulations.

(2) An authorised person who enters any land or premises under a power under other legislation may exercise any of the powers specified in this regulation for the purposes of enforcing these Regulations.

(3) Paragraph (1) applies in relation to a person referred to in regulation 9(6)(b) as if such person were an authorised person.

### **Offences and penalties**

**11.**—(1) It is an offence for any person (“A”) to—

- (a) intentionally obstruct any person acting in the execution of these Regulations (“B”);
- (b) without reasonable cause, proof of which lies with A, fail to give B any assistance or information that B may reasonably require under these Regulations;
- (c) knowingly or recklessly furnish to B any information that is false or misleading in any material particular.

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

- (a) in England and Wales, on summary conviction to a fine;
- (b) in Scotland, on summary conviction to a fine not exceeding level 5 on the standard scale;
- (c) in Northern Ireland, on summary conviction to a fine not exceeding level 3 on the standard scale.

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

- (a) on summary conviction—

- (i) in England and Wales, to a fine or to imprisonment for a term not exceeding three months, or both;
  - (ii) in Scotland and Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.

(4) Subject to paragraph (5), for an offence under paragraph (1) proceedings must be brought within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to the prosecutor's knowledge.

(5) No proceedings for an offence under paragraph (1) may begin more than two years after the date of the commission of the offence.

(6) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient, in the opinion of the prosecutor, to justify the proceedings came to their knowledge is conclusive of that fact.

(7) Subject to paragraph (5), in relation to proceedings in Scotland, section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> (date of commencement of proceedings) applies for the purposes of this regulation as it applies for the purposes of that section.

### **Offences by bodies corporate, partnerships or unincorporated associations**

**12.**—(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, that person, as well as the body corporate, is guilty of the offence.

(2) In paragraph (1)—

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“director, manager, secretary or other similar officer of the body corporate” includes a person who was purporting to act in any such capacity.

(3) Where a partnership is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a partner, the partner, as well as that partnership, is guilty of the offence.

(4) In paragraph (3) and regulation 13(1), “partner” includes a person purporting to act as a partner.

(5) Where an unincorporated association is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, an officer of the association, that officer, as well as the association, is guilty of the offence.

(6) In paragraph (5), “officer”, in relation to an unincorporated association, means—

- (a) an officer of the association or a member of its governing body; or
- (b) a person purporting to act in that capacity.

### **Proceedings against partnerships and unincorporated associations**

**13.**—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partner in a partnership or an officer of an unincorporated association may be brought against the partnership or association in the name of the partnership or association.

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(a) 1995 c. 46.

(2) For the purposes of such proceedings the following apply as if the partnership or unincorporated association were a body corporate—

- (a) rules of court relating to the service of documents;
- (b) section 33 of the Criminal Justice Act 1925<sup>(a)</sup> (procedure on charge of offence against a corporation) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations)<sup>(b)</sup>;
- (c) section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings against organisations) <sup>(c)</sup> and section 143 of that Act (prosecution of companies, etc.)<sup>(d)</sup>; and
- (d) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (procedure on charge)<sup>(e)</sup> and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (corporations)<sup>(f)</sup>.

(3) A fine imposed on a partnership or unincorporated association on its conviction for an offence under these Regulations is to be paid out of the funds of the partnership or association.

## Notices

**14.**—(1) For the purposes of regulations 6 and 9, any notice required to be served on a person may be served by—

- (a) delivering it to that person;
- (b) leaving it at that person's proper address;
- (c) sending it by post or fax to that person's proper address; or
- (d) sending it by email to that person's last known email address.

(2) For the purposes of paragraph (1)(a), a notice is delivered to—

- (a) a body corporate where it is given to an officer of that body;
- (b) a partnership where it is given to a partner or person having control or management of the partnership;
- (c) an unincorporated association where it is given to an officer or member of the governing body of the association or other person having management responsibilities in respect of the association.

(3) In paragraph (1)(b) and (c), "proper address" means, in the case of—

- (a) a body corporate, the registered office (if it is in the United Kingdom) or the principal office of the body in the United Kingdom;
- (b) a partnership, the principal office of the partnership in the United Kingdom;
- (c) an unincorporated association, the principal office of the association in the United Kingdom;
- (d) any other person, that person's last known address.

(4) For the purposes of paragraph (1)(d), a notice is sent to an email address of—

- (a) a body corporate, where it is sent to an email address of—
  - (i) the body corporate; or
  - (ii) an officer of that body,

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(a) 1925 c.86; section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, the Courts Act 1971 (c. 23), Schedule 8, Part 2, paragraph 19, and the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(b) 1980 c.43; Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and the Criminal Justice Act 2003 (c.44), Schedule 3, Part 2, paragraph 51(13) and Schedule 37, Part 4.

(c) 1995 c.46; section 70 was amended by the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), Part 3, section 10(6), the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), Part 2, section 28, the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), Part 3, section 66, the Partnerships (Prosecution) (Scotland) Act 2013 (c.21), section 6(4) and S.I. 2001/1149.

(d) Section 143 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Part 2, section 17, the Criminal Justice and Licensing (Scotland) Act 2010, Part 3, section 67, and S.I. 2001/128.

(e) 1945 c.15.

(f) S.I. 1981/1675 (N.I. 26).

- where that address is supplied by that body for the conduct of the affairs of that body;
- (b) a partnership, where it is sent to an email address of—
    - (i) the partnership; or
    - (ii) a partner or person having control or management of the partnership,where that address is supplied by that partnership for the conduct of the affairs of that partnership;
  - (c) an unincorporated association, where it is sent to an email address of—
    - (i) an officer or member of the governing body of the association, or
    - (ii) other person having management responsibilities in respect of the association, where that address is supplied by that association for the conduct of the affairs of that association.

## **Review**

- 15.**—(1) Before the end of each review period, the Secretary of State must—
- (a) carry out a review of these Regulations;
  - (b) set out the conclusions of the review in a report; and
  - (c) publish the report.
- (2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how Commission Regulation (EU) 2015/1853 is implemented in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation;
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first review period is the period of five years beginning with the date on which these Regulations come into force.
- (5) Each subsequent review period is a period of five years beginning with the date on which the report of the preceding review was published.

10th November 2015

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

## **EXPLANATORY NOTE**

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

These Regulations make provision for the implementation of the Commission Delegated Regulation (EU) 2015/1853 providing for temporary exceptional aid to farmers in the livestock sectors (OJ No L 271, 16.10.2015, p 25).

Regulation 3 requires the Secretary of State to make payments to milk producers based on the amount of milk and milk equivalents they produced in the 2014-2015 milk quota year. Regulation 4 requires the Secretary of State to make an additional payment to milk producers in Northern Ireland. Regulation 5 prevents the Secretary of State paying out amounts less than €108.33.



Regulation 6 provides that any overpayments due from a beneficiary are recoverable as a debt and regulation 7 provides for the rate of interest on that repayment. Regulation 8 allows for any overpayments to be set off against any direct payment or rural development payment due to a farmer. Regulations 9 and 10 provide powers of entry and inspection and regulation 11 creates offences and penalties.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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