
STATUTORY INSTRUMENTS

2024 No. 537

The Fair Dealing Obligations (Milk) Regulations 2024

PART 4

Pricing and payment

Permitted pricing

- 6.** A milk purchase contract must use—
- (a) a fixed price;
 - (b) a variable price; or
 - (c) a combination of a fixed price and a variable price.

Use of a fixed price

7.—(1) Where a milk purchase contract uses a fixed price (whether or not in combination with a variable price), it must do so in accordance with this regulation.

(2) A “fixed price” is a price, set out in the milk purchase contract, that—

- (a) is expressed per unit of milk or milk constituent; and
- (b) will be paid by the business purchaser to the producer for milk supplied under the contract.

(3) The milk purchase contract may set out more than one fixed price within the duration of the contract.

(4) The milk purchase contract must specify—

- (a) the period within the duration of the contract to which each price relates; and
- (b) the date on which each period begins and ends.

(5) The milk purchase contract must set out a procedure by which the price may be reviewed where exceptional market conditions occur.

(6) The milk purchase contract must set out what constitutes exceptional market conditions for the purpose of the procedure referred to in paragraph (5).

(7) The procedure referred to in paragraph (5) must provide that, where requested by the producer, the business purchaser must, within 30 days beginning with the date on which the request was made, invite the producer to enter into a discussion with the purpose of—

- (a) reviewing the price payable under the milk purchase contract at the time of the exceptional market condition occurring; and
- (b) where both parties agree, changing that price.

Use of a variable price

8.—(1) Where a milk purchase contract uses a variable price (whether or not in combination with a fixed price), it must do so in accordance with this regulation.

(2) A “variable price” is a price per unit of milk or milk constituent that is not fixed at the point that the milk purchase contract is made but is determined—

- (a) in accordance with; or
- (b) by the business purchaser with reference to,

factors set out in the milk purchase contract.

(3) Where the milk purchase contract makes provision in accordance with paragraph (2)(b), it must provide that the business purchaser must have due regard, as far as it is reasonably practicable to do so, to only the factors set out in the milk purchase contract when determining the price per unit of milk or milk constituent.

(4) The milk purchase contract may provide for the price per unit of milk or milk constituent to be determined by reference to more than one set of factors within the duration of the contract.

(5) Where the milk purchase contract accords with paragraph (4), it must specify—

- (a) the period within the duration of the contract to which each set of factors relates; and
- (b) the date on which each period begins and ends.

(6) The milk purchase contract must provide how often the price per unit of milk or milk constituent is to be determined, which is to be—

- (a) not more frequently than monthly; and
- (b) not less frequently than every three months.

(7) After the price per unit of milk or milk constituent is determined under the milk purchase contract, the producer may by written notice request that the business purchaser give them a written explanation as to—

- (a) how the price was determined; and
- (b) where the price per unit of milk or milk constituent is to be determined by the business purchaser, how the factors to which the business purchaser is to have due regard influenced the price.

(8) The notice described in paragraph (7) may be given once each time the price is determined.

(9) The business purchaser must give the explanation requested in the notice within 7 days beginning with the date on which the notice described in paragraph (7) was given.

Tiered pricing

9.—(1) An exclusive milk purchase contract may not include any provision that purports to provide that the price to be paid for milk under the contract changes if the amount of milk provided by the producer exceeds a certain volume.

(2) An “exclusive milk purchase contract” is a milk purchase contract that provides that the producer may not make a milk purchase contract with another business purchaser.

Method and frequency of payment

10. A milk purchase contract must set out—

- (a) the first day on which;
- (b) the method by which; and
- (c) the frequency with which,

the business purchaser will pay the producer for milk under the contract.

Referral of relevant variable price to independent third party

11.—(1) A milk purchase contract that uses a relevant variable price must include a third-party verification procedure.

(2) A “a third-party verification procedure” is a procedure which enables a producer to refer an explanation given in accordance with regulation 8(9) to an independent person—

- (a) for the purpose of seeking their professional opinion as to the extent to which any references to business-sensitive data are accurate; and
- (b) to confirm that, in the reasonable, professional opinion of the independent person, the explanation is supported by the business-sensitive data.

(3) The business purchaser must—

- (a) cooperate with the independent person, to such extent as is reasonably requested by the person; and
- (b) provide such information or specified documents as are reasonably requested by the person.

(4) Paragraph (3) does not apply if the independent person does not confirm to the business purchaser that they will not share business-sensitive data without the business purchaser’s consent.

(5) The milk purchase contract must—

- (a) provide that the independent person engaged to verify business-sensitive data is to be agreed upon by the business purchaser and producer; and
- (b) provide for the costs of the independent person to be apportioned between the parties.

(6) But the milk purchase contract must provide that the producer may not be apportioned a greater share of the costs of engaging the independent person than is apportioned to the business purchaser.

(7) In this regulation,

“business-sensitive data” is data—

- (a) the source of which is the business purchaser; and
- (b) that is of a confidential nature;

“relevant variable price” means a variable price which is determined with reference to business-sensitive data.

(8) Data is of a confidential nature if it is stated as being so in the milk purchase contract.