SCOTTISH STATUTORY INSTRUMENTS

2005 No.91

FOOD

The Dairy Produce Quotas (Scotland) Regulations 2005

Made - - - -	*28th February 2005*
Laid before the Scottish Parliament - - - -	*1st March 2005*
Coming into force - -	*31st March 2005*

The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**), section 56(1)(**2**) of the Finance Act 1973 and of all other powers enabling them on that behalf, hereby make the following Regulations:

PROSPECTIVE

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Dairy Produce Quotas (Scotland) Regulations 2005.

(2) These Regulations shall come into force on 31st March 2005.

(3) Subject to paragraph (4), these Regulations extend to Scotland only.

(4) In so far as these Regulations extend beyond Scotland, in accordance with regulation 3, they do so only as a matter of Scots law.

(**1**) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (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, in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) 1973 c. 51. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of article 2(2) of the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820) and the functions of the Minister were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The requirement to obtain the consent of the Treasury was removed by section 55 of the Scotland Act 1998.

Commencement Information

I1 Reg. 1 in force at 31.3.2005, see **reg. 1(1)**

Interpretation

2.—(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(**3**);

"Commission Regulation 1756/93" means Commission Regulation (EEC) No. 1756/93 fixing the operative events for the agricultural conversion rate applicable to milk and milk products, as amended(**4**);

"the Community legislation" means the Council Regulation, the Commission Regulation, and Commission Regulation 1756/93;

"competent authority" has the meaning given by regulation 2 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. 1788/2003 establishing a levy in the milk and milk products sector(**5**) as amended by Council Regulation (EC) No. 2217/2004(**6**);

"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 5(f) of the Council Regulation, and "deliver" shall be construed accordingly;

"direct sale" has the same meaning as in Article 5(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;

(**3**) O.J. No. L 94, 31.3.2004, p.22.
(**4**) O.J. No. L 161, 2.7.1993, p.48, as amended by Commission Regulation (EEC) No. 2866/1993 O.J. No. L 262, 21.10.1993, p.24, Commission Regulation (EEC) No. 114/1994, O.J. No. L 20, 25.1.1994, p.2, Commission Regulation (EC) No. 180/1994, O.J. No. L 24, 29.1.1994, p.38, Commission Regulation (EC) No. 267/1995, O.J. No. L 31, 10.2.1995, p.6, Commission Regulation (EC) No. 693/1995, O.J. No. L 71, 31.3.1995, p.52, Commission Regulation (EC) No. 315/1996, O.J. No. L 44, 22.2.1996, p12, Commission Regulation (EC) No. 569/1999 O.J. No. L 70, 17.3.1999, p.12 and Commission Regulation (EC) No. 420/1998, O.J. No. L 52, 21.2.1998, p.21.
(**5**) O.J. No. L 270, 21.10.2003, p.123, as corrected by corrigendum O.J. No. L94, 31.3.2004, p.71.
(**6**) O.J. No. L 375, 22.12.2004, p.1.

"direct sales quota holder" means a person in whose name direct sales quota is registered pursuant to regulation 4;

"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(**7**);

"the General Provisions Regulations" means the Dairy Produce Quotas (General Provisions) Regulations 2002(**8**);

"holding" has the same meaning as in Article 5(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 levy payable under the Community legislation and these Regulations to the Scottish Ministers;

"milk" has the same meaning as in Article 5(a) of the Council Regulation;

"national reserve" has the meaning given it by regulation 2 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 5(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 5(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 1(1) of the Council Regulation (which concerns the introduction of the levy);

"registered wholesale quota" means wholesale quota registered pursuant to regulation 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;

(**7**) 2000 c. 7. Section 15 is amended by paragraph 158 of Schedule 17 of the Communications Act 2003 (2003 c. 21).
(**8**) S.I. 2002/458.

"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 Executive Environment and Rural Affairs Department at Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY;

"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 wholesale 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(**9**).

(2) In these Regulations any reference to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is capable of being subsequently reproduced.

(3) Other expressions which are used in these Regulations shall, in so far as the context requires, have the same meaning as in the Community legislation and cognate expressions shall be construed accordingly.

Commencement Information

I2 Reg. 2 in force at 31.3.2005, see **reg. 1(1)**

Application

3. These Regulations apply to relevant persons in respect of whom the Scottish Ministers are the relevant competent authority.

(**9**) 1971 c. 80, to which there are no relevant amendments.

Commencement Information

I3 Reg. 3 in force at 31.3.2005, see **reg. 1(1)**

PART 2

REGISTRATION OF QUOTA

Registers and notices to be maintained and prepared by the Scottish Ministers

4.—(1) The Scottish Ministers shall–

(a) maintain a direct sales register; and

(b) send to each direct seller a copy of the entry in the direct sales register relating to that direct seller.

(2) The direct sales register shall contain an entry in respect of each direct seller setting out in particular–

(a) the name of each direct seller;

(b) the trading address of each direct seller or, where there is more than one such address, each such address, and the principal trading address of each direct seller;

(c) a reference number which serves to identify the direct seller;

(d) the direct sales quota available to that direct seller for the quota year; and

(e) the details of the direct sales of that direct seller.

(3) The Scottish Ministers shall–

(a) maintain a wholesale register;

(b) send to each wholesale producer a copy of the entry in the wholesale register relating to that wholesale producer; and

(c) send to each purchaser named in the list referred to in paragraph (4)(e) a copy of that part of the entry relating to the purchaser quota of that purchaser.

(4) The wholesale register shall contain an entry in respect of each wholesale producer setting out in particular–

(a) the name of each wholesale producer;

(b) the trading address of each wholesale producer or, where there is more than one such address, each such address and the principal trading address of each wholesale producer;

(c) a reference number which serves to identify the wholesale producer;

(d) the wholesale quota available to the wholesale producer for the quota year; and

(e) a list of the name and address of each purchaser whose purchaser quota will be calculated to take into account all or part of the total wholesale quota of that wholesale producer, and of the wholesale quota registered with each purchaser, showing the representative fat content base of that quota calculated in accordance with Article 7 of the Commission Regulation.

(5) The Scottish Ministers shall–

(a) maintain a register of purchasers; and

(b) send to each purchaser a copy of the purchaser entry relating to that purchaser.