***Changes to legislation:*** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Dairy Produce Quotas (Scotland) Regulations 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

# 2002 No. 110

# FOOD

## The Dairy Produce Quotas (Scotland) Regulations 2002

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| *Made - - - -* | *7th March 2002* |
| *Laid before the Scottish Parliament - - - -* | *8th March 2002* |
| *Coming into force - -* | *31st March 2002* |

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972[F1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

**F1** 1972 c.68; section 2(2) was amended by the Scotland Act 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, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

### Citation, commencement and extent

**1.**—(1) These Regulations may be cited as the Dairy Produce Quotas (Scotland) Regulations 2002 and shall come into force on 31st March 2002.

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

(3) In so far as these Regulations extend beyond Scotland in accordance with regulation 2, they do so only as a matter of Scots Law.

### Interpretation

**2.**—(1) In these Regulations, unless the context otherwise requires–

"agricultural area" includes areas used for agriculture within the meaning of section 86(3) of the Agriculture (Scotland) Act 1948 [F2];

"the Commission Regulation" has the same meaning as it has in Schedule 1;

"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 [F3];

"Commission Regulation 2562/93" means Commission Regulation (EEC) No. 2562/93 laying down detailed rules for the application of Council Regulation 2055/93 allocating a special reference quantity to certain producers of milk and milk products [F4];

"the Community compensation scheme" has the same meaning as it has in Schedule 1;

"the Community legislation" has the same meaning as it has in Schedule 1;

"consent or sole interest notice" means a notice, in relation to a holding or part of a holding which states that–

(a) the person providing that notice is the occupier of that holding or part of a holding and that no other person has an interest in that holding or part of the holding; or

(b) every person having an interest in the holding or part of the holding the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates agrees to that apportionment or proposed prospective apportionment;

"the Council Regulation" has the same meaning as it has in Schedule 1;

"Council Regulation 2055/1993" has the same meaning as it has in Schedule 1;

"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 under the Community legislation;

"delivery" has the same meaning as in Article 9(g) of the Council Regulation and "deliver" shall be construed accordingly;

"direct sale" means a sale which comes within Article 9(h) 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 from a holding in a quota year without the direct seller in occupation of that holding being liable to pay levy;

"direct seller" means a person who produces milk and treats that milk or processes it to produce milk or 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 treated or processed by an undertaking which treats or processes milk or milk products;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000 [F5];

"eligible heifer" means any heifer, which–

(a) at the date of service of a notice referred to in regulation 14(2)(a), was on land subject to the notice and calves for the first time on a day which falls within the relevant period; or

(b) at the date of the coming into force of an order referred to in regulation 14(2)(a) or (b), was on land subject to that order and calves for the first time on a day which falls within the relevant period;

"holding" has the same meaning as in Article 9(d) of the Council Regulation;

"interest" includes a licence to occupy land, the interest of a heritable creditor and a trustee, but does not include the interest of a beneficiary under a trust or settlement or the estate of a superior;

"levy" means the levy payable under the Community legislation and these Regulations to the Scottish Ministers;

"national reserve" has the same meaning as in the Dairy Produce Quotas (General Provisions) Regulations 2002 [F6];

"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 person, and during the currency of an interest

referred to in regulation 8(5)(a), the person entitled to grant occupation when that interest terminates, and "occupation" shall be construed accordingly;

"producer" has the same meaning as in Article 9(c) of the Council Regulation;

"prospective apportionment", means in relation to quota on a holding apportionment of quota pursuant to regulation 10 which will take place if there is a change in occupation of part of the holding to which the prospective apportionment relates (other than a change in respect of which regulation 8(5) applies) within six months of that prospective apportionment;

"purchaser" means a purchaser within the meaning of Article 9(e) of the Council Regulation and, with the exception of the references in regulations 24(1) and (2) and paragraph 11(a) of Schedule 3, approved by the Scottish Ministers pursuant to regulation 24;

"purchaser quota" means the quantity of dairy produce which may be delivered by wholesale delivery to a purchaser during a quota year without that purchaser being liable to pay levy;

"purchaser special quota" means the quantity of dairy produce which may be delivered by wholesale deliveries against the special quota of a producer to a purchaser during a quota year without that purchaser being liable to pay levy;

"qualifying cow" means, for the purposes of any quota year, any eligible heifer which calves for the first time at a time when the number of eligible heifers exceeds the replacement number, whether or not the time of such calving falls during that quota year, but an eligible heifer which is a qualifying cow for the purposes of any quota year shall not be a qualifying cow for the purposes of any subsequent quota year;

"qualifying day" means, in respect of any qualifying cow, the day it calves and each day or part of a day thereafter during which a notice or order referred to in regulation 14(2)(a) has effect or remains in force, as the case may be;

"quota" means direct sales quota or wholesale quota, as the case may be;

"quota year" means any of the periods of 12 months referred to in Article 1 of the Council Regulation (which deals with the fixing of the levy);

"registered wholesale quota" means quota registered in accordance with regulation 22(2);

"relevant competent authority" has the meaning given by regulation 3 of the Dairy Produce Quotas (General Provisions) Regulations 2002;

"the relevant period" means–

(a) where a notice referred to in regulation 14(2)(a) or an order referred to in regulation 14(2)(a) or (b) has effect or is in force for a period which expires on or before the expiry of the quota year during which it is served or made (as the case may be), the period of twelve months immediately preceding the day after the date on which that notice or order ceases to have effect or be in force, as the case may be; and

(b) in any other case, the quota year during which that notice or order is served or made or at any time thereafter when that notice or order has effect or is in force;

"replacement number" means the nearest integer to 20 per cent of the total number of dairy cows on the land–

(a) subject to the notice referred to in regulation 14(2)(a), as at the date of service of the notice; or

(b) subject to an order referred to in regulation 14(2)(a) or (b), as at the date of the coming into force of the order,

and where 20 per cent of the total number is half way between two integers, the nearest even integer shall be deemed to be the nearest integer;

"Scottish Islands area" means any one of–

(a) the islands of Orkney; or

(b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae and the Kintyre peninsula south of Tarbert;

"special quota" means the quota referred to in Article 1(1) of Council Regulation 2055/93;

"submit", means in relation to a document or information submitted to the Scottish Ministers, the act of sending that document or information as evidenced by proof of posting or delivery to a courier service or, if an electronic communication, a record of its dispatch;

"transferee" means–

(a) where quota is transferred with a holding or part of a holding, a person who replaces another person as occupier of that holding or part of a holding; and

(b) in any other case, the recipient of a transfer of quota;

"transferor" means–

(a) where quota is transferred with a holding or part of a holding, a person who is replaced by another person as occupier of a holding or part of a holding; and

(b) in any other case, the donor of a transfer of quota;

"unused quota" means quota remaining unused after any direct sales or wholesale deliveries have been taken into account, adjusted pursuant to Article 4(1) of the Commission Regulation (which deals with the fat content of milk), and "used quota" shall be construed accordingly;

"wholesale delivery" means delivery from a producer to a purchaser;

"wholesale quota" means the quantity of dairy produce which may be delivered by wholesale delivery to a purchaser from a holding in a quota year without the producer in occupation of that holding being liable to pay levy.

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

(3) In these Regulations, unless the context otherwise requires–

(a) any reference to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations;

(b) any reference in a regulation or Schedule to a numbered paragraph shall be construed as a reference to the paragraph so numbered in that regulation or Schedule; and

(c) any reference in a paragraph to a numbered or lettered sub-paragraph shall be construed as a reference to the sub-paragraph so numbered or lettered in that paragraph.

**F2** 1948 c. 45.
**F3** O.J. No. L 161, 2.7.1993, p.48, as last amended by Commission Regulation (EC) No. 569/1999 (O.J. No. L 70, 17.3.99, p.12).
**F4** O.J. No. L 235, 18.9.93, p.18.
**F5** 2000 c.7.
**F6** S.I. 2002/458.

## Application

**3.** These Regulations shall apply in relation to producers, purchasers and other relevant persons in respect of whom the Scottish Ministers are the relevant competent authority.

### Scottish Islands area

**4.**—(1) Subject to paragraph (3), quota registered to direct sellers and producers within any Scottish Islands area can only be used by producers and purchasers against direct sales or wholesale deliveries of milk produced within that Scottish Islands area.

(2) Where a direct seller or producer has a part of the dairy enterprise of that direct seller or producer outside the Scottish Islands area, that direct seller or producer shall be treated for the purposes of this regulation as a direct seller or producer within any Scottish Islands area if 50% or more of the dairy enterprise of that direct seller or producer is within the Scottish Islands area.

(3) Paragraph (1) shall not apply to the reallocation of quota undertaken in accordance with Schedule 3.

(4) For the purposes of this regulation "direct seller" and "producer" shall have the same meaning as in regulation 22(6).

### Determination of levy

**5.** For the purposes of Article 2(1) of the Council Regulation (which concerns the calculation of the levy), the contribution of producers who make wholesale deliveries towards the levy shall be established, in accordance with the provisions of that Article, at the level of the purchaser.

### Milk equivalence of dairy produce

**6.**—(1) For the purposes of Article 2(3) of the Commission Regulation (which concerns milk equivalence of dairy produce) the milk equivalence of dairy produce shall be calculated on the basis that each kilogram of dairy produce shall equal such quantity of milk referred to in paragraph (2) as is required to make that kilogram of dairy produce.

(2) The milk to which paragraph (1) relates is milk the fat content of which has not been altered since milking.

### Adjustment of purchaser quota

**7.**—(1) Where any wholesale quota is increased or reduced in accordance with the Community legislation or these Regulations, the purchaser quota of any purchaser to whom that quota is applicable shall be correspondingly increased or reduced.

(2) On any transaction to which the second sub-paragraph of Article 2(2) of the Council Regulation (which concerns replacement of purchasers and changes of purchasers by producers) applies, any purchaser whose purchaser quota has been increased by virtue of such a transaction (other than as a result of a temporary transfer of quota under regulation 13) shall submit to the Scottish Ministers–

(a) on or before 14th May in the quota year immediately following the quota year in which that transaction took place, a statement setting out the particulars of the transaction; and

(b) where appropriate, a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement referred to in sub-paragraph (a) above.

(3) The statement referred to in paragraph (2)(a) and the declaration referred to in paragraph (2)(b) shall be made in such form as may reasonably be required by the Scottish Ministers.

(4) Subject to paragraph (5), where during a quota year a producer changes from being registered with one purchaser to being registered with any other purchaser–

(a) for the purposes of calculating liability for levy pursuant to regulation 18 in that quota year, any purchaser with whom the producer is newly registered shall request of the Scottish