

## SCOTTISH STATUTORY INSTRUMENTS

# 2002 No. 110

## FOOD

### The Dairy Produce Quotas (Scotland) Regulations 2002

<i>Made</i>	- - - -	<i>7th March 2002</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>8th March 2002</i>
<i>Coming into force</i>	- -	<i>31st March 2002</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>M1</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

#### Marginal Citations

**M1** 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<sup>M2</sup>;

“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<sup>M3</sup>;

“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<sup>M4</sup>;

“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<sup>M5</sup>;

“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<sup>M6</sup>;

“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;

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**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

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“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.

#### **Marginal Citations**

**M2** [1948 c. 45.](#)

**M3** 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).

**M4** O.J. No. L 235, 18.9.93, p.18.

**M5** [2000 c.7.](#)

**M6** [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 Ministers (in such form as they may require) that the purchaser quota of the purchaser be increased by an amount equivalent to such part of the registered wholesale quota of that producer as that producer shall determine;
- (b) the amount of the increase of the purchaser quota determined in accordance with sub-paragraph (a) shall not include the amount of quota necessary to cover the deliveries made by the producer before the date of the change of purchaser, adjusted if necessary in accordance with the second sub-paragraph of Article 4(1) of the Commission Regulation, and such amount of quota shall remain available to the original purchaser;
- (c) at the beginning of the quota year immediately following the quota year referred to in sub-paragraph (a), the purchaser with whom the producer is newly registered shall have the quota of that purchaser increased by such part of the remaining registered wholesale quota of the producer as that producer shall determine; and
- (d) corresponding reductions of the purchaser quota of the original purchaser shall be made, and, where there are adjustments of quota of a producer registered with more than one purchaser, such reductions of purchaser quota shall be made in respect of such of those other purchasers in such proportions as may appear to the Scottish Ministers to be appropriate in all the circumstances.

(5) Where the amount of quota necessary to cover the deliveries made to an original purchaser and referred to in paragraph (4)(b) is affected by an adjustment of the quantity delivered by the producer (being an adjustment in accordance with the second sub-paragraph of Article 4(1) of the Commission Regulation)—

- (a) in the event that an increase in such quota of the original purchaser is necessary to cover the deliveries made to the original purchaser by the producer, the original purchaser may apply to the Scottish Ministers (in such form as they may reasonably require) to assess and make such increase, and make a corresponding reduction in the purchaser quota of the purchaser with whom the producer is newly registered; and
- (b) in the event that a reduction is capable of being made to the quota of an original purchaser who has more than is necessary to cover the deliveries made to the original purchaser by the producer, any purchaser with whom the producer is newly registered and who requires an increase in purchaser quota to cover the deliveries made by the producer to the purchaser with whom the producer is newly registered may apply to the Scottish Ministers (in such form as they may reasonably require) to assess and make the appropriate reduction, and make a corresponding increase in the purchaser quota of that purchaser with whom the producer is newly registered,

and in each case upon such application the Scottish Ministers shall make the assessment requested and the appropriate adjustment.

(6) An application under paragraph (5)(a) or (b) shall be made no later than 15th June in the quota year immediately following the quota year during which the producer changed from being registered with the original purchaser to being registered with the other purchaser in question.

### **Transfer of quota with transfer of land**

**8.—(1)** For the purposes of Article 7 of the Council Regulation (which concerns the transfer of quota with a holding when the holding is sold, leased, transferred by inheritance or subjected to other cases of transfer involving comparable legal effects for producers), on a transfer of any holding or

part of a holding, other than a transfer of a kind to which paragraph (5) or (7) refers, the transferee shall submit to the Scottish Ministers—

- (a) a notice of transfer in such a form as the Scottish Ministers may reasonably require—
    - (i) in the case of a transfer made by lease before 1st March, on or before 1st March in the quota year in which the transfer takes place; or
    - (ii) in the case of a transfer made otherwise than by lease, on or before 31st March in the quota year in which the transfer takes place; and
  - (b) such other information relating to the transfer, and within such time, as they may require.
- (2) The notice referred to in paragraph (1)(a) shall, in the case of a transfer of part of a holding, include—
- (a) statements from the transferor and transferee to the effect that they have agreed that the quota shall be apportioned taking account of the areas used for milk production as specified in the statement or that no such apportionment has been agreed and specifying the amounts of used and unused quota transferred; and
  - (b) where such an apportionment has been agreed, a consent or sole interest notice, provided by the transferor in respect of the entire holding.
- (3) Where there is a transfer of part of a holding—
- (a) an apportionment of the quota relating to the holding shall be carried out in accordance with regulation 9; and
  - (b) any dairy produce which has been sold by direct sale or delivered by wholesale delivery from the holding during the quota year in which the change of occupation takes place and prior to that transfer shall be deemed, for the purposes of any levy calculation, to have been sold or delivered from each part of the holding in proportion to that apportionment, unless the parties agree otherwise and notify the Scottish Ministers at the time of the submission of the notice, or other information pursuant to paragraph (1), of the agreement in such form as they may reasonably require.
- (4) A prospective apportionment of quota in respect of a part of a holding may be made in accordance with regulation 10.
- (5) No person shall transfer quota on a transfer of any holding or part of a holding in the following cases:—
- (a) the grant of—
    - (i) a licence to occupy land; or
    - (ii) the lease of any land under which a holding, or part of a holding, is occupied for a period of less than eight months; or
  - (b) the termination of a licence or lease to which sub-paragraph (a) applies.
- (6) Where a notice of transfer has not been submitted in accordance with paragraph (1)(a), then for the purpose of any levy calculation—
- (a) the unused quota transferred shall not be treated as a part of quota entitlement of the transferee for the quota year in which the transfer takes effect but shall be treated as if it remained unused quota available where appropriate for reallocation by the Scottish Ministers in that quota year in accordance with paragraph 7 of Schedule 3;
  - (b) the notice shall be disregarded by the Scottish Ministers for the quota year to which it applies and shall not be noted on any register maintained under regulation 22 until the following quota year; and

- (c) a transferee shall not be entitled to demand that, by reason of such a transfer, an amendment be made to the amount of quota, if any, which has been reallocated to the transferee under Schedule 3 for the quota year in which the transfer takes effect.

(7) No person shall transfer quota on a transfer of a holding or part of a holding where the transfer would result in an increase or reduction in the total direct sales quota or total wholesale quota available for use by dairy enterprises located within a Scottish Islands area.

### **Apportionment of quota**

9. Subject to regulations 8(5) and (7), 10(4) and (5) and 11, where there is a transfer of part of a holding, and a notice of transfer has been submitted in accordance with regulation 8(1)(a), the apportionment of the quota or special quota, relating to that holding, shall be carried out—

- (a) in accordance with the agreed apportionment set out in the notice referred to in regulation 8(1)(a); or
- (b) where there is no such agreement, by arbitration in accordance with the provisions of Schedule 2.

### **Prospective apportionment of quota**

10.—(1) The occupier of a holding who intends that a prospective apportionment of quota will be applied to it shall submit to the Scottish Ministers an application in such a form as the Scottish Ministers may reasonably require, requesting either—

- (a) that a prospective apportionment of quota relating to the holding be made taking account of areas used for milk production as set out in the application; or
- (b) that a prospective apportionment of quota be ascertained by arbitration in accordance with Schedule 2.

(2) A request for a prospective apportionment of quota may be withdrawn by a notice in writing to the Scottish Ministers, given by the occupier of the holding to which the prospective apportionment relates.

(3) Where the occupier of a holding requests that a prospective apportionment be made in accordance with paragraph (1)(a) or gives notice in writing of the withdrawal of such a request in accordance with paragraph (2), that request or notice shall be accompanied by a consent or sole interest notice in respect of the entire holding.

(4) Where there is a change of occupation of part of a holding (other than a change to which regulation 8(5) applies) and within the six months preceding that change of occupation—

- (a) the occupier of that holding has requested a prospective apportionment of quota in respect of that part of the holding and has submitted a notice in accordance with regulation 8(1), indicating that an apportionment of quota has been agreed; or
- (b) a prospective apportionment of quota relating to that part of that holding has been or is in the process of being made by virtue of Schedule 2,

the apportionment of quota shall be carried out in accordance with paragraph (5).

(5) Where quota is apportioned in accordance with this paragraph, the apportionment shall be carried out in accordance with—

- (a) any prospective apportionment of quota relating to that part of that holding made under paragraph (1) unless the request for that prospective apportionment was withdrawn before the change of occupation to which it relates takes place;
- (b) if no such prospective apportionment has been made, any prospective apportionment which is in the process of being made under paragraph (1); and

- (c) in any other case, regulation 9.

### **Notification by the Scottish Ministers of apportionment of quota by arbitration**

**11.—**(1) Where the Scottish Ministers have reasonable grounds for believing that the areas used for milk production on a holding—

- (a) are not as specified in a notice or application submitted pursuant to regulations 8 or 10(1) respectively; or
- (b) were not as agreed between the parties at the time of apportionment in a case where no such notice or application has yet been submitted,

they may give notice of this fact to the person who submitted the notice or application, or in a case where neither was submitted, to the transferee.

(2) In any case to which paragraph (1) applies the apportionment or prospective apportionment of that quota shall be made by arbitration in accordance with Schedule 2.

### **Transfer of quota without transfer of land**

**12.—**(1) For the purposes of sub-paragraph (e) of Article 8 of the Council Regulation (which permits the authorisation of a transfer of quota without transfer of the corresponding land, with the aim of improving the structure of milk production at the level of the holding), an application for transfer of quota without transfer of land, other than an application for transfer of a kind to which paragraph (7) refers, shall be submitted by the transferee to the Scottish Ministers for approval, provided that it is submitted no later than ten working days before the intended date of the transfer and that application shall be in such form as the Scottish Ministers may reasonably require.

(2) The application referred to in paragraph (1) shall include—

- (a) statements from the transferor and transferee, that they have agreed to the transfer of quota stating the amounts of used and unused quota transferred and explaining how the transfer is necessary to improve the structure of the businesses of the transferor and transferee;
- (b) a consent or sole interest notice from the transferor in respect of the entire holding from which the quota is to be transferred; and
- (c) a statement from the transferee that the transferee is in milk production or intends to commence milk production on the holding of the transferee within six months of the intended date of transfer, with an undertaking that that transferee will continue to be, or will be, in milk production at the end of that six-month period.

(3) Where the Scottish Ministers have received an application pursuant to paragraph (1), they may require that the transferor or transferee shall produce such other information relating to the application, and within such time, as they may reasonably determine.

(4) Where an application submitted pursuant to paragraph (1) has been approved by the Scottish Ministers, they may subsequently decide to withdraw from the transferee, for the purpose of inclusion in the national reserve, the quota transferred:

Provided that they—

- (a) have reasonable grounds for believing that the undertaking provided by the transferee pursuant to paragraph (2)(c) has been breached;
- (b) are satisfied that there is no justification for releasing the transferee from that undertaking pursuant to paragraph (5);
- (c) serve on the transferee a notice to this effect;
- (d) give the transferee an opportunity to make written representations within such time as they consider reasonable; and

(e) consider any such representations,

and the Scottish Ministers shall, after so deciding, take steps to ensure the transfer of that quota to the national reserve until such time as the transferee resumes or commences milk production.

(5) Where an application submitted pursuant to paragraph (1) has been approved by the Scottish Ministers, they may decide to release the transferee from the undertaking provided pursuant to paragraph (2)(c) where they are satisfied that the release is justified in the light of exceptional circumstances which have resulted in the transferee ceasing to be, or failing to become, a producer, and which could not have been avoided or foreseen by the transferee at the time of the submission of the application.

(6) The exceptional circumstances referred to in paragraph (5) are—

- (a) the inability of the transferee to conduct the business of the transferee for a prolonged period as a result of the onset of ill-health, injury or disability;
- (b) a natural disaster seriously affecting the holding;
- (c) the accidental destruction of buildings used for the purposes of milk production;
- (d) without prejudice to sub-paragraph (e) below, an outbreak of illness or disease seriously affecting the dairy herd;
- (e) the serving of a notice or the making of a declaration under an order made pursuant to section 17 of the Animal Health Act 1981<sup>M7</sup> or the adoption of an order under section 1 of the Food and Environment Protection Act 1985<sup>M8</sup>, and
- (f) the loss of a significant proportion of the forage area as a result of the compulsory purchase of the holding or part of the holding.

(7) In conformity with sub-paragraph (d) of Article 8 of the Council Regulation (which provides for the determination of regions within which such transfers may be authorised), no application submitted pursuant to paragraph (1) shall be approved by the Scottish Ministers where the transfer would result in an increase or reduction in the total direct sales quota or total wholesale quota available for use by dairy enterprises located within a Scottish Islands area.

#### Marginal Citations

**M7** 1981 c.22.

**M8** 1985 c.48.

### Temporary transfer of quota

**13.—**(1) For the purposes of Article 6 of the Council Regulation (which concerns the temporary transfer of quota), a producer may agree with any other producer to make a temporary transfer, other than a temporary transfer of a kind to which paragraph (4) refers, of all or part of any unused quota which is registered under regulation 22 as permanently held by that producer for a period of one quota year to that other producer.

(2) The Scottish Ministers may require a reasonable charge to be paid for the registration of any temporary transfer of quota, provided that the transfer takes place within a quota year in respect of which they have announced before the beginning of that quota year that they intend to make such a charge, in such a manner as they consider likely to come to the attention of producers.

(3) Where there is an agreement to make a temporary transfer under paragraph (1), the transferee shall notify the Scottish Ministers of the agreement in such form as the Scottish Ministers may reasonably require and shall submit the notice, together with any charge payable under paragraph (2), to the Scottish Ministers no later than 31st March in the quota year in which the agreement is made.

(4) No producer shall agree with any other producer to make a temporary transfer of quota which would result in a reduction in the total direct sales quota or total wholesale quota available for use by dairy enterprises located within a Scottish Islands area.

### **Temporary reallocation of quota**

**14.**—(1) For the purposes of the reallocation of quota referred to in Article 2(1) of the Council Regulation, the Scottish Ministers may, for any quota year, award to a producer referred to in paragraph (2) a temporary reallocation of an amount of any surplus quota, in accordance with the provisions of this regulation.

(2) This regulation shall apply to a producer who has quota registered as the quota of that producer in relation to a holding which—

- (a) at any time during that quota year is in whole or in part subject to a notice served or declaration made under an order made pursuant to section 17 the Animal Health Act 1981 prohibiting or regulating the movement of dairy cows; or
- (b) is situated wholly or partly within an area which at any time during that quota year has been designated by an order under section 1 of the Food and Environment Protection Act 1985.

(3) Subject to paragraph (4), a producer referred to in paragraph (2) may be awarded a temporary reallocation of surplus quota for any quota year in which the notice or order referred to in paragraph (2) has effect or remains in force, as the case may be, and the amount of any such award shall be calculated either—

- (a) as the amount equal to 16 litres per qualifying cow per qualifying day in any quota year; or
- (b) as the amount by which in the quota year in question the production of the producer exceeds the quota entitlement of that producer,

whichever amount is less.

(4) An award for a producer pursuant to paragraph (3) shall not be available in respect of a quota year during which that producer transfers unused quota pursuant to regulations 8 or 12, makes a temporary transfer of quota pursuant to regulation 13, or purchases cows or in-calf heifers for dairy purposes, unless the Scottish Ministers are satisfied that the agreement to transfer, temporarily transfer or purchase, was entered into before service of the notice or the coming into force of an order, referred to in paragraph (2).

### **Special allocation of quota**

**15.** Where, by reason of a mistake made by the Scottish Ministers, a person has not been allocated any quota or has been allocated a smaller quantity of any such quota than that person would have been allocated if the mistake had not been made, the Scottish Ministers may make arrangements so as to ensure allocation from the national reserve to that person of such quota as will compensate, in whole or in part, for that mistake.

### **Conversion of quota**

**16.**—(1) For the purposes of the provisions of Article 4(2) of the Council Regulation (which concerns changes from direct sales to wholesale delivery and vice versa), the second sub-paragraph of Article 2(2) of the Council Regulation (which concerns replacements of purchasers) and this regulation, a producer may apply to convert, temporarily or permanently, direct sales quota to wholesale quota or wholesale quota to direct sales quota.

(2) Where a producer wishes to convert quota permanently or temporarily in any quota year, the producer shall submit to the Scottish Ministers an application in such a form as they may reasonably require for that purpose and such application shall—

- (a) state the amount (if any) of direct sales quota of the producer, wholesale quota, direct sales and wholesale deliveries for the quota year in which the application is made, the amount of unused quota which the producer holds at the time of the application and the amount which the producer wishes the Scottish Ministers to convert; and
  - (b) include such other information as they may reasonably require in order to assess whether the requirements of Article 4(2) of the Council Regulation and Article 3 of the Commission Regulation (which concerns representative fat content) are fulfilled.
- (3) The application referred to in paragraph (2) shall be submitted by the producer to the Scottish Ministers by—
- (a) in the case of a permanent conversion of quota, 31st December in the quota year in which the conversion is intended to take effect; or
  - (b) in the case of temporary conversion of quota, 14th May in any year following the end of the quota year in which the temporary conversion of quota takes place.
- (4) Subject to paragraphs (5) and (6), where a producer has permanently converted quota in any quota year, that producer shall not subsequently in that quota year transfer out quota, of the type to which the producer has converted, whether temporarily or otherwise.
- (5) Where, upon an application to the Scottish Ministers by a producer who has permanently converted quota in any quota year, the Scottish Ministers are satisfied that exceptional circumstances of a type described in regulation 12(6) have resulted in a significant fall in milk production or a significant failure to achieve a planned increase in milk production, which, in the opinion of the Scottish Ministers, could have been neither foreseen nor avoided by the producer at the time of the permanent conversion by the producer, they may, in the same quota year in which the permanent conversion occurred, release that producer from the restriction in paragraph (4) to the extent that is required so as to allow the transfer of the amount of quota that the Scottish Ministers consider has remained unused in the particular case.
- (6) The restriction in paragraph (4) shall not apply to any producer who, in the immediately preceding quota year, has temporarily converted quota.

### **Representative fat content of milk**

17. A producer who in any quota year comes within the first indent of Article 3(7) of the Commission Regulation (which concerns the representative fat content of milk from certain new producers) may benefit from the negative correction provided for in the third sub paragraph of Article 4(1) thereof only if, before 1st March in that quota year, that producer confirms to the Scottish Ministers that in that quota year the producer has maintained in the dairy herd of the producer breeds of cows with characteristics similar to those in the herd in the first twelve months of production and undertakes to maintain such breeds in the dairy herd of the producer for the remainder of that quota year.

### **Reallocation of quota and calculation of levy liability**

18. Schedule 3 shall apply in respect of the reallocation of quota and the calculation of levy liability for the purposes of Article 2(1) of the Council Regulation (which deals with the calculation of the levy, whether or not following a reallocation of quota).

### **Prevention of avoidance of levy**

19.—(1) Subject to paragraph (2), where in any quota year a producer makes sales or deliveries of milk or milk products from milk produced by any cows and subsequently in the same quota year another producer makes sales or deliveries of milk or milk products from milk produced by any or

all of the same cows, the second producer shall be deemed for the purposes of these Regulations to have made those sales or deliveries in the capacity of agent for the first producer.

- (2) Paragraph (1) shall not apply where—
- (a) an agreement has been entered into by the first producer for the sale or lease of the cows in question or the second producer has inherited them from the first producer; and
  - (b) the cows are kept on the holding of the second producer.

### **Payment of levy**

**20.**—(1) For the purposes of Article 2(3) of the Council Regulation and Article 6 of the Commission Regulation (both of which concern payment of levy by direct sellers), or Article 2(2) of the Council Regulation (which concerns payment of levy by purchasers in respect of wholesale deliveries) and the payment of other penalties for which provision is made in Articles 5 and 6 of the Commission Regulation, the levy and other penalties referred to in those provisions shall be paid to the Scottish Ministers.

(2) Where any part of the levy remains unpaid after 1st September in any year, the Scottish Ministers may recover from the direct seller or, as the case may be, the purchaser, the amount of the levy outstanding at that date together with interest at the rate of one percentage point above the sterling three month London interbank offered rate in respect of each day thereafter until the said amount is recovered.

(3) For the purposes of the third-sub-paragraph of Article 2(2) of the Council Regulation (which concerns deduction of levy liability), where a producer making wholesale deliveries to a purchaser exceeds that producer's wholesale quota, following adjustment of that quota where appropriate and in accordance with Article 4(1) of the Commission Regulation, that purchaser may immediately deduct from the sums owed to the producer in respect of the deliveries an amount corresponding to the amount of levy that would otherwise be payable by that purchaser in respect of the excess.

### **Annual statements**

- 21.**—(1) The Scottish Ministers may, in respect of—
- (a) any person in whose name any direct sales quota is registered and who fails to submit to the Scottish Ministers by 14th May in any year any declaration which that person is required to forward by Article 6(2) of the Commission Regulations; or
  - (b) any purchaser approved by the Scottish Ministers pursuant to Article 13(2) of the Commission Regulation and by regulation 24 and who fails to submit to the Scottish Ministers by 14th May in any year any summary which that purchaser is required to forward by Article 5(2) of the Commission Regulation,

recover a reasonable charge in respect of any visit to any premises which the Scottish Ministers have reasonably considered that a person authorised for that purpose should make in order to obtain the declaration or summary in question.

(2) If a purchaser is requested by the Scottish Ministers to submit to them a revised version of the summary referred to in paragraph (1)(b), that purchaser shall submit a version of the summary revised in the manner requested within 10 working days of that request.

### **Registers to be prepared and maintained by the Scottish Ministers**

- 22.**—(1) The Scottish Ministers shall—
- (a) maintain—
    - (i) a direct sales register, being a register of entries referred to in sub-paragraph (b); and

- (ii) a register of particulars of direct sales by each direct seller; and
- (b) prepare a direct sales register entry in respect of each direct seller setting out in particular—
  - (i) the name of each direct seller;
  - (ii) 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;
  - (iii) a reference number which serves to identify the direct seller;
  - (iv) the direct sales quota available to that person for the quota year excluding the quota referred to in sub-paragraph (v); and
  - (v) quota issued to that person as special quota,and shall send each direct seller a copy of the entry relating to that person.
- (2) The Scottish Ministers shall—
  - (a) maintain a wholesale register, being a register of entries referred to in sub-paragraph (b); and
  - (b) prepare a wholesale register entry in respect of each producer setting out in particular—
    - (i) the name of each producer;
    - (ii) the trading address of each producer, or, where there is more than one such address, each such address and the principal trading address of each producer;
    - (iii) a reference number which serves to identify the producer;
    - (iv) the wholesale quota available to that producer for the quota year excluding the quota referred to in sub-paragraph (v);
    - (v) quota issued to that producer as special quota; and
    - (vi) a list of the names and addresses of each purchaser whose purchaser quota will be calculated to take into account all or part of the total wholesale quota of that producer, and of the wholesale quota registered with each purchaser, showing the representative fat content base of that quota calculated in accordance with Article 3 of the Commission Regulation,and shall send to each producer a copy of the entry relating to that person and, to each purchaser named on the list referred to in sub-paragraph (vi), a copy of that part of the entry relating to the purchaser quota of that person.
- (3) The Scottish Ministers shall—
  - (a) maintain a register of purchaser notices, being a register of notices containing the information specified in sub-paragraph (b); and
  - (b) prepare a purchaser notice in respect of each purchaser setting out—
    - (i) the name of that purchaser;
    - (ii) the purchaser quota of that purchaser; and
    - (iii) the purchaser special quota of that purchaser,and shall send each purchaser a copy of the notice relating to that purchaser.
- (4) For the purposes of paragraphs (1) and (2), where a holding comprises more than one dairy enterprise, a direct seller or a producer may, on presenting to the Scottish Ministers a consent or sole interest notice in respect of that holding, agree with them the partition of that holding between separate direct sales register entries or wholesale register entries as specified in the agreement.
- (5) The Scottish Ministers may make such enquiries as they reasonably consider to be necessary for the purposes of ensuring the accuracy of the registers which they are required to maintain pursuant to this regulation, and shall amend such registers—

- (a) to record any allocations or adjustments made under or by virtue of these Regulations; or
  - (b) to make any correction or amendment which they reasonably consider to be necessary, and, where they make a correction or amendment, they shall notify any person affected by that correction or amendment.
- (6) In this regulation, “direct seller” and “producer” include a person who occupies land with quota whether or not that person is engaged in the sale or delivery of dairy produce.

### **Inspection of entries in the Scottish Ministers’ registers**

23. The Scottish Ministers may, in response to a request—

- (a) made in respect of a quota register entry referred to in regulation 22(1) or (2) by any person who is the direct seller or producer identified in that entry, or who gives the Scottish Ministers a statement in writing that such person has an interest in the holding of the producer or direct seller identified in that entry, or by anyone who is the agent of such a person; or
- (b) made by a purchaser in respect of an entry in the register referred to in regulation 22(3) relating to that purchaser or, provided the request is made with the express written authority of the purchaser in question, relating to a specific purchaser,

on payment of a reasonable charge, supply to such a person a copy of that quota register entry.

### **Approval and registration of purchasers**

24.—(1) For the purposes of Article 13 of the Commission Regulation (which concerns the approval of purchasers), a purchaser shall submit to the Scottish Ministers an application seeking approval of that purchaser by the Scottish Ministers in such form as they may reasonably require.

(2) An application under paragraph (1) shall state the trading address of the purchaser, or, where there is more than one such address, each such address and the principal trading address of the purchaser.

(3) For the purposes of Article 13(2) of the Commission Regulation (which permits member States to lay down stricter rules on the approval of purchasers), the Scottish Ministers shall only approve a purchaser where that purchaser –

- (a) has given an undertaking to them to abide by the provisions of these Regulations and the Community legislation and comply with that undertaking;
  - (b) has no history of having committed—
    - (i) an irregularity under, or material infringement of, any Community provision relating to a Community aid scheme; or
    - (ii) an offence under an enactment implementing a Community or domestic aid scheme; and
  - (c) has, by submitting to them such information as the Scottish Ministers may reasonably require, demonstrated to their reasonable satisfaction that that purchaser has a sound financial basis upon which to operate.
- (4) Each purchaser shall—
- (a) inform the Scottish Ministers of—
    - (i) any change of trading address, or where there is more than one such address, any change in such trading address, any additional trading address and any change of principal trading address; and
    - (ii) any factor or change in circumstances which they might reasonably consider materially to affect any matter which is relevant to their consideration of the

application for approval or which affects the ability of the applicant to comply with the undertaking referred to in paragraph (2);

- (b) confirm to each producer supplying that purchaser that the purchaser is approved and supply on request details of that approval; and
- (c) notify each producer supplying that purchaser if that approval is withdrawn.

### **Obligations of producers and purchasers with respect to registration and deliveries**

**25.**—(1) Each direct seller shall register the quota of that direct seller with the Scottish Ministers.

(2) Each producer (within the extended meaning conferred by regulation 22(6)) who holds registered wholesale quota (including any producer who has temporarily ceased or who intends temporarily to cease making wholesale deliveries) shall register the quota of that producer with a purchaser and, if making deliveries, shall deliver them to a purchaser.

(3) Each purchaser shall maintain, in respect of all producers whose register entries include the name of that purchaser on the list referred to in regulation 22(2)(b)(vi)—

- (a) a register corresponding to that maintained by the Scottish Ministers under regulation 22(2)(b) in respect of that part of the quota of that purchaser attributable to each of those producers;
- (b) a register of particulars of wholesale deliveries from each of those producers to that purchaser;
- (c) the information required by paragraphs 2 to 5 of Article 14 of the Commission Regulation (which concerns the records required in connection with levy assessment); and
- (d) a system approved by the Scottish Ministers for sampling the milk of each producer and determining its fat content.

(4) Each purchaser shall amend the register referred to in paragraph (3)(a) on each occasion when, under these Regulations, the equivalent register maintained by the Scottish Ministers is required to be amended in relation to producers registered in that purchaser's register.

### **Registers as evidence**

**26.** Any entry in a register or notice required by these Regulations to be maintained by the Scottish Ministers shall in any proceedings (unless the contrary is shown) be conclusive evidence of the matters stated therein.

### **Information**

**27.**—(1) Each purchaser or producer shall provide such information to the Scottish Ministers as they may reasonably require in order that they may perform their functions under these Regulations and the Community legislation.

(2) Each purchaser shall submit to the Scottish Ministers on request, in a form from time to time to be determined by them, such statistics and forecasts relating to deliveries made or to be made to that purchaser, as may reasonably be required by the Scottish Ministers for the purpose of monitoring deliveries in relation to the total quantity for the United Kingdom referred to in Article 3(2) of the Council Regulation, and any such statistics shall be submitted within three working days of the end of the period to which the statistics relate and any such forecast shall be submitted within 28 days of receipt by the purchaser of the request to provide such forecast.

(3) The Scottish Ministers shall copy such records to each purchaser as that purchaser reasonably may require for the purposes of the registration obligations of that purchaser under these Regulations and Article 5 of the Commission Regulation (which concerns the submission of summaries of statements of deliveries or declarations that no deliveries have been received).

## Withholding or recovery of compensation

**28.** Where a producer has submitted an application for compensation in accordance with the Community compensation scheme and it appears to the Scottish Ministers that the producer has made a false or misleading statement in the application therefor or has failed to comply with any of the requirements of that scheme, the Scottish Ministers may withhold or recover on demand from that producer the whole or any part of the compensation payable or paid to that producer.

## Keeping and retention of records

**29.—(1)** For the purposes of Article 11(1) of the Commission Regulation (which requires member States to take all necessary measures to ensure that the levy is correctly charged) and without prejudice to regulation 3 of the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992 <sup>M9</sup>, a relevant person shall, in addition to fulfilling any relevant requirement of paragraphs 2 to 5 of Article 14 of the Commission Regulation (which concerns record keeping obligations of purchasers and producers), keep and retain such records and for such periods as are specified in Schedule 4.

(2) In this regulation, “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.

### Marginal Citations

**M9** S.I. 1992/314 as amended by S.I. 2001/3198 and S.S.I. 2001/390.

## Administrative penalties

**30.—(1)** Subject to the provisions of Article 13(4) of the Commission Regulation (which confers a discretion on member States not to impose penalties in certain circumstances) and paragraph (6), purchasers shall be subject to the administrative penalties specified in paragraphs (2) to (4).

(2) Where a purchaser fails to submit to the Scottish Ministers—

- (a) a statement or declaration concerning the adjustment of purchaser quota in accordance with regulation 7(2);
- (b) a revised summary of the statements required in accordance with regulation 21(2); or
- (c) any monthly statistics in accordance with regulation 27(2),

the purchaser shall be liable to pay to them a penalty equivalent to the theoretical amount of levy due on 0.01 per cent of the quantity by volume of milk covered by that statement, declaration or revised summary, or those statistics, per calendar day of the delay in submission.

(3) Where a purchaser fails to submit to the Scottish Ministers pursuant to regulation 21(1) or (2) a summary or revised summary, as the case may be, of the statements required in accordance therewith which is accurate, thus resulting in an overstatement of deliveries made to the purchaser, that purchaser shall be liable to pay to them a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement.

(4) Where a purchaser fails to maintain accurate and updated records pursuant to Article 14(2) of the Commission Regulation and regulation 29, the purchaser shall be liable to pay to the Scottish Ministers a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk concerned.

(5) For the purposes of the third sub-paragraph of Article 6(3) of the Commission Regulation (which requires member States to impose proportionate penalties where producers submit incorrect

declarations), and subject to the provisions of Article 6(5) of that Regulation (which confers a discretion on member States not to impose penalties in certain circumstances) and paragraph (6), where a direct seller submits an annual declaration which overstates the volume of direct sales for the period covered by that declaration, that seller shall be liable to pay to the Scottish Ministers a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement.

(6) Where a penalty is due in accordance with the provisions of paragraphs (2) to (5), the value of the penalties referred to therein shall, notwithstanding the provisions of those paragraphs—

- (a) in the case of purchasers and direct sellers, be £60, where the value would otherwise be less than that amount; or
- (b) in the case of purchasers, be £60,000, and in the case of direct sellers, be £600, where the value would otherwise exceed those respective amounts.

### **Offences and criminal penalties**

**31.**—(1) Any person who fails without reasonable excuse to comply with a requirement imposed by or under these Regulations or the Community legislation, or who, without prejudice to the generality of the foregoing—

- (a) fails to comply with a requirement made pursuant to regulation 27(1);
- (b) in connection with these Regulations or the Community legislation—
  - (i) makes or causes to be made a statement, or uses or causes to be used a document, which is known to be false in a material particular, or
  - (ii) recklessly makes or causes to be made a statement, or recklessly uses or causes to be used a document, which is false in a material particular; or
- (c) disposes of quota which that person knows or might reasonably be expected to know is incorrectly registered in the name of that person,

shall be guilty of an offence, and shall be liable—

- (i) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding three months, or to both; or
- (ii) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.

(2) The Scottish Ministers may, following any conviction under paragraph (1) against which there is no subsisting right of appeal or further appeal, by notice served on the person to whose quota that conviction relates withdraw from that person such quota as may reasonably be regarded by them as obtained by that person by reason of the falsehood upon which the conviction was founded.

(3) A notice served under paragraph (2) must be served within the period of twelve months beginning with the first day on which such notice may be served.

(4) Where an offence under these Regulations committed by a body corporate or a partnership 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 similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (4) above shall apply in relation to the acts and defaults of a member in connection with the functions of management of the members as if the member were a director of the body corporate.

(6) In this regulation “requirement” does not include a requirement or restriction imposed on an authority or a person acting as arbiter, nor does it include any restriction or obligation in or under regulation 8(5) or (7), 10(1), 13(4) or 16(2).

### **Provisions in connection with confiscation and restoration of quota**

**32.**—(1) On or before 14th May following the end of each quota year, each purchaser shall supply to the Scottish Ministers a list of those producers registered with that purchaser (whether for the whole or part of the quota year) who have not made deliveries to that purchaser during that year.

(2) Pursuant to Article 5 of the Council Regulation (which concerns the confiscation and restoration of quota), the Scottish Ministers shall notify—

- (a) any producer who from information available to the Scottish Ministers appears not to have made deliveries or direct sales or a temporary transfer of quota under regulation 14 during the previous quota year, that the quota of that producer has been taken into the national reserve;
- (b) any direct seller to whom Article 6(4) of the Commission Regulation (which concerns the late submission of declarations) applies that, unless that producer submits to the Scottish Ministers a declaration under Article 6(1) thereof within 30 days of the notification, the quota of that producer will be subject to confiscation to the national reserve.

(3) Any quota withdrawn pursuant to Article 5 of the Council Regulation may be restored to the producer in respect of the holding from which it was withdrawn within a period of six years from the beginning of the quota year in which it was withdrawn and the restoration of such quota shall be in accordance with paragraphs (4) to (8).

(4) A producer who receives a notification of confiscation under paragraph (2) shall—

- (a) within 28 days of receipt of that notification notify any person with an interest in the holding of the content of that notification; and
- (b) within six months of receipt of that notification, submit a notification to the Scottish Ministers, in such form as may reasonably be required by them for that purpose, as to whether that producer wishes to retain the right to request restoration of the quota and such a notification shall include—
  - (i) a statement that the producer is the occupier of the entire holding and that no other person has an interest in all or any of it;
  - (ii) a statement of the agreed apportionment of quota taking account of the areas used for milk production, signed by every person with an interest in the holding; or
  - (iii) a statement requesting apportionment of the quota in accordance with an arbitration under paragraphs 1, 2, 3(4) and 5 to 28 of Schedule 2.

(5) Where a producer has notified the Scottish Ministers under paragraph (4)(b) that the producer wishes to retain the right to restoration of quota, the producer may request the Scottish Ministers to restore to that producer the quota relating to that holding or part holding provided that the request is submitted to the Scottish Ministers by 15th July in the quota year following the quota year to which the request relates.

(6) Where a producer has notified the Scottish Ministers that the producer wishes to retain the right to restoration of quota and there is a change of occupation of all or part of the holding to which the quota relates, the new occupier may request the restoration to the new occupier of the quota relating to that holding or part holding, provided that the request is received by the Scottish Ministers at least six months before the end of the six year period referred to in paragraph (3) or within six months of the change of occupation, whichever is the earlier.

(7) Where quota is restored to part of a holding in respect of which an appointment of quota has been made in accordance with or under paragraph (4)(b)(ii) or (iii), in accordance with a request made

under paragraph (5), or following a change of occupation of part of a holding under paragraph (6), the amount of quota to be restored to that part shall be determined in accordance with—

- (a) the apportionment referred to in paragraph (4)(b)(ii) or (iii) and within that apportionment in proportion to the agricultural areas concerned; or
  - (b) where no such apportionment has been carried out, in the same proportion which the agricultural area concerned bears to the total agricultural area of the holding from which quota was withdrawn.
- (8) The relevant quota shall be liable to be taken into the national reserve where a producer—
- (a) fails to submit a notification in accordance with paragraph (4)(b);
  - (b) indicates on the notification submitted under paragraph (4)(b) that the producer does not wish to retain the right to restoration of quota;
  - (c) fails to request the restoration of quota in accordance with paragraph (5) or (6);
  - (d) having had quota restored to the producer in accordance with paragraph (5), fails to make deliveries or direct sales of dairy produce from the holding to which the quota relates within six months after the producer's application for the restoration of quota or the end of the six year period, whichever is the earlier; or
  - (e) having had quota restored to the producer following a change of occupation referred to in paragraph (6), fails to make deliveries or direct sales of dairy produce from the holding within eighteen months of the change of occupation or the end of the six year period, whichever is the earlier.

### Withdrawal of Special Quota

**33.** Where a producer has special quota registered in the name of that producer and it appears to the Scottish Ministers that the producer has made a false or misleading statement in the application by the producer for special quota or has failed to comply with the requirements under the Community legislation in relation to special quota, the Scottish Ministers may withdraw the whole or any part of the special quota.

### Revocations and savings

**34.—**(1) Subject to paragraph (2), the following provisions are hereby revoked:—

- (a) the Dairy Produce Quotas Regulations 1997 <sup>M10</sup>;
- (b) the Dairy Produce Quotas (Amendment) (Time Limits) Regulations 1997 <sup>M11</sup>;
- (c) the Dairy Produce Quotas Amendment (Scotland) Regulations 2000 <sup>M12</sup>;
- (d) the Dairy Produce Quotas Amendment (No. 2) (Scotland) Regulations 2000 <sup>M13</sup>; and
- (e) regulation 3(11) and (12) of the Abolition of the Intervention Board for Agricultural Produce (Consequential Provisions) (Scotland) Regulations 2001 <sup>M14</sup>.

(2) Paragraph (1) shall not affect the continued operation of regulations 30 and 31 of the Dairy Produce Quotas Regulations 1997 in respect of any requirement imposed by, or anything done in connection with, those Regulations, with the exception of any undertaking given pursuant to regulation 11(2)(c) or (d) of those Regulations, which undertaking shall cease to have effect.

#### Marginal Citations

**M10** S.I. 1997/773, amended by S.I. 1997/1093 and 1998/2880 and S.S.I. 2000/52, 391 and 2001/390.

**M11** S.I. 1997/1093.

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**M12** [S.S.I. 2000/52](#).

**M13** [S.S.I. 2000/391](#).

**M14** [S.S.I. 2001/390](#).

Pentland House, Edinburgh  
7th March 2002

*ROSS FINNIE*  
A member of the Scottish Executive

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## SCHEDULE 1

Regulation 2

## INTERPRETATION

In these Regulations—

“the Community compensation scheme” means—

- (a) the scheme instituted by Council Regulation (EEC) No. 2187/1993<sup>M15</sup> providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade and Commission Regulation (EEC) No. 2648/1993<sup>M16</sup> laying down detailed rules for the application of Council Regulation (EEC) No. 2187/1993; or
- (b) the scheme instituted by Council Regulation (EC) No. 2330/1998<sup>M17</sup> providing an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade and Commission Regulation (EC) No. 2647/1998<sup>M18</sup> laying down detailed rules for the application of Council Regulation (EC) No. 2330/1998; or
- (c) both those schemes;

“the Community legislation” means—

- (a) the Commission Regulation;
- (b) Commission Regulation 1756/93;
- (c) Commission Regulation 2562/93;
- (d) Commission Regulation (EEC) No. 2648/1993 laying down detailed rules for the application of Council Regulation (EEC) No. 2187/1993;
- (e) Commission Regulation 2647/1998 laying down detailed rules for the application of Council Regulation 2330/1998<sup>M19</sup>;
- (f) the Council Regulation;
- (g) Council Regulation 2055/93;
- (h) Council Regulation (EEC) No. 2187/1993<sup>M20</sup> providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade;
- (i) Council Regulation (EC) No. 2330/1998 providing an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade;

“the Commission Regulation” means Commission Regulation (EC) No. 1392/2001<sup>M21</sup> laying down detailed rules for applying Council Regulation (EEC) No. 3950/1992 establishing an additional levy on milk and milk products;

“the Council Regulation” means Council Regulation (EEC) No. 3950/1992<sup>M22</sup> establishing an additional levy in the milk and milk products sector, as amended by—

- (a) Council Regulation (EEC) No. 1560/1993<sup>M23</sup>;
- (b) Commission Regulation (EC) No. 647/1994<sup>M24</sup>;
- (c) Council Regulation (EC) No. 1883/1994<sup>M25</sup>;
- (d) Commission Regulation (EC) No. 630/1995<sup>M26</sup>;
- (e) Council Regulation (EC) No. 1552/1995<sup>M27</sup>;
- (f) Commission Regulation (EC) No. 635/1996<sup>M28</sup>;

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- (g) Commission Regulation (EC) No. 1109/1996<sup>M29</sup>;
- (h) Commission Regulation (EC) No. 614/1997<sup>M30</sup>;
- (i) Council Regulation (EC) No. 551/1998<sup>M31</sup>;
- (j) Commission Regulation (EC) No. 903/98<sup>M32</sup>;
- (k) Commission Regulation (EC) No. 751/1999<sup>M33</sup>;
- (l) Council Regulation (EC) No. 1256/1999<sup>M34</sup>;
- (m) Commission Regulation (EC) No. 749/2000<sup>M35</sup>;
- (n) Commission Regulation (EC) No. 603/2001<sup>M36</sup>;

“Council Regulation 2055/93” means Council Regulation (EEC) No. 2055/93<sup>M37</sup>, allocating a special reference quantity to certain producers of milk and milk products.

#### Marginal Citations

- M15** O.J. No. L 196, 05.08.93, p.6.
- M16** O.J. No. L 243, 29.09.93, p.1.
- M17** O.J. No. L 291, 30.10.98, p.4.
- M18** O.J. No. L 335, 10.12.98, p.33.
- M19** O.J. No. L 291, 30.10.98, p.4.
- M20** O.J. No. L 243, 29.09.93, p.1.
- M21** O.J. No. L 187 10.07.01, p.19.
- M22** O.J. No. L 405, 31.12.92, p.1.
- M23** O.J. No. L 154, 25.06.93, p.30.
- M24** O.J. No. L 80, 24.03.94, p.16.
- M25** O.J. No. L 197, 30.07.94, p.25.
- M26** O.J. No. L 66, 24.03.95, p.11.
- M27** O.J. No. L 148, 30.06.95, p.43.
- M28** O.J. No. L 90, 11.04.96, p.17.
- M29** O.J. No. L 148, 21.06.96, p.13.
- M30** O.J. No. L 94, 09.04.97, p.4.
- M31** O.J. No. L 73, 12.03.98, p.1.
- M32** O.J. No. L 127, 29.04.98, p.8.
- M33** O.J. No. L 96, 10.04.99, p.11.
- M34** O.J. No. L 160, 26.06.99, p.73.
- M35** O.J. No. L 90, 12.04.00, p.4.
- M36** O.J. No. L 89, 29.03.01, p.18.
- M37** O.J. No. L 187, 29.07.93, p.8 (as read with Corrigenda published in O.J. No. L 314, 16.12.93, p.51).

#### Marginal Citations

- M15** O.J. No. L 196, 05.08.93, p.6.
- M16** O.J. No. L 243, 29.09.93, p.1.
- M17** O.J. No. L 291, 30.10.98, p.4.
- M18** O.J. No. L 335, 10.12.98, p.33.
- M19** O.J. No. L 291, 30.10.98, p.4.
- M20** O.J. No. L 243, 29.09.93, p.1.
- M21** O.J. No. L 187 10.07.01, p.19.
- M22** O.J. No. L 405, 31.12.92, p.1.

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- M23** O.J. No. L 154, 25.06.93, p.30.
- M24** O.J. No. L 80, 24.03.94, p.16.
- M25** O.J. No. L 197, 30.07.94, p.25.
- M26** O.J. No. L 66, 24.03.95, p.11.
- M27** O.J. No. L 148, 30.06.95, p.43.
- M28** O.J. No. L 90, 11.04.96, p.17.
- M29** O.J. No. L 148, 21.06.96, p.13.
- M30** O.J. No. L 94, 09.04.97, p.4.
- M31** O.J. No. L 73, 12.03.98, p.1.
- M32** O.J. No. L 127, 29.04.98, p.8.
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- M34** O.J. No. L 160, 26.06.99, p.73.
- M35** O.J. No. L 90, 12.04.00, p.4.
- M36** O.J. No. L 89, 29.03.01, p.18.
- M37** O.J. No. L 187, 29.07.93, p.8 (as read with Corrigenda published in O.J. No. L 314, 16.12.93, p.51).

## SCHEDULE 2

Regulations 9, 10 and 32

### APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR THE SCOTTISH LAND COURT

#### PART I

#### GENERAL

**1.**—(1) Subject to sub-paragraphs (2) and (3), all apportionments and prospective apportionments in respect of holdings in Scotland shall be carried out by arbitration and the provisions of Part II of this Schedule shall apply.

(2) The Scottish Land Court shall carry out the apportionment or prospective apportionment where the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted—

- (a) a croft within the meaning of section 3 of the Crofters (Scotland) Act 1993 <sup>M38</sup>;
- (b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911 <sup>M39</sup>; or
- (c) the holding of a statutory small tenant under section 32 of the Small Landholders (Scotland) Act 1911.

(3) Where sub-paragraph (2) does not apply and the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991 <sup>M40</sup>, the Scottish Land Court shall carry out the apportionment or prospective apportionment if requested to do so by a joint application of all parties interested in the apportionment, not later than 28 days after the change of occupation of the holding or part of the holding.

(4) Where the Scottish Land Court carries out any apportionment or prospective apportionment, Part III of this Schedule shall apply.

#### Marginal Citations

**M38** 1993 c.44.

**M39** 1911 c.49.

**M40** 1991 c.55.

2.—(1) An arbiter or the Scottish Land Court, as the case may be, shall decide the apportionment on the basis of findings made by that arbiter or the Scottish Land Court, as the case may be, as to areas used for milk production in the last five-year period during which production took place before the change of occupation or, in the case of a prospective apportionment, in the last five-year period during which production took place before the appointment of the arbiter or the application to the Scottish Land Court.

(2) Notwithstanding sub-paragraph (1), an arbiter appointed in accordance with paragraph 3(4) shall conduct the arbitration in accordance with this Schedule and shall base the award on findings made by that arbiter as to the areas used for milk production in the last five-year period during which production took place.

(3) Where production has taken place for less than five years before the change of occupation or of appointment of the arbiter or of the application to the Scottish Land Court, the period of production before the change of occupation or the appointment of the arbiter or the application to the Scottish Land Court as the case may be shall be substituted for the five-year period referred to in sub-paragraphs (1) and (2).

## PART II

### APPORTIONMENTS CARRIED OUT BY ARBITRATION

#### Appointment and remuneration of arbiter

3.—(1) In any case where an apportionment is to be carried out by arbitration, an arbiter shall be appointed by agreement between the transferor and transferee within the period of 28 days from the change of occupation of the holding or part of the holding and the transferee shall give notice of the appointment of the arbiter to the Scottish Ministers within fourteen days from the date of the appointment.

(2) Notwithstanding sub-paragraph (1), the transferor or the transferee may at any time within the period of 28 days referred to in sub-paragraph (1) make an application to the Scottish Ministers for the appointment of an arbiter.

(3) If at the expiry of the period of 28 days referred to in sub-paragraph (1) an arbiter has not been appointed by agreement between the transferor and the transferee nor an application made to the Scottish Ministers under sub-paragraph (2), the Scottish Ministers shall at their own instance proceed to appoint an arbiter.

(4) Where an apportionment under regulation 32(4)(b)(iii) is to be carried out by arbitration, the producer shall either appoint an arbiter with the agreement of all persons with an interest in the holding or make an application to the Scottish Ministers for the apportionment of an arbiter.

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbiter shall be appointed by agreement between the occupier and any other interested party or, in default of agreement, by the Scottish Ministers on an application by the occupier.

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(2) Where an arbiter is appointed by agreement in terms of sub-paragraph (1), the occupier shall give notice of the appointment of the arbiter to the Scottish Ministers within fourteen days from the date of the appointment.

**5.—(1)** Where, in terms of a notice given by the Scottish Ministers under regulation 11, an apportionment or prospective apportionment is to be carried out by arbitration, the Scottish Ministers shall apply to the Scottish Land Court for the appointment of an arbiter.

(2) Any fee payable by the Scottish Ministers on an application to the Scottish Land Court under sub-paragraph (1) shall be recoverable by them as a debt due from the other parties to the arbitration jointly and severally.

(3) Where the Scottish Ministers are to be a party to an arbitration (otherwise than in terms of a notice given under regulation 11), the arbiter shall, in lieu of being appointed by the Scottish Ministers, be appointed by the Scottish Land Court.

**6.—(1)** If the person appointed arbiter dies, or is incapable of acting, or is removed by the sheriff under paragraph 21, or for seven days after notice from any party requiring that person to act fails to act, a new arbiter may be appointed as if no arbiter had been appointed.

(2) If an award is set aside by the sheriff under paragraph 22, a new arbiter may be appointed as if no arbiter had been appointed.

**7.** No party to the arbitration shall have power to revoke the appointment of the arbiter without the consent of all of the other parties.

**8.** Every appointment, application, notice, revocation and consent under paragraphs 1 to 7 must be in writing.

**9.** The remuneration of the arbiter shall be—

- (a) where the arbiter is appointed by agreement between the parties, such amount as may be agreed upon by the arbiter and the parties or, in default of agreement, fixed by the auditor of the sheriff court (subject to an appeal to the sheriff) on an application made by the arbiter or one of the parties;
- (b) where the arbiter is appointed by the Scottish Ministers, such amount as may be fixed by the Scottish Ministers;
- (c) where the arbiter is appointed by the Scottish Land Court, such amount as may be fixed by that Court;

and shall be recoverable by the arbiter as a debt due from any one of the parties to the arbitration.

### **Conduct of proceedings and witnesses**

**10.** The parties to the arbitration shall within twenty-eight days of the appointment of the arbiter deliver to the arbiter a statement of their respective cases with all necessary particulars; and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said twenty-eight days except with the consent of the arbiter;
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by that party and any amendment or addition duly made.

**11.** The parties to the arbitration, and all persons claiming through them, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute and shall, subject to any such objection, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power which may be

required or called for, and do all other things as the arbiter reasonably may require for the purposes of the arbitration.

**12.** Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter and the Scottish Ministers may make such representations where the arbitration follows on a notice given by them under regulation 11.

**13.** The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

### **Award**

**14.—(1)** The arbiter shall make and sign the award within three months of the appointment of the arbiter or within such longer period as may, either before or after the expiry of the aforesaid period, be agreed to in writing by the parties or fixed by the Scottish Ministers.

(2) The arbiter shall notify the terms of that award to the Scottish Ministers within eight days of the delivery of the award.

(3) The award shall fix a date not later than one month after the delivery of the award for the payment of any expenses awarded under paragraph 17.

**15.** The award to be made by the arbiter shall be final and binding on the parties and any persons claiming under them.

**16.** The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

### **Expenses**

**17.** The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the sheriff court on the application of any party, but that taxation shall be subject to review by the sheriff.

**18.—(1)** The arbiter shall, in awarding expenses, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of amount or otherwise;
- (b) any unreasonable demand for particulars or refusal to supply particulars; and
- (c) generally all the circumstances of the case.

(2) The arbiter may disallow any expenses which the arbiter considers to have been incurred unnecessarily, including the expenses of any witness whom the arbiter considers to have been called unnecessarily.

**19.** It shall not be lawful to include in the expenses of and incidental to the arbitration and award, or to charge against any of the parties, any sum payable in respect of remuneration or expenses to any person appointed by the arbiter to act as clerk or otherwise to assist the arbiter in the arbitration unless such appointment was made after submission of the claim and answers to the arbiter and with either the consent of the parties to the arbitration or the sanction of the sheriff.

### **Statement of case**

**20.** The arbiter may at any stage of the proceedings, and shall, if so directed by the sheriff (which direction may be given on the application of any party), state a case for the opinion of the sheriff on any questions of law arising in the course of the arbitration. The opinion of the sheriff on any case shall be final.

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### Removal of arbiter and setting aside of award

21. Where an arbiter has committed any misconduct, the sheriff may remove that arbiter.
22. Where an arbiter has committed any misconduct, or an arbitration or award has been improperly procured, the sheriff may set the award aside.

### Miscellaneous

23. Any amount paid in respect of the remuneration of an arbiter by any party to the arbitration in excess of the amount, if any, directed by the award to be paid by that person in respect of the expenses of the award shall be recoverable from the other party or jointly from the other parties.
24. The Arbitration (Scotland) Act 1894 <sup>M41</sup> shall not apply to any arbitration carried out under this Schedule.

#### Marginal Citations

M41 1894 c.13 (57 and 38 Vict).

## PART III

### APPORTIONMENTS CARRIED OUT BY THE SCOTTISH LAND COURT

25. The provisions of the Scottish Land Court Act 1993 <sup>M42</sup> with regard to the Scottish Land Court shall apply for the purpose of the determination of any matter which they are required, in terms of paragraph 1, to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under that Act.

#### Marginal Citations

M42 1993 c.45.

26. Where an apportionment or prospective apportionment is to be dealt with by the Scottish Land Court, the party making application to that Court shall notify the Scottish Ministers in writing of the application within fourteen days of its being lodged with the Court.

27. Where, in terms of a notice given by the Scottish Ministers under regulation 11, an apportionment or prospective apportionment is to be carried out by the Scottish Land Court, any fee payable by the Scottish Ministers to the Court shall be recoverable by them as a debt due from the other parties to the case jointly and severally.

28. Any person having an interest in the holding to which the apportionment or prospective apportionment relates shall be entitled to be a party to the proceedings before the Scottish Land Court and the Scottish Ministers shall be entitled to be a party where the apportionment follows on a notice given by them under regulation 11.

## SCHEDULE 3

Regulations 8 and 18

### REALLOCATION OF QUOTA AND CALCULATION OF LEVY LIABILITY

#### Wholesale quota

1. The Scottish Ministers shall determine the amount, if any, by which the wholesale deliveries of dairy produce to each purchaser exceeds the purchaser quota of that purchaser.

2. In making that determination the Scottish Ministers shall complete in sequence the steps required by paragraphs 3 to 7.

3. The Scottish Ministers shall where necessary authorise an adjustment of the amount, if any, to which the quantity of wholesale deliveries of dairy produce to each purchaser must be adjusted to take account of its fat content, calculated in accordance with Article 4(1) of the Commission Regulation.

4. The Scottish Ministers shall authorise the adjustment by purchasers (to the extent possible from within the quota available to the purchaser to whom the producer makes deliveries) of the quota of any producer making wholesale deliveries to whom a temporary reallocation of quota has been made, to take account of that reallocation and any purchaser who has insufficient quota unused by producers registered with that purchaser to meet that temporary reallocation shall notify the Scottish Ministers of the amount of the shortfall in such form as may reasonably be required by the Scottish Ministers.

5. The Scottish Ministers shall determine for each purchaser the amount, if any, by which the purchaser quota of each purchaser exceeds or falls short of the quantity of wholesale deliveries of dairy produce made to that purchaser taking into account the amount of quota converted in accordance with regulation 16, and any temporary reallocation made in accordance with paragraph 4.

6. The Scottish Ministers shall determine the total amount, if any, of excess quota remaining for any purchaser whose purchaser quota exceeds the quantity of wholesale deliveries of dairy produce made to that purchaser, as determined in accordance with paragraph 5, and shall make arrangements for that amount to be added to the national reserve.

7. The Scottish Ministers shall make arrangements for the reallocation of the amount, if any, referred to in paragraph 6—

- (a) in the first instance, to meet any award of a temporary reallocation of quota which has not been met by the adjustment referred to in paragraph 4 above;
- (b) thereafter, to offset the amount by which the deliveries made to any purchaser exceed that purchaser's purchaser quota, such allocation being made proportionately to the amount of quota; and
- (c) where the allocations referred to in sub-paragraph (b) exceed the amount required by the purchaser, the surplus shall be allocated to all purchasers where the deliveries exceed purchaser quota, until all unallocated quota has been exhausted.

8. Where a purchaser fails to notify the Scottish Ministers on or before 14th May immediately following the end of the quota year of the actual quantity of milk or milk products delivered to that purchaser in that year, the Scottish Ministers may decide that that purchaser shall not benefit from the reallocation of quota referred to in paragraph 7(b).

9. The Scottish Ministers shall determine the total amount of the levy payable by a purchaser by multiplying the amount, if any, by which deliveries to that purchaser exceed the purchaser's quota following the steps specified in paragraphs 3 to 7 by the rate of levy calculated in accordance with Article 1 of the Council Regulation.

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**10.** Where, for any quota year, a purchaser is unable to supply such proof of the quantities of dairy produce delivered to that purchaser that year as the Scottish Ministers may reasonably require, the Scottish Ministers shall make their own determination of those quantities, based on all the information available to them, for the purposes of calculating any levy payable by that purchaser, and shall inform the purchaser of such determination.

**11.** Where a purchaser—

- (a) has not been approved pursuant to regulation 24; or
- (b) has had the approval of that purchaser withdrawn by the Scottish Ministers pursuant to Article 13(3) of the Commission Regulation,

the Scottish Ministers may require any levy payable by that purchaser to be paid in such proportion as they may reasonably require by any producer whose wholesale deliveries to that purchaser have given rise to the liability for levy.

### **Direct sales quota**

**12.** The Scottish Ministers shall determine for each direct seller the amount, if any, after taking into account the amount of quota converted in accordance with regulation 16, by which that direct seller's direct sales quota exceeds the quantity of dairy produce sold by direct sale by that direct seller, and shall make arrangements for this to be added to any quantities available in the national reserve.

**13.** The Scottish Ministers shall make arrangements for the temporary reallocation of direct sales quota, under the terms of regulation 15 from the aggregate of amounts, if any, referred to in paragraph 12.

**14.** The Scottish Ministers shall determine the aggregate amount, if any, by which the direct sales quota of all direct sellers falls short of the total quantity of dairy produce sold by direct sales by them, after taking into account the amount of quota converted in accordance with regulation 17, and any temporary reallocation made in accordance with paragraph 13.

**15.** The Scottish Ministers shall determine for each direct seller the amount, if any, by which that direct seller's direct sales quota falls short of the quantity of dairy produce sold by direct sale by that direct seller, taking into account the amount of quota converted in accordance with regulation 17, and any temporary reallocation of quota made in accordance with paragraph 13.

**16.** The Scottish Ministers shall determine the aggregate of the amounts, if any, referred to in paragraph 15.

**17.** The Scottish Ministers shall determine the total amount of the levy payable by multiplying the amount, if any, referred to in paragraph 14 by the rate of levy calculated in accordance with Article 1 of the Council Regulation.

**18.** The Scottish Ministers shall calculate the rate of levy per litre, if any, to be paid by each direct seller on the amount, if any, at paragraph 15 by dividing the amount calculated in accordance with paragraph 17 by the aggregate referred to in paragraph 16.

**19.** Where a direct seller fails to notify the Scottish Ministers on or before 14th May immediately following the end of the quota year of the total quantity of milk products sold by that direct seller by direct sales in that year, the Scottish Ministers may require that the rate of levy per litre to be paid by that direct seller on the quantity not notified shall be the rate calculated in accordance with Article 1 of the Council Regulation.

**20.** Where for any quota year a direct seller is unable to supply such proof as the Scottish Ministers may reasonably require of the quantities of dairy produce sold by that direct seller in that year, the Scottish Ministers shall make their own determination of those quantities, based on all the

information available to them, for the purposes of calculating any levy payable by that direct seller, and shall inform the direct seller of their determination.

## SCHEDULE 4

Regulation 29

### KEEPING AND RETENTION OF RECORDS

#### **Records to be kept by purchasers**

1. In respect of each quota year, a purchaser shall keep, and retain for the relevant period, records comprising—

- (a) details of each producer making deliveries to that purchaser, including—
  - (i) the name and address of each producer;
  - (ii) the wholesale quota available to each producer at the beginning and end of each quota year;
  - (iii) the representative fat content (butterfat base) of the milk delivered by each producer; and
  - (iv) the total quota available for the purchaser group concerned and weighted butterfat of that quota;
- (b) details, in terms of each delivery and each month, of the quantities of milk or milk equivalent which each producer has delivered to that producer;
- (c) details of the cumulative total of the quantities delivered to that producer each month by all producers;
- (d) details of the average fat content of deliveries per month of each producer;
- (e) details of the weighted average fat content of the cumulative total referred to in paragraph (c);
- (f) a list of purchasers and other undertakings which deliver treated or processed milk or milk products to that purchaser;
- (g) details, in terms of each such purchaser or undertaking and each month, of the quantities delivered to that purchaser by such purchaser or undertaking;
- (h) details of the use to which milk and milk equivalent collected from that purchaser has been put;
- (i) records of individual deliveries and accompanying collection documents identifying each delivery by producer, purchaser or other undertaking; and
- (j) all books, registers, accounts, correspondence, commercial data, vouchers and supporting documents relating to the business activities of that purchaser.

#### **Records to be kept by producers**

2.—(1) In respect of each quota year, a direct seller shall keep, and retain for the relevant period, records comprising—

- (a) details of the quota held by that direct seller, including any permanent and temporary transfers of quota if appropriate;
- (b) that direct seller's herd records (comprising number and breed of cows and calved heifers in dairy herd with details of numbers in milk and numbers dry);

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- (c) daily records of milk produced;
  - (d) details recorded as a result of that direct seller's participation in the National Milk Recording Scheme or other recording scheme;
  - (e) details of quantities of milk processed, methods of processing and quantities and type of milk products produced;
  - (f) details of quantities of wholemilk used in the production of milk products (with conversion rates applied);
  - (g) details of quantities and types of milk and milk products which are produced and used on that direct seller's holding for stockfeeding and human consumption;
  - (h) details of quantities and types of milk products which are disposed of (other than under paragraph (g)) or wasted on the holding;
  - (i) details of quantities and types of milk and milk products sold direct to the consumer or transferred free of charge from that direct sellers holding (including milk and milk products sold on the holding of that direct seller);
  - (j) details of quantities and types of milk and milk products purchased, exchanged or otherwise received by that direct seller, and records relating to their disposal; and
  - (k) details of stocks of milk and milk products held by that direct seller on a monthly basis.
- (2) Where a direct seller delivers milk or milk products to a purchaser, that direct seller shall, in respect of each quota year, also keep, and retain for the relevant period, records comprising–
- (a) details of quantities and types of milk and milk products delivered wholesale by that direct seller and the name and address of any purchaser involved;
  - (b) the payment slips issued in respect of any such purchaser; and
  - (c) where there is a discrepancy between a payment slip of the purchaser and the relevant tanker receipt, that tanker receipt.
- 3.** A producer, other than a direct seller, who makes wholesale deliveries to a purchaser shall, in respect of each quota year, keep, and retain for the relevant period, records comprising–
- (a) details of the quota held by that producer, showing permanent and temporary transfers of quotas if appropriate;
  - (b) that producer's herd records (comprising number and breed of cows and calved heifers in dairy herd with details of numbers in milk and number dry);
  - (c) daily records of milk produced;
  - (d) details of quantities and types of milk and milk products delivered wholesale by that producer, and the name and address of any purchaser involved;
  - (e) the payment slips issued in respect of any such purchaser;
  - (f) where there is a discrepancy between a payment slip of a purchaser and the relevant tanker receipt, that tanker receipt;
  - (g) details recorded as a result of that producer's participation in the National Milk Recording Scheme or other recording scheme;
  - (h) details of quantities and types of milk and milk products produced and used on that producers holding for stockfeeding and human consumption;
  - (i) details of quantities and types of milk and milk products which are disposed of (other than under paragraph (h)) or wasted on the holding;
  - (j) details of quantities and types of milk and milk products transferred free of charge from that producers holding;

- (k) details of quantities and types of milk and milk products purchased, swapped or otherwise received, and records relating to their disposal; and
- (l) details of stocks of milk produced on that producers holding and any resulting milk products.

#### **Records to be kept by any person undertaking butterfat testing in a laboratory**

4. Any person undertaking butterfat testing for a purchaser in a laboratory shall keep, and retain for the relevant period, records comprising details of all samples of milk analysed, showing—

- (a) the time and date the sample was taken on the holding;
- (b) the time and date of that persons receipt of the sample;
- (c) the time and date of the analysis;
- (d) the identity of the purchaser concerned;
- (e) the identity of the producer concerned (by name or reference number);
- (f) the butterfat content of each sample recorded to two decimal places;
- (g) the method of analysis used; and
- (h) the results of any repeat analyses undertaken.

#### **Records to be kept by hauliers**

5. Any haulier collecting milk or milk products on behalf of a purchaser shall keep, and retain for the relevant period, records comprising details of all quantities of milk or milk products so collected, showing—

- (a) the time and date of collection from each producer;
- (b) the time and date of sampling of the milk or milk products of each producer;
- (c) the identity of the producer concerned;
- (d) the volume of milk collected (including a copy of the tanker receipt in the cases referred to in sub-paragraphs 2(2)(c) and 3(f));
- (e) the identity of the purchaser concerned;
- (f) the volume of milk delivered, and the name and address of each reception site;
- (g) the sources of all the milk carried on each tanker; and
- (h) details of any malfunction in any equipment used by that haulier.

#### **Records to be kept by processors**

6. Any processor in receipt of milk or milk products for processing or treating shall keep, and retain for the relevant period, records comprising details of all quantities of milk and milk products received, showing—

- (a) the time and date of their delivery;
- (b) their volume or weight per delivery (including copies of tanker receipts and weighbridge tickets in the cases referred to in sub-paragraphs 2(2)(c) and 3(f));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their seller or donor;
- (e) the quantities of milk processed, types of processing undertaken, and quantities and types of milk products produced;

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- (f) the quantities of milk used in the production of milk products (if not ascertainable from the information provided under paragraph (e));
- (g) the calculated stocks of milk and milk products held by that processor at the end of each month and details of actual stocks physically held as at 31st March each year; and
- (h) the quantities of milk or milk products sold or otherwise disposed of, with the date of supply or disposal, and the names and addresses of the buyers or recipients concerned.

#### **Records to be kept by persons buying, selling or supplying milk or milk products obtained directly from a producer or purchaser**

7. Any person buying, selling or supplying milk products obtained directly from a producer or purchaser shall keep, and retain for the relevant period, records comprising details of all quantities of milk or milk products received, showing—

- (a) the time and date of their receipt;
- (b) their volume or weight per delivery (including copies of tanker receipts or invoices in the cases referred to in paragraphs 2(2)(c) and 3(f));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their seller or donor;
- (e) the quantities of milk or milk products sold or supplied, with the date of sale or supply, and the names and addresses of the buyers or recipients concerned; and
- (f) the quantities of milk or milk products returned to the producer or purchaser unsold or unused, and the date of that return.

#### **Interpretation**

8. In this Schedule, in relation to any records—
- (a) “the relevant period” means the remainder of the year of record and a period of at least three calendar years thereafter; and
  - (b) “the remainder of the year” means, following the making of the records, the remainder of the year in which they were made.

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### **EXPLANATORY NOTE**

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

These Regulations, which extend to Scotland only, consolidate with amendments the Dairy Produce Quotas Regulations 1997, as amended. They are to be read with the Dairy Produce Quotas (General Provisions) Regulations 2002.

The Regulations implement measures for an additional levy in the milk and milk products sector provided for in Council Regulation (EEC) No. 3950/92 (“the Council Regulation”) and Commission Regulation (EC) No. 1392/2001 (“the Commission Regulation”). Under this and other Community legislation (collectively defined in these Regulations as “the Community legislation”), a levy continues to be payable on dairy produce sold by direct sale by a producer or delivered by that producer wholesale to a purchaser, unless the sales or deliveries are within a reference quantity described in that legislation. The Community legislation establishes the system

of what are commonly called “milk quotas” and in these Regulations the term “quota” is used to refer to the reference quantity described in the Community legislation.

The main changes effected by these Regulations are as follows:–

1. The conditions surrounding a transfer of quota without a corresponding transfer of the land to which that quota relates have been eased. The transferor and transferee are no longer required to give undertakings that they will not transfer quota onto or from their holdings for up to two quota years, and existing undertakings will cease to have effect (regulation 34(2)). Instead, the transferee is required to undertake to the Scottish Ministers that the transferee will be in milk production on a date six months from the date of the transfer (regulation 12(2)(c)).

2. The provisions concerning the temporary reallocation of quota have been extended to cover herd movement restrictions resulting from a declaration made under an order made pursuant to section 17 of the Animal Health Act 1981 (regulation 14(2)(a)). In addition, the definition of “eligible heifer” has been amended, introducing a new method of counting such heifers, and of calculating when the replacement number of heifers has been met, thus determining when reallocation is possible (regulation 2(1) and regulation 14).

3. In implementation of Article 13(2) of the Commission Regulation (which requires purchasers to be approved and confers on member States the power to impose additional conditions of approval), purchasers are required to apply to the Scottish Ministers for approval and meet certain conditions as to character, financial state and future conduct (regulation 24).

4. New provisions have been adopted in respect of the keeping and retention of records (regulation 29 and Schedule 4).

5. Administrative penalties have been introduced in relation to any failure of a purchaser to submit to the Scottish Ministers certain statements, summaries or statistics (regulation 30).

6. The provisions concerning offences and criminal penalties have been revised (regulation 31).

**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.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Sch 1 defn(s) subst by S.S.I. 2004/118 regs 320
- Sch 2 Pt II para 3 am by S.S.I. 2004/118 regs 321
- Sch 3 para 11 am by S.S.I. 2002/228 reg 2(1)(8)
- Sch 3 paras 13–15 am by S.S.I. 2002/228 reg 2(1)(7)
- Sch 3 para 9 am by S.S.I. 2004/118 regs 322
- Sch 3 para 17 am by S.S.I. 2004/118 regs 322
- Sch 3 para 19 am by S.S.I. 2004/118 regs 322
- Regulations revoked by S.S.I. 2005/91 reg. 41(1)
- reg 1 am by S.S.I. 2002/228 reg 2(1)(2)
- reg 2 defn(s) added by S.S.I. 2004/118 regs 34(c) (i)
- reg 2 defn(s) am by S.S.I. 2004/118 regs 34(a)4(a)(b)(d)–(g)
- reg 2 defn(s) subst by S.S.I. 2004/118 regs 34(h)
- reg 4 subst by S.S.I. 2004/118 regs 35
- reg 5 am by S.S.I. 2004/118 regs 36
- reg 7 am by S.S.I. 2002/228 reg 2(1)(8)
- reg 7 am by S.S.I. 2004/118 regs 37
- reg 8 am by S.S.I. 2002/228 reg 2(1)(3)
- reg 8 am by S.S.I. 2004/118 regs 38(a)
- reg 8 rev in pt by S.S.I. 2004/118 regs 38(b)
- reg 12 subst by S.S.I. 2004/118 regs 39
- reg 13 am by S.S.I. 2004/118 regs 310
- reg 14 am by S.S.I. 2002/228 reg 2(1)(8)
- reg 14 am by S.S.I. 2004/118 regs 311
- reg 16 am by S.S.I. 2004/118 regs 312
- reg 18 am by S.S.I. 2004/118 regs 313
- reg 20 am by S.S.I. 2002/228 reg 2(1)(8)
- reg 20 am by S.S.I. 2004/118 regs 314
- reg 22 am by S.S.I. 2004/118 regs 315(c)
- reg 22 rev in pt by S.S.I. 2004/118 regs 315(a)(b)
- reg 25 rev in pt by S.S.I. 2004/118 regs 316
- reg 27 am by S.S.I. 2004/118 regs 317
- reg 28 am by S.S.I. 2002/228 reg 2(1)(8)
- reg 30 am by S.S.I. 2002/228 reg 2(1)(4)
- reg 30 am by S.S.I. 2004/118 regs 318
- reg 32 am by S.S.I. 2002/228 reg 2(1)(5)
- reg 32 subst by S.S.I. 2004/118 regs 319
- reg 33 am by S.S.I. 2002/228 reg 2(1)(8)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg 33A added by S.S.I. 2002/228 reg 2(1)(6)