
SCOTTISH STATUTORY INSTRUMENTS

2005 No.91

FOOD

The Dairy Produce Quotas (Scotland) Regulations 2005

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

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

PART 1

PRELIMINARY

Citation, commencement and extent

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

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

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

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

Interpretation

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

(1) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (1998 c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

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

“the Commission Regulation” means Commission Regulation (EC) No. 595/2004 laying down detailed rules for applying Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector(3);

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

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

“competent authority” has the meaning given by regulation 2 of the General Provisions Regulations;

“consent or sole interest notice” means a notice, in relation to a holding, which states that—

- (a) the person providing the notice is the occupier of that holding and that no other person has an interest in that holding or part of that holding; or
- (b) every person having an interest in that holding or any part of it, the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates, agrees to that apportionment or prospective apportionment;

“converted quota” means quota converted by the Scottish Ministers following an application made under regulation 21;

“the Council Regulation” means Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector(5) as amended by Council Regulation (EC) No. 2217/2004(6);

“cow” includes a heifer that has calved;

“dairy enterprise” means an area stated by the occupier of that area to be run as a self contained dairy produce business;

“dairy produce” means produce, expressed in kilograms or litres (one kilogram being 0.971 litres), in respect of which levy is payable;

“delivery” has the same meaning as in Article 5(f) of the Council Regulation, and “deliver” shall be construed accordingly;

“direct sale” has the same meaning as in Article 5(g) of the Council Regulation;

“direct sales quota” means the quantity of dairy produce which may be sold or transferred free of charge by direct sale by a producer in a quota year without that producer being liable to pay levy;

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

“direct seller” means a producer who produces milk and treats that milk or processes it into milk products on the holding of that person and subsequently sells or transfers free of charge that milk or those milk products without their having been further treated or processed by a different undertaking which treats or processes milk or milk products;

(3) O.J. No. L 94, 31.3.2004, p.22.

(4) O.J. No. L 161, 2.7.1993, p.48, as amended by Commission Regulation (EEC) No. 2866/1993 O.J. No. L 262, 21.10.1993, p.24, Commission Regulation (EEC) No. 114/1994, O.J. No. L 20, 25.1.1994, p.2, Commission Regulation (EC) No. 180/1994, O.J. No. L 24, 29.1.1994, p.38, Commission Regulation (EC) No. 267/1995, O.J. No. L 31, 10.2.1995, p.6, Commission Regulation (EC) No. 693/1995, O.J. No. L 71, 31.3.1995, p.52, Commission Regulation (EC) No. 315/1996, O.J. No. L 44, 22.2.1996, p.12, Commission Regulation (EC) No. 569/1999 O.J. No. L 70, 17.3.1999, p.12 and Commission Regulation (EC) No. 420/1998, O.J. No. L 52, 21.2.1998, p.21.

(5) O.J. No. L 270, 21.10.2003, p.123, as corrected by corrigendum O.J. No. L94, 31.3.2004, p.71.

(6) O.J. No. L 375, 22.12.2004, p.1.

“electronic communication” has the same meaning as in section 15 of the Electronic Communications Act 2000(7);

“the General Provisions Regulations” means the Dairy Produce Quotas (General Provisions) Regulations 2002(8);

“holding” has the same meaning as in Article 5(d) of the Council Regulation;

“interest” includes a licence to occupy land and the interest of a mortgagee and a trustee, but does not include the interest of a beneficiary under a trust or settlement;

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

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

“national reserve” has the meaning given it by regulation 2 of the General Provisions Regulations;

“occupier” includes, in relation to land in respect of which there is no occupier, the person entitled to grant occupation of that land to another, and, during the currency of an interest mentioned in regulation 16(1), the person entitled to grant occupation when that interest terminates, and “occupation” shall be construed accordingly;

“producer” has the same meaning as in Article 5(c) of the Council Regulation;

“prospective apportionment”, in relation to quota in respect of a holding, means an apportionment of quota between the persons with an interest in the holding for the purposes of ascertaining the quota referable to a part of that holding in the event of a transfer of that part;

“purchaser” means a purchaser within the meaning of Article 5(e) of the Council Regulation and, other than in regulations 5(1) to (4) and 31(7), approved by the Scottish Ministers pursuant to regulation 5 and Article 23 of the Commission Regulation;

“purchaser quota” means the quantity of milk which may be delivered to a purchaser during a quota year without any liability for levy arising;

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

“quota holder”, in relation to quota, means the person in whose name the quota is registered;

“quota year” means any of the periods of twelve months referred to in Article 1(1) of the Council Regulation (which concerns the introduction of the levy);

“registered wholesale quota” means wholesale quota registered pursuant to regulation 4;

“relevant competent authority” has the meaning given by regulation 3 of the General Provisions Regulations;

“relevant person” means a producer, a purchaser, any employee or agent of a producer or of a purchaser, any milk haulier, any person undertaking butterfat testing for purchasers in a laboratory, a processor of milk or milk products, or any other person involved in the buying, selling or supply of milk or milk products obtained directly from a producer or purchaser, but does not include a consumer of milk or milk products;

“Scottish Islands area” means either—

- (a) the islands of Orkney, except for the island of Stronsay, or
- (b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae, the Kintyre peninsula south of Tarbert and the areas of land within the Argyll and Bute District comprising those parts of the parishes of Dunoon and Kilmun and Inverchaolain shown bounded by a red line on a map marked “Map referred to in sub paragraph (b) of

(7) 2000 c. 7. Section 15 is amended by paragraph 158 of Schedule 17 of the Communications Act 2003 (2003 c. 21).

(8) S.I. 2002/458.

the definition of Scottish Islands area in regulation 2(1) of the Dairy Produce Quotas (Scotland) Regulations 2005”, dated 10th February 2005, signed on behalf of the Scottish Ministers and deposited at the offices of the Scottish Executive Environment and Rural Affairs Department at Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TY;

“transferee” means—

- (a) where quota is transferred with a holding or part of a holding, a person who replaces another as occupier of that holding or part of a holding, and
- (b) in any other case, the person to whom quota is transferred;

“transferor” means—

- (a) where quota is transferred with a holding or part of a holding, a person who is replaced by another occupier of that holding or part of a holding, and
- (b) in any other case, the person from whom quota is transferred;

“unused quota” means quota remaining unused after any direct sales or deliveries have been taken into account, following such adjustment (if any) as is required by Article 10(1) of the Commission Regulation (which concerns the fat content of milk), and “used quota” shall be construed accordingly;

“wholesale producer” means a producer who delivers milk to a purchaser;

“wholesale quota” means the quantity of milk which may be delivered to a purchaser by a wholesale producer in a quota year without that wholesale producer being liable to pay levy;

“wholesale quota holder” means a person in whose name wholesale quota is registered pursuant to regulation 4; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁹⁾.

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

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

Application

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

PART 2

REGISTRATION OF QUOTA

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

4.—(1) The Scottish Ministers shall—

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

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

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

- (a) the name of each direct seller;
- (b) the trading address of each direct seller or, where there is more than one such address, each such address, and the principal trading address of each direct seller;
- (c) a reference number which serves to identify the direct seller;
- (d) the direct sales quota available to that direct seller for the quota year; and
- (e) the details of the direct sales of that direct seller.

(3) The Scottish Ministers shall—

- (a) maintain a wholesale register;
- (b) send to each wholesale producer a copy of the entry in the wholesale register relating to that wholesale producer; and
- (c) send to each purchaser named in the list referred to in paragraph (4)(e) a copy of that part of the entry relating to the purchaser quota of that purchaser.

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

- (a) the name of each wholesale producer;
- (b) the trading address of each wholesale producer or, where there is more than one such address, each such address and the principal trading address of each wholesale producer;
- (c) a reference number which serves to identify the wholesale producer;
- (d) the wholesale quota available to the wholesale producer for the quota year; and
- (e) a list of the name and address of each purchaser whose purchaser quota will be calculated to take into account all or part of the total wholesale quota of that wholesale producer, and of the wholesale quota registered with each purchaser, showing the representative fat content base of that quota calculated in accordance with Article 7 of the Commission Regulation.

(5) The Scottish Ministers shall—

- (a) maintain a register of purchasers; and
- (b) send to each purchaser a copy of the purchaser entry relating to that purchaser.

(6) The register of purchasers shall contain an entry in respect of each purchaser setting out in particular—

- (a) the name of each purchaser; and
- (b) the purchaser quota of that purchaser.

(7) For the purposes of paragraphs (1) to (4), where the holding of a quota holder comprises more than one dairy enterprise, that quota holder may, after submitting to the Scottish Ministers a consent or sole interest notice in respect of that holding, agree with the Scottish Ministers the partition of the quota available to that quota holder relating to that holding between separate direct sales register entries or separate wholesale register entries, as the case may be.

(8) The Scottish Ministers—

- (a) may make such enquiries as they reasonably consider necessary for the purposes of ensuring the accuracy of the registers which they are required to maintain under this regulation;
- (b) shall amend the registers—

- (i) to record any allocation or adjustments made under or by virtue of these Regulations;
- or

- (ii) to make any correction or amendment which they reasonably consider to be necessary; and
 - (c) shall notify any person affected by any correction or amendment made by them.
- (9) Notwithstanding that a person is no longer a producer, that person shall—
- (a) remain registered pursuant to this regulation; and
 - (b) for the purposes of this regulation and regulations 6, 7(a) and 33(1), continue to be regarded as a producer,
- until the start of the quota year following the year in which the quota available to that person has been transferred or until the quota has been withdrawn under Article 15 of the Council Regulation.
- (10) The obligation under paragraphs (1)(b), (3)(b) and (c) and (5)(b) is an obligation to send a copy of—
- (a) an entry; or
 - (b) part of an entry,
- as the case may be, as it has effect on 1st April in each year.

Approval of purchasers

5.—(1) For the purposes of Article 23 of the Commission Regulation (which concerns the approval of purchasers), a purchaser shall make an application to the Scottish Ministers for approval in such form as the Scottish Ministers may reasonably require.

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

(3) For the purposes of Article 23(2) of the Commission Regulation (which permits member States to lay down stricter rules on the approval of purchasers), the Scottish Ministers may only approve a purchaser if the purchaser has complied with the requirements of paragraph (4).

- (4) The requirements referred to in paragraph (3) are that the purchaser—
- (a) has given an undertaking to the Scottish Ministers to comply with the provisions of these Regulations and the Community legislation;
 - (b) has not materially contravened the provisions of any scheme for support in the agricultural sector derived from legislation; and
 - (c) either—
 - (i) by submitting to the Scottish Ministers such information as they may reasonably require, has demonstrated to the reasonable satisfaction of the Scottish Ministers that that purchaser has a sound financial basis upon which to operate; or
 - (ii) if the Scottish Ministers consider that the purchaser has not been trading long enough for that to be so demonstrated, has provided such security as the Scottish Ministers may reasonably require.

- (5) Each purchaser shall inform the Scottish Ministers of—
- (a) any change of trading address, or, where there is more than one such address, any change in any such trading address, any additional trading address and any change of principal trading address; and
 - (b) any factor or change in circumstances which the Scottish Ministers might reasonably consider to affect materially any matter that was 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 (4)(a).

- (6) Each purchaser shall—

- (a) confirm to each wholesale producer supplying that purchaser that the purchaser is approved pursuant to Article 23 of the Commission Regulation and this regulation and provide details of the approval if requested; and
- (b) notify each wholesale producer supplying that purchaser if the approval is withdrawn.

Obligations of producers and purchasers with respect to registration and deliveries

6.—(1) Every—

- (a) direct seller; and
- (b) wholesale producer,

shall register their quota with the Scottish Ministers.

(2) Each purchaser shall maintain, in respect of all wholesale producers whose register entries include the name of that purchaser on the list referred to in regulation 4(4)(e)—

- (a) a register corresponding to that maintained by the Scottish Ministers under regulation 4(3) in respect of that part of the purchaser quota attributable to each of those wholesale producers;
- (b) a register of particulars of deliveries from each of those wholesale producers to that purchaser; and
- (c) the information required by paragraphs 2 to 4 of Article 24 of the Commission Regulation (which concern the records required in connection with levy assessment).

(3) Each person who holds registered wholesale quota, including any wholesale producer who has temporarily ceased or who intends temporarily to cease making deliveries, shall register that quota with a purchaser.

(4) A wholesale producer may supply milk only to a purchaser.

(5) Each purchaser shall maintain a system approved by the Scottish Ministers for—

- (a) sampling the milk of each wholesale producer whose register entries include the name of that purchaser on the list referred to in regulation 4(4)(e); and
- (b) determining its fat content.

(6) Each purchaser shall amend the register referred to in paragraph (2)(a) on each occasion when the purchaser is notified by the Scottish Ministers that the equivalent register maintained by the Scottish Ministers has been amended in relation to wholesale producers registered in the register of that purchaser.

Inspection of entries in the Scottish Ministers' registers

7. If a request—

- (a) is made in respect of a register entry referred to in regulation 4(2) or (4) by any person who—
 - (i) is the quota holder identified in that entry;
 - (ii) gives the Scottish Ministers a statement in writing that such person has an interest in the holding of the quota holder identified in that entry; or
 - (iii) is the agent of a person referred to in sub paragraph (i) or (ii); or
- (b) is made by a purchaser in respect of an entry in the register referred to in regulation 4(6) relating to that purchaser or, by another person, provided the request is made with the express written authority of the purchaser in question,

the Scottish Ministers may, on payment of a reasonable charge, supply to the person making the request a copy of the register entry.

Registers as evidence

8. Any entry in a register which the Scottish Ministers are required by these Regulations to maintain shall in any proceedings (unless the contrary is shown) be conclusive evidence of the matters stated therein.

PART 3

TRANSFERS OF QUOTA

Transfer of quota with transfer of land: general

9.—(1) Subject to regulations 14 and 16, this regulation applies for the purposes of Article 17 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) in respect of a transfer of a holding or part of a holding.

(2) The transferee of the holding or the part of the holding shall submit to the Scottish Ministers—

- (a) a notice of transfer in such form; and
- (b) such other information relating to the transfer,

as the Scottish Ministers may reasonably require.

(3) The notice of transfer must reach the Scottish Ministers—

- (a) in the case of a transfer made by lease, no later than 1st March in the quota year in which the transfer takes place; and
- (b) in the case of a transfer made otherwise than by lease, no later than 31st March in the quota year in which the transfer takes place.

(4) The information referred to in paragraph (2)(b) must reach the Scottish Ministers within such time as the Scottish Ministers may reasonably require.

(5) The notice of transfer shall include—

- (a) statements from the transferor and transferee specifying the amounts of used and unused quota transferred;
- (b) in the case of a transfer of part of a holding—
 - (i) statements from the transferor and transferee to the effect that they have agreed that the quota is to be apportioned taking account of the areas used for milk production as specified in the notice of transfer or that no such apportionment has been agreed; and
 - (ii) where such an apportionment has been agreed, a consent or sole interest notice, provided by the transferor in respect of the holding; and
- (c) in the case of a transfer of the whole of a holding, a consent or sole interest notice, provided by the transferor in respect of the holding.

Transfer of part of holding

10.—(1) Subject to regulations 14 and 16, this regulation applies where there is a transfer of part of a holding.

(2) Subject to regulations 11(4) and (5) and 12, where a notice of transfer has been duly submitted in accordance with regulation 9, an apportionment of the quota relating to the holding shall—

- (a) be made in accordance with the agreed apportionment set out in that notice; or
- (b) if there is no such agreement, be determined by arbitration in accordance with Schedule 1.

(3) Subject to paragraph (4) and regulations 11(4) and (5) and 12, any dairy produce which has been the subject of a direct sale or delivered from the holding during the quota year in which the change of occupation takes place and prior to the transfer of the part of the holding is treated for the purposes of any levy calculation as if it was sold, transferred free of charge or delivered, as the case may be, from each part of the holding in proportion to the apportionment under paragraph (2).

(4) Paragraph (3) does not apply if the parties agree otherwise and submit to the Scottish Ministers a notice of that agreement.

(5) A notice referred to in paragraph (4) shall be submitted—

- (a) in such form as the Scottish Ministers may reasonably require; and
- (b) at the same time as the submission of the notice of transfer in accordance with regulation 9.

Prospective apportionment of quota

11.—(1) Where the occupier of a holding requires a prospective apportionment of quota relating to that holding, the occupier shall apply for such an apportionment to the Scottish Ministers in such 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 determined by arbitration in accordance with Schedule 1.

(2) A request for a prospective apportionment may be withdrawn by a notice in writing given to the Scottish Ministers by the occupier.

(3) If the occupier of a holding —

- (a) requests that a prospective apportionment be made in accordance with paragraph (1)(a); or
- (b) gives notice of the withdrawal of such a request in accordance with paragraph (2),

the request or notice shall be accompanied by a consent or sole interest notice in respect of the holding.

(4) Subject to paragraph (6), where there is a change of occupation of part of a holding and within the period of six months ending with the date of that change of occupation—

- (a) the occupier of the holding—
 - (i) has requested a prospective apportionment of quota in respect of that part of the holding, and
 - (ii) has duly submitted a notice of transfer in accordance with regulation 9, 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 determined by arbitration under Schedule 1,

paragraph (5) applies.

(5) The apportionment of quota shall be carried out in accordance with—

- (a) the prospective apportionment of quota relating to that part of that holding made or determined following a request under paragraph (1) unless the request for that prospective apportionment was withdrawn before the change of occupation to which it relates takes place; or

- (b) if no such prospective apportionment has been made or determined, but one is in the process of being made or determined, the prospective apportionment of quota relating to that part of that holding which is in the process of being made or determined under paragraph (1); or
 - (c) in any other case, regulation 10(2).
- (6) Paragraph (4) does not apply to a change of occupation to which regulation 16(1) applies.

Cases where apportionment of quota by arbitration is required

- 12.—(1) This regulation applies where—
- (a) there is a transfer of part of a holding; and
 - (b) the Scottish Ministers have reasonable grounds for believing that the areas used for milk production on the holding—
 - (i) are not as specified in a notice duly submitted pursuant to regulation 9 or an application duly submitted pursuant to regulation 11(1)(a), or
 - (ii) in a case where no such notice or no such application have been duly submitted, were not fully taken into account by the parties at the time of apportionment.
- (2) The Scottish Ministers may give notice that they have reasonable grounds for believing the matters referred to in paragraph (1)(b)—
- (a) to the person who submitted the notice or application referred to in paragraph (1)(b)(i); or
 - (b) in the case where neither was submitted, to the quota holder of the holding in question.
- (3) Where the Scottish Ministers give a notice under paragraph (2), the apportionment or prospective apportionment of the quota concerned shall be determined by arbitration in accordance with Schedule 1.

Transfer of quota without transfer of land

- 13.—(1) This regulation is subject to regulation 16(2) and (3).
- (2) This regulation applies where the competent authorities in England, Wales, Scotland and Northern Ireland have jointly determined, in accordance with paragraphs (1)(e) and (2) of Article 18 of the Council Regulation, that within each United Kingdom quota region transfer of quota without transfer of the corresponding land is authorised.
- (3) A transferee of quota for whom the Scottish Ministers are the relevant competent authority shall submit to the Scottish Ministers a notice of any such transfer within the United Kingdom quota region in such form as the Scottish Ministers may reasonably require.
- (4) The notice must reach the Scottish Ministers no later than 31st March in the quota year in which the transfer takes place and shall include—
- (a) statements by the transferor and transferee that they have agreed to the transfer of quota, stating the amounts of used and unused quota transferred;
 - (b) a consent or sole interest notice given by the transferor in respect of the holding from which the quota is to be transferred; and
 - (c) a statement by the transferee that the transferee is a producer.
- (5) Where the Scottish Ministers have received a notice pursuant to paragraph (3), they may require the transferor or transferee to produce such other information relating to the transfer, and within such time, as the Scottish Ministers may reasonably require.
- (6) In this regulation—
- (a) “general quota region” means the United Kingdom other than the Scottish Islands area; and

- (b) “United Kingdom quota region” means a Scottish Islands area or the general quota region.

Retention of quota at the end of a tenancy

14.—(1) This regulation has effect as respects tenancies ending after 31st March 2005.

(2) Where—

- (a) a tenant of any land in a holding has quota registered as available to that tenant;
- (b) the quota is so registered by virtue of a transfer referred to in regulation 13 the cost of which was not borne by the landlord of the tenant;
- (c) the tenancy of the land in question expires without any possibility of renewal on similar terms;
- (d) the tenant and the landlord of the tenant have not agreed that, after the expiry of the tenancy, the quota should no longer be available to the tenant; and
- (e) the tenant continues to be a producer after the expiry of the tenancy in relation to—
 - (i) another holding; or
 - (ii) another part of the holding of which the land formed part,the tenant may submit a notice to the Scottish Ministers that the quota is to be available to the tenant by virtue of the occupation by the tenant of that other holding or that other part of the holding of which the land formed part.

(3) A notice submitted pursuant to paragraph (2) shall—

- (a) be in such form as the Scottish Ministers may reasonably require;
- (b) reach the Scottish Ministers no later than 31st March in the quota year in which the tenancy expires; and
- (c) include a statement by the tenant—
 - (i) that the tenant and the landlord of the tenant have not agreed that, after the expiry of the tenancy, the quota should be registered in relation to the holding which then comprises or, as the case may be, includes, the land, stating the amounts of used and unused quota involved, and
 - (ii) that the tenant continues to be a producer.

(4) Where a tenant submits a notice pursuant to this regulation, the tenant shall not be entitled to receive compensation under paragraph 2 of Schedule 2 to the Agriculture Act 1986(10) on the termination of the tenancy in question.

Temporary transfer of quota

15.—(1) Subject to regulation 16(2), for the purposes of Article 16 of the Council Regulation (which concerns the temporary transfer of quota), a producer may agree with another producer to make a temporary transfer to that other producer of any unused quota which is registered under regulation 4 as permanently held by the producer if other quota (whether or not unused) remains so registered.

(2) Quota may only be temporarily transferred pursuant to paragraph (1) for such period as shall end on the 31st March in the quota year in which the transfer takes place.

(3) The Scottish Ministers may require a reasonable charge to be paid for the registration of any temporary transfer of quota if before the quota year in which the transfer takes place they have

(10) 1986 c. 49 as amended by the Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003/583, Schedule 1, paragraph 9.

announced that they intend to make such a charge in respect of such transfers in that year in such a manner as they consider likely to come to the attention of producers.

(4) Where there is an agreement to make a temporary transfer pursuant to paragraph (1), the transferee shall submit to the Scottish Ministers notice of the agreement, together with any charge payable under paragraph (3), so that the notice and any charge reach the Scottish Ministers no later than 31st March in the quota year in which the transfer takes place.

(5) A notice referred to in paragraph (4) shall be in such form as the Scottish Ministers may reasonably require.

Restrictions on transfer of quota

16.—(1) No person may transfer quota on the grant or termination of—

- (a) a licence to occupy land; or
- (b) a tenancy of any land under which a holding, or part of a holding, is occupied for a period of less than eight months.

(2) No person may transfer quota if the transfer would result in an increase or reduction in the total wholesale quota or the total direct sales quota available for use by dairy enterprises located within a Scottish Islands area.

(3) No person may transfer quota that is necessary to cover—

- (a) deliveries, after an adjustment for fat content; and
- (b) direct sales,

made by that person before the date of the transfer.

Consequences of failure duly to submit a transfer notice

17.—(1) This regulation applies if a notice of transfer is not duly submitted in accordance with regulation 9 or 13.

(2) Any unused quota transferred shall not be treated as a part of the quota entitlement of the transferee for the relevant quota year, but shall be treated as if it remained unused quota and available where appropriate for reallocation by the Scottish Ministers in that quota year in accordance with regulation 27 or 30.

(3) The transfer of quota shall have effect only from the beginning of the quota year in which the notice of transfer is received by the Scottish Ministers.

(4) The amount of quota, if any, which has been reallocated to the transferee under regulation 27 or 30 for the relevant quota year (or any subsequent years) shall not be varied to take the transfer into account until the quota year in which the transfer notice is received.

(5) In this regulation “relevant quota year” means—

- (a) in the case of a notice that should have been submitted in accordance with regulation 9, the quota year in which the transfer of the holding or the part of the holding takes effect; and
- (b) in the case of a notice that should have been submitted in accordance with regulation 13, the quota year in which the transfer of quota takes effect.

PART 4

ALLOCATIONS AND ADJUSTMENTS OF QUOTA

Allocation from national reserve

18. The Scottish Ministers may make allocations from the national reserve in accordance with the Community legislation.

Temporary reallocation of quota

19.—(1) This regulation applies where a producer has quota registered as the quota of the producer in relation to a holding which—

- (a) at any time during a quota year is in whole or in part subject to a notice served, or declaration made, under an order made pursuant to section 17(1) of the Animal Health Act 1981⁽¹¹⁾ prohibiting or regulating the movement of dairy cows; or
- (b) is situated wholly or partly within an area which at any time during a quota year has been designated by an order made pursuant to section 1 of the Food and Environment Protection Act 1985⁽¹²⁾.

(2) For the purposes of the reallocation of quota referred to in Article 10(3) of the Council Regulation and subject to paragraph (10), the Scottish Ministers may award to a producer a temporary reallocation of an amount of any surplus quota in accordance with the provisions of paragraphs (3) to (5).

(3) An award may only be made for a quota year in which the notice, declaration or order referred to in paragraph (1) has effect or remains in force.

(4) The amount of any such award is the lower of—

- (a) the amount equal to 16 litres per qualifying cow per qualifying day in the quota year referred to in paragraph (3); and
- (b) the amount by which the production of the producer exceeds the quota entitlement of that producer in that quota year.

(5) An award to a producer under this regulation is not available in respect of a quota year during which the producer—

- (a) transfers unused quota pursuant to regulation 9 or 13;
- (b) makes a temporary transfer of quota pursuant to regulation 15; or
- (c) purchases cows or in-calf heifers for dairy purposes,

unless the Scottish Ministers are satisfied that the agreement to transfer, temporarily to transfer or to purchase, was entered into before the service of the notice or the making of the declaration referred to in paragraph (1)(a) or, as the case may be, the coming into force of the order referred to in paragraph (1)(b).

(6) If a producer requires an award of a temporary reallocation of quota under this regulation, the producer shall submit to the Scottish Ministers an application in such form as the Scottish Ministers may reasonably require.

(7) An application referred to in paragraph (6) must reach the Scottish Ministers no later than 30th April following the end of the quota year in which the holding, or part of the holding, in question, was—

⁽¹¹⁾ 1981 c. 22.

⁽¹²⁾ 1985 c. 48; section 1 was amended by the Food Safety Act 1990 (c. 16), section 51(2), by the Food Standards Act 1999 (c. 28), section 40(1) and Schedule 5, paragraph 6(1) and (3), by S.I. 1999/1756 and by S.I. 2000/2040.

- (a) subject to a relevant notice or a relevant declaration; or
- (b) situated in an area designated by a relevant order.

(8) If the Scottish Ministers award to a wholesale producer a temporary reallocation of an amount of any surplus wholesale quota in accordance with this regulation, the Scottish Ministers shall notify each purchaser to whom the wholesale producer makes deliveries of that reallocation.

(9) The Scottish Ministers may make an award of a temporary reallocation of quota only from the aggregate of the amounts of quota referred to in regulations 27(3)(a) and 30(9)(a) once the aggregate has been determined under those regulations.

(10) An eligible heifer which is a qualifying cow for the purposes of a quota year shall not be a qualifying cow for the purposes of any subsequent quota year.

(11) In this regulation—

- (a) “eligible heifer” means a qualifying heifer which calves for the first time on a relevant calving day;
- (b) “qualifying cow”, for the purposes of a quota year, means an 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;
- (c) “qualifying heifer” means a heifer which either—
 - (i) at the date of service of a relevant notice or the making of a relevant declaration, was on land subject to that notice or, as the case may be, that declaration; or
 - (ii) at the date of the coming into force of a relevant order, was on land subject to that order;
- (d) “qualifying day”, in relation to any qualifying cow, means the day on which it calves and each later day or part of a later day during which the relevant notice, the relevant declaration or the relevant order in question has effect or, as the case may be, remains in force;
- (e) “relevant declaration” means a declaration referred to in paragraph (1)(a);
- (f) “relevant notice” means a notice referred to in paragraph (1)(a); and
- (g) “relevant order” means an order referred to in paragraph (1)(b).

(12) In this regulation, “relevant calving day”, in relation to a qualifying heifer, means a day which falls—

- (a) in a case where the relevant notice, relevant declaration or relevant order in question has effect or is in force for a period which expires at or before the end of the quota year during which it is served or (as the case may be) made, within the period of twelve months ending with the date on which that notice, declaration or order ceases to have effect or (as the case may be) to be in force; and
- (b) in any other case, within the quota year during which the relevant notice, the relevant declaration or the relevant order is served or made or at any later time when the relevant notice, the relevant declaration or the relevant order has effect or is in force.

(13) In this regulation, “replacement number” means the nearest whole number to 20% of the total number of dairy cows on land—

- (a) in a case where the land is subject to a relevant notice or a relevant declaration, as at the date of service of that notice or declaration; or
- (b) in a case where the land is subject to a relevant order, as at the date of the coming into force of that order,

and where 20% of the total number is half way between two whole numbers, the nearest even whole number is deemed to be the nearest whole number to 20%.

Special allocation of quota

20.—(1) This regulation applies if by reason of a mistake made by the Scottish Ministers—

- (a) a person has not been allocated any quota; or
- (b) has been allocated a smaller quantity of quota than that person would have been allocated if the mistake had not been made.

(2) The Scottish Ministers may allocate to that person from the national reserve such quota as will compensate, in whole or in part, for that mistake.

Conversion of quota: general

21.—(1) For the purposes of—

- (a) the provisions of Article 6(2) and (5) of the Council Regulation (which concern changes from direct sales to delivery and vice versa); and
- (b) Article 11(2) of the Council Regulation (which concerns replacements of purchasers and changes of purchasers by producers),

a producer may apply to convert direct sales quota to wholesale quota or wholesale quota to direct sales quota either temporarily or permanently.

(2) If a producer wishes to convert quota in any quota year, the producer shall submit to the Scottish Ministers an application in such form as the Scottish Ministers may reasonably require—

- (a) stating—
 - (i) the amount (if any) of direct sales quota of the producer, wholesale quota, direct sales and deliveries for the quota year in which the application is made;
 - (ii) the amount of unused quota which the producer holds at the time of the application; and
 - (iii) the amount which the producer wishes the Scottish Ministers to convert; and
- (b) including such other information as the Scottish Ministers may reasonably require in order to assess whether the requirements of Article 6(2) and (5) of the Council Regulation and Article 7 of the Commission Regulation (which concerns representative fat content) are met.

(3) The application must reach the Scottish Ministers—

- (a) in the case of a permanent conversion of quota, not later than 31st December in the quota year in which the conversion is intended to take effect; and
- (b) in the case of a temporary conversion of quota, not later than 14th May in the year following the end of the quota year in which that temporary conversion is intended to take effect.

Conversion of quota: restriction on transfers of converted quota in conversion year

22.—(1) This regulation does not apply to permanently converted quota which is transferred with a holding pursuant to Article 17 of the Council Regulation.

(2) Subject to paragraphs (3) and (6), where a producer has permanently converted quota in any quota year, that producer shall not transfer later in that quota year quota of the type to which the producer has converted, whether temporarily or otherwise.

(3) Where a producer who has permanently converted quota in any quota year applies to the Scottish Ministers for a release from the restriction in paragraph (2), the Scottish Ministers, being satisfied as to the matters set out in paragraph (5), may release that producer from that restriction.

(4) A release from the restriction in paragraph (2) shall be to the extent necessary to allow the transfer of the amount of quota that the Scottish Ministers consider has remained unused in the particular case.

(5) The matters referred to in paragraph (3) are—

- (a) that, as regards the producer, exceptional circumstances have resulted in a significant fall in milk production or a significant failure to achieve a planned increase in milk production; and
- (b) those circumstances could not reasonably have been foreseen or avoided by the producer at the time of the permanent conversion of quota by the producer.

(6) The restriction in paragraph (2) does not apply if—

- (a) in a case where the permanent conversion is from direct sales quota to wholesale quota, the producer temporarily converted direct sales quota to wholesale quota in the immediately preceding quota year; or
- (b) in a case where the permanent conversion is from wholesale quota to direct sales quota, the producer temporarily converted wholesale quota to direct sales quota in the immediately preceding quota year.

(7) The following are examples of circumstances which shall be recognised as exceptional for the purposes of paragraph (5)—

- (a) the death of the producer or the inability of the producer to conduct the business of the producer 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) 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(1) of the Animal Health Act 1981 or the making of an order pursuant to section 1 of the Food and Environment Protection Act 1985;
- (f) the loss of a significant proportion of the forage area as a result of the compulsory purchase of the holding or a part of the holding; and
- (g) where the transferee is a tenant, the serving of a notice to quit coming within any case specified in section 22(2) of the Agricultural Holdings (Scotland) Act 1991(13).

Adjustment of purchaser quota

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

(2) As regards a transaction to which Article 11(2) of the Council Regulation applies (which concerns replacements of purchasers and changes of purchasers by wholesale producers), a purchaser whose purchaser quota has been increased by virtue of such a transaction shall submit to the Scottish Ministers an application for the purchaser quota of that purchaser to be increased by the specified amount.

(3) An application referred to in paragraph (2) shall include—

- (a) a statement setting out the particulars of the transaction; and

- (b) a declaration made and signed by the wholesale producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the application referred to in paragraph (2).
- (4) The application referred to in paragraph (2)–
 - (a) must reach the Scottish Ministers no later than 14th May in the quota year immediately following that in which the transaction took place; and
 - (b) shall be made in such form as the Scottish Ministers may reasonably require.
- (5) The specified amount shall not include the remaining registered wholesale quota except so far as the increase registered in pursuance of paragraph (8) includes that quota.
- (6) The remaining registered wholesale quota shall remain available to the original purchaser.
- (7) If insufficient wholesale quota is registered with the original purchaser to cover deliveries made by the wholesale producer before the date of change of purchaser, any additional wholesale quota obtained by a wholesale producer is to be allocated to the original purchaser until all deliveries to the original purchaser made by the wholesale producer before that date are covered after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.
- (8) At the beginning of the quota year immediately following the quota year in which the increase referred to in paragraph (2) took place, the purchaser quota of the purchaser with whom the wholesale producer is newly registered is to be increased by such part of the remaining registered wholesale quota of the wholesale producer as is included in the specified amount.
- (9) If the amount of wholesale quota necessary to cover the deliveries made to an original purchaser is affected by–
 - (a) a transfer of wholesale quota to the wholesale producer under these Regulations; or
 - (b) an adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation,then, subject to paragraph (10), the Scottish Ministers shall make such adjustments in the purchaser quota of the original purchaser, and of the purchaser with whom the wholesale producer is newly registered, as are required to ensure that sufficient quota is registered with the original purchaser to cover deliveries made.
- (10) The Scottish Ministers shall make an adjustment pursuant to paragraph (9) after the end of the quota year in question.
- (11) Where a wholesale producer has wholesale quota registered with two or more purchasers, the wholesale producer may apply to the Scottish Ministers temporarily to change the quota registered between them, except so far as the quota registered with each of them is necessary to cover the deliveries made by the wholesale producer before the date of the transfer after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.
- (12) A wholesale producer who makes an application to the Scottish Ministers pursuant to paragraph (11) shall submit with that application–
 - (a) a statement setting out particulars of the wholesale quota to be temporarily reregistered; and
 - (b) a declaration made and signed by the wholesale producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement.
- (13) The statement and declaration referred to in paragraph (12)–
 - (a) shall be in such form as the Scottish Ministers may reasonably require; and
 - (b) must reach the Scottish Ministers no later than 15th June in the quota year immediately following the quota year for which the temporary re-registration is requested.
- (14) In this regulation–

- (a) “remaining registered wholesale quota” means the amount of wholesale quota necessary to cover the deliveries made by a wholesale producer before the date of the change of purchaser (adjusted for butterfat content in accordance with Article 10(1) of the Commission Regulation); and
- (b) “specified amount” means an amount equivalent to so much of the registered wholesale quota of a wholesale producer as is specified by that wholesale producer.

Restriction on use of quota in Scottish Islands area

24.—(1) Quota registered under regulation 4 to quota holders within a Scottish Islands area may be used by producers and purchasers only against direct sales or deliveries of milk produced within that Scottish Islands area.

(2) If a quota holder has a part of the dairy enterprise of that quota holder outside a Scottish Islands area, that quota holder is treated for the purposes of this regulation as a quota holder within a Scottish Islands area if 50% or more of the dairy enterprise of that quota holder is within that area.

(3) Paragraph (1) does not apply to the reallocation of quota undertaken in accordance with regulations 27 and 30.

PART 5

THE LEVY

Determination whether reduction in downward butterfat adjustment is required in relation to deliveries

25.—(1) After the end of each quota year, the Scottish Ministers shall make a determination of—

- (a) the total volume of deliveries to purchasers; and
- (b) the total volume of such deliveries after an adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(2) The determination under paragraph (1) shall be made by reference to the summaries purchasers are required to submit to the Scottish Ministers for the purposes of Article 8(2) of the Commission Regulation.

(3) If for any quota year a purchaser has not submitted the summaries so required or is unable to provide such proof of the volume of milk delivered to that purchaser in that year as the Scottish Ministers may reasonably require for the purposes of these Regulations, the Scottish Ministers shall for the purposes of paragraph (1)—

- (a) make their own determination of that volume of milk based on all the information available to them for the purposes of calculating any levy payable on deliveries made to that purchaser; and
- (b) inform the purchaser of their determination.

(4) If the volume referred to in paragraph (1)(a) exceeds that referred to in paragraph (1)(b), the Scottish Ministers shall calculate the proportionate reduction required to be made in all downward butterfat adjustments that have previously been made in order to increase the volume referred to in paragraph (1)(b) so that it equals the volume referred to in paragraph (1)(a).

(5) If paragraph (4) applies, the Scottish Ministers shall—

- (a) notify all purchasers that any downward butterfat adjustments made by them in the deliveries to them are reduced; and
- (b) specify the reduction.

(6) If the volume referred to in paragraph (1)(b) equals or exceeds that referred to in paragraph (1)(a), the Scottish Ministers shall notify all purchasers that no such reduction need be made.

(7) In this regulation, “downward butterfat adjustment”, in relation to deliveries to a purchaser, means an adjustment of the volume of the deliveries for butterfat content that results in that volume being reduced for the purposes of the levy calculation in accordance with Article 10(2) of the Council Regulation.

Determination whether levy on deliveries is payable

26.—(1) Where the total amount of the wholesale quota of wholesale producers, including converted quota, together with the total amount of wholesale quota in the national reserve exceeds whichever is the higher of—

- (a) the total volume of deliveries referred to in regulation 25(1)(a); or
- (b) the total volume of deliveries referred to in regulation 25(1)(b),

the Scottish Ministers shall determine that no levy is payable on deliveries.

(2) The Scottish Ministers shall notify all purchasers of a determination made under paragraph (1).

(3) Where the total amount of the wholesale quota of wholesale producers, including converted quota, together with the total amount of wholesale quota in the national reserve is less than whichever is the higher of—

- (a) the total volume of deliveries referred to in regulation 25(1)(a); or
- (b) the total volume of deliveries referred to in regulation 25(1)(b),

the Scottish Ministers shall notify all purchasers that levy is payable on the higher volume of deliveries.

Reallocation of wholesale producers' wholesale quota

27.—(1) This regulation applies for the purpose of Article 10(3) of the Council Regulation (which concerns the calculation of levy on deliveries).

(2) After the end of each quota year, the Scottish Ministers shall determine for each wholesale producer the amount, if any, of unused quota available to that wholesale producer, taking into account any adjustment required under regulation 25(4), the amount of any converted quota and wholesale quota transferred in accordance with regulations 9, 13 or 15 or restored under regulation 39.

(3) If the Scottish Ministers determine pursuant to paragraph (2) that a wholesale producer has unused quota, they shall—

- (a) add the total amount of unused quota to the national reserve;
- (b) subject to paragraph (4), make an award of any temporary reallocation of wholesale quota in accordance with regulation 19; and
- (c) having made such an award, reallocate any remaining amount of unused quota to any wholesale producers whose deliveries are in excess of their wholesale quota in proportion to their respective wholesale quotas.

(4) The amount of an award made under paragraph (3)(b) shall be reduced proportionately if there is insufficient wholesale quota after the Scottish Ministers have complied with paragraph (3)(a) to make a full award to all wholesale producers who are eligible to receive a temporary reallocation of wholesale quota under regulation 19.

(5) Subject to paragraph (6), if the total amount of unused quota available for reallocation to a wholesale producer under paragraph (3)(c) is not required by that wholesale producer to cover the butterfat adjusted deliveries of the wholesale producer, the Scottish Ministers shall reallocate

the amount of unused quota not required amongst all wholesale producers whose butterfat adjusted deliveries are in excess of their wholesale quota in proportion to their respective wholesale quotas.

(6) No wholesale producer may receive any unused quota under paragraph (5) in excess of the amount of wholesale quota required by that wholesale producer to cover the amount by which the butterfat adjusted deliveries of that wholesale producer exceed the wholesale quota of that wholesale producer.

(7) In this regulation, “butterfat adjusted deliveries” means deliveries adjusted for butterfat content in accordance with Article 10(1) of the Commission Regulation.

Determination of liability for levy on deliveries

28.—(1) This regulation applies for the purpose of Article 10(3) of the Council Regulation (which concerns the calculation of levy on deliveries).

- (2) After the end of each quota year, the Scottish Ministers shall—
- (a) ascertain which wholesale producers have made deliveries which exceed the wholesale quota allocated to them after taking into account any adjustments made under regulations 25 and 27;
 - (b) establish the total amount of the levy payable by each such wholesale producer at the rate of levy set in Article 2 of the Council Regulation; and
 - (c) establish the total amount of levy payable by each purchaser on deliveries made to that purchaser.

Notification of levy liability

- 29.** After the end of each quota year, the Scottish Ministers shall—
- (a) notify each purchaser of the total amount of levy payable on deliveries made to that purchaser; and
 - (b) give details to that purchaser of the amount of levy attributable to each wholesale producer who has made deliveries to that purchaser.

Determination of liability for levy on direct sales

30.—(1) This regulation applies for the purpose of Article 12 of the Council Regulation (which concerns the calculation of levy on direct sales).

(2) After the end of each quota year, the Scottish Ministers shall make a determination of the total quantity of dairy produce sold or transferred free of charge by direct sellers in the quota year in question.

(3) A determination under paragraph (2) shall be made by reference to the declarations direct sellers are required to submit to the Scottish Ministers in accordance with Article 11(2) of the Commission Regulation.

(4) If for any quota year a direct seller has not submitted to the Scottish Ministers a declaration in accordance with that Article or is unable to provide such proof of the quantities of dairy produce sold or transferred free of charge by the direct seller in that year as the Scottish Ministers may reasonably require for the purposes of these Regulations, the Scottish Ministers shall for the purposes of paragraph (2)—

- (a) make their own determination of such quantities based on all the information available to them for the purposes of calculating any levy payable by that direct seller; and
- (b) inform the direct seller of their determination.

(5) Where, in respect of a quota year—

(a) the total amount of direct sales quota of direct sales quota holders, including any converted quota; and
(b) the total amount of direct sales quota in the national reserve,
together exceed the total quantity determined by the Scottish Ministers under paragraph (2), the Scottish Ministers shall determine that no levy in respect of direct sales is payable.

(6) The Scottish Ministers shall notify all direct sellers of their determination made under paragraph (5).

(7) Where, in respect of a quota year—

(a) the total amount of direct sales quota of direct sales quota holders, including any converted quota; and
(b) the total amount of direct sales quota in the national reserve,
together are less than the total quantity determined by the Scottish Ministers under paragraph (2), the Scottish Ministers shall notify all direct sellers that levy is payable.

(8) After the end of each quota year, the Scottish Ministers shall determine in respect of each direct sales quota holder the amount of any unused quota available to that direct sales quota holder in the quota year in question, taking into account any converted quota and direct sales quota transferred in accordance with regulations 9, 13 or 15 or restored under regulation 39.

(9) If the Scottish Ministers determine under paragraph (8) that a direct sales quota holder has unused quota, they shall—

- (a) add that unused quota to the national reserve; and
- (b) subject to paragraph (10), make such awards of temporary reallocation of direct sales quota under regulation 19 as they consider it appropriate to make.

(10) If, after the Scottish Ministers have complied with paragraph (9)(a), there is insufficient direct sales quota to make a full award under regulation 19 to each direct sales quota holder who is eligible to receive such an award, the amount of each award under paragraph (9)(b) shall be reduced proportionately.

(11) In respect of the quota year in question, the Scottish Ministers shall then establish—

- (a) the amount by which the total quantity referred to in paragraph (2) exceeds the total of—
 - (i) the direct sales quota of all direct sales quota holders, including converted quota, and
 - (ii) the direct sales quota in the national reserve;
- (b) the total amount of levy payable by direct sellers by multiplying the amount determined under sub-paragraph (a) by the rate of levy set in Article 2 of the Council Regulation; and
- (c) the amount by which the total quantity referred to in paragraph (2) exceeds all the direct sales quota of the direct sales quota holders whose direct sales are greater than their direct sales quota.

(12) The Scottish Ministers shall establish the rate of levy per litre to be paid by each direct seller by dividing the amount determined in accordance with paragraph (11)(b) by the amount determined in accordance with paragraph (11)(c).

(13) The Scottish Ministers shall—

- (a) ascertain which direct sellers have sold or transferred free of charge dairy produce in excess of the direct sales quota available to that direct seller including any converted quota, any direct sales quota temporarily reallocated by an award in accordance with paragraph (9) (b) and direct sales quota transferred in accordance with regulations 9, 13 or 15 or restored under regulation 39;

- (b) establish the total amount of levy payable by each such direct seller at the rate of levy established in accordance with paragraph (12); and
- (c) notify each direct seller of the total amount of levy payable by that direct seller.

(14) If a direct seller fails to submit to the Scottish Ministers in accordance with Article 11(2) of the Commission Regulation a declaration of the total quantity of dairy produce sold or transferred free of charge by the direct seller in a quota year, the rate of levy per litre to be paid by that direct seller on the quantity not notified or determined under paragraph (4) shall be the rate set in Article 2 of the Council Regulation.

Payment and recovery of levy

31.—(1) In respect of the collection of levy, the Scottish Ministers are the competent authority for the purposes of the Community legislation.

(2) For the purposes of—

- (a) Article 11(1) of the Council Regulation (which concerns payment of levy by purchasers in respect of deliveries);
- (b) Article 12(4) of the Council Regulation (which concerns payment of levy by direct sellers);
- (c) Article 8 of the Commission Regulation (which concerns statements by purchasers of deliveries by producers); and
- (d) Article 11 of the Commission Regulation (which concerns declarations of direct sales by producers),

the levy and penalties referred to in those provisions shall be paid to the Scottish Ministers.

(3) Paragraph (4) applies for the purposes of Article 11(3) of the Council Regulation (which concerns deduction of levy liability) where a wholesale producer making deliveries to a purchaser exceeds the wholesale quota of that wholesale producer.

(4) Following any adjustment of the quantity delivered in accordance with Article 10(1) of the Commission Regulation, the purchaser may immediately deduct from the sums owed to the wholesale producer in respect of the deliveries an amount corresponding to the amount of levy that would otherwise be payable by that wholesale producer in respect of the excess.

(5) Where any part of the levy remains unpaid after 1st September in any year, the Scottish Ministers may recover the amount of the levy outstanding at that date together with interest in respect of each day after that date until that amount is recovered—

- (a) from the direct seller or, as the case may be, the purchaser; or
- (b) from the wholesale producer, in a case within paragraph (4) where—
 - (i) the purchaser has not paid the levy; and
 - (ii) the wholesale producer has not paid the purchaser the levy either directly or by deduction and the purchaser is not taking steps to recover it from the wholesale producer.

(6) Interest under paragraph (5) is payable at the rate of one percentage point above the sterling three month London interbank offered rate.

(7) If—

- (a) a purchaser has not been approved pursuant to regulation 5; or
- (b) a purchaser has had their approval withdrawn by the Scottish Ministers pursuant to Article 23(3) of the Commission Regulation,

subject to paragraph (8), the Scottish Ministers may require any levy payable by the purchaser that has not been paid by the purchaser to be paid in such proportions as they may reasonably require by any wholesale producers whose deliveries to that purchaser have given rise to the liability for levy.

(8) Paragraph (7) does not apply in respect of a wholesale producer who has paid the purchaser in question either directly or by deduction the levy payable by that wholesale producer.

Prevention of avoidance of levy

32.—(1) Subject to paragraphs (2) and (3), if—

- (a) a producer (“A”) makes sales or deliveries of milk or milk products in any quota year from milk produced by any cows; and
- (b) later in the same quota year another producer (“B”) makes sales or deliveries of milk or milk products from milk produced by any or all of the same cows,

B is deemed for the purposes of these Regulations to have made those sales or deliveries as agent of A.

(2) Paragraph (1) does not apply if—

- (a) an agreement has been entered into by A for the sale or lease of the cows in question to B;
- (b) the cows are kept on B’s holding; and
- (c) after the making of the agreement—
 - (i) B is actively involved in the management of the herd which the cows mentioned in paragraph (1)(b) comprise and production from it; and
 - (ii) A has no further involvement in that management and production.

(3) Paragraph (1) does not apply if—

- (a) B has inherited the cows in question from A; and
- (b) the cows are kept on B’s holding.

PART 6

INFORMATION AND RECORDS

Information

33.—(1) Every relevant person shall provide such information to the Scottish Ministers as the Scottish Ministers may reasonably require to perform their functions under these Regulations and the Community legislation.

(2) Each purchaser shall provide the Scottish Ministers with such information as they may reasonably require relating to deliveries made or to be made to the purchaser by such person or persons as the Scottish Ministers may identify for the purpose of monitoring deliveries in relation to the total national reference quantity for the United Kingdom referred to in Article 1(3) and Annex I of the Council Regulation.

(3) The information referred to in paragraph (2) shall be provided—

- (a) for such periods; and
- (b) in such form,

as the Scottish Ministers may reasonably require.

(4) The information referred to in paragraph (2) shall be submitted so as to reach the Scottish Ministers before the expiry of the period of three working days beginning with the end of the period

to which the information relates or within seven working days beginning with the date of notification of the requirement, whichever is the later.

(5) Each purchaser shall provide the Scottish Ministers with a list of those wholesale quota holders registered with that purchaser at 31st March in each quota year (whether they have been so registered for the whole or part of that quota year) who—

- (a) hold wholesale quota in respect of that quota year that has not been acquired by temporary transfer for that quota year; and
- (b) have not made deliveries to that purchaser during that quota year;

and ensure that the list reaches the Scottish Ministers no later than 14th May following the end of that quota year.

(6) The Scottish Ministers shall provide each purchaser with a copy of such information as the purchaser may reasonably require for the purposes of—

- (a) the registration obligations of that purchaser under regulation 6; and
- (b) Article 8 of the Commission Regulation (which concerns the submission of summaries of producers' statements of deliveries or declarations that no deliveries have been received).

Keeping and retention of records

34.—(1) For the purposes of Article 17 of the Commission Regulation (which requires member States to take all necessary measures to ensure that the levy is correctly charged), a relevant person shall comply with the requirements of paragraph (2) in addition to meeting any relevant requirement of paragraphs 2 to 6 of Article 24 of the Commission Regulation (which concerns record keeping obligations of purchasers and producers).

(2) The requirements referred to in paragraph (1) are—

- (a) to keep and retain such records; and
- (b) to comply with sub-paragraph (a) for such periods,

as are specified in Schedule 2.

(3) Paragraph (1) is without prejudice to regulation 3 of the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992⁽¹⁴⁾.

Annual declarations and summaries

35.—(1) If—

- (a) a producer in whose name any direct sales quota is registered pursuant to regulation 4 fails to submit to the Scottish Ministers any declaration which that producer is required to submit by Article 11(2) of the Commission Regulation so that the declaration reaches the Scottish Ministers on or before 14th May in any year; or
- (b) a purchaser fails to submit any summary which that purchaser is required to submit to the Scottish Ministers by Article 8(2) of the Commission Regulation so that the summary reaches them on or before 14th May in any year,

the Scottish Ministers may recover a reasonable charge from that producer or that purchaser, as the case may be, in respect of any visit to any premises which they reasonably consider an authorised officer should make in order to obtain the declaration or summary in question.

(2) If the Scottish Ministers send to a purchaser a revised version of a summary submitted by that purchaser in accordance with Article 8(2) of the Commission Regulation, the purchaser shall submit either—

⁽¹⁴⁾ S.I. 1992/314; as amended by S.I. 2001/3686 and S.I. 2001/3198.

- (a) confirmation that the revised version is agreed; or
- (b) amendments to the revised version,

so that such confirmation or amendments, as the case may be, reach the Scottish Ministers before the expiry of the period of ten working days beginning with the date on which the revised version was sent to the purchaser.

(3) In this regulation, “authorised officer” means a person (whether or not an officer of the Scottish Ministers) who is authorised by the Scottish Ministers, either generally or specifically, to act in matters arising under these Regulations and the Community legislation.

PART 7

PENALTIES AND MISCELLANEOUS PROVISIONS

Administrative penalties

36.—(1) Subject to the provisions of Article 23(4) of the Commission Regulation (which authorises member States not to impose penalties in certain circumstances) and paragraph (5), purchasers are subject to the administrative penalties specified in paragraphs (2) and (3).

- (2) Where a purchaser fails to provide or submit to the Scottish Ministers—
 - (a) an application, statement or declaration concerning the adjustment of purchaser quota in accordance with regulation 23(2) to (4);
 - (b) information in accordance with regulation 33(2) to (4); or
 - (c) a confirmation or amendments relating to a revised version of a summary in accordance with regulation 35(2),

the purchaser shall be liable to pay to the Scottish Ministers a penalty equivalent to the theoretical amount of levy that would be due on 0.01% of the quantity by volume of milk covered by that application, statement, declaration or revised version, or that information, for each day of the period of delay in the submission reaching the Scottish Ministers.

(3) Where a purchaser fails to maintain accurate and updated records pursuant to Article 24(2) of the Commission Regulation and regulation 34, the purchaser shall be liable to pay to the Scottish Ministers a penalty equivalent to the theoretical amount of the levy that would be due on 0.5% of the quantity by volume of milk concerned.

(4) For the purposes of the third sub-paragraph of Article 11(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 11(5) of that Regulation (which authorises member States not to impose penalties in certain circumstances) and to paragraph (5), where a direct seller submits an annual declaration which overstates or understates the volume of direct sales for the quota year covered by that declaration, the direct seller shall be liable to pay to the Scottish Ministers—

- (a) in the case of an overstatement, a penalty equivalent to the theoretical amount of levy that would be due on 0.5% of the quantity by volume of the milk which comprises the overstatement; or
- (b) in the case of an understatement, a penalty equivalent to the theoretical amount of levy that would be due on 0.5% of the quantity by volume of the milk which comprises the understatement,

except in any case where, for the quota year covered by the declaration, the direct seller is liable to pay to the Scottish Ministers levy which exceeds that amount.

(5) Notwithstanding anything in paragraphs (2) to (4), the penalties referred to in those paragraphs—

- (a) in the case of purchasers and direct sellers, are not to be less than £60;
- (b) in the case of purchasers, are not to exceed £60,000; and
- (c) in the case of direct sellers, are not to exceed £600.

(6) Subject to paragraph (7), if a purchaser fails to submit a summary required to be submitted under Article 8(2) of the Commission Regulation before 1st July in the year in which it is required to be submitted, the purchaser shall be liable to pay to the Scottish Ministers a penalty equivalent to the theoretical amount of levy that would be due on 0.01% of the quantity by volume of milk covered by that declaration for each day of the period of the delay in the submission reaching the Scottish Ministers.

(7) A purchaser shall not be liable to pay a penalty under paragraph (6) if, in the opinion of the Scottish Ministers, the failure—

- (a) was neither deliberate nor the result of serious negligence;
- (b) is negligible in terms of the functioning of the scheme or the effectiveness of the checks; or
- (c) is attributable to force majeure.

Withholding or recovery of compensation

37.—(1) Where—

- (a) a producer has submitted an application for compensation in accordance with the Community compensation scheme; and
- (b) it appears to the Scottish Ministers that the producer has—
 - (i) made a false or misleading statement in that application; or
 - (ii) failed to comply with any of the requirements of the 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 the producer.

(2) In this regulation, “Community compensation scheme” means the scheme instituted by Council Regulation (EC) No. 2330/98 providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade⁽¹⁵⁾ and Commission Regulation (EC) No. 2647/98 laying down detailed rules for the application of Council Regulation (EC) No. 2330/98⁽¹⁶⁾.

Confiscation of quota

38.—(1) In pursuance of Article 15 of the Council Regulation (which relates to the confiscation and restoration of quota in cases of inactivity), the Scottish Ministers shall notify a quota holder that the quota of that quota holder has been taken into the national reserve if it appears from information available to the Scottish Ministers that the quota holder has not made deliveries or direct sales during the previous quota year.

(2) In pursuance of Article 11(4) of the Commission Regulation (which relates to the confiscation of direct sales quota in cases of failure to submit declarations of direct sales before 1st July), the Scottish Ministers shall notify any direct sales quota holder who contravenes Article 11 of that Regulation, by failing to submit an annual declaration to the Scottish Ministers so that the annual

⁽¹⁵⁾ O.J. No. L 291, 30.10.98, p.4.

⁽¹⁶⁾ O.J. No. L 335, 10.12.98, p.33.

declaration reaches them before 1st July, that the direct sales quota of the direct sales quota holder shall be taken into the national reserve 30 days after notification.

(3) Any quota withdrawn pursuant to Article 15 of the Council Regulation shall be placed in the national reserve with effect from 1st April following the quota year for which information became available to the Scottish Ministers indicating to them that deliveries or direct sales, as the case may be, have not been made.

(4) A quota holder who receives a notification of confiscation under paragraph (1) or, as the case may be, paragraph (2) must notify any person with an interest in the land comprised in the holding in question of the contents of that notification before the expiry of the period of 28 days beginning with the day on which the quota holder received it.

Restoration of quota

39.—(1) Subject to the second sub paragraph of Article 15(1) of the Council Regulation (which specifies the time limit for quota restoration), a person whose quota has been taken into the national reserve may request the Scottish Ministers to restore to that person the quota in respect of the holding from which it was confiscated or in respect of part of that holding if that person is a producer.

(2) Subject to paragraph (3), a request under paragraph (1)—

(a) must reach the Scottish Ministers—

(i) no later than the end of the quota year to which it relates; or

(ii) in the case of confiscation of quota notified by virtue of regulation 38(2), no later than the end of the quota year in which the quota is to be restored; and

(b) in a case falling within sub-paragraph (a)(ii), must include the declaration which the person making the request failed to submit under Article 11 of the Commission Regulation.

(3) Where—

(a) there is a change of occupation of all or part of the holding in respect of which quota has been taken into the national reserve; and

(b) the new occupier is a producer,

the new occupier may submit a request to the Scottish Ministers to restore to the new occupier the quota relating to that holding or part of the holding before the expiry of the time limit for quota restoration specified by the second sub paragraph of Article 15(1) of the Council Regulation.

(4) A request for restoration of quota to part of a holding made under paragraph (1) or (3) shall include—

(a) 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 land comprised in the holding; or

(b) a statement requesting apportionment of the quota in accordance with an arbitration under paragraphs 1, 2, 3(4), and 5 to 30 of Schedule 1.

(5) Where quota is restored to part of a holding in accordance with a request made under paragraph (1) or (3), the amount of quota to be restored to that part shall be determined in accordance with the apportionment referred to in paragraph (4)(a) or (b).

Offences and criminal penalties

40.—(1) A person is guilty of an offence if—

(a) being a relevant person, that person fails without reasonable excuse to comply with a requirement imposed on that person by or under these Regulations or the Community legislation; or

- (b) in connection with these Regulations or the Community legislation, that person—
- (i) makes or causes to be made a statement, or uses or causes to be used a document, which that person knows 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.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) 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
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.
- (3) The Scottish Ministers may, following any conviction under paragraph (1)(b) 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 the Scottish Ministers as obtained by that person by reason of the falsehood upon which the conviction was founded.
- (4) A notice under paragraph (3) may not be served after the expiry of the period of twelve months beginning with the first day on which the notice may be served.
- (5) Where an offence under this regulation which has been committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to be 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 person who was purporting to act as such), that person as well as the body corporate or partnership shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (6) Where the affairs of a body corporate are managed by its members, the provisions of paragraphs (1) and (2) 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 was a director of the body corporate.
- (7) In this regulation, “requirement” does not include any restriction or obligation in or under regulations 11(1) and (3), 14(3), 15(4) and (5), 16, 19(6) and (7), 21(2) and (3), 22(2), 23(2), (4), (12) and (13), and 39(2) and (4).

Revocations and amendment

41.—(1) The Dairy Produce Quotas (Scotland) Regulations 2002⁽¹⁷⁾, the Dairy Produce Quotas (Scotland) Amendment Regulations 2002⁽¹⁸⁾ and the Dairy Produce Quotas (Scotland) Amendment Regulations 2004⁽¹⁹⁾ are revoked.

(2) In article 8(3)(b) of the Milk Development Council Order 1995⁽²⁰⁾, for “the Dairy Produce Quotas (Scotland) Regulations 2002” substitute “the Dairy Produce Quotas (Scotland) Regulations 2005⁽²¹⁾”.

⁽¹⁷⁾ S.S.I. 2002/110.

⁽¹⁸⁾ S.S.I. 2002/228.

⁽¹⁹⁾ S.S.I. 2004/118.

⁽²⁰⁾ S.I. 1995/356 amended by S.I. 2000/878 and S.I. 2004/964.

⁽²¹⁾ S.S.I. 2005/91.

St Andrew's House Edinburgh
28th February 2005

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE 1

Regulations 10(2)

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;
- (b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911; 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, 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.

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 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

3.—(1) Subject to sub-paragraph (4), 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 39(4)(b) 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 appointment 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.

(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 12(2), 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 12(2)), 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 23, 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 24, 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 amounts 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.

10.—(1) Subject to sub-paragraph (2), in any arbitration to which this Schedule applies, the arbiter may join as a party to the arbitration any person having an interest in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

(2) Where an apportionment pursuant to a request in a statement under regulation 39(4)(b) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign such a statement as is referred to in regulation 39(4)(a) must be a party to the arbitration.

11. 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.

12. 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.

13. 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 12(2).

14. 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.

15.—(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 19.

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

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

18. Where the arbiter is requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award, the arbiter must furnish such a statement.

19. 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.

20.—(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.

21. 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.

22. 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 and the opinion of the sheriff on any case shall be final.

23. Where an arbiter has committed any misconduct, the sheriff may remove that arbiter.

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

25. Any amount paid in respect of the remuneration of an arbiter by any party to the arbitration in excess of 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.

26. The Arbitration (Scotland) Act 1894 shall not apply to any arbitration carried out under this Schedule.

PART III

APPORTIONMENTS CARRIED OUT BY THE SCOTTISH LAND COURT

27. The provisions of the Scottish Land Court Act 1993 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.

28. 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.

Status: This is the original version (as it was originally made).

29. Where, in terms of a notice given by the Scottish Ministers under regulation 12(2), 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.

30. 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 12(2).

SCHEDULE 2

Regulation 34(2)

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 wholesale producer making deliveries to the purchaser, including—
 - (i) the name and address of the wholesale producer,
 - (ii) the wholesale quota available to that wholesale producer at the beginning and end of each quota year,
 - (iii) the representative fat content (butterfat base) of the milk delivered by that wholesale producer, and
 - (iv) the total wholesale quota available for all the wholesale producers who make deliveries to the purchaser and the weighted butterfat of that quota;
 - (b) details, in terms of each delivery and each month, of the quantities of milk which each wholesale producer has delivered to the purchaser;
 - (c) details of the cumulative total of the quantities delivered to the purchaser each month by all wholesale producers;
 - (d) details of the average fat content of deliveries per month of each wholesale producer;
 - (e) details of the weighted average fat content of the cumulative total referred to in sub paragraph (c);
 - (f) a list of purchasers and other undertakings which supply 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 supplied that purchaser by that purchaser or undertaking;
 - (h) details of the use to which milk and milk products collected from that purchaser has been put;
 - (i) records of individual deliveries and supplies and accompanying collection documents identifying each delivery or supply by wholesale producer, purchaser or other undertaking; and
 - (j) all books, registers, accounts, correspondence, commercial data, vouchers and supporting documents relating to the business activities of the 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) the herd records (comprising number and breed of cows and calved heifers in dairy herd with details of number of cows in milk and number of cows dry) of that direct seller;
- (c) daily records of milk produced;
- (d) invoices of any feed purchased;
- (e) details recorded as a result of the participation of that direct seller in the National Milk Recording Scheme or other similar recording scheme;
- (f) details of quantities of milk processed, methods of processing and quantities and type of milk products produced;
- (g) details of quantities of whole milk used in the production of milk products (with conversion rates applied);
- (h) details of quantities and types of milk and milk products which are produced and used on the holding of that direct seller for stock feeding 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) without prejudice to paragraph (i), details of any milk or milk products which—
 - (i) were transported from the holding of that direct seller to be destroyed elsewhere for sanitary purposes pursuant to a decision of the Scottish Ministers,
 - (ii) were so destroyed, and
 - (iii) as a consequence, are to be excluded from the levy calculation,including information about the reason why such destruction was necessary and details of where, when and how such destruction occurred;
- (k) details of quantities and types of milk and milk products sold directly to the consumer or transferred free of charge from the holding of that direct seller (including milk and milk products sold on the holding of that direct seller);
- (l) 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
- (m) details of stocks of milk and milk products held by that direct seller on a monthly basis.

(2) Where a direct seller also 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 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 the payment slip of a purchaser and the relevant tanker receipt, that tanker receipt.

3. A wholesale quota holder who makes 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 wholesale quota holder, showing permanent and temporary transfers of quota if appropriate;

Status: This is the original version (as it was originally made).

- (b) the herd records of that wholesale quota holder (comprising number and breed of cows and calved heifers in dairy herd with details of number of cows in milk and number of cows dry);
- (c) daily records of milk produced;
- (d) invoices of any feed purchased;
- (e) details of quantities of milk delivered by that wholesale quota holder, and the name and address of the purchaser involved;
- (f) the payment slips issued in respect of any such purchaser;
- (g) where there is a discrepancy between the payment slip of a purchaser and the relevant tanker receipt, that tanker receipt;
- (h) details recorded as a result of the participation of that wholesale quota holder in the National Milk Recording Scheme or other similar recording scheme;
- (i) details of quantities of milk produced and used on the holding of that wholesale quota holder for stock feeding and human consumption;
- (j) details of quantities of milk which are disposed of (other than under sub paragraph (i)) or wasted on the holding;
- (k) without prejudice to sub paragraph (j), details of any milk which—
 - (i) was transported from the holding of that wholesale quota holder to be destroyed elsewhere for sanitary purposes pursuant to a decision of the Scottish Ministers,
 - (ii) was so destroyed, and
 - (iii) as a consequence, is to be excluded from the levy calculation,including information about the reason why such destruction was necessary and details of where, when and how such destruction occurred;
- (l) details of quantities and types of milk and milk products transferred free of charge from the holding of that wholesale quota holder;
- (m) details of quantities of milk purchased, swapped or otherwise received, and records relating to its disposal; and
- (n) details of stocks of milk produced on the holding of that wholesale quota holder.

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 person's receipt of the sample;
 - (c) the time and date of the analysis;
 - (d) the identity of the purchaser concerned;
 - (e) the identity of the wholesale 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 wholesale producer;
- (b) the time and date of sampling of the milk or milk products of each wholesale producer;
- (c) the identity of the wholesale producer concerned;
- (d) the volume of milk collected (including a copy of the tanker receipt in the cases referred to in paragraphs 2(2)(c) and 3(g));
- (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 or 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 paragraphs 2(2)(c) and 3(g));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their vendor or donor;
- (e) the quantities of milk processed, types of processing undertaken, and quantities and types of milk products produced;
- (f) the quantities of milk used in the production of milk products (if not ascertainable from the information provided under sub 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 who in the course of a business buys, sells or supplies milk or 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(g));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their vendor or donor;

Status: This is the original version (as it was originally made).

- (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 other than the consumers of such milk or milk products; and
 - (f) the quantities of milk or milk products returned to the producer or purchaser unsold or unused, and the date of that return.
8. In this Schedule, in relation to any records—
- “the relevant period” means the remainder of the year of record and a period of at least three years thereafter; and
 - “the remainder of the year of record” means, following the making of the records, the remainder of the year in which they were made.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 31st March 2005, revoke and replace the Dairy Produce Quotas (Scotland) Regulations 2002 (S.S.I. 2002/118) as amended by the Dairy Produce Quotas (Scotland) Amendment Regulations 2002 (S.S.I. 2002/228) and the Dairy Produce Quotas (Scotland) Amendment Regulations 2004 (S.S.I. 2004/118).

These Regulations implement Council Regulation (EC) No. 1788/2003 (O.J. No. L 270, 21.10.2003 p.123) establishing a levy in the milk and milk products sector, as amended (“the Council Regulation”) and Commission Regulation (EC) No. 595/2004 (O.J. No. L 94, 31.3.2004, p.22) laying down detailed rules for applying Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector (“the Commission Regulation”). The Council Regulation and the Commission Regulation revoke and replace earlier legislation relating to the levy.

Under the Community legislation, as defined in regulation 2(1), a levy continues to be payable on dairy produce sold by direct sale or transferred free of charge by a producer or delivered by a wholesale producer wholesale to a dairy business, unless the sales, transfers or deliveries are within a reference quantity described in that legislation. The Community legislation establishes this system of milk quotas and in these Regulations the term “quota”, which is defined in regulation 2(1), is used to refer to the reference quantity described in the Community legislation.

These Regulations apply to relevant persons, including producers and purchasers, in relation to whom the Scottish Ministers are the competent authority under the Dairy Produce Quotas (General Provisions) Regulations 2002 (S.I.2002/458). The terms “relevant person”, “producer” and “purchaser” are defined in regulation 2(1). The Scottish Ministers are the competent authority in relation to those relevant persons whose trading address or, where there is more than one such address, principal trading address is in Scotland. The holdings of producers to whom these Regulations apply may comprise land in parts of the United Kingdom outside Scotland. Amendments to the Dairy Produce Quotas (General Provisions) Regulations 2002 also come into force on 31st March 2005.

Apart from drafting changes and the revocation of spent provisions, the new provisions included in these Regulations are as follows:

- (a) before approving a purchaser, the Scottish Ministers may oblige the purchaser to lodge such security as the Scottish Ministers may reasonably require (regulation 5(4));

- (b) provisions relating to butterfat-adjusted deliveries and the liability of wholesale producers for levy on deliveries (regulations 25 and 27);
- (c) a direct seller who does not provide a declaration of the sales made by that direct seller in a quota year (as defined in regulation 2(1)) by 14th May immediately following the end of that quota year and who is liable to pay levy in respect of such sales will pay levy at the full rate (regulation 30(14));
- (d) unless a wholesale producer has already paid levy, in certain circumstances the wholesale producer will be liable for the payment of levy to the Scottish Ministers where the purchaser of that wholesale producer has failed to do so (regulation 31);
- (e) Article 21 of the Commission Regulation requires that checks be made on the compatibility between deliveries and direct sales of milk on the one hand and production capacity on the other; consequently, a producer is required to keep invoices of feed purchased by that producer (regulation 34(2) and paragraphs 2(1)(d) and 3(d) of Schedule 2);
- (f) Article 6 of the Commission Regulation provides that milk which is destroyed off-farm for sanitary reasons will not be taken into account when calculating levy; consequently, a producer is required to keep records of such milk (regulation 34(2) and paragraphs 2(1)(j) and 3(k) of Schedule 2);
- (g) where a person has to submit a document to the Scottish Ministers in accordance with these Regulations, the operative date is the date by when the Scottish Ministers receive the document, not the date of despatch to the Scottish Ministers;
- (h) new provision is also made—
 - (i) enabling a tenant who buys quota to retain that quota at the end of the tenancy of that tenant in certain circumstances (regulation 14);
 - (ii) relating to the conversion of quota (regulation 22);
 - (iii) to prevent the avoidance of levy (regulation 32);
 - (iv) imposing a penalty for failure to submit a summary under Article 8(2) of the Commission Regulation by 1st July (regulation 36(6)); and
 - (v) for the confiscation of quota (regulation 38).

A Regulatory Impact Assessment of the effect which this instrument will have on the costs of business has been prepared and placed in the Scottish Parliament Reference Centre.

Copies of the map referred to in the definition of “Scottish Islands area” in regulation 2(1) and the Regulatory Impact Assessment are available from the offices of the Scottish Executive Environment and Rural Affairs Department at Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TY.