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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 91**

**The Dairy Produce Quotas (Scotland) Regulations 2005**

**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.

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**Commencement Information**

**II** [Reg. 9](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

## 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.

### Commencement Information

**I2** Reg. 10 in force at 31.3.2005, see reg. 1(2)

## 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.

#### Commencement Information

**I3** [Reg. 11](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

### 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.

#### Commencement Information

**I4** [Reg. 12](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

### 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

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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.

#### Commencement Information

**I5** [Reg. 13](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

#### 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(1) on the termination of the tenancy in question.

#### Commencement Information

**I6** [Reg. 14](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

### 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 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.

#### Commencement Information

**I7** [Reg. 15](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

### 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.

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

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(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.

#### Commencement Information

**18** [Reg. 16](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

#### 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.

#### Commencement Information

**19** [Reg. 17](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

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

- Regulations revoked by [S.S.I. 2018/391 sch. Pt. 2](#)

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

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

- reg. 2(1)(1A) substituted for reg. 2(1) by [S.S.I. 2011/83 Sch. para. 1](#)