
WELSH STATUTORY INSTRUMENTS

2005 No. 537

The Dairy Produce Quotas (Wales) Regulations 2005

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Dairy Produce Quotas (Wales) Regulations 2005 and shall come into force on 31 March 2005.

Interpretation

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

“the Commission Regulation” (“*Rheoliad y Comisiwn*”) 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⁽¹⁾;

“Commission Regulation 1756/93” (“*Rheoliad y Comisiwn 1756/93*”) means Commission Regulation (EEC) No. 1756/93 fixing the operative events for the agricultural conversion rate applicable to milk and milk products⁽²⁾;

“the Community legislation” (“*deddfwriaeth y Gymuned*”) means the Council Regulation, the Commission Regulation, and Commission Regulation 1756/93;

“competent authority” (“*awdurdod cymwys*”) has the meaning given by regulation 2 of the General Provisions Regulations;

“consent or sole interest notice” (“*hysbysiad cydsyniad neu hysbysiad unig fuddiant*”) 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” (“*cwota addasedig*”) means quota converted by the National Assembly following an application made under regulation 21;

“the Council Regulation” (“*Rheoliad y Cyngor*”) means Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector⁽³⁾;

“cow” (“*buwch*”) includes a heifer that has calved;

“dairy enterprise” (“*menter laeth*”) means an area stated by the occupier of that area to be run as a self-contained dairy produce business;

(1) OJ No. L94, 31.3.2004, p.22.

(2) OJ No.L161, 2.7.1993, p.48, as last amended by Commission Regulation (EC) No. 569/1999 (OJ No. L70, 17.3.1999, p.12).

(3) OJ No. L270, 21.10.03, p.123, as corrected by corrigendum OJ No. L94, 31.3.2004, p. 71.

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

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

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

“direct sales quota” (“*cwota gwerthiannau uniongyrchol*”) 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” (“*deiliad cwota gwerthiannau uniongyrchol*”) means a person in whose name direct sales quota is registered pursuant to regulation 4;

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

“electronic communication” (“*cyfathrebu uniongyrchol*”) has the same meaning as in section 15 of the Electronic Communications Act 2000(4);

“the General Provisions Regulations” (“*y Rheoliadau Darpariaethau Cyffredinol*”) means the Dairy Produce Quotas (General Provisions) Regulations 2002(5);

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

“interest” (“*buddiant*”) 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” (“*ardoll*”) means the levy payable under the Community legislation and these Regulations to the National Assembly;

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

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“national reserve” (“*cronfa genedlaethol*”) has the meaning given it by regulation 2 of the General Provisions Regulations;

“occupier” (“*deiliad*”), in relation to land, includes 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” (“*cynhyrchwr*”) has the same meaning as in Article 5(c) of the Council Regulation;

“prospective apportionment” (“*dosraniad rhagolygol*”), 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” (“*prynwr*”) means a purchaser within the meaning of Article 5(e) of the Council Regulation and, other than in regulation 5(1) to (4) and regulation 31(7), approved by the National Assembly pursuant to regulation 5 and Article 23 of the Commission Regulation;

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

“quota” (“*cwota*”) means direct sales quota or wholesale quota, as the case may be;

(4) 2000 c. 7.

(5) S.I. 2002/458, as amended by S.I. 2005/466.

“quota holder” (“*deiliad cwota*”), in relation to quota, means the person in whose name the quota is registered;

“quota year” (“*blwyddyn gwota*”) means any of the periods of 12 months referred to in Article 1(1) of the Council Regulation (which concerns the introduction of the levy);

“registered wholesale quota” (“*cwota cyfanwerthol cofrestredig*”) means wholesale quota registered pursuant to regulation 4(3) and (4);

“relevant competent authority” (“*awdurdod cymwys perthnasol*”) has the meaning given by regulation 3 of the General Provisions Regulations;

“relevant person” (“*person perthnasol*”) 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” (“*ardal Ynysoedd yr Alban*”) means either —

- (a) the islands of Orkney except for the island of Stronsay; or
- (b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae, the Kintyre peninsula south of Tarbert and the areas of land within the Argyll and Bute District comprising those parts of the parishes of Dunoon and Kilmun and Inverchaolain shown bounded by a red line on a map marked “Map referred to in sub-paragraph (b) of the definition of Scottish Islands area in regulation 2(1) of the Dairy Produce Quotas (Wales) Regulations 2005”, dated 31 January 2005, signed on behalf of the National Assembly and deposited at its offices at Cathays Park, Cardiff CF10 3NQ;

“transferee” (“*trosglwyddai*”) 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” (“*trosglwyddwr*”) 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” (“*cwota nas defnyddiwyd*”) 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” (“*cynhyrchwr cyfanwerthol*”) means a producer who delivers milk to a purchaser;

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

“wholesale quota holder” (“*deiliad cwota cyfanwerthol*”) means a person in whose name wholesale quota is registered pursuant to regulation 4; and

“working day” (“*diwrnod gwaith*”) 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(6).

(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—

- (a) in these Regulations; and
- (b) in the Community legislation,

shall have the same meaning as in the Community legislation and cognate expressions shall be construed accordingly.

Application

3. Except as otherwise provided, these Regulations apply to relevant persons in respect of whom the National Assembly is the relevant competent authority.

PART 2

REGISTRATION OF QUOTA

Registers and notices to be maintained and prepared by the National Assembly

4.—(1) The National Assembly must —

- (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 him or her.

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

- (a) his or her name;
- (b) his or her trading address;
- (c) a reference number which serves to identify him or her;
- (d) the direct sales quota available to him or her for the quota year; and
- (e) the details of his or her direct sales.

(3) The National Assembly must—

- (a) maintain a wholesale register;
- (b) send to each wholesale producer a copy of the entry in the wholesale register relating to him or her; 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 his or her purchaser quota.

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

- (a) his or her name;
- (b) his or her trading address;
- (c) a reference number which serves to identify him or her;
- (d) the wholesale quota available to him or her 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 that wholesale producer's total wholesale quota, 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 National Assembly must —

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

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

- (a) his or her name; and
- (b) his or her purchaser quota.

(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 National Assembly a consent or sole interest notice in respect of that holding, agree with the National Assembly 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 National Assembly —

- (a) may make such enquiries as it reasonably considers necessary for the purposes of ensuring the accuracy of the registers which it is required to maintain under this regulation;
- (b) must 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 it reasonably considers to be necessary; and
- (c) must notify any person affected by any correction or amendment made by it.

(9) Notwithstanding that a person is no longer a producer, he or she must—

- (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 him or her 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 1 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 must make an application to the National Assembly for approval in such form as the National Assembly may reasonably require.

(2) An application under paragraph (1) must state the purchaser's trading address, or, if there is more than one such address, each such address and his or her principal trading address.

(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 National Assembly 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 National Assembly 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 National Assembly such information as it may reasonably require, has demonstrated to the reasonable satisfaction of the National Assembly that he or she has a sound financial basis upon which to operate, or
 - (ii) if the National Assembly considers that the purchaser has not been trading long enough for that to be so demonstrated, has provided such security as the National Assembly may reasonably require.
- (5) Each purchaser must inform the National Assembly of —
- (a) any change in his or her 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 in his or her principal trading address; and
 - (b) any factor or change in circumstances which the National Assembly might reasonably consider materially to affect any matter that was relevant to its consideration of his or her application for approval, or which affects his or her ability to comply with the undertaking referred to in paragraph (4)(a).
- (6) Each purchaser must —
- (a) confirm to each producer supplying him or her that he or she is approved pursuant to this regulation and provide details of the approval if requested; and
 - (b) notify each producer supplying him or her 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,

must register his or her quota with the National Assembly.

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

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

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

- (4) A wholesale producer may supply milk only to a purchaser.
- (5) Each purchaser must maintain a system approved by the National Assembly for —
 - (a) sampling the milk of each wholesale producer whose register entries include the purchaser's name on the list referred to in regulation 4(4)(e); and

(b) determining its fat content.

(6) Each purchaser must amend the register referred to in paragraph (2)(a) on each occasion when he or she is notified by the National Assembly that the equivalent register maintained by the National Assembly has been amended in relation to wholesale producers registered in that purchaser's register.

Inspection of entries in the National Assembly's 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, or
 - (ii) gives the National Assembly a statement in writing that he or she 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 himself or herself,

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

Registers as evidence

8. In any proceedings, any entry in a register which the National Assembly is required by these Regulations to maintain is evidence of the matters stated in it.

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 must submit to the National Assembly —

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

as the National Assembly may reasonably require.

(3) The notice of transfer must reach the National Assembly —

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

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

(5) The notice of transfer must 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 must —

- (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 —

- (a) the subject of a direct sale; or
- (b) 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 National Assembly a notice of that agreement.

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

- (a) in such form as the National Assembly 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, he or she must apply for such an apportionment to the National Assembly in such form as the National Assembly 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 National Assembly by the person who made the request.

(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 must 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 must 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 National Assembly has 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 National Assembly may give notice that it has 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 National Assembly gives a notice under paragraph (2), the apportionment or prospective apportionment of the quota concerned is to 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 National Assembly is the relevant competent authority must submit to it a notice of any such transfer within the general quota region in such form as the National Assembly may reasonably require.

(4) The notice must reach the National Assembly no later than 31 March in the quota year in which the transfer takes place and must 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 he or she is a producer.

(5) Where the National Assembly has received a notice pursuant to paragraph (3), it may require the transferor or transferee to produce such other information relating to the transfer, and within such time, as the National Assembly may reasonably require.

(6) In this regulation —

- (a) “general quota region” means the United Kingdom other than the Scottish Islands areas; 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 31 March 2005.

(2) Where —

- (a) a tenant of any land in a holding has quota registered as available to him or her;
- (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 tenant’s landlord;
- (c) the tenancy of the land in question expires without any possibility of renewal on similar terms;
- (d) the tenant and his or her landlord 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 National Assembly that the quota is to be available to him or her by virtue of his or her occupation 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) must —

- (a) be in such form as the National Assembly may reasonably require;
- (b) reach the National Assembly no later than 31 March in the quota year in which the tenancy expires; and
- (c) include a statement by the tenant —

- (i) that he or she and his or her landlord 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 he or she continues to be a producer.

(4) Where a tenant submits a notice pursuant to this regulation, he or she shall not be entitled to receive compensation under paragraph 1 of Schedule 1 to the Agriculture Act 1986(7) 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 31 March in the quota year in which the transfer takes place.

(3) The National Assembly 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 it has announced that it intends to make such a charge in respect of such transfers in that year in such a manner as it considers 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 must submit to the National Assembly notice of the agreement, together with any charge payable under paragraph (3), so that the notice and any charge reach it no later than 31 March in the quota year in which the transfer takes place.

(5) A notice referred to in paragraph (4) must be in such form as the National Assembly 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 ten 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 him or her before the date of the transfer.

Consequences of failure to duly 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.

(7) 1986 c. 49.

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

(3) The transfer of quota has effect only from the beginning of the quota year in which the notice of transfer is received.

(4) The amount of quota, if any, which has been reallocated to the transferee under regulations 27 or 30 for the relevant quota year (or any subsequent year) 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 National Assembly 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 his or hers 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⁽⁸⁾ 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⁽⁹⁾.

(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 National Assembly 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 producer's production exceeds his or her quota entitlement in that quota year.

⁽⁸⁾ 1981 c. 22.

⁽⁹⁾ 1985 c. 48; section 1 was amended by the Food Safety Act 1991 (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.

(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 National Assembly is 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, he or she must submit to the National Assembly an application in such form as the National Assembly may reasonably require.

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

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

(8) If the National Assembly awards to a producer a temporary reallocation of an amount of any surplus quota in accordance with this regulation, the National Assembly must notify each purchaser to whom the producer makes deliveries of that reallocation.

(9) The National Assembly can make an award of a temporary reallocation of quota only from the aggregate of the amounts of quota referred to in regulation 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);
- (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, the relevant declaration or the 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 one.

Special allocation of quota

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

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

(2) The National Assembly 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, he or she must submit to the National Assembly an application in such form as the National Assembly may reasonably require —

- (a) stating —
 - (i) the amount (if any) of that producer’s direct sales quota, wholesale quota, direct sales and deliveries for the quota year in which the application is made,
 - (ii) the amount of unused quota which he or she holds at the time of the application, and
 - (iii) the amount which he or she wishes the National Assembly to convert; and
- (b) including such other information as the National Assembly 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 National Assembly —

- (a) in the case of a permanent conversion of quota, not later than 31 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 14 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, he or she must not transfer later in that quota year quota of the type to which he or she has converted, whether temporarily or otherwise.

(3) Where a producer who has permanently converted quota in any quota year applies to the National Assembly for a release from the restriction in paragraph (2), the National Assembly, 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 National Assembly considers 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 have been foreseen or avoided by the producer at the time of his or her permanent conversion of quota.

(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 are to be taken to be exceptional for the purposes of paragraph (5) —

- (a) the death of the producer or his or her inability to conduct his or her business 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 Part I of Schedule 3 to the Agricultural Holdings Act 1986(10).

(10) 1986 c. 5; Part I of Schedule 3 was amended by the Agricultural Holdings (Amendment) Act 1990 (c. 15), section 1.

Adjustment of purchaser quota

23.—(1) Where a quota holder's wholesale quota 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 producers), a purchaser whose purchaser quota has been increased by virtue of such a transaction must submit to the National Assembly an application for his or her purchaser quota to be increased by the specified amount.

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

- (a) a statement setting out the particulars of the transaction; and
- (b) a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the application referred to in paragraph (2).

(4) The application referred to in paragraph (2) —

- (a) must reach the National Assembly no later than 14 May in the quota year immediately following that in which the transaction took place; and
- (b) must be made in such form as the National Assembly may reasonably require.

(5) The specified amount must 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 quota is registered with the original purchaser to cover deliveries made by the producer before the date of change of purchaser, any additional quota obtained by a producer is to be allocated to the original purchaser until all deliveries to the original purchaser made by the 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 producer is newly registered is to be increased by such part of the remaining registered wholesale quota of the producer as is included in the specified amount.

(9) If the amount of quota necessary to cover the deliveries made to an original purchaser is affected by —

- (a) a transfer of quota to the 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 National Assembly must make such adjustments in the purchaser quota of the original purchaser, and of the purchaser with whom the producer is newly registered, as are required to ensure that sufficient quota is registered with the original purchaser to cover deliveries made.

(10) The National Assembly must make an adjustment pursuant to paragraph (9) after the end of the quota year in question.

(11) Where a producer has quota registered with two or more purchasers, the producer may apply to the National Assembly 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 him or her before the date of the transfer after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(12) A producer who makes an application to the National Assembly pursuant to paragraph (11) must submit with his or her application —

- (a) a statement setting out particulars of the quota to be temporarily reregistered; and
- (b) a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement.

(13) The statement and declaration referred to in paragraph (12) —

- (a) must be in such form as the National Assembly may reasonably require; and
- (b) must reach the National Assembly no later than 15 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 quota necessary to cover the deliveries made by a producer before the date of the change of purchaser (adjusted in accordance with Article 10(1) of the Commission Regulation); and
- (b) “specified amount” means an amount equivalent to so much of a producer’s registered wholesale quota as is specified by that 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 his or her dairy enterprise outside a Scottish Islands area, he or she is treated for the purposes of this regulation as a quota holder within a Scottish Islands area if he or she has 50% or more of his or her dairy enterprise 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 National Assembly must 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) must be made by reference to the summaries purchasers are required to submit to the National Assembly for the purposes of Article 8(2) of the Commission Regulations.

(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 him or her in that year as the National Assembly may reasonably require for the purposes of these Regulations, the National Assembly must for the purposes of paragraph (1) —

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

(4) If the volume referred to in paragraph (1)(a) exceeds that referred to in paragraph (1)(b), the National Assembly must 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 National Assembly must —

- (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 National Assembly must 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 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 National Assembly must determine that no levy is payable on deliveries.

(2) The National Assembly must notify all purchasers of a determination made under paragraph (1).

(3) Where the total amount of the wholesale quota of 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 National Assembly must notify all purchasers that levy is payable on the higher volume of deliveries.

Reallocation of producers' quota

27.—(1) This regulation applies for the purposes 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 National Assembly must determine for each producer the amount, if any, of unused quota available to that producer, taking into account any adjustment required under regulation 25(4) and the amount of any converted quota.

(3) If the National Assembly determines pursuant to paragraph (2) that a producer has unused quota, it must —

- (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 quota in accordance with regulation 19; and
- (c) having made such an award, reallocate any remaining amount of unused quota to any producers whose deliveries are in excess of their quotas in proportion to their respective quotas.

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

(5) Subject to paragraph (6), if the total amount of unused quota available for reallocation to a producer under paragraph (3)(c) is not required by that producer to cover his or her butterfat adjusted deliveries, the National Assembly must reallocate the amount of unused quota not required amongst all producers whose butterfat adjusted deliveries are in excess of their quota in proportion to their respective quotas.

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

(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 purposes 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 National Assembly must —
 - (a) ascertain which producers have made deliveries which exceed the quota allocated to them after taking into account any adjustments made under regulations 25 and 27; then
 - (b) establish the total amount of the levy payable by each such producer at the rate of levy set in Article 2 of the Council Regulation; and then
 - (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 National Assembly must —
- (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 producer who has made deliveries to that purchaser.

Determination of liability for levy on direct sales

30.—(1) This regulation applies for the purposes 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 National Assembly must 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) must be made by reference to the declarations direct sellers are required to submit to the National Assembly in accordance with Article 11(2) of the Commission Regulation.

(4) If for any quota year a direct seller has not submitted to the National Assembly 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 him or her in that year as the National Assembly may reasonably require for the purposes of these Regulations, the National Assembly must for the purposes of paragraph (2) —

- (a) make its own determination of such quantities based on all the information available to it for the purposes of calculating any levy payable by that direct seller, and
- (b) inform the direct seller of its 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 National Assembly under paragraph (2), the National Assembly must determine that no levy in respect of direct sales is payable.

(6) The National Assembly must notify all direct sales quota holders of its 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 National Assembly under paragraph (2), the National Assembly must notify all direct sellers that levy is payable.

(8) After the end of each quota year, the National Assembly must determine in respect of each direct sales quota holder the amount of any unused direct sales quota available to that direct sales quota holder in the quota year in question, taking into account any converted quota.

(9) If the National Assembly determines under paragraph (8) that a direct sales quota holder has unused direct sales quota, it must —

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

(10) If, after the National Assembly has 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 National Assembly must 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 sales quota holders 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 quota.

(12) The National Assembly must establish the rate of levy per litre to be paid by each direct sales quota holder by dividing the amount determined in accordance with paragraph (11)(b) by the amount determined in accordance with paragraph (11)(c).

(13) The National Assembly must —

- (a) ascertain which direct sales quota holders have sold or transferred free of charge dairy produce in excess of the quota available to them including any converted quota and any quota temporarily reallocated by an award under paragraph (9)(b);
- (b) establish the total amount of levy payable by each such direct sales quota holder at the rate of levy established in accordance with paragraph (12); and
- (c) notify each direct sales quota holder of the total amount of levy payable by him or her.

(14) If a direct seller fails to submit to the National Assembly 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 him or her 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) is the rate set in Article 2 of the Commission Regulation.

Payment and recovery of levy

31.—(1) In respect of the collection of levy, the National Assembly is 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 must be paid to the National Assembly.

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

(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 producer in respect of the deliveries an amount corresponding to the amount of levy that would otherwise be payable by him or her in respect of the excess.

(5) Where any part of the levy remains unpaid after 1 September in any year, the National Assembly 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 producer, in a case within paragraph (4) where—
 - (i) the purchaser has not paid the levy, and
 - (ii) the producer has not paid the purchaser the levy either directly or by deduction and the purchaser is not taking steps to recover it from him or her.

(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 his or her approval withdrawn by the National Assembly pursuant to Article 23(3) of the Commission Regulation,

subject to paragraph (8), the National Assembly may require any levy payable by the purchaser that has not been paid by him or her to be paid in such proportions as it may reasonably require by any producers whose deliveries to that purchaser have given rise to the liability for levy.

(8) Paragraph (7) does not apply in respect of a producer who has paid the purchaser in question either directly or by deduction the levy payable by that 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 for 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 must provide such information to the National Assembly as the National Assembly may reasonably require to perform its functions under these Regulations and the Community legislation.

(2) Each purchaser must provide the National Assembly with such information as it may reasonably require relating to deliveries made or to be made to the purchaser by such person or persons as the National Assembly 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) must be provided —

- (a) for such periods; and

(b) in such form,
as the National Assembly may reasonably require.

(4) The information referred to in paragraph (2) must be submitted so as to reach the National Assembly 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 must provide the National Assembly with a list of those quota holders registered with that purchaser at 31 March in each quota year (whether they have been so registered for the whole or part of that quota year) who —

- (a) hold 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 it no later than 14 May following the end of that quota year.

(6) The National Assembly must provide each purchaser with a copy of such information as the purchaser may reasonably require for the purposes of —

- (a) that purchaser's registration obligations 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 must 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⁽¹¹⁾.

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 National Assembly any declaration which he or she is required to submit by Article 11(2) of the Commission Regulation so that the declaration reaches it on or before 14 May in any year; or
- (b) a purchaser fails to submit any summary which he or she is required to submit to it by Article 8(2) of the Commission Regulation so that the summary reaches it on or before 14 May in any year,

the National Assembly 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 it reasonably considers an authorised officer should make in order to obtain the declaration or summary in question.

⁽¹¹⁾ [S.I. 1992/314](#); relevant amending instrument is [S.I. 2001/3686](#).

(2) If the National Assembly sends to a purchaser a revised version of a summary submitted by him or her in accordance with Article 8(2) of the Commission Regulation, the purchaser must submit either —

- (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 National Assembly 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 National Assembly) who is authorised by the National Assembly, 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 National Assembly —

- (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),

he or she is liable to pay to the National Assembly 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 during the period of delay in the submission reaching the National Assembly.

(3) Where a purchaser fails to maintain accurate and updated records pursuant to Article 24(2) of the Commission Regulation and regulation 34, he or she is liable to pay to the National Assembly 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, he or she is liable to pay to the National Assembly —

- (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;
- (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, he or she is liable to pay to the National Assembly 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 1 July in the year in which it is required to be submitted, he or she is liable to pay to the National Assembly 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 National Assembly.

(7) A purchaser is not liable to pay a penalty under paragraph (6) if, in the opinion of the National Assembly, 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 National Assembly that the producer has —
 - (i) made a false or misleading statement in his or her application, or
 - (ii) failed to comply with any of the requirements of the scheme,

the National Assembly may withhold or recover on demand from that producer the whole or any part of the compensation payable or paid to him or her.

(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⁽¹²⁾ and Commission Regulation (EC) No. 2647/98 laying down detailed rules for the application of Council Regulation (EC) No. 2330/98⁽¹³⁾.

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 National Assembly must notify a quota holder that his or her quota has been taken into the national reserve if it appears from information available to the National Assembly that he or she has made no 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 quota in cases of failure to submit declarations of direct sales before 1 July), the National Assembly must notify any direct sales quota holder who contravenes Article 11 of that Regulation, by failing

⁽¹²⁾ OJ No. L291, 30.10.98, p.4.

⁽¹³⁾ OJ No. L335, 10.12.98, p.33.

to submit an annual declaration to the National Assembly so that the annual declaration reaches it before 1 July, that his or her quota will be taken into the national reserve 30 days after notification.

(3) Any quota withdrawn pursuant to Article 15 of the Council Regulation must be placed in the national reserve with effect from 1 April following the quota year for which information became available to the National Assembly indicating to it that no deliveries or no direct sales, as the case may be, were made.

(4) A wholesale quota holder or direct sales 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 he or she 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 National Assembly to restore to him or her the quota in respect of the holding from which it was confiscated or in respect of part of that holding if he or she is a producer.

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

(a) must reach the National Assembly —

(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 before 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 National Assembly to restore to him or her the quota relating to that holding or part 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) must 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(5), 3(2), 4 and 6 to 34 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 must 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, he or she fails without reasonable excuse to comply with a requirement imposed on him or her by or under these Regulations or the Community legislation; or

- (b) in connection with these Regulations or the Community legislation, he or she —
 - (i) makes or causes to be made a statement, or uses or causes to be used a document, which he or she 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 he or she knows or might reasonably be expected to know is incorrectly registered in his or her name.
- (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 National Assembly 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 whose quota that conviction relates to, withdraw from him or her such quota as may reasonably be regarded by the National Assembly as obtained by him or her by reason of the falsehood upon which the conviction was founded.
- (4) A notice served 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 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, he or she as well as the body corporate is deemed to be guilty of that offence and is 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) apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were 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), 16, 19(6) and (7), 21(2) and (3), 22(2), 23(12) and (13) and 39(2) and (4).

Revocations and amendments

- 41.**—(1) The Dairy Produce Quotas (Wales) Regulations 2002(**14**), are revoked
- (2) In article 8(3)(b) of the Milk Development Council Order 1995(**15**), for the words “the Dairy Produce Quotas (Wales) Regulations 2002” there are substituted “the Dairy Produce Quotas (Wales) Regulations 2005(**16**)”.

(14) S.I. 2002/897.

(15) S.I. 1995/356; relevant amending instrument is S.I. 2004/964.

(16) S.I. 2005/537.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(17)

8 March 2005

D. Elis-Thomas
The Presiding Officer of the National Assembly