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STATUTORY RULES OF NORTHERN IRELAND

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**2002 No. 88**

**FOOD**

**Dairy Produce Quotas Regulations (Northern Ireland) 2002**

*Made* - - - - *8th March 2002*

*Coming into operation* *31st March 2002*

The Department of Agriculture and Rural Development, being a Department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by virtue of the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Dairy Produce Quotas Regulations (Northern Ireland) 2002 and shall come into operation on 31st March 2002.

**Application**

2. These Regulations shall apply in relation to producers, purchasers and other relevant persons in relation to whom the Department is the relevant competent authority.

**Interpretation**

3.—(1) In these Regulations—

“agricultural area” includes areas used for the purposes of agriculture within the meaning of section 43(1) of the Agriculture Act (Northern Ireland) 1949<sup>(3)</sup>;

“authorised officer” means a person (whether or not an officer of the Department) who is authorised by the Department, either generally or specifically, to act in matters arising under these Regulations and the Community legislation;

“the Commission Regulation” means Commission Regulation (EC) No. 1392/2001 laying down detailed rules for applying Council Regulation (EEC) No. 3950/92 establishing an additional levy on milk and milk products<sup>(4)</sup>;

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(1) S.I. 2000/2812

(2) 1972 c. 68

(3) 1949 c. 2 (N.I.)

(4) O.J. No. L187, 10.7.2001, p. 19

“Commission Regulation 1756/93” means Commission Regulation (EEC) No. 1756/93 fixing the operative events for the agricultural conversion rate applicable to milk and milk products<sup>(5)</sup>;

“Commission Regulation 2562/93” means Commission Regulation (EEC) No. 2562/93 laying down detailed rules for the application of Regulation (EEC) No. 2055/93 allocating a special reference quantity to certain producers of milk and milk products<sup>(6)</sup>;

“Community compensation scheme” means—

- (a) the scheme instituted by Council Regulation (EEC) No. 2187/93 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying out their trade<sup>(7)</sup> and Commission Regulation (EEC) No. 2648/93 laying down detailed rules for the application of Council Regulation (EEC) No. 2187/93<sup>(8)</sup>;
- (b) 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<sup>(9)</sup> and Commission Regulation (EC) No. 2647/98 laying down detailed rules for the application of Council Regulation (EC) No. 2330/98<sup>(10)</sup>; or
- (c) both those schemes;

“the Community legislation” means the Commission Regulation, the Council Regulation, Council Regulation 2055/93, Commission Regulation 1756/93 and Commission Regulation 2562/93;

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

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

“the Council Regulation” means Council Regulation (EEC) No. 3950/92 establishing an additional levy in the milk and milk products sector<sup>(11)</sup>, as last amended by Commission Regulation (EC) No. 603/2001 adapting the total quantities referred to in Article 3 of Council Regulation (EEC) No. 3950/92<sup>(12)</sup>;

“Council Regulation 2055/93” means Council Regulation (EEC) No. 2055/93 allocating a special reference quantity to certain producers of milk and milk products<sup>(13)</sup>;

“cow” includes a heifer that has calved;

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

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

“delivery” has the same meaning as in Article 9(g) of the Council Regulation;

“the Department” means the Department of Agriculture and Rural Development;

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

(6) O.J. No. L235, 18.9.93, p. 18

(7) O.J. No. L196, 5.8.93, p. 6

(8) O.J. No. L243, 29.9.93, p. 1

(9) O.J. No. L291, 30.10.98, p. 4

(10) O.J. No. L335, 10.12.98, p. 33

(11) O.J. No. L405, 31.12.92, p. 1

(12) O.J. No. L89, 29.3.2001, p. 18

(13) O.J. No. L187, 29.7.93, p. 8

“direct sale” means a sale within the terms of Article 9(h) of the Council Regulation;

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

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

“electronic communication” has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001(14);

“eligible heifer” means any heifer which—

- (a) at the date of service of a notice referred to in regulation 15(2)(a), was on land subject to that notice; or
- (b) at the date of the coming into force of an order referred to in regulation 15(2)(a) or (b), was on land subject to that order,

and calves for the first time on a day which falls—

- (i) where that notice or order has effect or is in force for a period which expires on or before the expiry of the quota year during which it is, respectively, served or made, within the period of twelve months immediately preceding the day after the date on which that notice or order ceases to have effect or be in force, as the case may be; and
- (ii) in any other case, within the quota year during which that notice or order is served or made or at any time thereafter when that notice or order has effect or is in force;

“the General Provisions Regulations” means the Dairy Produce Quotas (General Provisions) Regulations 2002(15);

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

“interest”, except where used in regulation 21(3), includes a licence to occupy land and the interest of a mortgagee and a trustee, but does not include the interest of a beneficiary under a trust or settlement;

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

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

“occupier” includes, in relation to land in respect of which there is no occupier, the person entitled to grant occupation of that land to another, and, during the currency of an interest referred to in regulation 8(5)(a), the person entitled to grant occupation when that interest terminates;

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

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

“purchaser” means a purchaser within the meaning of Article 9(e) of the Council Regulation and, other than in regulation 25(1) and (2), and sub-paragraph (a) of paragraph 11 of Schedule 2, approved by the Department pursuant to regulation 25;

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(14) 2001 c. 9 (N.I.)

(15) S.I. 2002/458

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

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

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

“qualifying day” means, in respect of any qualifying cow, the day on which it calves and each day or part of a day thereafter during which a notice or order referred to in regulation 15(2) has effect or remains in force, as the case may be;

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

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

“registered wholesale quota” means wholesale quota registered pursuant to regulation 23(2);

“relevant person” means a producer, a purchaser, any employee or agent of a producer or of a purchaser, any milk haulier, any person undertaking butterfat testing for purchasers in a laboratory, a processor of milk or milk products, or any other person involved in the buying, selling or supply of milk or milk products obtained directly from a producer or purchaser;

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

“replacement number” means the nearest integer to 20 per cent of the total number of dairy cows on the land—

- (a) subject to a notice referred to in regulation 15(2)(a) as at the date of service of that notice; or
- (b) subject to an order referred to in regulation 15(2)(a) or (b) as at the date of the coming into force of that order,

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

“Scottish Islands area” means any one of—

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

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

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(16);

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

“transferee” means—

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

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

“transferor” means—

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

(b) in any other case, the person from whom quota is transferred;

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

“wholesale delivery” means delivery from a producer to a purchaser; and

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

(2) In these Regulations 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) The Interpretation Act (Northern Ireland) 1954, except section 20(2) and (3), shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

### **Scottish Islands areas**

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

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

(3) Paragraph (1) shall not apply to the reallocation of quota undertaken in accordance with Schedule 2.

(4) In this regulation “direct seller” and “producer” include a person who occupies land with quota whether or not that person is engaged in the sale or delivery of dairy produce.

### **Determination of levy**

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

### **Milk equivalence of dairy produce**

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

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

### **Adjustment of purchaser quota**

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

(2) On any transaction to which the second sub-paragraph of Article 2(2) of the Council Regulation (which concerns replacements of purchasers and changes of purchasers by producers) applies, any purchaser whose purchaser quota has been increased by virtue of such a transaction (other than as a result of a temporary transfer of quota under regulation 14) shall submit to the Department—

- (a) on or before 14th May in the quota year immediately following the quota year in which that transaction took place, a statement setting out particulars of the transaction; and
- (b) where appropriate, a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement referred to in sub-paragraph (a).

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

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

- (a) for the purposes of calculating liability for levy pursuant to regulation 19 in that quota year, any purchaser with whom he is newly registered shall request of the Department (in such form as the latter may reasonably require) that his purchaser quota be increased by an amount equivalent to such part of that producer's registered wholesale quota as that producer shall determine;
- (b) the amount of the increase of purchaser quota determined in accordance with sub-paragraph (a) shall not include the amount of quota necessary to cover the deliveries made by the producer before the date of the change of purchaser, adjusted if necessary in accordance with the second sub-paragraph of Article 4(1) of the Commission Regulation, and such amount of quota shall remain available to the original purchaser;
- (c) at the beginning of the quota year immediately following the quota year referred to in sub-paragraph (a), the purchaser with whom the producer is newly registered shall have his purchaser quota increased by such part of the producer's remaining registered wholesale quota as that producer shall determine; and
- (d) corresponding reductions of the purchaser quota of the original purchaser shall be made, and, where there are adjustments of quota of a producer registered with more than one purchaser, such reductions of purchaser quota shall be made in respect of such of those other purchasers in such proportions as may appear to the Department to be appropriate in all the circumstances.

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

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

purchaser with whom the producer is newly registered and who requires an increase in purchaser quota to cover the deliveries made by the producer to him may apply to the Department (in such form as the latter may reasonably require) to assess and make the appropriate reduction, and make a corresponding increase in the purchaser quota of the said purchaser with whom the producer is newly registered,

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

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

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

8.—(1) For the purposes of Article 7 of the Council Regulation (which concerns the transfer of quota with a holding when the holding is sold, leased, transferred by inheritance or subjected to other cases of transfer involving comparable legal effects for producers), in respect of a transfer of any holding or part of a holding, other than a transfer of a kind to which paragraph (5) or (7) refers, the transferee shall submit to the Department—

(a) a notice of transfer in such form as the Department may reasonably require—

(i) in the case of a transfer made by lease before 1st March, on or before 1st March in the quota year in which the transfer takes place; and

(ii) in the case of a transfer made by lease on any date during March or made at any time otherwise than by lease, on or before 31st March in the quota year in which the transfer takes place;

and

(b) such other information relating to the transfer, and within such time, as the Department may reasonably require.

(2) The notice referred to in paragraph (1)(a) shall, in the case of a transfer of part of a holding, include—

(a) statements from the transferor and transferee to the effect that they have agreed that the quota shall be apportioned taking account of the areas used for milk production as specified in the statement or that no such apportionment has been agreed and specifying the amounts of used and unused quota transferred; and

(b) where such an apportionment has been agreed, a consent or sole interest notice, provided by the transferor in respect of the entirety of the holding.

(3) Where there is a transfer of part of a holding—

(a) an apportionment of the quota relating to the holding shall be carried out in accordance with regulation 9; and

(b) any dairy produce which has been sold by direct sale or delivered by wholesale delivery from the holding during the quota year in which the change of occupation takes place and prior to that transfer shall be deemed, for the purposes of any levy calculation, to have been sold or delivered from each part of the holding in proportion to that apportionment, unless the parties agree otherwise and notify the Department in such form as the Department may reasonably require, at the time of the submission of the notice or other information pursuant to paragraph (1) of the agreement.

(4) A prospective apportionment of quota in respect of a part of a holding may be made in accordance with regulation 10.

(5) No person shall transfer quota on a transfer of any holding or part of a holding in the following cases—

- (a) the grant of—
  - (i) a licence to occupy land; or
  - (ii) a tenancy of any land under which a holding, or part of a holding, is occupied for a period of less than twelve months;
- (b) the termination of a licence or tenancy to which sub-paragraph (a) applies.

(6) Where a notice of transfer has not been submitted in accordance with the provisions of paragraph (1)(a), then for the purposes of any levy calculation—

- (a) the unused quota transferred shall not be treated as a part of the transferee's quota entitlement for the quota year in which the transfer takes effect but shall be treated as if it remained unused quota available where appropriate for reallocation by the Department in that quota year in accordance with paragraph 7 of Schedule 2;
- (b) the notice shall be disregarded by the Department for the quota year to which it applies and shall not be noted on any register maintained under regulation 23 until the following quota year; and
- (c) a transferee shall not be entitled to demand that, by reason of such a transfer, an amendment be made to the amount of quota, if any, which has been reallocated to him under Schedule 2 for the quota year in which the transfer takes effect.

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

### **Apportionment of quota**

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

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

### **Prospective apportionment of quota**

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

- (a) that a prospective apportionment of quota relating to the holding be made taking account of areas used for milk production as set out in the application; or
- (b) that a prospective apportionment of quota be ascertained by arbitration in accordance with Schedule 1.

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

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



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

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

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

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

- (a) any prospective apportionment of quota relating to that part of that holding made under paragraph (1) unless the request for that prospective apportionment was withdrawn before the change of occupation to which it relates takes place;
- (b) if no such prospective apportionment has been made, any prospective apportionment which is in the process of being made under paragraph (1); and
- (c) in any other case, regulation 9.

#### **Notification by the Department of apportionment of quota by arbitration**

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

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

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

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

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

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

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

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

undertaking that he will continue to be, or will be, in milk production at the end of that six-month period.

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

(4) Where an application submitted pursuant to paragraph (1) has been approved by the Department, it may subsequently withdraw from the transferee, for inclusion in the national reserve, the quota transferred, provided that it—

- (a) has reasonable grounds for believing that the undertaking provided by the transferee pursuant to paragraph (2)(c) has been breached;
- (b) is satisfied that there is no justification for releasing the transferee from that undertaking pursuant to paragraph (5);
- (c) serves on the transferee a notice to this effect;
- (d) gives the transferee an opportunity to make written representations within such time as the Department considers reasonable; and
- (e) considers any such representations,

and the Department shall transfer that quota to the national reserve until such time as the transferee resumes or commences milk production.

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

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

- (a) the inability of the transferee to conduct his 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) without prejudice to sub-paragraph (e), 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 under Article 12(1) of the Diseases of Animals (Northern Ireland) Order 1981<sup>(17)</sup> or the adoption of an order pursuant to section 1 of the Food and Environment Protection Act 1985<sup>(18)</sup>; and
- (f) the loss of a significant proportion of the forage area as a result of the compulsory purchase of the holding or part of a holding.

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

### **National reserve**

**13.** The Department may make allocations from the national reserve in accordance with the Community legislation.

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<sup>(17)</sup> S.I. 1981/1115 (N.I. 22)

<sup>(18)</sup> 1985 c. 48

### **Temporary transfer of quota**

14.—(1) For the purposes of Article 6 of the Council Regulation (which concerns the temporary transfer of quota), a producer may agree with any other producer to make a temporary transfer, other than a temporary transfer of a kind to which paragraph (4) refers, of all or part of any unused quota which is registered under regulation 23 as permanently held by him for a period of one quota year to that other producer.

(2) The Department may require a reasonable charge to be paid for the registration of any temporary transfer of quota, provided that the transfer takes place within a quota year in respect of which it has announced before the beginning of that quota year that it intends to make such a charge, in such a manner as it considers likely to come to the attention of producers.

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

(4) No producer shall enter into an agreement to make a temporary transfer pursuant to paragraph (1) which would result in a reduction in the total wholesale quota or total direct sales quota available for use by dairy enterprises located within a Scottish Islands area.

### **Temporary reallocation of quota**

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

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

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

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

- (a) as the amount equal to 16 litres per qualifying cow per qualifying day in any quota year; or
- (b) as the amount by which in the quota year in question the producer's production exceeds his quota entitlement, whichever amount is less.

(4) An award to a producer pursuant to paragraph (3) shall not be available in respect of a quota year during which that producer transfers unused quota pursuant to regulation 8 or 12, makes a temporary transfer of quota pursuant to regulation 14, or purchases cows or in-calf heifers for dairy purposes, unless the Department is satisfied that the agreement to transfer, temporarily transfer or purchase, was entered into before service of the notice, or the coming into force of an order, referred to in paragraph (2).

### **Special allocation of quota**

16. Where, by reason of a mistake made by the Department, a person has not been allocated any quota, or has been allocated a smaller quantity of any such quota than he would have been allocated if the mistake had not been made, the Department 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**

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

(2) Where a producer wishes to convert quota permanently or temporarily in any quota year, he shall submit to the Department an application in such form as the Department may reasonably require, and such application shall—

- (a) state the amount (if any) of that producer's direct sales quota, wholesale quota, direct sales and wholesale deliveries for the quota year in which the application is made, the amount of unused quota which he holds at the time of the application and the amount which he wishes the Department to convert; and
- (b) include such other information as the Department may reasonably require in order to assess whether the requirements of Article 4(2) of the Council Regulation and Article 3 of the Commission Regulation (which concerns representative fat content) are fulfilled.

(3) The application referred to in paragraph (2) shall be submitted by the producer to the Department by—

- (a) in the case of a permanent conversion of quota, 31st December in the quota year in which the conversion is intended to take effect; or
- (b) in the case of temporary conversion of quota, 14th May in any year following the end of the quota year in which that temporary conversion of quota takes place.

(4) Subject to paragraphs (5) and (6), where a producer has permanently converted quota in any quota year, he shall not subsequently in that quota year transfer out quota, of the type to which he has converted, whether temporarily or otherwise.

(5) Where, upon an application to the Department by a producer who has permanently converted quota in any quota year, the Department is satisfied that exceptional circumstances of a type described in regulation 12(6) have resulted in a significant fall in milk production or a significant failure to achieve a planned increase in milk production, which, in the opinion of the Department, could have been neither foreseen nor avoided by the producer at the time of his permanent conversion, it may, in the same quota year in which the permanent conversion occurred, release that producer from the restriction in paragraph (4) to the extent that is required so as to allow the transfer of the amount of quota that the Department considers has remained unused in the particular case.

(6) The restriction in paragraph (4) shall not apply to any producer who, in the immediately preceding quota year, has temporarily converted quota.

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

18. A producer who in any quota year comes within the first indent of Article 3(7) of the Commission Regulation (which concerns the representative fat content of milk from certain new producers) may benefit from the negative correction provided for in the third sub-paragraph of Article 4(1) thereof only if, before 1st March in that quota year, he confirms to the Department that in that quota year he has maintained in his dairy herd breeds of cow with characteristics similar to

those in the herd in the first 12 months of production and undertakes to maintain such breeds in his dairy herd for the remainder of that quota year.

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

**19.** Schedule 2 shall apply in respect of the reallocation of quota and the calculation of levy liability for the purposes of Article 2(1) of the Council Regulation (which concerns the calculation of levy whether or not following a reallocation of quota).

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

**20.**—(1) Subject to paragraph (2), where in any quota year a producer makes sales or deliveries of milk or milk products from milk produced by any cows and subsequently in the same quota year another producer makes sales or deliveries of milk or milk products from milk produced by any or all of the same cows, the second producer shall be deemed for the purposes of these Regulations to have made those sales or deliveries in the capacity of agent for the first producer.

(2) Paragraph (1) shall not apply where—

- (a) an agreement has been entered into by the first producer for the sale or lease of the cows in question or the second producer has inherited them from the first producer; and
- (b) the cows are kept on the second producer's holding.

### **Payment of levy**

**21.**—(1) In respect of the collection of levy, the Department shall be the competent authority for the purposes of the Community legislation.

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

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

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

### **Annual statements**

**22.**—(1) The Department may, in respect of—

- (a) any person in whose name any direct sales quota is registered and who fails to submit to the Department by 14th May in any year any declaration which he is required to forward by Article 6(2) of the Commission Regulation; or
- (b) any purchaser approved by the Department pursuant to Article 13(2) of the Commission Regulation and regulation 25 and who fails to submit to the Department by 14th May in

any year any summary which he is required to forward by Article 5(2) of the Commission Regulation,

recover a reasonable charge in respect of any visit to any premises which the Department has reasonably considered that an authorised officer should make in order to obtain the declaration or summary in question.

(2) If a purchaser is requested by the Department to submit to it a revised version of the summary referred to in paragraph (1)(b), he shall submit such a version of the summary revised in the manner requested within ten working days of that request.

### **Registers to be prepared and maintained by the Department**

**23.—**(1) The Department shall—

- (a) maintain—
  - (i) a direct sales register, being a register of entries referred to in sub-paragraph (b); and
  - (ii) a register of particulars of direct sales by each direct seller; and
- (b) prepare a direct sales register entry in respect of each direct seller setting out in particular—
  - (i) his name;
  - (ii) his trading address, or, where there is more than one such address, each such address and his principal trading address;
  - (iii) a reference number which serves to identify him;
  - (iv) the direct sales quota available to him for the quota year excluding the quota referred to sub-paragraph (v); and
  - (v) quota issued to him as special quota,
 and shall send each direct seller a copy of the entry relating to him.

(2) The Department shall—

- (a) maintain a wholesale register, being a register of entries referred to in sub-paragraph 2(b); and
- (b) prepare a wholesale register entry in respect of each producer setting out in particular—
  - (i) his name;
  - (ii) his trading address, or, where there is more than one such address, each such address and his principal trading address;
  - (iii) a reference number which serves to identify him;
  - (iv) the wholesale quota available to him for the quota year excluding the quota referred to in sub-paragraph (v);
  - (v) quota issued to him as special quota; and
  - (vi) a list of the names and addresses of each purchaser whose purchaser quota will be calculated to take into account all or part of that 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 3 of the Commission Regulation,

and shall send to each producer a copy of the entry relating to him and, to each purchaser named on the list referred to in sub-paragraph (vi), a copy of that part of the entry relating to his purchaser quota.

(3) The Department shall—

- (a) maintain a register of purchaser notices, being a register of notices containing the information specified in sub-paragraph (b); and
- (b) prepare a purchaser notice in respect of each purchaser setting out—
  - (i) his name;
  - (ii) his purchaser quota; and
  - (iii) his purchaser special quota,

and shall send each purchaser a copy of the notice relating to him.

(4) For the purposes of paragraphs (1) and (2), where a holding comprises more than one dairy enterprise, a direct seller or a producer may, on presenting to the Department a consent or sole interest notice in respect of that holding, agree with the Department the partition of that holding between separate direct sales register entries or wholesale register entries as specified in the agreement.

(5) The Department may make such enquiries as it reasonably considers to be necessary for the purposes of ensuring the accuracy of the registers which it is required to maintain pursuant to this regulation, and shall amend such registers—

- (a) to record any allocations or adjustments made under or by virtue of these Regulations; or
- (b) to make any correction or amendment which it reasonably considers to be necessary,

and, where the Department makes a correction or amendment, it shall notify any person affected by that correction or amendment.

(6) In this regulation, “direct seller” and “producer” include a person who occupies land with quota whether or not that person is engaged in the sale or delivery of dairy produce.

### **Inspection of entries in the Department’s registers**

**24.** The Department may, in response to a request—

- (a) made in respect of a quota register entry referred to in regulation 23(1) or (2) by any person who is the direct seller or producer identified in that entry, or who gives the Department a statement in writing that he has an interest in the holding of the producer or direct seller identified in that entry, or by anyone who is the agent of such a person; or
- (b) made by a purchaser in respect of an entry in the register referred to in regulation 23(3) relating to himself or, provided the request is made with the express written authority of the purchaser in question, relating to a specific purchaser,

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

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

**25.—**(1) For the purposes of Article 13 of the Commission Regulation (which concerns the approval of purchasers), a purchaser shall submit to the Department an application seeking that purchaser’s approval by the Department in such form as the latter may reasonably require.

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

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

- (a) has given an undertaking to the Department to abide by the provisions of these Regulations and the Community legislation and to comply with that undertaking;
- (b) has no history of having committed—

- (i) an irregularity under, or material infringement of, any Community provision relating to a Community aid scheme; or
  - (ii) an offence under a statutory provision implementing a Community or domestic aid scheme; and
- (c) has, by submitting to the Department such information as it may reasonably require, demonstrated to the reasonable satisfaction of the Department that he has a sound financial basis upon which to operate.
- (4) Each purchaser shall—
  - (a) inform the Department of—
    - (i) any change in his 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 principal trading address; and
    - (ii) any factor or change in circumstance which the Department might reasonably consider materially to affect any matter that was relevant to its consideration of his application for approval, or which affects his ability to comply with the undertaking referred to in paragraph (3)(a);
  - (b) confirm to each producer supplying him that he is approved and supply on request details of that approval; and
  - (c) notify each producer supplying him if that approval is withdrawn.

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

- 26.**—(1) Each direct seller shall register his quota with the Department.
- (2) Each producer (within the extended meaning conferred by regulation 23(6)) who holds registered wholesale quota, including any producer who has temporarily ceased or who intends temporarily to cease making wholesale deliveries, shall register his quota with a purchaser and, if making deliveries, shall make them to a purchaser.
- (3) Each purchaser shall maintain, in respect of all producers whose register entries include that purchaser's name on the list referred to in regulation 23(2)(b)(vi)—
- (a) a register corresponding to that maintained by the Department under regulation 23(2) in respect of that part of his purchaser quota attributable to each of those producers;
  - (b) a register of particulars of wholesale deliveries from each of those producers to that purchaser;
  - (c) the information required by paragraphs 2 to 5 of Article 14 of the Commission Regulation (which concerns the records required in connection with levy assessment); and
  - (d) a system approved by the Department for sampling the milk of each producer and determining its fat content.
- (4) Each purchaser shall amend the register referred to in paragraph (3)(a) on each occasion when, under these Regulations, the equivalent register maintained by the Department is required to be amended in relation to producers registered in that purchaser's register.

#### **Registers as evidence**

- 27.** Any entry in a register or notice required by these Regulations to be maintained by the Department shall in any proceedings be evidence of the matters stated therein.



## Information

**28.**—(1) Each purchaser or producer shall provide such information to the Department as the Department may reasonably require in order that it is able to perform its functions under these Regulations and the Community legislation.

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

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

## Withholding or recovery of compensation

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

## Keeping and retention of records

**30.**—(1) For the purposes of Article 11(1) of the Commission Regulation (which requires Member States to take all necessary measures to ensure that the levy is correctly charged), and without prejudice to regulation 3 of the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992<sup>(19)</sup>, a relevant person shall, in addition to fulfilling any relevant requirement of paragraphs 2 to 5 of Article 14 of the Commission Regulation (which concerns record keeping obligations of purchasers and producers), keep and retain such records, and for such periods, as are specified in Schedule 3.

(2) In this regulation, “relevant person” means a producer, a purchaser, any employee or agent of a producer or of a purchaser, any milk haulier, any person undertaking butterfat testing for purchasers in a laboratory, a processor of milk or milk products, or any other person involved in the buying, selling or supply of milk or milk products obtained directly from a producer or purchaser.

## Administrative penalties

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

(2) Where a purchaser fails to submit to the Department—

- (a) a statement or declaration concerning the adjustment of purchaser quota in accordance with regulation 7(2);
- (b) a revised summary of producers' statements in accordance with regulation 22(2); or
- (c) monthly statistics in accordance with regulation 28(2),

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<sup>(19)</sup> S.I. 1992/314, as amended by S.I. 2001/3198 and S.I. 2001/3686

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

(3) Where a purchaser fails to submit to the Department pursuant to regulation 22(1) or (2) a summary or revised summary, as the case may be, of producers' statements which is accurate, and thereby causes an overstatement by him of deliveries made to him, he shall be liable to pay to the Department a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement.

(4) Where a purchaser fails to maintain accurate and updated records pursuant to Article 14(2) of the Commission Regulation and regulation 30, he shall be liable to pay to the Department a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk concerned.

(5) For the purposes of the third sub-paragraph of Article 6(3) of the Commission Regulation (which requires Member States to impose proportionate penalties where producers submit incorrect declarations), and subject to the provisions of Article 6(5) of that Regulation (which confers a discretion on Member States not to impose penalties in certain circumstances) and paragraph (6), where a direct seller submits an annual declaration which overstates the volume of direct sales for the period covered by that declaration, he shall be liable to pay to the Department a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement.

(6) Notwithstanding the provisions of paragraphs (2) to (5), the penalties referred to therein shall—

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

### **Offences and criminal penalties**

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

- (a) fails to comply with a requirement made pursuant to regulation 28(1);
- (b) in connection with these Regulations or the Community legislation—
  - (i) makes or causes to be made a statement, or uses or causes to be used a document, which he 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 knows or might reasonably be expected to know is incorrectly registered in his name,

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

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

(2) The Department may, following any conviction under paragraph (1)(b) against which there is no subsisting right of appeal or further appeal, by notice served on the person to whose quota that

conviction relates withdraw from him such quota as may reasonably be regarded by the Department as obtained by him by reason of the falsehood upon which the conviction was founded.

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

(4) Where an offence under 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 as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) In this regulation “requirement” does not include a requirement or restriction imposed on the Department or a person acting as arbitrator, nor does it include any restriction or obligation in or under regulation 8(5) or (7), 10(1), 14(4) or 17(2).

### **Confiscation and restoration of quota**

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

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

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

(3) Any quota withdrawn pursuant to Article 5 of the Council Regulation shall be placed in the national reserve with effect from the beginning of the quota year following the quota year for which the list referred to in paragraph (1) was supplied, the quota year for which the declaration indicating no direct sales was made, or the quota year for which no declaration was submitted, as the case may be.

(4) Any quota withdrawn pursuant to Article 5 of the Council Regulation may be restored to the producer in respect of the holding from which it was withdrawn within a period of six years from the beginning of the quota year in which it was withdrawn, in accordance with the provisions of this regulation.

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

- (a) within 28 days of receipt of that notification notify any person with an interest in the land comprised in the holding of the content of that notification; and
- (b) within six months of receipt of that notification, submit a notification to the Department, in such form as the Department may reasonably require for that purpose, as to whether that producer wishes to retain the right to request restoration of the quota, and such a notification shall include—
  - (i) a statement that he is the occupier of the entirety of the holding and that no other person has an interest in all or any of it;

- (ii) a statement of the agreed apportionment of quota taking account of the areas used for milk production, signed by every person with an interest in the land comprised in the holding; or
- (iii) a statement requesting apportionment of the quota in accordance with an arbitration under paragraphs 1, 2, 3(5), 5, 6 and 8 to 19 of Schedule 1.

(6) Where a producer has notified the Department under paragraph (5)(b) that he wishes to retain the right to restoration of quota, he may request the Department to restore to him the quota relating to that holding or part holding provided that the request—

- (a) is submitted to the Department by 15th July in the quota year following the quota year to which the request relates; and
- (b) in the case of confiscation of quota arising from the lack of any declaration being submitted by a direct seller, following submission of any such declaration.

(7) Where a producer has notified the Department that he wishes to retain the right to restoration of quota and there is a change of occupation of all or part of the holding to which the quota relates, the new occupier may request the Department to restore to him the quota relating to that holding or part holding, provided that the request is received by the Department at least six months before the end of the six-year period referred to in paragraph (4) or within six months of the change of occupation, whichever is the earlier.

(8) Where quota is restored to part of a holding in respect of which an apportionment of quota has been made in accordance with or under paragraph 5(b)(ii) or (iii), in accordance with a request made under paragraph (6), or following a change of occupation of part of a holding pursuant to paragraph (7), the amount of quota to be restored to that part shall be determined in accordance with—

- (a) the apportionment referred to in paragraph (5)(b)(ii) or (iii) and within that apportionment in proportion to the agricultural areas concerned; or
- (b) where no such apportionment has been carried out, in the same proportion as the agricultural area concerned bears to the total agricultural area of the holding from which quota was withdrawn.

(9) Where a producer—

- (a) fails to submit a notification in accordance with paragraph (5)(b);
- (b) indicates on the notification submitted under paragraph (5)(b) that he does not wish to retain the right to restoration of quota;
- (c) fails to request the restoration of quota in accordance with paragraph (6) or (7);
- (d) having had quota restored to him in accordance with paragraph (6), fails to make deliveries or direct sales of dairy produce from the holding to which the quota relates within six months of his application for the restoration of quota or the end of the six year period, whichever is the earlier; or
- (e) having had quota restored to him following a change of occupation referred to in paragraph (7), fails to make deliveries or direct sales of dairy produce from the holding within eighteen months of the change of occupation or the end of the six-year period, whichever is the earlier,

the relevant quota shall be taken into the national reserve.

### **Withdrawal of special quota**

**34.** Where a producer has special quota registered in his name and it appears to the Department that the producer has made a false or misleading statement in his application for special quota or has

failed to comply with the requirements under the Community legislation in relation to special quota, the Department may withdraw the whole or any part of the special quota.

### **Revocations**

**35.**—(1) Subject to paragraph (2), the Regulations specified in Schedule 4 are hereby revoked to the extent specified in that Schedule in so far as they apply to Northern Ireland.

(2) Subject to paragraph (3), paragraph (1) shall not affect the continued operation of regulations 30 and 31 of the 1997 Regulations in respect of any requirement imposed by, or anything done in connection with, those Regulations.

(3) Any undertaking given pursuant to regulation 11(2)(c) or (d) of the 1997 Regulations shall cease to have effect.

(4) In this regulation, “the 1997 Regulations” means the Dairy Produce Quotas Regulations 1997(20).

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 8th March 2002.

L.S.

*Liam McKibben*  
A senior officer of the  
Department of Agriculture and Rural  
Development

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE 1

regulations 9(b), 10(1)(b) and (4)(b), 11(2) and 33(5)(b)(iii)

### **Apportionment and prospective apportionment by arbitration**

1. Paragraphs 3 to 19 shall apply to every arbitration in Northern Ireland.

2.—(1) Parts I, II and IV of the Arbitration Act 1996<sup>(21)</sup> shall, except insofar as they are inconsistent with paragraphs 3 to 19, apply to every arbitration in Northern Ireland as if that arbitration were pursuant to an arbitration agreement and as if paragraphs 3 to 11 and 13 to 18 were contained in an arbitration agreement.

(2) For the purpose of this paragraph “arbitration agreement” shall be construed in accordance with sections 5(1) and 6 of the Arbitration Act 1996.

### **Appointment of arbitrator**

3.—(1) Subject to sub-paragraph (2), in any case where an apportionment is to be carried out by arbitration, an arbitrator shall be appointed by agreement between the transferor and transferee, and the transferee shall give notice of the appointment of the arbitrator to the Department.

(2) The transferor or the transferee may at any time make an application to the President of the Law Society of Northern Ireland (referred to in this Schedule as “the President”) for the appointment of an arbitrator and the person who makes such an application to the President shall give notice of that fact to the Department.

(3) If an arbitrator has not been appointed by agreement between the transferor and the transferee and no application has been made to the President under sub-paragraph (2), the Department may make an application to the President for the appointment of an arbitrator.

(4) Where the Department gives a notice in accordance with regulation 11, it shall make an application to the President for the appointment of an arbitrator and the Department shall be a party to the arbitration.

(5) Where an apportionment under regulation 33(5)(b)(iii) is to be carried out by arbitration, the producer shall either appoint an arbitrator by agreement with all persons with an interest in the holding or make an application to the President for the appointment of an arbitrator.

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbitrator shall be appointed—

- (a) where regulation 11 applies, by the President;
- (b) where regulation 10 applies, by agreement between the occupier of the holding to which the prospective apportionment relates and any other interested party, or, in default, by the President on an application by that occupier.

(2) Where sub-paragraph (1)(b) applies, the occupier shall give notice to the Department of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator.

5.—(1) An arbitrator appointed in accordance with paragraph 3(1) to (4) or 4 shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to areas used for milk production in the last five year period during which production took place before the change of occupation, or, in the case of a prospective apportionment, in the last five year period during which production took place before the appointment of the arbitrator.

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(21) 1996 c. 23

(2) An arbitrator appointed in accordance with paragraph 3(5) shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to the areas used for milk production in the last five-year period during which production took place before the appointment of the arbitrator.

(3) An arbitrator appointed under any paragraph of this Schedule shall base his award on findings made by him in accordance with the law in force at the time the event giving rise to an application for arbitration took place.

6. No application may be made to the President for an arbitrator to be appointed by him under this Schedule unless the application is accompanied by a fee which shall be £50 for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).

7. Where the Department makes an application to the President under paragraph 3(3) or (4), the fee payable to the President in respect of that application referred to in paragraph 6 shall be recoverable by the Department as a debt due from the other parties to the arbitration jointly or severally.

8. Any appointment of an arbitrator by the President shall be made by him as soon as possible after receiving the application.

9. If the arbitrator dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

10. A party to the arbitration shall have power to revoke the appointment of the arbitrator with the consent of all other parties.

11. Every appointment, application, notice, revocation and consent under paragraph 3, 4, 5, 9 or 10 shall be in writing.

### **Persons with an interest in the holding**

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

(2) Where an apportionment under regulation 33(5)(b)(iii) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign the statement referred to in regulation 33(5)(b)(ii) shall be a party to the arbitration.

### **Statement of case**

13. The parties to the arbitration shall, within 35 days of the appointment of the arbitrator, or within such further period as the arbitrator may determine, deliver to him a statement of their respective cases with all necessary particulars and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said 35 days except with the consent of the arbitrator; and
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

### **Award**

14.—(1) Subject to sub-paragraph (2), the arbitrator shall make and sign his award within 56 days of his appointment.

(2) The President may from time to time extend the time limited for making the award, whether that time has expired or not.

15. The arbitrator shall notify the terms of his award to the Department within eight days of delivery of that award.

16. The arbitrator shall have power to correct in the award any clerical mistake or error arising from any accidental slip or omission.

### **Reasons for award**

17. If requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award the arbitrator shall furnish such a statement.

18. For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment, and in the case of any such arbitrator the periods mentioned in paragraphs 13 and 14 shall run from that time.

19. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbitrator.

## **SCHEDULE 2**

regulation 19

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

#### **Wholesale quota**

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

2. In making that determination the Department shall complete in sequence the steps required by paragraphs 3 to 7, 9 and 10.

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

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

5. The Department shall determine for each purchaser the amount, if any, by which the purchaser quota of each purchaser exceeds or falls short of the quantity of wholesale deliveries of dairy produce made to him taking into account the amount of quota converted in accordance with regulation 17, and any temporary reallocation made in accordance with regulation 15.



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

7. The Department shall reallocate the amount, if any, referred to in paragraph 6—

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

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

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

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

11. Where a purchaser—

- (a) has not been approved pursuant to regulation 25; or
- (b) has had his approval withdrawn by the Department pursuant to Article 13(3) of the Commission Regulation,

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

### **Direct sales quota**

12. The Department shall determine for each direct seller the amount, if any, after taking into account the amount of quota converted in accordance with regulation 17, by which his direct sales quota exceeds the quantity of dairy produce sold by direct sale by him, and shall add this to any quantities available in the national reserve.

13. The Department shall make an award of a temporary reallocation of direct sales quota, under the terms of regulation 15 from the aggregate of amounts, if any, referred to in paragraph 12.

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

15. The Department shall determine for each direct seller the amount, if any, by which his direct sales quota falls short of the quantity of dairy produce sold by direct sale by him, taking into account

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the amount of quota converted in accordance with regulation 17, and any temporary reallocation of quota made in accordance with paragraph 13.

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

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

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

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

20. Where for any quota year a direct seller is unable to supply such proof as the Department may reasonably require of the quantities of dairy produce sold by him in that year, the Department shall make its own determination of those quantities, based on all the information available to it, for the purposes of calculating any levy payable by that direct seller, and shall inform the direct seller of its determination.

## SCHEDULE 3

regulation 30

### **Keeping and retention of records**

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

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

- (a) details of each producer making deliveries to him, including—
  - (i) that producer's name and address;
  - (ii) the wholesale quota available to that producer at the beginning and end of each quota year;
  - (iii) the representative fat content (butterfat base) of the milk delivered by that producer; and
  - (iv) the total quota available for the purchaser group concerned and the weighted butterfat of that quota;
- (b) details, in terms of each delivery and each month, of the quantities of milk or milk products which each producer has delivered to him;
- (c) details of the cumulative total of the quantities delivered to him each month by all producers;
- (d) details of the average fat content of each producer's deliveries per month;
- (e) details of the weighted average fat content of the cumulative total referred to in sub-paragraph (c);

- (f) a list of purchasers and other undertakings which deliver treated or processed milk or milk products to him;
- (g) details, in terms of each such purchaser or undertaking and each month, of the quantities delivered to him by that purchaser or undertaking;
- (h) details of the use to which milk and milk products collected from him has been put;
- (i) records of individual deliveries and accompanying collection documents identifying each delivery by producer, purchaser or other undertaking; and
- (j) all books, registers, accounts, correspondence, commercial data, vouchers and supporting documents relating to his business activities.

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

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

- (a) details of the quota held by him, including any permanent and temporary transfers of quota if appropriate;
- (b) his herd records (comprising number and breed of cows and calved heifers in dairy herd with details of number of cows in milk and number of cows dry);
- (c) daily records of milk produced;
- (d) details recorded as a result of his participation in a milk recording scheme;
- (e) details of quantities of milk processed, methods of processing and quantities and type of milk products produced;
- (f) details of quantities of wholemilk used in the production of milk products (with conversion rates applied);
- (g) details of quantities and types of milk and milk products which are produced and used on his holding for stockfeeding and human consumption;
- (h) details of quantities and types of milk and milk products which are disposed of (other than under sub-paragraph (g)) or wasted on the holding;
- (i) details of quantities and types of milk and milk products sold direct to the consumer or transferred free of charge from his holding (including milk and milk products sold on his holding);
- (j) details of quantities and types of milk and milk products purchased, exchanged or otherwise received by him, and records relating to their disposal; and
- (k) details of stocks of milk and milk products held by him on a monthly basis.

(2) Where a direct seller delivers milk or milk products to a purchaser, he shall, in respect of each quota year, also keep, and retain for the relevant period, records comprising—

- (a) details of quantities and types of milk and milk products delivered wholesale by him and the name and address of any purchaser involved;
- (b) the payment slips issued in respect of any such purchaser; and
- (c) where there is a discrepancy between a purchaser's payment slip and the relevant tanker receipt, that tanker receipt.

(3) For the purposes of sub-paragraph (1)(d) and paragraph 3(g)—

- (a) “milk recording scheme” means a scheme under which the amount of milk produced by a cow during a lactation is measured in terms of volume and compositional quality by a person independent of the producer; and

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- (b) “lactation” means the period commencing with calving and ending when the cow requires to be milked only once a day.
- 3. A producer, other than a direct seller, who makes wholesale deliveries to a purchaser shall, in respect of each quota year, keep, and retain for the relevant period, records comprising—
  - (a) details of the quota held by him, showing permanent and temporary transfers of quota if appropriate;
  - (b) his herd records (comprising number and breed of cows and calved heifers in dairy herd with details of number of cows in milk and number of cows dry);
  - (c) daily records of milk produced;
  - (d) details of quantities and types of milk and milk products delivered wholesale by him, and the name and address of any purchaser involved;
  - (e) the payment slips issued in respect of any such purchaser;
  - (f) where there is a discrepancy between a purchaser’s payment slip and the relevant tanker receipt, that tanker receipt;
  - (g) details recorded as a result of his participation in a milk recording scheme;
  - (h) details of quantities and types of milk and milk products produced and used on his holding for stockfeeding and human consumption;
  - (i) details of quantities and types of milk and milk products which are disposed of (other than under sub-paragraph (h)) or wasted on the holding;
  - (j) details of quantities and types of milk and milk products transferred free of charge from his holding;
  - (k) details of quantities and types of milk and milk products purchased, swapped or otherwise received, and records relating to their disposal; and
  - (l) details of stocks of milk produced on his holding and any resulting milk products.

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

- 4. Any person undertaking butterfat testing for a purchaser in a laboratory shall keep, and retain for the relevant period, records comprising details of all samples of milk analysed, showing—
  - (a) the time and date the sample was taken on the holding;
  - (b) the time and date of his receipt of the sample;
  - (c) the time and date of the analysis;
  - (d) the identity of the purchaser concerned;
  - (e) the identity of the producer concerned (by name or reference number);
  - (f) the butterfat content of each sample recorded to two decimal places;
  - (g) the method of analysis used; and
  - (h) the results of any repeat analyses undertaken.

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

- 5. Any haulier collecting milk or milk products on behalf of a purchaser shall keep, and retain for the relevant period, records comprising details of all quantities of milk or milk products so collected, showing—
  - (a) the time and date of collection from each producer;
  - (b) the time and date of sampling of the milk or milk products of each producer;

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

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

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

- (a) the time and date of their delivery;
- (b) their volume or weight per delivery (including copies of tanker receipts and weighbridge tickets in the cases referred to in paragraphs 2(2)(c) and 3(f));
- (c) the name and address of the haulier concerned;
- (d) the name and address of their vendor or donor;
- (e) the quantities of milk processed, types of processing undertaken, and quantities and types of milk products produced;
- (f) the quantities of milk used in the production of milk products (if not ascertainable from the information provided under sub-paragraph (e));
- (g) the calculated stocks of milk and milk products held by that processor at the end of each month and details of actual stocks physically held as at 31st March each year; and
- (h) the quantities of milk or milk products sold or otherwise disposed of, with the date of supply or disposal, and the names and addresses of the buyers or recipients concerned.

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

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

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

8. In this Schedule, in relation to any records—

- (a) “the relevant period” means the remainder of the year of record and a period of at least three calendar years thereafter; and

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- (b) “the remainder of the year of record” means, following the making of the records, the remainder of the year in which they were made.

#### SCHEDULE 4

regulation 35

##### Revocations

<i>Title</i>	<i>Number</i>	<i>Extent of Revocation</i>
The Dairy Produce Quotas Regulations 1997	<a href="#">S.I. 1997/733</a>	The whole Regulations
The Dairy Produce Quotas (Amendment) (Time Limits) Regulations 1997	<a href="#">S.I. 1997/1093</a>	The whole Regulations
The Charges for Inspections and Controls (Amendment) Regulations 1998	<a href="#">S.I. 1998/2880</a>	Regulation 6
The Dairy Produce Quotas (Amendment) Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 83</a>	The whole Regulations
The Dairy Produce Quotas (Amendment) Regulations (Northern Ireland) 2001	<a href="#">S.R. 2001 No. 27</a>	The whole Regulations

#### EXPLANATORY NOTE

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

These Regulations, which come into operation on 31st March 2002, replace the provisions of the Dairy Produce Quotas Regulations 1997 ([S.I.1997/733](#), as amended by [S.I. 1997/1093](#), [S.I. 1998/2880](#), [S.I. 2000/698](#), [S.R. 2000 No. 83](#) and [S.R. 2001 No. 27](#)).

They implement Council Regulation ([EEC](#)) No. 3950/92 establishing an additional levy in the milk and milk products sector (O.J. No. L405, 31.12.92, p.1, as last amended by Commission Regulation ([EC](#)) No. 603/2001 (O.J. No. L89, 29.3.2001, p. 18)) (“the Council Regulation”) and Commission Regulation ([EC](#)) No. 1392/2001 laying down detailed rules for applying Council Regulation ([EEC](#)) No. 3950/92 (O.J. No. L187, 10.7.2001, p. 19) (“the Commission Regulation”). Under this and other Community legislation (collectively defined in these Regulations as “the Community legislation”), a levy continues to be payable on dairy produce sold by direct sale by a producer or delivered by him wholesale to a purchaser, unless the sales or deliveries are within a reference quantity described in that legislation. The Community legislation establishes the system of what are commonly called “milk quotas” and in these Regulations the term “quota” is used to refer to the reference quantity described in the Community legislation.

These Regulations apply in relation to producers, purchasers and other relevant persons in relation to whom the Department of Agriculture and Rural Development (“the Department”) is “the relevant competent authority” as defined by the Dairy Produce Quotas (General Provisions) Regulations 2002 (S.I. 2002/458), that is to say, producers, purchasers or other persons whose trading address, or, where there is more than one such address, whose principal trading address, is in Northern Ireland. The holdings of producers to whom these Regulations apply may comprise land in parts of the United Kingdom outside Northern Ireland.

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

1. The conditions surrounding the transfer of quota without a corresponding transfer of the land to which that quota relates have been eased. The transferor and transferee are no longer required to give undertakings that they will not transfer quota onto or from their holdings for up to two quota years, and existing undertakings will cease to have effect (regulation 35(3)). Instead, the transferee is required to undertake to the Department that he will be in milk production on a date six months from the date of the transfer (regulation 12(2)(c)).
2. The provisions concerning the temporary reallocation of quota have been extended to cover herd movements restrictions resulting from a declaration made under an order made pursuant to the Diseases of Animals (Northern Ireland ) Order 1981 (S.I.1981/1115 (N.I. 22)) (regulation 15(2)(a)). In addition, the definition of “eligible heifer” has been amended, introducing a new method of counting such heifers, and of calculating when the replacement number of heifers has been met, thus determining when reallocation is possible (regulation 2(1) and regulation 15).
3. In implementation of Article 13(2) of the Commission Regulation (which requires purchasers to be approved and confers on Member States the power to impose additional conditions of approval), purchasers are required to apply to the Department for approval and meet certain conditions as to character, financial state and future conduct (regulation 25).
4. New provisions have been adopted in respect of the keeping and retention of records (regulation 30 and Schedule 3).
5. Administrative penalties have been introduced in relation to any failure of a purchaser to submit to the Department certain statements, summaries or statistics (regulation 31).
6. The provisions concerning offences and criminal penalties have been revised (regulation 32).