
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 91

The Dairy Produce Quotas (Scotland) Regulations 2005

PART 4

ALLOCATIONS AND ADJUSTMENTS OF QUOTA

Allocation from national reserve

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

Temporary reallocation of quota

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

- (a) at any time during a quota year is in whole or in part subject to a notice served, or declaration made, under an order made pursuant to section 17(1) of the Animal Health Act 1981⁽¹⁾ prohibiting or regulating the movement of dairy cows; or
- (b) is situated wholly or partly within an area which at any time during a quota year has been designated by an order made pursuant to section 1 of the Food and Environment Protection Act 1985⁽²⁾.

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

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

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

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

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

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

⁽¹⁾ 1981 c. 22.

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

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

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

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

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

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

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

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

(11) In this regulation—

- (a) “eligible heifer” means a qualifying heifer which calves for the first time on a relevant calving day;
- (b) “qualifying cow”, for the purposes of a quota year, means an eligible heifer which calves for the first time at a time when the number of eligible heifers exceeds the replacement number, whether or not the time of such calving falls during that quota year;
- (c) “qualifying heifer” means a heifer which either—
 - (i) at the date of service of a relevant notice or the making of a relevant declaration, was on land subject to that notice or, as the case may be, that declaration; or
 - (ii) at the date of the coming into force of a relevant order, was on land subject to that order;
- (d) “qualifying day”, in relation to any qualifying cow, means the day on which it calves and each later day or part of a later day during which the relevant notice, the relevant declaration or the relevant order in question has effect or, as the case may be, remains in force;
- (e) “relevant declaration” means a declaration referred to in paragraph (1)(a);
- (f) “relevant notice” means a notice referred to in paragraph (1)(a); and
- (g) “relevant order” means an order referred to in paragraph (1)(b).

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

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

- (b) in any other case, within the quota year during which the relevant notice, the relevant declaration or the relevant order is served or made or at any later time when the relevant notice, the relevant declaration or the relevant order has effect or is in force.

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

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

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

Special allocation of quota

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

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

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

Conversion of quota: general

21.—(1) For the purposes of—

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

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

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

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

(3) The application must reach the Scottish Ministers—

- (a) in the case of a permanent conversion of quota, not later than 31st December in the quota year in which the conversion is intended to take effect; and

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

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

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

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

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

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

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

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

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

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

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

- (a) the death of the producer or the inability of the producer to conduct the business of the producer for a prolonged period as a result of the onset of ill-health, injury or disability;
- (b) a natural disaster seriously affecting the holding;
- (c) the accidental destruction of buildings used for the purposes of milk production;
- (d) an outbreak of illness or disease seriously affecting the dairy herd;
- (e) the serving of a notice or the making of a declaration under an order made pursuant to section 17(1) of the Animal Health Act 1981 or the making of an order pursuant to section 1 of the Food and Environment Protection Act 1985;
- (f) the loss of a significant proportion of the forage area as a result of the compulsory purchase of the holding or a part of the holding; and
- (g) where the transferee is a tenant, the serving of a notice to quit coming within any case specified in section 22(2) of the Agricultural Holdings (Scotland) Act 1991(3).

(3) 1991 c. 55 as amended by 2003 asp 11, section 67.

Adjustment of purchaser quota

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

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

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

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

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

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

(5) The specified amount shall not include the remaining registered wholesale quota except so far as the increase registered in pursuance of paragraph (8) includes that quota.

(6) The remaining registered wholesale quota shall remain available to the original purchaser.

(7) If insufficient wholesale quota is registered with the original purchaser to cover deliveries made by the wholesale producer before the date of change of purchaser, any additional wholesale quota obtained by a wholesale producer is to be allocated to the original purchaser until all deliveries to the original purchaser made by the wholesale producer before that date are covered after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(8) At the beginning of the quota year immediately following the quota year in which the increase referred to in paragraph (2) took place, the purchaser quota of the purchaser with whom the wholesale producer is newly registered is to be increased by such part of the remaining registered wholesale quota of the wholesale producer as is included in the specified amount.

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

- (a) a transfer of wholesale quota to the wholesale producer under these Regulations; or
- (b) an adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation,

then, subject to paragraph (10), the Scottish Ministers shall make such adjustments in the purchaser quota of the original purchaser, and of the purchaser with whom the wholesale producer is newly registered, as are required to ensure that sufficient quota is registered with the original purchaser to cover deliveries made.

(10) The Scottish Ministers shall make an adjustment pursuant to paragraph (9) after the end of the quota year in question.

(11) Where a wholesale producer has wholesale quota registered with two or more purchasers, the wholesale producer may apply to the Scottish Ministers temporarily to change the quota registered between them, except so far as the quota registered with each of them is necessary to cover the deliveries made by the wholesale producer before the date of the transfer after any adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

- (12) A wholesale producer who makes an application to the Scottish Ministers pursuant to paragraph (11) shall submit with that application—
- (a) a statement setting out particulars of the wholesale quota to be temporarily reregistered; and
 - (b) a declaration made and signed by the wholesale producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement.
- (13) The statement and declaration referred to in paragraph (12)—
- (a) shall be in such form as the Scottish Ministers may reasonably require; and
 - (b) must reach the Scottish Ministers no later than 15th June in the quota year immediately following the quota year for which the temporary re-registration is requested.
- (14) In this regulation—
- (a) “remaining registered wholesale quota” means the amount of wholesale quota necessary to cover the deliveries made by a wholesale producer before the date of the change of purchaser (adjusted for butterfat content in accordance with Article 10(1) of the Commission Regulation); and
 - (b) “specified amount” means an amount equivalent to so much of the registered wholesale quota of a wholesale producer as is specified by that wholesale producer.

Restriction on use of quota in Scottish Islands area

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

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

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