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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 91**

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

**PART 7**

**PENALTIES AND MISCELLANEOUS PROVISIONS**

**Administrative penalties**

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

(2) Where a purchaser fails to provide or submit to the Scottish Ministers—

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

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

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

(4) For the purposes of the third sub-paragraph of Article 11(3) of the Commission Regulation (which requires member States to impose proportionate penalties where producers submit incorrect declarations), and subject to the provisions of Article 11(5) of that Regulation (which authorises member States not to impose penalties in certain circumstances) and to paragraph (5), where a direct seller submits an annual declaration which overstates or understates the volume of direct sales for the quota year covered by that declaration, the direct seller shall be liable to pay to the Scottish Ministers—

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

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

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

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

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

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

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

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#### Commencement Information

**II** [Reg. 36](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

### Withholding or recovery of compensation

**37.—(1)** Where—

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

the Scottish Ministers may withhold or recover on demand from that producer the whole or any part of the compensation payable or paid to the producer.

(2) In this regulation, “Community compensation scheme” means the scheme instituted by Council Regulation (EC) No. 2330/98 providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade<sup>(1)</sup> and Commission Regulation (EC) No. 2647/98 laying down detailed rules for the application of Council Regulation (EC) No. 2330/98<sup>(2)</sup>.

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#### Commencement Information

**I2** [Reg. 37](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

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(1) O.J. No. L 291, 30.10.98, p.4.

(2) O.J. No. L 335, 10.12.98, p.33.

## Confiscation of quota

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

(2) In pursuance of Article 11(4) of the Commission Regulation (which relates to the confiscation of direct sales quota in cases of failure to submit declarations of direct sales before 1st July), the Scottish Ministers shall notify any direct sales quota holder who contravenes Article 11 of that Regulation, by failing to submit an annual declaration to the Scottish Ministers so that the annual declaration reaches them before 1st July, that the direct sales quota of the direct sales quota holder shall be taken into the national reserve 30 days after notification.

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

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

### Commencement Information

**I3** Reg. 38 in force at 31.3.2005, see reg. 1(2)

## Restoration of quota

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

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

(a) must reach the Scottish Ministers–

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

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

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

(3) Where–

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

(b) the new occupier is a producer,

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

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

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- (a) a statement of the agreed apportionment of quota taking account of the areas used for milk production, signed by every person with an interest in the land comprised in the holding; or
  - (b) a statement requesting apportionment of the quota in accordance with an arbitration under paragraphs 1, 2, 3(4), and 5 to 30 of Schedule 1.
- (5) Where quota is restored to part of a holding in accordance with a request made under paragraph (1) or (3), the amount of quota to be restored to that part shall be determined in accordance with the apportionment referred to in paragraph (4)(a) or (b).

#### Commencement Information

**I4** [Reg. 39](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

### Offences and criminal penalties

- 40.**—(1) A person is guilty of an offence if—
- (a) being a relevant person, that person fails without reasonable excuse to comply with a requirement imposed on that person by or under these Regulations or the Community legislation; or
  - (b) in connection with these Regulations or the Community legislation, that person—
    - (i) makes or causes to be made a statement, or uses or causes to be used a document, which that person knows to be false in a material particular, or
    - (ii) recklessly makes or causes to be made a statement, or recklessly uses or causes to be used a document, which is false in a material particular; or
  - (c) disposes of quota which that person knows or might reasonably be expected to know is incorrectly registered in the name of that person.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding three months; or to both, or
  - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.
- (3) The Scottish Ministers may, following any conviction under paragraph (1)(b) against which there is no subsisting right of appeal or further appeal, by notice served on the person to whose quota that conviction relates withdraw from that person such quota as may reasonably be regarded by the Scottish Ministers as obtained by that person by reason of the falsehood upon which the conviction was founded.
- (4) A notice under paragraph (3) may not be served after the expiry of the period of twelve months beginning with the first day on which the notice may be served.
- (5) Where an offence under this regulation which has been committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or person who was purporting to act as such), that person as well as the body corporate or partnership shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (6) Where the affairs of a body corporate are managed by its members, the provisions of paragraphs (1) and (2) shall apply in relation to the acts and defaults of a member in connection with the functions of management of the members as if the member was a director of the body corporate.

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(7) In this regulation, “requirement” does not include any restriction or obligation in or under regulations 11(1) and (3), 14(3), 15(4) and (5), 16, 19(6) and (7), 21(2) and (3), 22(2), 23(2), (4), (12) and (13), and 39(2) and (4).

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**Commencement Information**

**I5** [Reg. 40](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

**Revocations and amendment**

**41.**—(1) The Dairy Produce Quotas (Scotland) Regulations 2002(**3**), the Dairy Produce Quotas (Scotland) Amendment Regulations 2002(**4**) and the Dairy Produce Quotas (Scotland) Amendment Regulations 2004(**5**) are revoked.

(2) In article 8(3)(b) of the Milk Development Council Order 1995(**6**), for “the Dairy Produce Quotas (Scotland) Regulations 2002” substitute “the Dairy Produce Quotas (Scotland) Regulations 2005(**7**)”.

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**Commencement Information**

**I6** [Reg. 41](#) in force at 31.3.2005, see [reg. 1\(2\)](#)

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(3) [S.S.I. 2002/110](#).

(4) [S.S.I. 2002/228](#).

(5) [S.S.I. 2004/118](#).

(6) [S.I.1995/356](#) amended by [S.I. 2000/878](#) and [S.I. 2004/964](#).

(7) [S.S.I. 2005/91](#).

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

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

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

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

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