
STATUTORY INSTRUMENTS

2005 No. 465

The Dairy Produce Quotas Regulations 2005

PART 5

THE LEVY

Determination whether reduction in downward butterfat adjustment is required in relation to deliveries

25.—(1) After the end of each quota year, the Secretary of State must make a determination of—

- (a) the total volume of deliveries to purchasers; and
- (b) the total volume of such deliveries after an adjustment for butterfat content in accordance with Article 10(1) of the Commission Regulation.

(2) The determination under paragraph (1) must be made by reference to the summaries purchasers are required to submit to the Secretary of State for the purposes of Article 8(2) of the Commission Regulation.

(3) If for any quota year a purchaser has not submitted the summaries so required or is unable to provide such proof of the volume of milk delivered to him in that year as the Secretary of State may reasonably require for the purposes of these Regulations, the Secretary of State must for the purposes of paragraph (1)—

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

(4) If the volume referred to in paragraph (1)(a) exceeds that referred to in paragraph (1)(b), the Secretary of State must calculate the proportionate reduction required to be made in all downward butterfat adjustments that have previously been made in order to increase the volume referred to in paragraph (1)(b) so that it equals the volume referred to in paragraph (1)(a).

(5) If paragraph (4) applies, the Secretary of State must—

- (a) notify all purchasers that any downward butterfat adjustments made by them in the deliveries to them are reduced; and
- (b) specify the reduction.

(6) If the volume referred to in paragraph (1)(b) equals or exceeds that referred to in paragraph (1)(a), the Secretary of State must notify all purchasers that no such reduction need be made.

(7) In this regulation, “downward butterfat adjustment”, in relation to deliveries to a purchaser, means an adjustment of the volume of the deliveries for butterfat content that results in that volume being reduced for the purposes of the levy calculation in accordance with Article 10(2) of the Council Regulation.

Determination whether levy on deliveries is payable

26.—(1) Where the total amount of the wholesale quota of producers, including converted quota, together with the total amount of wholesale quota in the national reserve exceeds whichever is the higher of—

- (a) the total volume of deliveries referred to in regulation 25(1)(a); or
- (b) the total volume of deliveries referred to in regulation 25(1)(b),

the Secretary of State must determine that no levy is payable on deliveries.

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

(3) Where the total amount of the wholesale quota of producers, including converted quota, together with the total amount of wholesale quota in the national reserve is less than whichever is the higher of—

- (a) the total volume of deliveries referred to in regulation 25(1)(a); or
- (b) the total volume of deliveries referred to in regulation 25(1)(b),

the Secretary of State must notify all purchasers that levy is payable on the higher volume of deliveries.

Reallocation of producers' quota

27.—(1) This regulation applies for the purposes of Article 10(3) of the Council Regulation (which concerns the calculation of levy on deliveries).

(2) After the end of each quota year, the Secretary of State must determine for each producer the amount, if any, of unused quota available to that producer, taking into account any adjustment required under regulation 25(4) and the amount of any converted quota.

(3) If the Secretary of State determines, pursuant to paragraph (2), that a producer has unused quota, she must—

- (a) add the total amount of unused quota to the national reserve;
- (b) subject to paragraph (4), make an award of any temporary reallocation of quota in accordance with regulation 19; and
- (c) having made such an award, reallocate any remaining amount of unused quota to any producers whose deliveries are in excess of their quotas in proportion to their respective quotas.

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

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

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

(7) In this regulation, “butterfat-adjusted deliveries” means deliveries adjusted for butterfat content in accordance with Article 10(1) of the Commission Regulation.

Determination of liability for levy on deliveries

28.—(1) This regulation applies for the purposes of Article 10(3) of the Council Regulation (which concerns the calculation of levy on deliveries).

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

Notification of levy liability

- 29.** After the end of each quota year, the Secretary of State must—
- (a) notify each purchaser of the total amount of levy payable on deliveries made to that purchaser; and
 - (b) give details to that purchaser of the amount of levy attributable to each producer who has made deliveries to that purchaser.

Determination of liability for levy on direct sales

30.—(1) This regulation applies for the purposes of Article 12 of the Council Regulation (which concerns the calculation of levy on direct sales).

(2) After the end of each quota year, the Secretary of State must make a determination of the total quantity of dairy produce sold or transferred free of charge by direct sellers in the quota year in question.

(3) A determination under paragraph (2) must be made by reference to the declarations direct sellers are required to submit to the Secretary of State in accordance with Article 11(2) of the Commission Regulation.

(4) If for any quota year a direct seller has not submitted to the Secretary of State a declaration in accordance with that Article or is unable to provide such proof of the quantities of dairy produce sold or transferred free of charge by him in that year as the Secretary of State may reasonably require for the purposes of these Regulations, the Secretary of State must for the purposes of paragraph (2)—

- (a) make her own determination of such quantities based on all the information available to her for the purposes of calculating any levy payable by that direct seller, and
- (b) inform the direct seller of her determination.

(5) Where, in respect of a quota year—

- (a) the total amount of direct sales quota of direct sales quota holders, including any converted quota; and
- (b) the total amount of direct sales quota in the national reserve,

together exceed the total quantity determined by the Secretary of State under paragraph (2), the Secretary of State must determine that no levy in respect of direct sales is payable.

(6) The Secretary of State must notify all direct sales quota holders of her determination made under paragraph (5).

(7) Where, in respect of a quota year—

- (a) the total amount of direct sales quota of direct sales quota holders, including any converted quota; and

(b) the total amount of direct sales quota in the national reserve, together are less than the total quantity determined by the Secretary of State under paragraph (2), the Secretary of State must notify all direct sellers that levy is payable.

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

(9) If the Secretary of State determines under paragraph (8) that a direct sales quota holder has unused direct sales quota, she must—

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

(10) If, after the Secretary of State has complied with paragraph (9)(a), there is insufficient direct sales quota to make a full award under regulation 19 to each direct sales quota holder who is eligible to receive such an award, the amount of each award under paragraph (9)(b) shall be reduced proportionately.

(11) In respect of the quota year in question, the Secretary of State must then establish—

- (a) the amount by which the total quantity referred to in paragraph (2) exceeds the total of—
 - (i) the direct sales quota of all direct sales quota holders, including converted quota, and
 - (ii) the direct sales quota in the national reserve;
- (b) the total amount of levy payable by direct sales quota holders by multiplying the amount determined under sub-paragraph (a) by the rate of levy set in Article 2 of the Council Regulation; and
- (c) the amount by which the total quantity referred to in paragraph (2) exceeds all the direct sales quota of the direct sales quota holders whose direct sales are greater than their quota.

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

(13) The Secretary of State must—

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

(14) If a direct seller fails to submit to the Secretary of State in accordance with Article 11(2) of the Commission Regulation a declaration of the total quantity of dairy produce sold or transferred free of charge by him in a quota year, the rate of levy per litre to be paid by that direct seller on the quantity not notified or determined under paragraph (4) is the rate set in Article 2 of the Commission Regulation.

Payment and recovery of levy

31.—(1) In respect of the collection of levy, the Secretary of State is the competent authority for the purposes of the Community legislation.

(2) For the purposes of—

- (a) Article 11(1) of the Council Regulation (which concerns payment of levy by purchasers in respect of deliveries);
- (b) Article 12(4) of the Council Regulation (which concerns payment of levy by direct sellers);
- (c) Article 8 of the Commission Regulation (which concerns statements by purchasers of deliveries by producers); and
- (d) Article 11 of the Commission Regulation (which concerns declarations of direct sales by producers),

the levy and penalties referred to in those provisions must be paid to the Secretary of State.

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

(4) Following any adjustment of the quantity delivered in accordance with Article 10(1) of the Commission Regulation, the purchaser may immediately deduct from the sums owed to the producer in respect of the deliveries an amount corresponding to the amount of levy that would otherwise be payable by him in respect of the excess.

(5) Where any part of the levy remains unpaid after 1st September in any year, the Secretary of State may recover the amount of the levy outstanding at that date together with interest in respect of each day after that date until that amount is recovered—

- (a) from the direct seller or, as the case may be, the purchaser; or
- (b) from the producer, in a case within paragraph (4) where—
 - (i) the purchaser has not paid the levy, and
 - (ii) the producer has not paid the purchaser the levy either directly or by deduction and the purchaser is not taking steps to recover it from him.

(6) Interest under paragraph (5) is payable at the rate of one percentage point above the sterling three month London interbank offered rate.

(7) If—

- (a) a purchaser has not been approved pursuant to regulation 5; or
- (b) a purchaser has had his approval withdrawn by the Secretary of State pursuant to Article 23(3) of the Commission Regulation,

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

(8) Paragraph (7) does not apply in respect of a producer who has paid the purchaser in question, either directly or by deduction, the levy payable by that producer.

Prevention of avoidance of levy

32.—(1) Subject to paragraphs (2) and (3), if—

- (a) a producer (“A”) makes sales or deliveries of milk or milk products in any quota year from milk produced by any cows; and
- (b) later in the same quota year another producer (“B”) makes sales or deliveries of milk or milk products from milk produced by any or all of the same cows,

B is deemed for the purposes of these Regulations to have made those sales or deliveries as agent of A.

(2) Paragraph (1) does not apply if—

- (a) an agreement has been entered into by A for the sale or lease of the cows in question to B;

- (b) the cows are kept on B's holding; and
- (c) after the making of the agreement—
 - (i) B is actively involved in the management of the herd which the cows mentioned in paragraph (1)(b) comprise and production from it, and
 - (ii) A has no further involvement in that management and production.
- (3) Paragraph (1) does not apply if—
 - (a) B has inherited the cows in question from A; and
 - (b) the cows are kept on B's holding.