

**2010 No. 1085**

**AGRICULTURE**

**The Dairy (Specific Market Support Measure) Regulations 2010**

*Made* - - - - *30th March 2010*

*Laid before Parliament* *31st March 2010*

*Coming into force* - - *21st April 2010*

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Union, and makes these Regulations in exercise of the powers in that section.

**Citation and commencement**

1. These Regulations may be cited as the Dairy (Specific Market Support Measure) Regulations 2010; they come into force on 21st April 2010.

**Interpretation**

2. In these Regulations—

“Commission Regulation (EU) No 1233/2009” means Commission Regulation (EU) No 1233/2009 laying down a specific market support measure in the dairy sector(c);

“Council Regulation (EC) No 1234/2007” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products(d);

“farmer” has the meaning assigned to it by Article 2(a) of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers(e);

“marketing” has the meaning assigned to it by Article 65(h) of Council Regulation (EC) No 1234/2007, and cognate terms are construed accordingly;

“milk” means the produce of the milking of one or more cows;

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(a) S.I. 1972/1811.

(b) 1972 c. 68. The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The power of the Secretary of State, as a designated Minister, to make regulations which extend to Scotland, Wales and Northern Ireland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46); article 4(4) of the European Communities (Designation) (No. 3) Order 2005 (S.I. 2005/2766); and article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812) respectively.

(c) OJ No L 330, 16.12.2009, p. 70, as last amended by Commission Regulation (EU) 119/2010 (OJ No L 37, 10.2.2010, p. 26).

(d) OJ No L 299, 16.11.2007, p. 1, as last amended by Council Regulation (EC) No 1140/2009 (OJ No L 312, 27.11.2009, p. 4).

(e) OJ No L 30, 31.1.2009, p. 16, as last amended by Council Regulation (EC) No 1250/2009 (OJ No L 338, 19.12.2009, p. 1).

“milk equivalent” has the meaning assigned to it by Article 65(b) of Council Regulation (EC) No 1234/2007 and by Article 12 of Commission Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) 1788/2003 establishing a levy in the milk and milk products sector<sup>(a)</sup>;

“relevant authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Wales, the Welsh Ministers; and
- (d) in relation to Northern Ireland, the Department of Agriculture and Rural Development;

“specified period” means the period from 1st October 2008 until 30th September 2009 inclusive.

### **Payments to farmers**

3.—(1) In accordance with Article 1 of Commission Regulation (EU) No 1233/2009, the relevant authority must make a payment to eligible farmers as provided for in these Regulations.

(2) The relevant authority must pay to each eligible farmer the specified sum per litre of milk or milk equivalent produced and marketed by that farmer during the specified period.

(3) For the purposes of this regulation, the specified sum is calculated by dividing A by B where—

- (a) “A” means the amount (expressed in euro) in the entry for “UK” in the Annex to Commission Regulation (EU) No 1233/2009, to which the relevant exchange rate has been applied;
- (b) “B” means, subject to paragraph (4), the total volume (expressed in litres) of milk and milk equivalent produced and marketed in the UK during the specified period, and
- (c) “the relevant exchange rate” is 1 euro is equivalent to 91.155 pence.

(4) In calculating the total volume of milk and milk equivalent produced and marketed for the purposes of paragraph (3)(b), the relevant authority need only take account of production and marketing—

- (a) by an eligible farmer, and
- (b) which has been notified to it by the farmer, or of which it has been otherwise notified, at the date of the coming into force of these Regulations.

### **Eligible Farmers**

4.—(1) A farmer (“F”) is an eligible farmer for the purposes of regulation 3 if—

- (a) F’s total production of milk and milk equivalent marketed during the specified period was 50,000 litres or more; and
- (b) F’s name was listed for part or all of the specified period, in—
  - (i) one or more of the registers maintained, in respect of England, by the Secretary of State in accordance with regulation 4(1)(a) and (3)(a) of the Dairy Produce Quota Regulations 2005<sup>(b)</sup>;
  - (ii) one or more of the registers maintained, in respect of Scotland, by the Scottish Ministers in accordance with regulation 4(1)(a) and (3)(a) of the Dairy Produce Quotas (Scotland) Regulations 2005<sup>(c)</sup>;

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(a) OJ No L 94, 31.3.2004, p. 22, as last amended by Commission Regulation (EC) No 793/2009 (OJ No L 228, 1.9.2009, p. 7).

(b) S.I. 2005/465, amended by S.I. 2008/439; there are other amending instruments but none is relevant.

(c) S.S.I. 2005/91, to which there are amendments not relevant to these Regulations.

- (iii) one or more of the registers maintained, in respect of Wales, by the Welsh Ministers in accordance with regulation 4(1)(a) and 3(a) of the Dairy Produce Quotas (Wales) Regulations 2005(a); or
- (iv) one or more of the registers maintained, in respect of Northern Ireland, by the Department of Agriculture and Rural Development in accordance with regulation 4(1)(a) and 3(a) of the Dairy Produce Quotas Regulations (Northern Ireland) 2005(b).

(2) A relevant authority may request any information from a farmer for the purposes of establishing whether that farmer is an eligible farmer or for the purpose of establishing the amount of the payment to which that farmer is entitled under regulation 3.

(3) If a farmer fails to provide any information requested under paragraph (2) within the period specified in the request, the relevant authority is entitled to make a payment to the farmer on the basis of the information held by that authority prior to the making of the request, or to treat the farmer as not eligible to receive a payment under regulation 3.

### **Recovery of unauthorised payments and interest**

5.—(1) Where—

- (a) a farmer has received any payment under regulation 3;
- (b) the relevant authority establishes that figures used to calculate that farmer's production and marketing of milk and milk equivalent during the specified period were incorrect, and
- (c) if correct figures or information had been used the farmer would not have received a particular sum ("the unauthorised sum") as the whole or any part of the payment,

the relevant authority may recover that unauthorised sum.

(2) The relevant authority may recover interest on the unauthorised sum in accordance with paragraphs (3) and (4).

(3) Interest is payable in respect of each day from and including the day on which the relevant authority paid the unauthorised sum to the farmer.

(4) The rate of interest applicable on any day is one percentage point above the sterling three month London interbank offered rate on that day.

(5) The unauthorised sum, together with interest, is recoverable as a civil debt.

*Jim Fitzpatrick*  
Minister of State

30th March 2010

Department for Environment, Food and Rural Affairs

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(a) S.I. 2005/537 (W.47), amended by S.I. 2008/685 (W.72); there are other amending instruments but none is relevant. By virtue of sections 59(1) and 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006 (c.32), functions conferred on the National Assembly for Wales by the European Communities (Designation) (No. 3) Order 2005 (S.I. 2005/2766) are exercisable by the Welsh Ministers.

(b) S.R. (NI) 2005 No 70, amended by S.R. (NI) 2008 No 70; there are other amending instruments but none is relevant.

## EXPLANATORY NOTE

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

These Regulations provide for the distribution of monies in the United Kingdom for the purposes of Commission Regulation (EU) No 1233/2009 laying down a specific market support measure in the dairy sector (OJ No L 330, 16.12.2009, p. 70) (“the Commission Regulation”). They extend to the United Kingdom.

The Commission Regulation provides for certain monies to be paid to EU Member States as an emergency support measure for the dairy sector. Article 1 of the Commission Regulation provides that Member States shall distribute the monies paid pursuant to the Commission Regulation within their territories on the basis of objective and non discriminatory criteria. These Regulations set out the basis upon which those monies will be distributed to farmers within the UK.

Regulation 2 defines certain terms which are used in the Regulations. Regulation 3 specifies the basis upon which payments will be made to farmers. Regulation 4 sets out the conditions with which a farmer must comply in order to be eligible to receive a payment. Regulation 5 specifies that unauthorised payments are recoverable by the relevant authority, together with interest, as a civil debt.

No impact assessment has been prepared for this instrument, as minimal impact on the private or voluntary sectors is foreseen.

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