

EXPLANATORY MEMORANDUM TO
THE DAIRY (SPECIFIC MARKET SUPPORT MEASURE) REGULATIONS 2010

2010 No. 1085

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1. 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).

The Regulations extend to the United Kingdom, they set out the basis upon which those monies will be distributed to farmers within the UK, they provide that in order to be entitled to receive a payment farmers must provide certain information if requested to do so by the appropriate minister, or their agent, and provide for recovery in the event of overpayment.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Regulation 5(1) provides that the “relevant authority” may recover a sum from a farmer, if that authority establishes that incorrect figures have been used to calculate the farmer’s relevant production during the specified period, and the farmer would not have received that sum if correct figures or information had been used. Such a provision may, at first sight, appear to remove that farmer’s ability to rely on the doctrine of equitable estoppel. However, this will not, in practice occur, as the information used will in all cases have been supplied to the appropriate authority either directly by the farmer, or by wholesalers to whom the farmer has supplied milk. In all cases, prior to making the payment, the farmer will have been notified in writing by the appropriate authority of the figures which it proposes to use to calculate the payment to the farmer. The farmer will have been asked in the notification letter to specifically notify the appropriate authority by a specified date (which will be before the date on which payment is made) if the figures are incorrect.

4. **Legislative Context**

4.1 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. Council Regulation (EC) No. 1290/2005 provides that national measures need to be in place to ensure proper application and protection of Community funds. Existing legislation does not cover these payments,

4.2. This instrument does not relate to any other instruments and does not pave the way for future instruments. The EU Dairy Fund is a one-off payment.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The formal approval of short-term support from the European Commission and European Council in the form of a €300 million EU 'Dairy Fund', was confirmed through European Commission Regulation 1233/2009 of 15 December 2009. The Fund in the form of 'national envelopes', is allocated to each Member State, and based on 2008/2009 milk production, the UK's share is just over €29.26 million.

Following consultation with farmers and farmers representatives across the UK, UK Ministers announced in early March 2010 that the method for distributing the Fund will be on the basis of a direct payment based on production during October 2008 to September 2009.

The Rural Payments Agency (RPA) will make payments on behalf of the four UK agriculture departments. Payment will only be made to milk producers and direct sellers whose details were at any time in the specified period on one or more relevant registers maintained by the appropriate authorities the specified period. Payment will only be made on actual production during the specified period and the quantity produced will not be adjusted for butterfat.

RPA (acting as agent for the appropriate authorities) are currently writing to milk producers. The letter requests confirmation of the volume of milk produced by wholesale milk producers. In addition, direct sellers will be contacted by a letter from the RPA regarding their production. These data will form the basis for the payments to be made. A check will be made on these data following end of year returns. Any producer who ceased production during the specified period will receive a payment on production up to the point where production ceased according to paying agency records.

This Statutory instrument sets out the basis upon which payment will be made to farmers (at a flat rate calculated in accordance with their milk production during the relevant period, and makes provision for recovery in the event of overpayments.

Consolidation

7.2 This instrument does not amend another instrument and therefore consolidation is not applicable.

8. Consultation outcome

8.1 Across the UK we sought views on the mechanism for distributing payments from the EU dairy fund through public consultations in January and February 2010. The UK decision, Defra consultation letter and a summary of responses to Defra's consultation (relating to England) can be found at - <http://defraweb/corporate/consult/dairy-fund/index.htm>. Roughly three-quarters of respondents (including all bar one representative organisation) favoured the same option (which is the option to be implemented). An impact assessment was not applicable as the payments involved only EU funds, and will involve no burden to farmers.

9. Guidance

9.1 Details of the scheme will be provided to milk producers via the letters from the RPA to wholesale and direct sellers. The letters make it clear that overpayments are recoverable.

10. Impact

10.1 This SI has only a potential and minimal impact on relevant businesses. Relevant businesses may be required to supply eligibility data if they wish to benefit from a payment. This data request will impose a small burden, but relevant businesses will benefit financially from the payments made. There will be no impact on charities or the voluntary bodies.

10.2 The impact on the public sector is the cost of administration of the scheme.

10.3 An Impact Assessment has not been prepared for this instrument as only potential and minimal impact on the private sector (and no impact on charities or voluntary bodies) is foreseen.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The SI sets out the basis on which the appropriate authorities will make payments to distribute the UK's share of the EU Dairy Fund to farmers, and puts in place provisions to ensure that it is possible to recover sums of money paid in error.

12. Monitoring & review

12.1 The aim of this instrument is to reduce the possibility of over claims for funds to within 5% of applicants or 3% of the fund (whichever is the smaller).

13. Contact

Sian Oliver-Gay at Defra can answer any queries regarding the instrument.
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