WELSH STATUTORY INSTRUMENTS

2005 No. 537

The Dairy Produce Quotas (Wales) 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 National Assembly —

(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),

he or she is liable to pay to the National Assembly 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 during the period of delay in the submission reaching the National Assembly.

(3) Where a purchaser fails to maintain accurate and updated records pursuant to Article 24(2) of the Commission Regulation and regulation 34, he or she is liable to pay to the National Assembly 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, he or she is liable to pay to the National Assembly —

(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;

(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, he or she is liable to pay to the National Assembly levy which exceeds that amount.

(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 1 July in the year in which it is required to be submitted, he or she is liable to pay to the National Assembly 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 National Assembly.

(7) A purchaser is not liable to pay a penalty under paragraph (6) if, in the opinion of the National Assembly, 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.

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 National Assembly that the producer has —

(i) made a false or misleading statement in his or her application, or

(ii) failed to comply with any of the requirements of the scheme,

the National Assembly may withhold or recover on demand from that producer the whole or any part of the compensation payable or paid to him or her.

(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(**1**) and Commission Regulation (EC) No. 2647/98 laying down detailed rules for the application of Council Regulation (EC) No. 2330/98(**2**).

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 National Assembly must notify a quota holder that his or her quota has been taken into the national reserve if it appears from information available to the National Assembly that he or she has made no 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 quota in cases of failure to submit declarations of direct sales before 1 July), the National Assembly must notify any direct sales quota holder who contravenes Article 11 of that Regulation, by failing to submit an annual declaration to the National Assembly so that the annual declaration reaches it before 1 July, that his or her quota will be taken into the national reserve 30 days after notification.

(3) Any quota withdrawn pursuant to Article 15 of the Council Regulation must be placed in the national reserve with effect from 1 April following the quota year for which information became

(**1**) OJ No. L291, 30.10.98, p.4.
(**2**) OJ No. L335, 10.12.98, p.33.

available to the National Assembly indicating to it that no deliveries or no direct sales, as the case may be, were made.

(4) A wholesale quota holder or direct sales 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 he or she received it.

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 National Assembly to restore to him or her the quota in respect of the holding from which it was confiscated or in respect of part of that holding if he or she is a producer.

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

(a) must reach the National Assembly —

(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 before 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 National Assembly to restore to him or her the quota relating to that holding or part 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) must include —

(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(5), 3(2), 4 and 6 to 34 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 must be determined in accordance with the apportionment referred to in paragraph (4)(a) or (b).

Offences and criminal penalties

40.—(1) A person is guilty of an offence if —

(a) being a relevant person, he or she fails without reasonable excuse to comply with a requirement imposed on him or her by or under these Regulations or the Community legislation; or

(b) in connection with these Regulations or the Community legislation, he or she —

(i) makes or causes to be made a statement, or uses or causes to be used a document, which he or she 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 he or she knows or might reasonably be expected to know is incorrectly registered in his or her name.

(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 National Assembly 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 whose quota that conviction relates to, withdraw from him or her such quota as may reasonably be regarded by the National Assembly as obtained by him or her by reason of the falsehood upon which the conviction was founded.

(4) A notice served 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 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, he or she as well as the body corporate is deemed to be guilty of that offence and is 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) apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

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

Revocations and amendments

41.—(1) The Dairy Produce Quotas (Wales) Regulations 2002(**3**), are revoked

(2) In article 8(3)(b) of the Milk Development Council Order 1995(**4**), for the words "the Dairy Produce Quotas (Wales) Regulations 2002" there are substituted "the Dairy Produce Quotas (Wales) Regulations 2005(**5**)".

(**3**) S.I. 2002/897.
(**4**) S.I. 1995/356; relevant amending instrument is S.I. 2004/964.
(**5**) S.I. 2005/537.