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STATUTORY INSTRUMENTS

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**2024 No. 537**

**The Fair Dealing Obligations (Milk) Regulations 2024**

**PART 9**

**Enforcement**

**Referral of complaint to the Secretary of State**

- 20.**—(1) A producer may refer a relevant complaint to the Secretary of State.
- (2) A “relevant complaint” is a complaint that—
- (a) a milk purchase contract to which the producer is a party is not compliant with the obligations of these Regulations; or
  - (b) the business purchaser has failed to comply with the obligation to provide an explanation in accordance with regulation 8(9) following a request by the producer under regulation 8(7) (request for explanation regarding pricing).
- (3) To refer a relevant complaint, a producer must give a written notice to the Secretary of State that includes—
- (a) the details of the alleged failure to comply;
  - (b) any evidence of the alleged failure to comply;
  - (c) a statement as to whether the producer is seeking compensation from the business purchaser concerned;
  - (d) the amount of any compensation sought; and
  - (e) the reasons why such compensation is sought.
- (4) A relevant complaint may not be referred to the Secretary of State unless—
- (a) the producer has made the complaint, or, in the opinion of the Secretary of State, a substantially similar complaint, to the business purchaser under the milk purchase contract’s dispute resolution procedure (see regulation 17) and 28 days have passed beginning with the day on which the complaint was made to the business purchaser; or
  - (b) the milk purchase contract makes no provision for a dispute resolution procedure or otherwise fails to comply with regulation 17.
- (5) A producer may not refer a relevant complaint to the Secretary of State that the Secretary of State has already decided unless—
- (a) new evidence is available; and
  - (b) the decision made by the Secretary of State was that no requirement was to be imposed under regulation 21(1).
- (6) After receiving the relevant complaint, the Secretary of State must give a notice to the business purchaser that—
- (a) includes the relevant complaint;
  - (b) asks the business purchaser to respond to the allegations made in the complaint; and

- (c) gives a date by which the business purchaser must reply.
- (7) The Secretary of State may—
  - (a) investigate a case where a relevant complaint is referred to the Secretary of State;
  - (b) require the parties to the milk purchase contract to submit evidence relating to the relevant complaint;
  - (c) consider other failures to comply with these Regulations that did not form part of the complaint made to the business purchaser.
- (8) Evidence able to be requested by the Secretary of State includes—
  - (a) documents, including those in digital format, in the possession, or under the control, of the party;
  - (b) witness evidence, whether provided by way of a written statement or orally; and
  - (c) any other evidence the Secretary of State considers relevant.
- (9) A request for evidence under paragraph (7)(b) must be in writing and include—
  - (a) a statement that the request is made under paragraph (7)(b);
  - (b) the name, or a description, of the person from whom the evidence is being requested;
  - (c) a description of the evidence being requested;
  - (d) the method by which the evidence is required to be submitted;
  - (e) the address to which the evidence is to be sent;
  - (f) the period within which the evidence is to be provided; and
  - (g) a statement that failing to comply with the request—
    - (i) may cause the Secretary of State to draw an adverse inference against the person in respect of the complaint; or
    - (ii) may lead to civil proceedings being brought to obtain the evidence (in respect of which, see paragraph (12)).
- (10) The address referred to in paragraph (9)(e) may be an electronic address.
- (11) The business purchaser must cooperate with an investigation of the Secretary of State under paragraph (7)(a).
- (12) The Secretary of State may enforce the requirement to provide evidence by bringing civil proceedings to obtain—
  - (a) in England and Wales or Northern Ireland, an injunction;
  - (b) in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988(1).

### **Power to impose a civil penalty or require compensation**

**21.**—(1) Where the Secretary of State finds that a business purchaser has failed to comply with a requirement under these Regulations, the Secretary of State may require the business purchaser to pay either, or both, of the following—

- (a) a civil penalty;
- (b) compensation to the producer.

(2) A business purchaser may be required to pay a civil penalty or compensation in respect of each and every failure to comply with these Regulations.

- (3) The maximum amount of a civil penalty is 1% of the business purchaser's turnover.
- (4) The Secretary of State may recover any unpaid civil penalty as a debt.
- (5) Sums received by the Secretary of State as payment for civil penalties are to be paid into the consolidated fund.
- (6) A business purchaser's "turnover" is the business purchaser's applicable turnover for the business year preceding the date of the notice of decision under regulation 25.
- (7) Where the business year preceding the date of the decision notice did not equal twelve months, the turnover is the business purchaser's applicable turnover for that business year divided by the number of months in that business year and multiplied by twelve.
- (8) Where there was no preceding business year, the turnover is the applicable turnover for the twelve months ending on the last day of the month preceding the month in which the Secretary of State gave the decision notice to the business purchaser.
- (9) Where in the application of paragraph (8) the business purchaser has turnover for a period of less than twelve months, the turnover is the applicable turnover in that period divided by the number of months in that period and multiplied by twelve.
- (10) In this regulation—
  - "applicable turnover" is the sum of—
    - (a) all amounts derived by the business purchaser from the provision of goods and services falling within the business purchaser's ordinary activities in the United Kingdom; and
    - (b) all other amounts received by the business purchaser in the course of the business purchaser's ordinary activities in the United Kingdom by way of gift, grant, subsidy or membership fee,after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received;
  - "business year" means a period of more than six months in respect of which a business purchaser published accounts or, if no such accounts were published for the period, prepared accounts.
- (11) Amounts are to be calculated in conformity with generally accepted accounting principles and practices.

### **Requirement of the Secretary of State to publish guidance**

- 22.**—(1) The Secretary of State must publish guidance relating to the imposition of a requirement under regulation 21(1).
- (2) The guidance must include—
    - (a) the matters to be taken into account in determining the amount of the civil penalty or compensation payable;
    - (b) the rights of the business purchaser and producer to make representations under regulation 24;
    - (c) the right of the business purchaser and producer to appeal against a decision to impose a requirement.
  - (3) The guidance must be reviewed and revised from time to time.
  - (4) The Secretary of State must have regard to the guidance when exercising the power in regulation 21(1).

### **Notice of intent**

**23.**—(1) Where the Secretary of State proposes to require a business purchaser to pay a civil penalty or pay compensation, the Secretary of State must first give them a notice of intent.

(2) A “notice of intent” is a written notice including—

- (a) a description of the breach which the Secretary of State considers has been committed;
- (b) the evidence being relied upon;
- (c) the requirement under regulation 21(1) the Secretary of State proposes to impose; and
- (d) a statement that the business purchaser has a right to make representations in accordance with regulation 24 and how to make such representations.

(3) Before the expiry of 7 days beginning with the day after the day on which the Secretary of State gives a notice of intent, the Secretary of State must send —

- (a) a copy of the notice of intent to the producer; and
- (b) where the Secretary of State proposes to require the business purchaser to pay compensation to a producer, a written notice setting out that producer’s right to make representations in respect of the compensation.

### **Representations**

**24.**—(1) A business purchaser to whom a notice of intent is given may, within 28 days beginning with the day on which the notice was received, make written representations to the Secretary of State in relation to the proposed requirement to pay a civil penalty or pay compensation.

(2) A producer who is notified under regulation 23(3)(b) that the Secretary of State proposes to require the business purchaser to pay compensation to them may, within 28 days beginning with the day on which the notice was received, make written representations to the Secretary of State in relation to the amount of that compensation.

### **Notice of decision**

**25.**—(1) After the expiry of both periods within which the business purchaser and producer may make representations under regulation 24, the Secretary of State must decide whether to impose a requirement under regulation 21(1).

(2) Where the Secretary of State decides to impose a requirement, it may be that set out in the notice of intent, or a different requirement.

(3) A business purchaser required to pay a civil penalty or pay compensation under regulation 21(1) must do so within 28 days of receiving a notice of decision under paragraph (4).

(4) Where the Secretary of State makes a decision under paragraph (1), the Secretary of State must give a written notice (a “notice of decision”) to the business purchaser setting out—

- (a) where the decision is to impose a requirement under regulation 21(1)—
  - (i) the requirement being imposed;
  - (ii) the reasons for imposing the requirement;
  - (iii) the amount to be paid by the business purchaser in respect of each requirement imposed under regulation 21(1);
  - (iv) an explanation as to how the amount has been calculated;
  - (v) how payment may be made;
  - (vi) that payment is due within 28 days of the receipt of the notice of decision;

- (vii) information about the right to appeal against the imposition of a requirement under regulation 26; and
- (viii) where the Secretary of State decides to impose a civil penalty, that the Secretary of State is entitled to recover any unpaid civil penalty as a debt; or
- (b) where the decision is not to impose a requirement under regulation 21(1)—
  - (i) that decision; and
  - (ii) the reasons for reaching the decision.
- (5) Before the expiry of 7 days beginning with the day after the day on which the Secretary of State gives a notice of decision, the Secretary of State must send a copy of the notice to the producer.
- (6) Where the Secretary of State—
  - (a) requires the business purchaser to pay compensation to a producer; or
  - (b) decides not to impose a requirement under regulation 21(1) on the business purchaser,the Secretary of State must include with the copy of the notice of decision under paragraph (5) a written notice setting out the producer’s right to appeal under regulation 26(2).

## Appeals

- 26.—**(1) A business purchaser on whom a requirement has been imposed under regulation 21(1) may appeal against—
- (a) the imposition of the requirement;
  - (b) the amount of any civil penalty they have been ordered to pay; or
  - (c) the amount of any compensation they have been ordered to pay.
- (2) A relevant producer may appeal against—
- (a) a decision of the Secretary of State under regulation 25(1) not to impose a requirement on a relevant business purchaser; or
  - (b) the amount of any compensation a relevant business purchaser has been ordered to pay.
- (3) An appeal under paragraph (1) or (2) is to be made to the First-Tier Tribunal.
- (4) The time limit for payment of a civil penalty or compensation under regulation 25(3) is paused until the appeal is concluded.
- (5) Paragraph (6) applies where, following an appeal under this regulation, the First-Tier Tribunal affirms the decision of the Secretary of State or orders the business purchaser to pay any amount to the Secretary of State or producer.
- (6) The business purchaser must make the payment before the expiry of 28 days beginning with the date of the First-Tier Tribunal’s judgment, minus the number of days that expired (if any) between the date on which the business purchaser received the notice of decision and the date on which the appeal was filed.
- (7) An appeal under this regulation may be determined having regard to matters of which the Secretary of State was unaware.
- (8) In this regulation—
- “notice of decision” has the meaning given in regulation 25(4);
  - “relevant producer” means the producer who referred the complaint to the Secretary of State that resulted in the Secretary of State making a decision under regulation 25(1) and “relevant business purchaser” means the business purchaser against whom the complaint was made.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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