

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2004 No. (W.)**FOOD, WALES****The Dairy Produce Quotas (Wales)
(Amendment) Regulations 2004****EXPLANATORY NOTE***(This note is not part of the Regulations)*

These Regulations come into force on 1st April 2004 and amend the Dairy Produce Quotas (Wales) Regulations 2002 (S.I. 2002/897 (W.103)). They apply in relation to producers, purchasers and other relevant persons in relation to whom the National Assembly for Wales is “the relevant competent authority” as defined by the Dairy Produce Quotas (General Provisions) Regulations 2002 (S.I. 2002/458). The holdings to which these Regulations apply may comprise land in other parts of the United Kingdom outside Wales.

The Regulations implement Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector (OJ No. L270, 21.10.2003, p.123) and also the European Court of Justice’s judgement in case C-401/99 *Peter Heinrich Thomsen v Amt für ländliche Räume Husum* [2002] ECR I-5775. The *Thomsen* judgment confirmed, in relation to a lessor on expiry of a lease, that milk quota may generally be held only by a “producer” within the meaning of what is now Article 5(c) of Council Regulation (EC) No. 1788/2003.

The Regulations —

- (a) replace the definitions of “Council Regulation” and “Scottish Islands area” (regulation 5);
- (b) continue to restrict quota held within Scottish Island areas to use within those areas (regulation 6);
- (c) make general provision for the transfer, within each United Kingdom quota region, of quota without transfer of land (regulation 7);

- (d) maintain the registration obligations of those no longer producing and marketing milk until their quota has been transferred or withdrawn (regulations 8 and 9);
- (e) extend to understatements, the administrative penalties for inaccurate summaries from purchasers and incorrect declarations from direct sellers which currently apply only to overstatements (regulations 10 and 11);
- (f) revise the provisions on confiscation and restoration of quota by, applying the time limit prescribed for restoration by Council Regulation (EC) No. 1788/2003, by restricting quota holding to producers, by updating the references to the Council Regulation, and by making administrative changes (regulations 12 and 13);
- (g) update the remaining references to the Council Regulation (regulation 14 and Schedule 1);
- (h) make further minor amendments (regulation 15 and Schedule 2).

A copy of the map referred to in the definition of “Scottish Islands area” is available for inspection at the offices of the National Assembly for Wales, Department for Environment, Planning and Countryside, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ and at the offices of the Scottish Executive, Environment and Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh DH4 1TY.

A regulatory appraisal has been prepared in respect of these Regulations and is available for inspection at offices of the National Assembly at the address given above.

2004 No. (W.)

FOOD, WALES

**The Dairy Produce Quotas (Wales)
(Amendment) Regulations 2004**

Made 2004

Coming into force 1st April 2004

The National Assembly for Wales, being designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Community, acting in exercise of the powers conferred on it by virtue of the said section 2(2), hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Dairy Produce Quotas (Wales) (Amendment) Regulations 2004 and shall come into force on 1st April 2004.

Application

2.—(1) These Regulations shall apply in relation to producers, purchasers and other relevant persons in relation to whom the National Assembly is the relevant competent authority.

(2) In this regulation, “relevant competent authority” has the meaning given to it by regulation 3 of the Dairy Produce Quotas (General Provisions) Regulations 2002⁽³⁾.

⁽¹⁾ By virtue of the European Communities (Designation) (No. 3) Order 1999 (S.I. 1999/2788) (“the Order”). The National Assembly’s power to make, as a body designated in relation to the Common agricultural policy of the European Community, regulations which extend to agricultural holdings which include land situated within the UK but outside Wales is confirmed by paragraph 2(b) of Schedule 2 to the Order.

⁽²⁾ 1972 c.68.

⁽³⁾ S.I. 2002/458.

Interpretation

3. In these Regulations, “the principal Regulations” means the Dairy Produce Quotas (Wales) Regulations 2002⁽⁴⁾.

Amendment of the principal Regulations

4. The principal Regulations shall be amended in accordance with regulations 5 to 15 below.

5. In regulation 3 (interpretation) —

- (a) for the definition of “the Council Regulation” there shall be substituted the following definition —

““the Council Regulation” means Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector⁽⁵⁾”;

- (b) for the definition of “Scottish Islands area” there shall be substituted the following definition —

““Scottish Islands area” means either one of-

(a) the islands of Orkney except for the island of Stronsay; or

(b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae, the Kintyre peninsula south of Tarbert and the areas of land comprising those parts of the parishes of Dunoon and Kilmun and of Inverchaolain in the Argyll and Bute District shown bounded by a red line on a map marked “Map referred to in sub paragraph (b) of the definition of Scottish Islands area in regulation 3 of the Dairy Produce Quotas (Wales) Regulations 2002, as amended by regulation 5(b) of the Dairy Produce Quotas (Wales)(Amendment) Regulations 2004”, dated 2nd February 2004, signed on behalf of the National Assembly and deposited at the offices of National Assembly’s Department for Environment, Planning and Countryside, at Crown Buildings, Cathays Park, Cardiff, CF10 3NQ”;

6. For regulation 4 (Scottish Islands areas) there shall be substituted the following regulation —

⁽⁴⁾ S.I. 2002/897 (W. 103).

⁽⁵⁾ OJ No. L 270, 21.10.2003, p123.

“Scottish Islands areas

4.—(1) Quota registered to direct sales quota holders and wholesale quota holders within a Scottish Islands area may be used by producers and purchasers only against direct sales or wholesale deliveries of milk produced within that Scottish Islands area.

(2) Where a direct sales quota holder or wholesale quota holder has a part of his or her dairy enterprise outside the Scottish Islands area, he or she shall be treated for the purposes of this regulation as a direct sales quota holder or wholesale quota holder within a Scottish Islands area if he or she has 50 per cent or more of his or her dairy enterprise within that area.

(3) Paragraph (1) shall not apply to the reallocation of quota undertaken in accordance with Schedule 2.

(4) In this regulation —

- (a) “direct sales quota holder” means a person in whose name direct sales quota is registered;
- (b) “wholesale quota holder” means a person in whose name wholesale quota is registered.”.

7. For regulation 12 (transfer of quota without transfer of land) there shall be substituted the following regulation —

“Transfer of quota without transfer of land

12.—(1) This regulation applies where the competent authorities in Wales, England, Scotland and Northern Ireland have jointly determined in accordance with paragraphs (1)(e) and (2) of Article 18 of the Council Regulation, that within each United Kingdom quota region transfer of quota without transfer of the corresponding land is authorised.

(2) a transferee of quota for whom the National Assembly is the relevant competent authority shall submit a notice of any such transfer within the general quota region in such form as the National Assembly may reasonably require to reach the National Assembly no later than 31st March in the quota year in which the transfer takes place.

(3) The notice referred to in paragraph (2) shall include —

- (a) statements by the transferor and transferee that they have agreed to the transfer of quota, stating the amounts of used and unused quota transferred;

(b) a consent or sole interest notice given by the transferor in respect of the entirety of the holding from which the quota is to be transferred; and

(c) a statement from the transferee that he or she is a producer.

(4) Where the National Assembly has received a notice pursuant to paragraph (2), it may require that the transferor or transferee shall produce such other information relating to the transfer, and within such time, as the National Assembly may reasonably determine.

(5) In this regulation,--

(a) “competent authority” has the meaning given to it by regulation 2 of the Dairy Produce Quotas (General Provisions) Regulations 2002;

(b) “general quota region” means the United Kingdom other than the Scottish Islands area;

(c) “United Kingdom quota region” means a Scottish Islands area or the general quota region.”.

8. For regulation 23(6) (direct sellers and producers for the purposes of registers prepared and maintained by the National Assembly) there shall be substituted the following paragraph —

“(6) Notwithstanding that a person no longer produces and markets milk and for that reason is not a direct seller or producer, he or she shall remain registered under paragraph (1) or (2) and, for the purposes of this regulation and regulations 24(a), 26 and 28(1), continue to be regarded as a direct seller or producer, as the case may be, until the quota allocated or issued to him or her has been transferred or has been withdrawn under Article 15 of the Council Regulation.”.

9. In regulation 26(2) (registration obligation of producers holding wholesale quota) there shall be deleted the words “(within the extended meaning conferred by regulation 23(6))”.

10. For regulation 31(3) (administrative penalties for failure by purchasers to submit accurate summaries or revised summaries) there shall be substituted the following paragraph —

“(3) Where a purchaser fails to submit to the National Assembly pursuant to regulation 22(1) or (2) a summary or revised summary, as the case may be, of producers’ statements which is accurate, and thereby causes an overstatement or an understatement by him or her of deliveries made to him or her, he or she shall be liable to

pay to the National Assembly a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement or understatement.”.

11. For regulation 31(5) (administrative penalties for submission by direct sellers of incorrect declarations) there shall be substituted the following paragraph —

“(5) For the purposes of the third subparagraph of Article 6(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 6(5) of that Regulation (which confers a discretion on Member States not to impose penalties in certain circumstances) and paragraph (6), 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 shall be liable to pay to the National Assembly —

- (a) in the case of an overstatement, a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of milk which comprises the overstatement;
- (b) in the case of an understatement, a penalty equivalent to the theoretical amount of levy due on 0.5 per cent of the quantity by volume of 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.”.

12. For regulation 33 (confiscation and restoration of quota) there shall be substituted the following regulation —

“Confiscation and restoration of quota

33.—(1) On or before 14th May following the end of each quota year, each purchaser shall supply to the National Assembly a list of those wholesale quota holders registered with that purchaser (whether for the whole or part of the quota year) who have not made deliveries to that purchaser during that year.

(2) Pursuant to Article 15 of the Council Regulation (which concerns the confiscation and restoration of quota), the National Assembly shall notify —

- (a) any wholesale quota holder or direct sales quota holder who, from information available to the National Assembly, appears to have made neither deliveries nor direct sales during the previous quota year, or
- (b) any direct sales quota holder who, in contravention of Article 6 of the Commission Regulation, has failed to submit to National Assembly a declaration within 30 days of service of a notice by the National Assembly in accordance with Article 6(4) of that Regulation,

that his or her quota has been taken into the national reserve.

(3) Any quota withdrawn pursuant to Article 15 of the Council Regulation shall be placed in the national reserve with effect from the beginning of the quota year following —

- (a) the quota year for which the list referred to in paragraph (1) was supplied,
- (b) the quota year to which the declaration indicating no direct sales were made relates, or
- (c) the quota year for which no declaration was submitted,

as the case may be.

(4) A wholesale quota holder or direct sales quota holder who receives a notification of confiscation under paragraph (2) shall within 28 days of receipt of that notification notify any person with an interest in the land comprised in the holding of the content of that notification.

(5) Subject to the second sub-paragraph of Article 15(1) of the Council Regulation (which specifies the time limit for quota restoration) and to paragraphs (6) and (7), a person whose quota has, pursuant to Article 15(1), 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 provided that —

- (a) he or she is a producer;
- (b) the National Assembly receives the request by the end of the quota year to which the request relates; and
- (c) in the case of confiscation of quota notified by virtue of paragraph (2)(b), the National Assembly has received the required declaration from him or her by

the end of the quota year preceding the quota year in which the quota is to be restored.

(6) Where there is a change of occupation of all or part of the holding to which the quota relates, the new occupier may, in accordance with paragraph (5), request the National Assembly to restore to him or her the quota relating to that holding or part holding, provided that the request is received by the National Assembly before expiry of the time limit for quota restoration specified by the second subparagraph of Article 15(1) of the Council Regulation.

(7) A request for restoration of quota to part of a holding made under paragraph (5) or, following a change of occupation of part of a holding, under paragraph (6) shall 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.

(8) Where quota is restored to part of a holding in accordance with a request made under paragraph (5), or following a change of occupation of part of a holding pursuant to paragraph (6), the amount of quota to be restored to that part shall be determined in accordance with the apportionment referred to in paragraph (7)(a) or (b).

(9) In this regulation —

- (a) “direct sales quota holder” means a person in whose name direct sales quota is registered;
- (b) “wholesale quota holder” means a person in whose name wholesale quota is registered.”.

13. In Schedule 1 -

- (a) in paragraph 1(5), for the words “regulation 33(5)(iii)” there shall be substituted the words “regulation 33(7)(b)”;
- (b) in paragraph 12(2), for the words “regulation 33(5)(b)(iii)” there shall be substituted the words “under regulation 33(7)(b)”;
- (c) in paragraph 12(2), for the words “regulation 33(5)(b)(ii)” there shall be substituted the words “regulation 33(7)(a)”.

14. For the references in the principal Regulations to the provisions of Council Regulation (EEC) No. 3950/92⁽⁶⁾ specified in column 1 of Schedule 1 to these Regulations, there shall be substituted the references to the provisions of Council Regulation (EC) No. 1788/2003 specified in relation thereto in column 2.

15. The provisions of the principal Regulations specified in column 1 of Schedule 2 to these Regulations shall be amended as specified in relation thereto in column 2.

Signed on behalf of the National Assembly for Wales
under section 66(1) of the Government of Wales Act
1998⁽⁷⁾

Date

The Presiding Officer of the National Assembly

⁽⁶⁾ OJ No. L405, 31.12.92, p.1.
⁽⁷⁾ 1998 c.38.

SCHEDULE 1 Regulation 14

Amendment of references to the Council
Regulation

<i>Column 1</i>	<i>Column 2</i>
References to Council Regulation 3950/92	Substituted references to Council Regulation 1788/2003
Article 9(g), in the definition of “delivery” in regulation 3	Article 5(f)
Article 9(h), in the definition of “direct sale” in regulation 3	Article 5(g)
Article 9(d), in the definition of “holding” in regulation 3	Article 5(d)
Article 9(c), in the definition of “producer” in regulation 3	Article 5(c)
Article 9(e), in the definition of “purchaser” in regulation 3	Article 5(e)
Article 1, in the definition of “quota year” in regulation 3	Article 1(1)
Article 2(1), in regulation 5	Article 10(3)
Second sub-paragraph of Article 2(2), in regulation 7(2)	Article 11(2)
Article 7, in regulation 8(1)	Article 17
Article 6, in regulation 14(1)	Article 16
Article 2(1), in regulation 15(1)	Article 10(3)
Article 4(2), in regulation 17(1)	Article 6(2) and (5)
Second sub-paragraph of Article 2(2), in regulation 17(1)	Article 11(2)
Article 4(2), in regulation 17(2)(b)	Article 6(2) and (5)
Article 2(1), in regulation 19	Article 10(3)
Article 2(3), in regulation 21(2)	Article 12(4)

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<i>Column 1</i>	<i>Column 2</i>
Article 2(2), in regulation 21(2)	Article 11(1)
Third sub-paragraph of Article 2(2), in regulation 21(4)	Article 11(3)
Article 3(2), in regulation 28(2)	Article 1(3) and Annex I
Article 1, in Schedule 2 paragraphs 9, 17 and 19	In each case, Article 2

SCHEDULE 2 Regulation 15

Minor amendments

<i>Column 1</i>	<i>Column 2</i>
Provisions of principal Regulations	Amendments
Definition of “interest” in regulation 3	For the words “except where used in regulation 21(2)” substitute the words “except where used in regulation 21(3)”
Regulation 8(1)(a)(i)	For the words “in the case of a transfer made by lease before 1 st March” substitute the words “in the case of a transfer made by lease”
Regulation 8(1)(a)(ii)	Delete the words “made by lease on any date during March or”
Regulation 17(3)(b)	For the words “14 th May in any year” substitute the words “14 th May in the year”
Regulation 21(4)	For the words “following adjustment of that quota” substitute the words “following adjustment of the quantity delivered”
Regulation 23(1)(b)(ii) and (2)(b)(ii)	In each case, delete the words “or, where there is more than one such address, each such address and his or her principal trading address”
Regulation 31(4)	For the words “and regulation 31” substitute the words “and regulation 30”