
STATUTORY INSTRUMENTS

1991 No. 2232

FOOD

The Dairy Produce Quotas Regulations 1991

<i>Made</i>	- - - -	<i>8th October 1991</i>
<i>Laid before Parliament</i>		<i>8th October 1991</i>
<i>Coming into force</i>	- -	<i>29th October 1991</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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 Economic Community, acting jointly in exercise of the powers conferred on them by that section and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Title and commencement

1. These Regulations may be cited as the Dairy Produce Quotas Regulations 1991 and shall come into force on 29th October 1991.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“additional milk product” means dairy produce other than milk, butter, cream or cheese;

“agricultural area” includes areas used for horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, areas of land used as grazing land, meadow land, osier land, market gardens and nursery grounds and areas of land used for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

“Commission Regulation” means Commission Regulation (EEC)1546/88(3) laying down detailed rules for the application of the levy as amended by the Commission Regulations listed in Schedule 3;

“Community reserve” has the meaning assigned to it by Article 5c(4) of Council Regulation 804/68;

(1) S. I. 1972/1811.

(2) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read, as regards England and Wales, with sections 37, 40 and 46 of the Criminal Justice Act 1982 (c. 48) and S.I.1984/447, as regards Scotland, with section 289GA of the Criminal Procedure (Scotland) Act 1975 (c. 21) (as inserted by section 66(2) of the Criminal Justice (Scotland) Act 1987 (c. 41)) and, as regards Northern Ireland, with S.I. 1984/703 (N.I.3) and S.R. (N.I.) 1984 No. 253.

(3) OJ No. L139, 4.6.88, p. 12.

“Community legislation” means Article 5c of Council Regulation 804/68, Council Regulation 857/84 and the Commission Regulation;

“consent or sole interest notice” means a notice, in relation to a holding or part of a holding, signed by the person required under these Regulations to provide the notice, that either—

- (a) he is the occupier of that holding or part of a holding and no other person has an interest in that holding or part of the holding, or
- (b) all persons having an interest in the holding or part of the holding the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates agree to that apportionment or proposed prospective apportionment;

“Council Regulation 804/68” means Council Regulation (EEC) No. 804/68(4) on the common organisation of the market in milk and milk products as amended by the Regulations listed in Schedule 1;

“Council Regulation 857/84” means Council Regulation (EEC) No. 857/84(5) adopting general rules for the application of the levy in the milk and milk products sector, as amended by the Regulations listed in Schedule 2;

“Council Regulation 775/87” means Council Regulation (EEC) No. 775/87(6) temporarily withdrawing a proportion of the reference quantity mentioned in Article 5c(1) of Council Regulation 804/68;

“Council Regulation 3880/89” means Council Regulation (EEC) No. 3880/89(7) amending Council Regulation 857/84;

“cow” includes a heifer that has calved;

“dairy enterprise” means an area stated by the occupier of that area to be run as a self-contained dairy produce business;

“dairy produce” means the produce, expressed in kilograms or litres (one kilogram being 0.97116 litres) of milk, in respect of which levy is payable under the Community legislation;

“Dairy Produce Quota Tribunal” has the meaning assigned to it by regulation 35;

“dairy unit” means a building or a set of buildings used for the production of dairy produce, the address of which is registered as part of the particulars required under these Regulations or, if not so registered, is registered for any purpose by a milk marketing board or under any enactment relating to conditions to be observed in the production of dairy produce;

“delivery” has the meaning assigned to it by Article 12(g) of Council Regulation 857/84 (which sets out definitions) and “deliver” shall be construed accordingly;

“development claim” means a claim based on Article 3(1) of Council Regulation 857/84 (which deals with milk production development plans and investments);

“direct sale” means a sale referred to in Article 12(h) of Council Regulation 857/84;

“direct sales quota” means quantity of dairy produce which may be sold by direct sale from a holding in a quota year without the direct seller in occupation of that holding being liable to pay levy;

“direct seller” means a producer selling dairy produce by direct sale;

“division” means a part of a holding in a region where the remainder of the holding is in another region;

(4) OJ No. L148, 28.6.68, p. 13 (OJ/SE 1968(1) p. 176).

(5) OJ No. L90, 1.4.84, p. 13.

(6) OJ No. L78, 20.3.87, p. 5.

(7) OJ No. L378, 27.12.89, p. 3.

“eligible heifer” means any heifer, which, at the date of service of the notice referred to in regulation 18(2)(b), was on land subject to the notice and calves for the first time on a day when the notice has effect or which at the date of making the order referred to in regulation 18(2)(c) was on land designated by the order and calves for the first time on a day when the order is in force;

“farming press” means any newspaper, journal or similar publication considered by the Minister to be likely to be read by producers and purchasers;

“Formula B” has the meaning assigned to it by Article 5c(1) of Council Regulation 804/68 (which deals with implementation of the levy);

“Gazette” means, as respects anything in these Regulations relating to—

- (a) England and Wales, the London Gazette,
- (b) Scotland, the Edinburgh Gazette,
- (c) Northern Ireland, the Belfast Gazette, and
- (d) the United Kingdom, the London, Edinburgh and Belfast Gazettes;

“holding” has the meaning assigned to it by Article 12(d) of Council Regulation 857/84, but in relation to any region, it means the division of the holding in that region;

“identification” means a description of a holding specifying—

- (a) the address of the producer farming the holding, and
- (b) such other particulars, if any, as the Minister may require,

and “identify” and “identified” shall be construed accordingly;

“interest” includes the interest of a mortgagee or heritable creditor and a trustee, but does not include the interest of a beneficiary under a trust or settlement or, in Scotland, the estate of a superior;

“Intervention Board” means the Intervention Board for Agricultural Produce established under section 6(1) of the European Communities Act 1972;

“levy” means the levy, payable under the Community legislation to the competent authority referred to therein, described in Article 1 of Council Regulation 857/84 (which deals with the fixing of the levy);

“milk marketing board” means a milk marketing board constituted under the Agricultural Marketing Act 1958⁽⁸⁾ or the Agricultural Marketing Act (Northern Ireland) 1964⁽⁹⁾;

“Minister”, as respects anything in these Regulations relating to—

- (a) England and Wales, means the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly;
- (b) Scotland, means the Secretary of State for Scotland;
- (c) Northern Ireland, shall be construed in accordance with paragraph (3), and
- (d) the United Kingdom, means the Ministers;

“Ministers” means all those to whom the definition of “the Minister” relates, acting jointly;

“national direct sales reserve” means the reserve constituted under regulation 7(1) of the 1984 Regulations for the purpose of Article 6(3) of Council Regulation 857/84 (which enables Member States to constitute a reserve from the national direct sales quota);

“national wholesale quota” means quota applied for the time being to the United Kingdom or any part thereof by or under Article 5c(3) and (4) of Council Regulation 804/68;

⁽⁸⁾ 1958 c. 47, to which there are amendments not relevant to these Regulations.

⁽⁹⁾ 1964 c. 13 (N.I.), to which there are amendments not relevant to these Regulations.

“new region” means a region the establishment of which is announced under regulation 6(1);

“occupier” includes, in relation to land in respect of which there is no occupier, the person entitled to grant occupation of that land to another person;

“old region” means a region the discontinuance of which is announced under regulation 6(1);

“producer” has the meaning assigned to it by Article 12(c) of Council Regulation 857/84;

“prospective apportionment” in relation to quota on a holding means apportionment of quota ascertained under regulation 13 which will take place if there is a change of occupation of a part of the holding to which the prospective apportionment relates within six months of that prospective apportionment;

“purchaser” has the meaning assigned to it by Article 12(e) of Council Regulation 857/84;

“purchaser details” means in relation to a producer, the name and address of any purchaser to whom that producer delivers, or intends to deliver, dairy produce by wholesale delivery and the proportions of that dairy produce which he delivers or intends to deliver to each;

“purchaser quota” means quantity of dairy produce which may be delivered by wholesale delivery to a purchaser, from holdings in a region, during a quota year without that purchaser being liable to pay levy;

“purchaser special quota” means the quantity of dairy produce which may be delivered by wholesale deliveries against producers' special quotas to a purchaser, from holdings in a region, during a quota year without that purchaser being liable to pay levy;

“qualifying cow” means any eligible heifer which calves at a time when the number of eligible heifers exceeds the replacement number;

“qualifying day” means, in respect of any qualifying cow, the day it calves and each day or part of a day thereafter during which the notice referred to in regulation 18(2)(b) has effect or during which the order referred to in regulation 18(2)(c) is in force;

“quota” means direct sales quota or wholesale quota, as the case may be;

“quota year” means any of the periods of 12 months described in the first subparagraph of Article 5c(1) of Council Regulation 804/68 (which deals with periods in respect of which levy is payable);

“regions” means regions into which the United Kingdom is divided for the purposes of Article 1(2) of Council Regulation 857/84 (which deals with regions);

“regional wholesale quota” has the meaning assigned to it by regulation 6(1);

“registered wholesale quota” means quota registered in accordance with regulation 28(2)(a);

“replacement number” means the nearest integer to 22 per cent of the total number of dairy cows on the land subject to the notice referred to in regulation 18(2)(b), or designated by the order referred to in regulation 18(2)(c), as at the date of service of the notice or (as the case may be) the coming into force of the order, and where 22 per cent of the total number is half way between two integers the nearest even integer shall be deemed to be the nearest integer;

“running regional wholesale reserve” means a reserve constituted under regulation 5(9) or 7(2) (b) of the 1984 Regulations, regulation 6(2) or 9 of the 1986 Regulations, regulation 7(2) or 13 of the 1989 Regulations or regulation 6(2) or 15 of these Regulations;

“secondary wholesale quota” means wholesale quota which was allocated under paragraph 12(5) of Schedule 2 to the 1984 Regulations in consequence of a claim based on Article 3(1) or (3) of Council Regulation 857/84 or Article 3 of the Commission Regulation;

“special quota” means quota which is subject to the restrictions referred to in the second indent of Article 3a(4) of Council Regulation 857/84;

“suspended quota” means quota which is the subject of a compensation payment under Article 2 of Council Regulation 775/87;

“the 1984 Regulations” means the Dairy Produce Quotas Regulations 1984⁽¹⁰⁾;

“the 1986 Regulations” means the Dairy Produce Quotas Regulations 1986⁽¹¹⁾;

“the 1989 Regulations” means the Dairy Produce Quotas Regulations 1989⁽¹²⁾;

“total direct sales quota” means the total quantity of dairy produce which may be sold by direct sale from a holding in a quota year without the direct seller in occupation of that holding being liable to pay levy;

“total purchaser quota” means the quantity of dairy produce which may be delivered by wholesale delivery to a purchaser during a quota year without that purchaser being liable to pay levy;

“total wholesale quota” means the total quantity of dairy produce which may be delivered by wholesale delivery from a holding in a region in a quota year without the producer in occupation of that holding being liable to pay levy;

“transferee” means a person who replaces another person as occupier of a holding or part of a holding;

“transferor” means a person who is replaced by another person as occupier of a holding or part of a holding;

“wholesale delivery” means delivery from a producer to a purchaser;

“wholesale quota” means quantity of dairy produce which may be delivered by wholesale delivery to a purchaser (to the extent specified in relation to that purchaser under these Regulations), from a holding in a quota year without the producer in occupation of that holding being liable to pay levy; save that for the purposes of the Agriculture Act 1986 “wholesale quota” includes in addition the quantity of dairy produce which could have been so delivered had it not been the subject of a compensation payment under Article 2 of Council Regulation 775/87.

(2) In these Regulations, unless the context otherwise requires—

- (a) any reference to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations,
- (b) any reference in a regulation or Schedule to a numbered paragraph shall be construed as a reference to the paragraph so numbered in that regulation or Schedule, and
- (c) any reference in a paragraph to a numbered or lettered subparagraph shall be construed as a reference to the subparagraph so numbered or lettered in that paragraph.

(3) In their application to Northern Ireland these Regulations shall have effect with the substitution, for references to the Minister, of references to the Department of Agriculture for Northern Ireland.

Establishment of quota

3. Total direct sales quota and total wholesale quota for any person and purchaser quota for any purchaser in respect of any quota year shall be established in accordance with these Regulations and the Community legislation.

⁽¹⁰⁾ S.I. 1984/1047; amended by S.I. 1984/1538, 1787 and S.I. 1985/509.

⁽¹¹⁾ S.I. 1986/470; amended by S.I. 1988/534 and S.I. 1989/16.

⁽¹²⁾ S.I. 1989/380; amended by S.I. 1990/132, 664, 784 and S.I. 1991/832.

Formula B

4. For the purposes of Article 5c(1) of Council Regulation 804/68 the levy system shall be implemented in accordance with Formula B.

Milk equivalence of cheese

5.—(1) For the purposes of Article 11 of the Commission Regulation (which deals with milk equivalence of cream, butter and cheese) the milk equivalence of cheese shall be calculated on the basis that each kilogram of cheese shall equal such quantity of milk referred to in paragraph (2) as is required to make that kilogram of cheese.

(2) The milk to which paragraph (1) relates is milk the fat content of which has not been altered since milking.

Regions

6.—(1) The Minister shall, in respect of each quota year, announce by advertisement published in the Gazette and the farming press any change in the regions into which the United Kingdom is divided for the purposes of Article 1(2) of Council Regulation 857/84 (which deals with regions) and the allocation from the national wholesale quota of a regional wholesale quota for each region.

(2) Subject to paragraph (3) where, in respect of any quota year, the regional wholesale quota allocated for a region is increased in relation to the preceding quota year, the wholesale quota so added shall create, or be added to, the running regional wholesale reserve for that region.

(3) Paragraph (2) shall not apply in relation to that part of the regional wholesale quota which consists of special quota awarded to producers in that region.

(4) Where, in respect of any quota year, the regional wholesale quota allocated for a region is reduced in relation to the preceding quota year the wholesale quota so subtracted shall be satisfied from the wholesale quota (other than quota issued from the Community reserve) of all persons in proportion to the wholesale quota of each (the reduction of purchaser quota to be calculated in accordance with those reductions of wholesale quota).

(5) Where in respect of a quota year the direct sales quota is reduced in relation to the preceding quota year, the quota so subtracted shall be satisfied from all persons with direct sales quota in proportion to the direct sales quota of each.

(6) Where, in respect of any quota year, there is a change of regions as described in paragraph (1), the following shall be deemed to have taken place, for the purposes of these Regulations, immediately before the end of the preceding quota year—

- (a) the adjustment of wholesale quota applicable to any holding affected by the change in accordance with the following calculations—
 - (i) where any holding in more than one old region is in one new region, by aggregating the total wholesale quota relating to that holding;
 - (ii) where any holding in one old region is in more than one new region, by allocating wholesale quota in accordance with paragraph (7) in relation to divisions in new regions;
 - (iii) where any holding in more than one old region is in more than one new region but in different divisions, by aggregating the total wholesale quota relating to that holding and allocating wholesale quota in accordance with paragraph (7) in relation to divisions in new regions;
- (b) the calculation of the running regional wholesale reserve of each new region by aggregating the running regional wholesale reserves of each of the old regions and dividing

the aggregate among the new regions proportionally in accordance with the total wholesale quota then allocated in each new region;

- (c) the calculation of the regional wholesale quota of each new region by adding to its aggregate of wholesale quotas (taking account of subparagraph (a)) its running regional wholesale reserve calculated under subparagraph (b).

(7) An allocation is made in accordance with this paragraph by allocating to the division of a holding which contains the dairy unit (where that holding contains a single dairy unit) the total wholesale quota relating to that holding or (in respect of any other holding) allocating to each division of that holding a part of the total wholesale quota relating to that holding calculated proportionally in accordance with the area of that division.

(8) The Minister may at any time reallocate the national wholesale quota among the regions, and where such reallocation is unable to be achieved by the transfer of wholesale quota between running regional reserves, may reduce the regional wholesale quota allocated for a region, the reduction being satisfied from the wholesale quota (other than quota issued from the Community reserve) of all persons in that region in proportion to the wholesale quota of each person and may pay compensation to persons whose entitlement to quota is so reduced and shall announce these arrangements by advertisement published in the Gazette.

(9) For the purpose of any reallocation of national wholesale quota under paragraph (8) the Minister may remove wholesale quota from any running regional wholesale reserve and add it to any other running regional wholesale reserve.

Adjustment of purchaser quota

7.—(1) Where any wholesale quota is increased or reduced in accordance with the Community legislation or these Regulations, the purchaser quota of any purchaser to whom that quota is applicable shall be correspondingly increased or reduced.

(2) On any transaction to which Article 7(2) of Council Regulation 857/84 or Article 9(1)(d) of the Commission Regulation (which between them deal with replacements of purchasers and changes by producers from one purchaser to another) applies, any purchaser whose purchaser quota has been increased by virtue of that transaction shall, no later than a date 21 days after the date of the transaction, submit to the Minister—

- (a) a statement of the transaction, that is to say a statement setting out (in accordance with Article 7(2) of Council Regulation 857/84 where applicable) the following particulars—
 - (i) the nature of the transaction;
 - (ii) the parties to the transaction;
 - (iii) the changes of purchaser quota of any purchaser to whom the transaction relates;
 - (iv) the changes in respect of matters referred to in the list, mentioned in regulation 28(2) (a)(ix) forming part of the wholesale register entry of each producer to whom the transaction relates; and
 - (b) a declaration signed by the producer and the purchaser whose purchaser quota is to increase that the purchaser whose purchaser quota is to decrease has been notified of the changes the particulars of which are set out in the statement of the transaction referred to in subparagraph (a).
- (i) Subject to subparagraph (ii), where during a quota year a producer changes from making deliveries to a purchaser to making deliveries to any other purchaser, for the purposes of calculation of levy liability under regulation 21 in that quota year, any of the purchasers to whom he commences making deliveries shall have its purchaser quota increased by an amount equivalent to such part of that producer's registered wholesale quota as the producer shall determine.

- (ii) The amount of the increase of purchaser quota determined in accordance with subparagraph (i) shall not include the amount of quota necessary to cover the deliveries made by the producer before the date of the change of purchaser, adjusted if necessary in accordance with Article 12(2) of the Commission Regulation, which shall remain available to the original purchaser.
 - (iii) At the end of the quota year referred to in subparagraph (i) each of the purchasers to whom the producer commences making deliveries shall have its purchaser quota increased by such part of the producer's remaining registered wholesale quota as he shall determine.
- (4) The Minister may provide such forms as he reasonably considers to be necessary for the purposes of this regulation.

Transfer of quota

8.—(1) For the purposes of Article 7 of Council Regulation 857/84 and Article 7 of the Commission Regulation (transfer of quota when any holding is sold, leased or transferred by inheritance) on a transfer of any holding or part of a holding, other than a transfer of a kind to which paragraph (7) refers, the transferee shall submit to the Minister—

- (a) within two months of the change of occupation of the holding or part of a holding, a duly completed form prescribed for this purpose from time to time by the Minister, and
- (b) such other evidence relating to the transfer, and within such time, as the Minister may reasonably require.

(2) Notwithstanding paragraph (1) above, the Minister may decide, in respect of transfers of any holding or part of a holding in a quota year which have not been notified to him in writing by the transferee before a date to be determined by him in the following quota year, that for the purposes of any levy calculation—

- (a) the unused quota transferred with such transfers shall not be treated as a part of the transferee's quota entitlement for the quota year in which the transfer took effect but shall be treated as if it remained unused quota available for reallocation by the Minister in the year in which the transfer took place, and
- (b) a transferee shall not be entitled to demand that, by reason of such a transfer, an amendment be made to the amount of quota, if any, which has been reallocated to him under Schedule 8 for the quota year in which the transfer took effect.

(3) A decision by the Minister, together with the date determined by him under paragraph (2) above, shall be announced by advertisement published in the Gazette and the farming press at least two months before that date or, in the event that such publication is not possible for any reason, by such other means of publication as the Minister considers likely to come to the attention of producers.

(4) Where there is a transfer of the entirety of a holding it shall be presumed that the transferee intends to deliver dairy produce from the holding by wholesale delivery to the purchasers named, and in the proportions listed, in the transferor's entry in the wholesale register.

(5) Where there is a transfer of part of a holding—

- (a) an apportionment of the quota relating to the holding shall be carried out in accordance with regulation 11, and
- (b) dairy produce previously sold by direct sale or delivered by wholesale delivery from the holding in the quota year in which the change of occupation takes place shall be deemed, for the purposes of any levy, to have been sold or delivered from each part of the holding proportionally in accordance with that apportionment.

(6) A prospective apportionment of quota in respect of a part of a holding may be made in accordance with regulation 13.

(7) This regulation shall not apply to the following—

- (a) a licence to occupy land,
- (b) the tenancy of any land under which a holding, or part of a holding, in England and Wales is occupied for a period of less than ten months,
- (c) the lease of any land under which a holding, or part of a holding, in Scotland is occupied for a period of less than eight months,
- (d) the tenancy of any land under which a holding, or part of a holding, in Northern Ireland is occupied for a period of less than twelve months,
- (e) the termination of a tenancy or lease to which sub-paragraph (b), (c) or (d) applies.

(8) Paragraphs (1), 5(a), (6) and (7) and the words “Notwithstanding paragraph (1) above” in paragraph (2) shall not apply in relation to special quota.

Effect of land transfers on special quota

9.—(1) Subject to paragraph (3) and (4) where a producer has special quota registered in his name—

- (a) that special quota shall be returned to the running regional wholesale reserve or national direct sales reserve if the holding is sold or leased by the producer; and
- (b) a proportion of that special quota shall be returned to the running regional wholesale reserve or national direct sales reserve if only part of the holding is sold or leased by the producer.

(2) The proportion of the special quota which is to be returned to the running regional wholesale reserve or national direct sales reserve in accordance with paragraph (1)(b) shall be the same proportion which the agricultural area of the holding sold or leased bears to the total agricultural area farmed by the producer.

(3) This regulation shall not apply where the transfer of the holding or any part of it is effected by means of the following—

- (a) a licence to occupy land,
- (b) the tenancy of any land under which a holding, or part of a holding, in England and Wales is occupied for a period of less than 10 months,
- (c) the lease of any land under which a holding, or part of a holding, in Scotland is occupied for a period of less than 8 months,
- (d) the tenancy of any land under which a holding, or part of a holding, in Northern Ireland is occupied for a period of less than 12 months.

(4) No part of the special quota shall be returned to the running regional wholesale reserve or national direct sales reserve where the holding or any part of it is transferred—

- (a) on inheritance,
- (b) by gift for which no consideration is given,
- (c) by the granting of a tenancy following a direction under section 39 or section 53 of the Agricultural Holdings Act 1986⁽¹³⁾ (direction for grant of tenancy to successor on death or retirement of previous tenant),
- (d) by the granting of a tenancy (following a direction under section 39 of that Act) in circumstances within section 45(6) of that Act (new tenancy granted by agreement to persons entitled to tenancy under direction),
- (e) by the granting of such a tenancy as is referred to in section 37(1)(b) or (2) of that Act (tenancy granted by agreement to close relatives),

(13) 1986 c. 5.

(f) by the granting of a tenancy other than under paragraphs (c), (d) or (e) of this regulation by the landlord to a successor of a tenant who has died or retired, and the person to whom the holding or any part of it is transferred undertakes to comply with the undertakings of his predecessor under Article 3a of Council Regulation 857/84.

Notification of transfer of holding in relation to special quota

10.—(1) Subject to paragraph (2) where a producer has a special quota registered in his name and intends to transfer the whole or a part of his holding he shall submit to the Minister—

- (a) before making such transfer a duly completed form prescribed for this purpose from time to time by the Minister, and
- (b) such other evidence relating to the proposed transfer, and within such time, as the Minister may reasonably require.

(2) Where a transfer takes place of a holding or part of a holding as is referred to in regulation 9(4), the transferee shall submit to the Minister—

- (a) a duly completed form prescribed for this purpose from time to time by the Minister, and
- (b) such other evidence relating to the proposed transfer, and within such time, as the Minister may reasonably require.

Apportionment of quota

11. Subject to regulations 9, 12, 13(4) and 14, where there is a transfer of part of a holding the apportionment of the quota relating to that holding shall be carried out—

- (a) where within two months of the change of occupation the transferee submits to the Minister —
 - (i) a duly completed form in accordance with regulation 8(1)(a),
 - (ii) a statement, signed by the transferor and the transferee, that they have agreed that the quota shall be apportioned according to areas used for milk production as specified in the statement, and
 - (iii) a consent or sole interest notice provided by the transferor or his personal representative in respect of the entirety of the holding,
 in accordance with the agreement specified in subparagraph (ii),
- (b) in all other cases—
 - (i) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 4 and 6 respectively,
 - (ii) in Scotland in accordance with Schedule 5.

Apportionment of special quota

12. Where there is a transfer of part of a holding to which regulation 9(4) applies, the apportionment of the special quota relating to that part of the holding shall be carried out—

- (a) where within two months of the change of occupation the transferee submits to the Minister —
 - (i) a duly completed form in accordance with regulation 10(2)(a),
 - (ii) a statement, signed by the transferor and the transferee, that they have agreed that the special quota shall be apportioned according to areas used for milk production as specified in the statement, and

- (iii) a consent or sole interest notice provided by the transferor or his personal representative in respect of the entirety of the holding, in accordance with the agreement specified in subparagraph (ii),
- (b) in all other cases—
 - (i) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 4 and 6 respectively,
 - (ii) in Scotland in accordance with Schedule 5.

Prospective apportionment of quota

13.—(1) The occupier of the holding in respect of which the prospective apportionment of quota is to be applied shall submit to the Minister a statement—

- (a) identifying the parts of the holding to which the prospective apportionment is to relate,
- (b) containing such information relating to the holding as may reasonably be required by the Minister, and
- (c) requesting either—
 - (i) that a prospective apportionment of quota relating to the holding be made according to areas used for milk production as at the date of the statement as specified in the statement, or
 - (ii) that a prospective apportionment of quota be ascertained by arbitration in accordance with Schedule 4 in England and Wales and Schedule 6 in Northern Ireland, and in Scotland in accordance with Schedule 5.

(2) The prospective apportionment of quota shall be made in accordance with Schedule 4, 5 or 6, as the case may be, unless a prospective apportionment has been specified in accordance with paragraph 1(c)(i) and the occupier sends to the Minister a consent or sole interest notice in respect of the entirety of the holding, in the case of which, subject to regulation 14, the prospective apportionment shall be as so specified.

(3) A prospective apportionment of quota may be revoked by a notice in writing to the Minister, signed by the occupier of the holding to which the prospective apportionment relates and accompanied by a consent or sole interest notice in respect of that holding, that the occupier no longer wishes that prospective apportionment to have effect.

(4) Where there is a change of occupation of part of a holding and within the six months preceding that change of occupation—

- (a) the occupier of that holding has submitted a statement referred to in paragraph (1) in respect of that part of that holding, or
- (b) a prospective apportionment of quota relating to that part of that holding has been made by an arbitrator under Schedule 4 or 6, or under Schedule 5,

the apportionment of quota shall be carried out in accordance with—

- (i) any prospective apportionment of quota relating to that part of that holding made under paragraph (2) and not revoked under paragraph (3),
- (ii) if there is no such prospective apportionment, any prospective apportionment which is in the process of being made under paragraph (2) by virtue of a statement relating to that part of that holding under paragraph (1),
- (iii) in any other case, regulation 8.

(5) The Minister shall maintain a record of each prospective apportionment made under this regulation.

Notification by the Minister of apportionment of quota by arbitration

14. Where the Minister has reasonable grounds for believing—

- (a) that the areas used for milk production on a holding are not as specified in a statement made for the purpose of regulation 10, 11 or 13(1), or
- (b) that the areas used for milk production on a holding were not as agreed between the parties at the time of apportionment notwithstanding that no statement was made for the purposes of the aforementioned regulations

he shall give notice of this fact in writing to the person who made the statement, or in a case where no statement was made, to the transferee and the apportionment or prospective apportionment of that quota shall then be made—

- (a) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 4 and 6 respectively,
- (b) in Scotland in accordance with Schedule 5.

Reserves

15. There may be constituted for any region a running regional wholesale reserve and there may be added to the national direct sales reserve and to any appropriate running regional wholesale reserve such quota as is not for the time being allocated to any person.

Quota exchange

16.—(1) For the purposes of Article 5(5) and (6) of the Commission Regulation (which deals with changes from direct sales to wholesale delivery and vice versa) any person in a region may exchange direct sales quota for wholesale quota with any other person with a holding in the same region on such terms as those producers and the Minister may agree having regard to the provisions of the Community legislation.

(2) This regulation shall not apply in relation to special quota and quota issued under Council Regulation 3880/89.

Temporary transfer of quota

17.—(1) For the purposes of Article 5c(1a) of Council Regulation 804/68 (temporary transfers of quotas) and subject to paragraph (2), a producer who has wholesale quota registered as his which constitutes part of the purchaser quota of a purchaser may make a temporary transfer of part of that wholesale quota for a period of one quota year to any other producer whose wholesale quota constitutes part of the purchaser quota of that same purchaser.

(2) Where there is an agreement to make a temporary transfer of quota pursuant to paragraph (1) the transferee shall notify the Minister in writing of the agreement and of such particulars at such time as the Minister may reasonably require.

Temporary reallocation of quota

18.—(1) For the purposes of Formula B, the Minister may, in any quota year, award to a producer referred to in paragraph (2) below a temporary reallocation of unused quota from the purchaser quota of the purchaser to whom that producer makes wholesale deliveries of dairy produce, in accordance with the provisions of this regulation.

(2) This regulation shall apply to—

- (a) a producer to whom an award of quota has been made by the Dairy Produce Quota Tribunal, or one of the local panels constituted under regulation 6(2) of the 1984

Regulations, or to whom an allocation of quota has been made by the Minister under Schedule 12 to the 1986 Regulations, which award or amount of the allocation has been mistakenly entered in the registers prepared and maintained by the Minister under regulation 28 as an amount of quota being more than 100 litres in excess of the amount of the award or the allocation, and

- (b) a producer who has quota registered as his in relation to a holding which is in whole or in part subject to a notice prohibiting or regulating the movement of dairy cows pursuant to an Order made under the Animal Health Act 1981(14) or the Diseases of Animals (Northern Ireland) Order 1981(15),
- (c) a producer who has quota registered as his in relation to a holding which is situated wholly or partly within an area which at any time during that quota year has been designated by an emergency order under section 1 and section 24(1) and (3) of the Food and Environment Protection Act 1985(16).

(3) Subject to paragraph (4), a producer referred to in paragraph (2)(a) may be awarded a temporary reallocation of unused quota for any quota year ending before 1 April 1992. The amount of any such award shall be calculated either—

- (a) as the amount by which the producer's production exceeds his quota entitlement in the quota year in question, or
- (b) as the amount being the difference between the producer's quota entitlement in the quota year in question and the quota mistakenly having been registered as his, or
- (c) as the amount referred to in paragraph (3)(b) reduced by the amount, if any, by which the direct sales quota mistakenly having been registered as the producer's was less than the direct sales quota to which he is entitled in the quota year in question,

whichever amount is less.

(4) An award under paragraph (3) above shall be subject to the following conditions—

- (a) a producer whose production in the quota year in question has not exceeded his quota entitlement shall not be entitled to receive an award for that year;
- (b) a producer who transfers the whole of his quota under regulation 8, or exchanges the whole of his quota under regulation 16, shall not be entitled to receive an award for the quota year in which the transfer took effect or any future quota year;
- (c) a producer who transfers a part of his quota under regulation 8, or exchanges a part of his quota under regulation 16, shall be entitled to receive an award for the quota year in which the transfer or exchange took effect reduced by the amount of quota transferred or exchanged;
- (d) a producer who makes a temporary transfer of quota under regulation 17(1) shall not be entitled to receive an award in the same quota year;
- (e) an award shall not be transferable to the transferee of any holding or part of a holding of a producer to whom an award has been or may be made.

(5) Subject to paragraph (7), a producer referred to in paragraph (2)(b) or (c) above may be awarded a temporary reallocation of unused quota for any quota year in which the notice or as the case may be the order referred to in paragraph 2(b) or the order referred to in paragraph 2(c) has effect. The amount of any such award shall be calculated either—

- (a) as the amount equal to 15 litres per qualifying cow per qualifying day in any quota year, or

(14) 1981 c. 22.

(15) S.I. 1981/1115 (N.I. 22).

(16) 1985 c. 48.

- (b) as the amount by which in the quota year in question the producer's production exceeds his quota entitlement,

whichever amount is less.

(6) Where the notice referred to in paragraph (2)(b) or the order referred to in paragraph 2(c) above continues beyond the quota year in respect of which a producer has received an award under paragraph (5), any award under that paragraph for the following quota year shall be calculated as if the number of the producer's qualifying cows were equal to that of his eligible heifers which calved during the period of the notice in that heifers calved the number of eligible heifers did not exceed the replacement number.

(7) An award under paragraph (5) above shall be subject to the following conditions—

- (a) the total amount of quota temporarily reallocated to producers from the purchaser quota of any purchaser shall not exceed 15 per cent of the total amount of unused quota available to that purchaser in any quota year and the Minister shall, to the extent that it is necessary so to do, abate in whole or in part each such temporary reallocation accordingly;
- (b) a producer who transfers quota under regulation 8, or who makes a temporary transfer of quota under regulation 17(1), or purchases cows or in-calf heifers for dairy purposes, shall not be entitled to receive an award in the same quota year unless the Minister is satisfied that the agreement to transfer, temporarily transfer or purchase, was entered into before service of the notice to which paragraph (2)(b) above refers, or (as the case may be) before the coming into force of the order to which paragraph (2)(c) above refers.

(8) In making any award of a temporary reallocation of unused quota for the purpose of this regulation the Minister shall afford priority to the producers referred to in paragraph (2)(a) above before making any award to the producers to whom paragraph (2)(b) above applies, and then priority to the producers referred to in paragraph (2)(b) above before making any award to the producers to whom paragraph (2)(c) above applied.

(9) In this regulation, "quota", except where otherwise described, means wholesale quota.

Special allocation of quota

19. Where, by reason of a mistake made by the Minister or any person acting on his behalf, a person has not been allocated any quota or has been allocated a smaller quantity of any such quota than he would have been allocated if the mistake had not been made, the Minister may allocate to that person such quota as will compensate, in whole or in part, for that mistake from the national direct sales reserve or from the appropriate running regional wholesale reserve, as the case may be.

Conversion of direct sales quota and wholesale quota

20. Schedule 7 shall apply in respect of the conversion of wholesale quota into direct sales quota and of direct sales quota into wholesale quota under Article 6a of Council Regulation 857/84.

Calculation of levy liability

21. Schedule 8 shall apply in respect of the reallocation of quota for the purposes of Article 4a of Council Regulation 857/84 and in respect of the calculation of levy liability for the purposes of Article 5c of Council Regulation 804/68.

Prevention of avoidance of levy

22.—(1) Subject to subparagraph (2) below, where in any quota year a producer makes sales or deliveries of milk or milk products from milk produced by any cows and subsequently another producer makes sales or deliveries of milk or milk products from milk produced by any or all of

the same cows the second producer shall be deemed to have made those sales or deliveries in the capacity of agent for the first producer.

- (2) Paragraph (1) above shall not apply where—
- (a) an agreement has been entered into by the first producer for the sale or lease of the cows in question or the second producer has inherited them from the first producer; and
 - (b) the cows are kept on the second producer's holding.

Payment of levy

23.—(1) For the purposes of Article 16(3) of the Commission Regulation the time allowed for making the payment required to be made by Article 16(2) of that Regulation (time for payment of levy by direct sellers) shall be four months from the end of the quota year in respect of which the payment is made.

(2) For the purposes of Article 9(3) of Council Regulation 857/84 (payment of levy by direct sellers) or Article 15 of the Commission Regulation (payment of levy by purchasers in respect of wholesale deliveries) levy shall be paid to the Intervention Board.

- (3) Where any part of the levy remains unpaid—
- (i) in the case of a direct seller, at the expiry of the period specified in paragraph (1) above; or
 - (ii) in the case of a purchaser, at the expiry of the period specified in Article 15(4) of the Commission Regulation,

the Intervention Board may recover from the direct seller or (as the case may be) the purchaser the amount of the levy outstanding at the expiry of the period applicable in his case, together with interest in respect of each day thereafter until the said amount is recovered at the rate of one percentage point above the sterling three-month London interbank offered rate.

Additional milk products

24. The Minister shall award direct sales quota to producers of additional milk products in accordance with Schedule 9.

Functions of the Intervention Board for Agricultural Produce

- 25.**—(1) The Intervention Board shall continue to be—
- (a) the agency appointed for the purposes of Article 9(3) of Council Regulation 857/84 (which deals with payment of levy by direct sellers), and
 - (b) the competent authority for the purposes of—
 - (i) Article 11 (which deals with equivalences),
 - (ii) Article 12(2) (which deals with increases in fat content),
 - (iii) Article 14(1) (which deals with records of wholesale deliveries),
 - (iv) Article 15 (which deals with payment of levy by purchasers in respect of wholesale deliveries), and
 - (v) Article 16 (which deals with records of direct sales and payment of levy in respect thereof)—
- of the Commission Regulation.

(2) The Intervention Board and any milk marketing board may enter into an agreement providing for the discharge by the milk marketing board, on behalf of the Intervention Board, of any functions of the Intervention Board under these Regulations or the Community legislation specified in the agreement, on such terms as may be specified in the agreement.

(3) In respect of any area which is not within the area of a milk marketing board, paragraph (2) shall have effect as if “person or milk marketing board” were substituted for “milk marketing board” wherever those words appear.

(4) The Intervention Board may, in respect of any person in whose name any direct sales quota is registered and who fails to submit to the Intervention Board within two months of the end of any quota year the statement required to be made by Article 16(1) of the Commission Regulation, make and recover a reasonable charge in respect of any visit to any premises reasonably required to be made by the Intervention Board to obtain that statement.

Functions under these Regulations

26.—(1) The Minister and any milk marketing board may enter into an agreement providing for the discharge by that milk marketing board, on behalf of the Minister, of any functions of the Minister under these Regulations or the Community legislation specified in the agreement, on such terms as may be specified in the agreement.

(2) In respect of any area which is not within the area of a milk marketing board, paragraph (1) shall have effect as if “person or milk marketing board” were substituted for “milk marketing board” wherever those words appear.

Disapplication of enactments

27. Nothing in section 47(2) of the Agricultural Marketing Act 1958⁽¹⁷⁾ or section 23 of the Agricultural Marketing Act (Northern Ireland) 1964⁽¹⁸⁾ (which restrict the disclosure of certain information obtained under those Acts) shall restrict or apply to the disclosure of any information if, and in so far as, the disclosure is required or authorised by these Regulations, the Community legislation or an agreement under regulation 25(2) or 26(1).

Registers to be prepared and maintained by the Minister

28.—(1) The Minister shall—

(a) prepare a direct sales register entry in respect of each direct seller setting out in particular—

- (i) his name;
- (ii) his address;
- (iii) his direct sales quota; and
- (iv) quota issued as special quota,

and shall send each direct seller a copy of the entry relating to him, and

(b) maintain—

- (i) a direct sales register (being a register of entries referred to in paragraph (1)(a)),
- (ii) a register of particulars of direct sales by each direct seller.

(2) For each region the Minister shall—

(a) prepare a wholesale register entry in respect of each producer in that region setting out in particular—

- (i) his name;
- (ii) his address;

⁽¹⁷⁾ 1958 c. 47, to which there are amendments not relevant to these Regulations.

⁽¹⁸⁾ 1964 c. 13 (N.I.), to which there are amendments not relevant to these Regulations.

- (iii) any reference number which serves to identify the producer in the purchaser's records;
- (iv) wholesale quota available to him for the quota year excluding the quota referred to in subparagraph (vi) or (vii);
- (v) his suspended quota;
- (vi) quota issued as special quota;
- (vii) quota issued under Council Regulation 3880/89;
- (viii) a list—
 - of the names and addresses of each purchaser in that region whose purchaser quota will be calculated to take into account all or part of that producer's total wholesale quota, and
 - of the wholesale quota to be taken into account based on purchaser details to be provided by the producer
- (ix) in respect of each purchaser supplied, his wholesale quota registered with that purchaser, and its butterfat base calculated in accordance with article 12 of the Commission Regulation,
and shall send to each producer a copy of the entry relating to him and to each purchaser named on the list referred to in subparagraph (viii) a copy of that part of the entry relating to his purchaser quota, and
- (b) maintain—
 - (i) a wholesale register (being a register of entries referred to in paragraph (2)(a)) for each region, and
 - (ii) a register for that region of particulars of wholesale deliveries by each producer in that region.
- (3) In respect of each purchaser the Minister shall—
 - (a) prepare a purchaser notice setting out—
 - (i) his name,
 - (ii) his purchaser quota,
 - (iii) his purchaser special quota,and shall send each purchaser a copy of the notice relating to him, and
 - (b) maintain—
 - (i) a register of purchaser notices, and
 - (ii) a register of particulars of wholesale deliveries to each purchaser.
- (4) For the purposes of paragraphs (1) and (2), where a holding comprises more than one dairy enterprise a direct seller or a producer may, on presenting to the Minister a consent or sole interest notice in respect of that holding, agree with the Minister the partition of that holding among separate direct sales register entries or wholesale register entries as specified in the agreement.
- (5) The Minister shall amend the registers which he is required by this regulation to maintain to record any allocations or adjustments made under or by virtue of these Regulations, and shall inform any person to whom an amendment relates and any purchaser affected by an amendment of that amendment.
- (6) In this regulation “direct seller” and “producer” include a person who has moved into occupation of land with quota, whether or not that person is engaged in the sale or delivery of dairy produce.

Inspection of entries in the Minister's registers

29. The Minister shall permit, during reasonable working hours, inspection of any entry relating to—

(a) a specific holding in the registers referred to in regulation 28(1)(b)(i) and 28(2)(b)(i) by any person who is the direct seller or producer in relation to, or gives the Minister a statement in writing that he has an interest in, that holding, and

(b) a specific purchaser in either register referred to in regulation 28(3)(b) by the purchaser,

and shall, on payment of a reasonable charge, forward a copy of that entry to any such person who requests it.

Registers to be maintained by purchasers

30.—(1) Each purchaser shall maintain, in respect of all producers whose register entries include that purchaser's name on the list referred to in regulation 28(2)(a)(viii)—

(a) a register as indicated in regulation 28(2)(b)(i) in respect of that part of its purchaser quota attributable to each of those producers, and

(b) a register of particulars of wholesale deliveries from each of those producers to that purchaser.

(2) Each purchaser shall amend its registers referred to in paragraph (1) on each occasion when, under these Regulations, the Minister's equivalent register is required to be amended in relation to producers registered in that purchaser's register.

Registers as evidence

31. Any entry in a register or notice required by these Regulations to be maintained by the Minister shall in any proceedings be evidence of matters stated therein.

Information

32.—(1) The Minister and the Intervention Board shall provide each other with such information and assistance as shall be required for the proper performance of their respective functions under these Regulations and the Community legislation.

(2) Each purchaser shall provide such information to the Minister as the Minister may reasonably require for the maintenance of his register of particulars of wholesale deliveries under regulation 28(2)(b)(ii) and regulation 28(3)(b)(ii).

(3) The Minister shall copy such records to each purchaser as that purchaser may reasonably require for the purposes of his registration obligations under these Regulations and Article 14(1) of the Commission Regulation.

Service of documents

33. Any document required by these Regulations to be served on any person may be served by post.

Penalties

34.—(1) Subject to paragraph (2), any person who—

(a) fails without reasonable excuse to comply with a requirement imposed on him by or under these Regulations or the Community legislation, or

- (b) in connection with these Regulations or the Community legislation, makes a statement or uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or, on conviction on indictment, to a fine.

(2) Paragraph (1)(a) shall not apply to any failure by any person to comply with a requirement in an agreement referred to in regulation 25 or 26.

(3) The Minister may, following any conviction under paragraph (1)(b) against which there is no successful appeal, by notice served (within the period of 12 months following the date specified in paragraph (4)) on the person to whose quota that conviction relates reduce his quota to such extent as may reasonably be regarded by the Minister as being attributable to the falsehood on which the conviction was founded.

(4) The date referred to in paragraph (3) is—

- (a) in the case of a conviction against which there is no appeal, the date on which the right to appeal against that conviction expires, and
- (b) in the case of a conviction against which there is an unsuccessful appeal—
 - (i) if there is no right of appeal against the result of that unsuccessful appeal, the date of that result, and
 - (ii) if there is a right of appeal against that result but no appeal is made, the date on which that right of appeal expires.

Dairy Produce Quota Tribunals

35.—(1) The Dairy Produce Quota Tribunal for England and Wales, the Dairy Produce Quota Tribunal for Scotland, and the Dairy Produce Quota Tribunal for Northern Ireland constituted under regulation 6 of the 1984 Regulations shall continue in existence and, in respect of direct sales from a holding situated in more than one area of a Dairy Produce Quota Tribunal, the Dairy Produce Quota Tribunal the functions of which shall relate to those direct sales shall continue to be the Dairy Produce Quota Tribunal chosen for the purpose by the Ministers.

(2) Any reference in these Regulations to “The Tribunal” shall be treated as a reference to the appropriate Dairy Produce Quota Tribunal under paragraph (1).

(3) Schedule 10 shall apply in respect of the constitution, appointment of members, remuneration of members, staffing and procedure of Dairy Produce Quota Tribunals.

Revocation

36. The Regulations specified in Schedule 11 are hereby revoked.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 4th October 1991.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

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

8th October 1991

Strathclyde
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulation 2

RELEVANT AMENDMENTS TO COUNCIL REGULATION 804/68

Council Regulation	Official Journal Reference	Article amended or added
856/84	L90, 1.4.84, p. 10	5c
1557/84	L150, 6.6.84, p. 6	5c
591/85	L68, 8.3.85, p. 5	5c
1298/85	L137, 27.5.85, p. 5	5c
1335/86	L119, 8.5.86, p. 19	5c(3)
		17(2)
773/87	L78, 20.3.87, p. 1	5c
		7(1)
		7a
2998/87	L285, 8.10.87, p. 1	5c
744/88	L78, 23.3.88, p. 1	5c
1109/88	L110, 29.4.88, p. 27	5c
763/89	L84, 29.3.89, p. 1	5c
3879/89	L378, 27.12.89, p. 1	5c
1635/91	L150, 15.6.91, p. 28	5c
Commission Regulation	Official Journal Reference	Article amended or added
2033/85	L192, 24.7.85, p. 9	5c
2893/85	L278, 18.10.85, p. 9	5c
3275/85	L314, 23.11.85, p. 7	5c
3571/85	L341, 19.12.85, p. 11	5c
1105/87	L106, 22.4.87, p. 33	5c(3)
2188/87	L203, 24.7.87, p. 24	5c(3)
487/88	L50, 24.2.88, p. 12	5c
3296/89	L320, 1.11.89, p. 45	5c

SCHEDULE 2

Regulation 2

AMENDMENTS TO COUNCIL REGULATION 857/84

Council Regulation	Official Journal Reference	Article amended or added
1557/84	L150, 6.6.84, p. 6	Annex

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Council Regulation	Official Journal Reference	Article amended or added
590/85	L68, 8.3.85, p. 1	4a
		6
		6a
		7
		12(e)
591/85	L68, 8.3.85, p. 5	Annex
1305/85	L137, 27.5.85, p. 12	1(1)
		3(3)
		4a(1)
		6(2)
		8
		9(1), 9(2), 9(4)
		10
		2(3)
1343/86	L119, 8.5.86, p. 34	4(1)(a)
		4a(1)
		6(4)
		9(1), 9(4)
		2
1911/86	L165, 21.6.86, p. 6	6(1)
		2(1), 2(2)
2316/86	L202, 25.7.86, p. 3	3
		6(1)
		1(1)
774/87	L78, 20.3.87, p. 3	4a(1), 4a(3)
		9(4)
		10

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Council Regulation	Official Journal Reference	Article amended or added
		Annex
1899/87	L182, 3.7.87, p. 39	4(1), 4(2)
1110/88	L110, 29.4.88, p. 28	4a(1)
		9(4)
		Annex
764/89	L84, 29.3.89, p. 2	3a
		4a
		12c
1117/89	L118, 29.4.89, p. 10	4
3880/89	L378, 27.12.89, p. 3	1(1)
		3(b)
		4(1)(a)
1183/90	L119, 11.5.90, p. 27	1(1), 3b
		1a
3577/90	L353, 17.12.90, p. 30	2(1)(a)
		3(3)
		4a(1)
		7(1)
		Annex
3642/90	L362, 27.12.90, p. 7	2(1)(a) and (d)
		3(3)
		6(1)(a) and (c)
		Annex
306/91	L37, 9.2.91, p. 4	4(1)(d)
		12(b)
1635/91	L150, 15.6.91, p. 28	Annex
1639/91	L150, 15.6.91, p. 35	2(3)
		3(a)(c) and (d)
		5

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Council Regulation	Official Journal Reference	Article amended or added
		6(3)
		Annex
Commission Regulation	Official Journal Reference	Article amended or added
2033/85	L192, 24.7.85 p. 9	Annex
2893/85	L278, 18.10.85, p. 9	Annex
3275/85	L314, 23.11.85, p. 7	Annex
3571/85	L341, 19.12.85, p. 11	Annex
1105/87	L106, 22.4.87, p. 33	Annex
2188/87	L203, 24.7.87, p. 24	Annex
487/88	L50, 24.2.88, p. 12	Annex
3296/89	L320, 1.11.89, p. 45	Annex

SCHEDULE 3

Regulation 2

AMENDMENTS TO COMMISSION REGULATION 1546/88

Commission Regulation	Official Journal Reference	Article amended or added
2202/88	L195, 23.7.88, p. 54	15(6)
		16(2), 16(3)
		19(3)
3086/88	L275, 7.10.88, p. 14	12(1), 12(2)
		13(1)
3367/88	L296, 29.10.88, p. 49	15(6)
		19(3)
215/89	L25, 28.1.89, p. 27	1
1033/89	L110, 21.4.89, p. 27	1
		3a
		7a
		9(1)(a)
		14(1)(b)
		19(4)

Commission Regulation	Official Journal Reference	Article amended or added
3835/89	L372, 21.12.89, p. 27	1
652/90	L71, 17.3.90, p. 14	1
771/90	L83, 29.3.90, p. 80	14(1)(b)
		16(1)
2138/90	L195, 26.7.90, p. 23	1
		3(b)
		4
		4a
		9(3)(a)
		14(3)(b)
		19
2333/90	L211, 9.8.90, p. 5	8
559/91	L62, 8.3.91, p. 25	5
		12(1)
		19(2)
2061/91	L187, 13.7.91, p. 35	1, 3(a), 7(a), 13(2) and
		19(4)

SCHEDULE 4

Regulations 11, 12, 13 and 14

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS
BY ARBITRATION—ENGLAND AND WALES

Appointment and remuneration of arbitrator

1.—(1) In any case where an apportionment is to be carried out by arbitration an arbitrator shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 8(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbitrator within fourteen days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the President of the Royal Institution of Chartered Surveyors (referred to in this Schedule as “the President”) for the appointment of an arbitrator from among the members of the panel referred to in paragraph 8 and the person who makes such an application to the President shall notify the Minister in writing of that fact within fourteen days from the date of the application.

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(3) If at the expiry of the relevant period an arbitrator has not been appointed by agreement between the transferor and the transferee nor an application made to the President under subparagraph (2) above, the Minister shall make an application to the President for the appointment of an arbitrator.

(4) Where the Minister gives a notice in accordance with regulation 14 he shall make an application to the President for the appointment of an arbitrator and the Minister shall be a party to the arbitration.

2.—(1) In any case where a prospective apportionment is to be made by arbitration an arbitrator shall be appointed—

- (a) where regulation 14 applies, by the President,
- (b) in any other case, by agreement between the occupier and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where subparagraph (1)(b) above applies, the occupier shall notify the Minister in writing of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator, within fourteen days from the date of the appointment of the arbitrator or the date of the application to the President, as appropriate.

3. An arbitrator appointed in accordance with paragraphs 1 and 2 above shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to areas used for milk production in the five years preceding the change of occupation, or in the case of a prospective apportionment in the five years preceding the appointment of the arbitrator.

4.—(1) No application may be made to the President for an arbitrator to be appointed by him under this Schedule unless the application is accompanied by the prescribed fee for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).

(2) The prescribed fee for the purposes of this paragraph shall be that which from time to time is prescribed as the fee payable to the President under paragraph 1(2) of Schedule 11 to the Agricultural Holdings Act 1986⁽¹⁹⁾.

5. Where the Minister makes an application to the President under paragraphs 1(3) or (4) above, the fee payable to the President in respect of that application referred to in paragraph 4 above shall be recoverable by the Minister as a debt due from the other parties to the arbitration jointly or severally.

6. Any appointment of an arbitrator by the President shall be made by him as soon as possible after receiving the application.

7. A person appointed by the President as arbitrator shall, where the arbitration relates to a holding in Wales, and any party to the arbitration so requires, be a person who possesses a knowledge of the Welsh language.

8. For the purposes of paragraph 1(2) the panel of arbitrators shall be the panel appointed by the Lord Chancellor under paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986.

9. If the arbitrator dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

⁽¹⁹⁾ 1986 c. 5.

10. No party to the arbitration shall have power to revoke the appointment of the arbitrator without the consent of the other party; and his appointment shall not be revoked by the death of any party.

11. Every appointment, application, notice, revocation and consent under the foregoing paragraphs must be in writing.

12. The remuneration of the arbitrator shall be—

- (a) where he is appointed by agreement between the parties, such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the registrar of the county court (subject to an appeal to the judge of the court) on an application made by the arbitrator or one of the parties,
- (b) where he is appointed by the President, such amount as may be agreed upon by the arbitrator and the parties or, in default of agreement, fixed by the President,

and shall be recoverable by the arbitrator as a debt due from any one of the parties to the arbitration.

Conduct of proceedings and witnesses

13. The parties to the arbitration shall, within thirty-five days from the appointment of the arbitrator, or within such further period as the arbitrator may permit, deliver to him a statement of their respective cases with all necessary particulars and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said thirty-five days except with the consent of the arbitrator,
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

14. The parties to the arbitration and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute and shall, subject to any such objection, produce before the arbitrator all samples and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

15. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbitrator.

16. Witnesses appearing at the arbitration shall, if the arbitrator thinks fit, be examined on oath or affirmation, and the arbitrator shall have power to administer oaths to, or to take the affirmation of, the parties and witnesses appearing.

17. The provisions of county court rules as to the issuing of witness summonses shall, subject to such modifications as may be prescribed by such rules, apply for the purposes of the arbitration as if it were an action or matter in the county court.

18.—(1) Subject to subparagraphs (2) and (3) below, any person who—

- (a) having been summoned in pursuance of county court rules as a witness in the arbitration refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or
- (b) having been so summoned or being present at the arbitration and being required to give evidence, refuses to be sworn or give evidence,

shall forfeit such fine as the judge of the county court may direct.

(2) A judge shall not have power under subparagraph (1) above to direct that a person shall forfeit a fine of an amount exceeding £10.

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(3) No person summoned in pursuance of county court rules as a witness in the arbitration shall forfeit a fine under this paragraph unless there has been paid or tendered to him at the time of the service of the summons such sum in respect of his expenses (including, in such cases as may be prescribed by county court rules, compensation for loss of time) as may be so prescribed for the purposes of section 55 of the County Courts Act 1984(20).

(4) The judge of the county court may at his discretion direct that the whole or any part of any such fine, after deducting costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

19.—(1) Subject to subparagraph (2) below, the judge of the county court may, if he thinks fit, upon application on affidavit by any party to the arbitration, issue an order under his hand for bringing up before the arbitrator any person (in this paragraph referred to as a “prisoner”) confined in any place under any sentence or under committal for trial or otherwise, to be examined as a witness in the arbitration.

(2) No such order shall be made with respect to a person confined under process in any civil action or matter.

(3) Subject to subparagraph (4) below, the prisoner mentioned in any such order shall be brought before the arbitrator under the same custody, and shall be dealt with in the same manner in all respects, as a prisoner required by a writ of habeas corpus to be brought before the High Court and examined there as a witness.

(4) The person having the custody of the prisoner shall not be bound to obey the order unless there is tendered to him a reasonable sum for the conveyance and maintenance of a proper officer and returning from, the place where the arbitration is held.

20. The High Court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before the arbitrator, if the prisoner is confined in any prison under process in any civil action or matter.

Award

21.—(1) Subject to subparagraph (2) below, the arbitrator shall make and sign his award within fifty-six days of his appointment.

(2) The President may from time to time enlarge the time limited for making the award, whether that time has expired or not.

(3) The arbitrator shall notify the terms of his award to the Minister within 8 days of delivery of that award.

(4) The award shall fix a date not later than one month after the delivery of the award for the payment of any costs awarded under paragraph 25 below.

22. The award shall be final and binding on the parties and the persons claiming under them respectively.

23. The arbitrator shall have power to correct in the award any clerical mistake or error arising from any accidental slip or omission.

Reasons for award

24. If requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award the arbitrator shall furnish such a statement.

(20) 1984 c. 28.

Costs

25. The costs of, and incidental to, the arbitration and award shall be in the discretion of the arbitrator who may direct to and by whom and in what manner the costs, or any part of the costs, are to be paid. The costs for the purposes of this paragraph shall include any fee paid to the President in respect of the appointment of an arbitrator and any sum paid to the Minister pursuant to paragraph 5.

26. On the application of any party, any such costs shall be taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the arbitrator under paragraph 25 above, or, in the absence of any such direction, by the county court.

27.—(1) The arbitrator shall, in awarding costs, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of amount or otherwise,
- (b) any unreasonable demand for particulars or refusal to supply particulars, and
- (c) generally all the circumstances of the case.

(2) The arbitrator may disallow the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been unnecessarily incurred.

Special case, setting aside award and remission

28. The arbitrator may, at any stage of the proceedings, and shall, upon a direction in that behalf given by the judge of the county court upon an application made by any party, state in the form of a special case for the opinion of the county court any question of law arising in the course of the arbitration and any question as to the jurisdiction of the arbitrator.

29.—(1) Where the arbitrator has misconducted himself, the county court may remove him.

(2) Where the arbitrator has misconducted himself, or an arbitration or award has been improperly procured, or there is an error of law on the face of the award, the county court may set the award aside.

30.—(1) The county court may from time to time remit the award, or any part of the award, to the reconsideration of the arbitrator.

(2) In any case where it appears to the county court that there is an error of law on the face of the award, the court may, instead of exercising its power of remission under subparagraph (1) above, vary the award by substituting for so much of it as is affected by the error such award as the court considers that it would have been proper for the arbitrator to make in the circumstances; and the award shall thereupon have effect as so varied.

(3) Where remission is ordered under that subparagraph, the arbitrator shall, unless the order otherwise directs, make and sign his award within thirty days after the date of the order.

(4) If the county court is satisfied that the time limited for making the said award is for any good reason insufficient, the court may extend or further extend that time for such period as it thinks proper.

Miscellaneous

31. Any amount paid, in respect of the remuneration of the arbitrator by any party to the arbitration, in excess of the amount, if any, directed by the award to be paid by him in respect of costs of the award shall be recoverable from the other party or jointly from the other parties.

32. For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment;

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and in the case of any such arbitrator the periods mentioned in paragraphs 13 and 21 above shall accordingly run from that time.

33. Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraphs 1, 2, 6, 7, 12 or 21 above and to be signed by or on behalf of the President shall be taken to be such an instrument or document unless the contrary is shown.

34. The Arbitration Act 1950(21) shall not apply to an arbitration determined in accordance with this Schedule.

SCHEDULE 5

Regulations 11, 12, 13 and 14

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR SCOTTISH LAND COURT—SCOTLAND

PART I

GENERAL

1.—(1) Subject to subparagraphs (2) and (3) below, all apportionments and prospective apportionments in respect of holdings in Scotland shall be carried out by arbitration and the provisions of Part II of this Schedule shall apply.

(2) The Scottish Land Court shall carry out the apportionment or prospective apportionment where the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted—

- (a) a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1955(22);
- (b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911(23); or
- (c) the holding of a statutory small tenant under section 32 of the Small Landholders (Scotland) Act 1911.

(3) Where subparagraph (2) above does not apply and the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1949(24), the Scottish Land Court shall carry out the apportionment or prospective apportionment if requested to do so by a joint application of all parties interested in the apportionment, made within the period of two months referred to in regulation 8(1)(a).

(4) Where the Scottish Land Court carries out any apportionment or prospective apportionment, Part III of this Schedule shall apply.

2. An arbiter or the Scottish Land Court, as the case may be, shall decide the apportionment on the basis of findings made as to areas used for milk production in the five years preceding the change of occupation or, in the case of a prospective apportionment, in the five years preceding the appointment of the arbiter or the application to the Scottish Land Court.

(21) 1950 c. 27, to which there are amendments not relevant to these Regulations.

(22) 1955 c. 21; section 3(1) was amended by The Crofters (Scotland) Act 1961 (c. 58), Schedule 1, Part II, paragraph 9.

(23) 1911 c. 49.

(24) 1949 c. 75.

PART II

APPORTIONMENTS CARRIED OUT BY ARBITRATION

Appointment and remuneration of arbiter

3.—(1) In any case where the apportionment is to be carried out by arbitration, an arbiter shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 8(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbiter within fourteen days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the Minister for the appointment of an arbiter.

(3) If at the expiry of the relevant period an arbiter has not been appointed by agreement between the transferor and the transferee nor an application made to the Minister under subparagraph (2) above, the Minister shall at his own instance proceed to appoint an arbiter.

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbiter shall be appointed by agreement between the occupier and any other interested party or, in default, by the Minister on an application by the occupier.

(2) Where an arbiter is appointed by agreement in terms of subparagraph (1) above, the occupier shall notify the Minister in writing of the appointment of the arbiter within fourteen days from the date of the appointment.

5.—(1) Where, in terms of a notice given by the Minister under regulation 14, an apportionment or prospective apportionment is to be carried out by arbitration, the Minister shall apply to the Scottish Land Court for the appointment of an arbiter.

(2) Any fee payable by the Minister on an application to the Scottish Land Court under subparagraph (1) above shall be recoverable by him as a debt due from the other parties to the arbitration jointly or severally.

(3) Where the Minister is to be a party to an arbitration (otherwise than in terms of a notice given under regulation 14), the arbiter shall, in lieu of being appointed by the Minister, be appointed by the Scottish Land Court.

6. If the person appointed arbiter dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbiter may be appointed as if no arbiter had been appointed.

7. No party to the arbitration shall have power to revoke the appointment of the arbiter without the consent of all other parties.

8. Every appointment, application, notice, revocation and consent under the foregoing paragraphs must be in writing.

9. The remuneration of the arbiter shall be—

(a) where he is appointed by agreement between the parties, such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the auditor of the sheriff court (subject to an appeal to the sheriff) on an application made by the arbiter or one of the parties;

(b) where he is appointed by the Minister, such amount as may be fixed by the Minister;

(c) where he is appointed by the Scottish Land Court, such amount as may be fixed by that Court;

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and shall be recoverable by the arbiter as a debt due from any one of the parties to the arbitration.

Conduct of proceedings and witnesses

10. The parties to the arbitration shall within twenty-eight days from the appointment of the arbiter deliver to him a statement of their respective cases with all necessary particulars; and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said twenty-eight days except with the consent of the arbiter;
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

11. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbiter may require.

12. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter. The Minister may make such representations where the arbitration follows on a notice given by him under regulation 11.

13. The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

Award

14.—(1) The arbiter shall make and sign his award within three months of his appointment or within such longer period as may, either before or after the expiry of the aforesaid period, be agreed to in writing by the parties or fixed by the Minister.

(2) The arbiter shall notify the terms of his award to the Minister within 8 days of the delivery of that award.

(3) The award shall fix a date not later than one month after the delivery of the award for the payment of any expenses awarded under paragraph 17 below.

15. The award to be made by the arbiter shall be final and binding on the parties and the persons claiming under them respectively.

16. The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

Expenses

17. The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the sheriff court on the application of any party, but that taxation shall be subject to review by the sheriff.

18.—(1) The arbiter shall, in awarding expenses, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of amount or otherwise;
- (b) any unreasonable demand for particulars or refusal to supply particulars; and
- (c) generally all the circumstances of the case.

(2) The arbiter may disallow the expenses of any witness whom he considers to have been called unnecessarily and any other expenses which he considers to have been incurred unnecessarily.

19. It shall not be lawful to include in the expenses of and incidental to the arbitration and award, or to charge against any of the parties, any sum payable in respect of remuneration or expenses to any person appointed by the arbiter to act as clerk or otherwise to assist him in the arbitration unless such appointment was made after submission of the claim and answers to the arbiter and with either the consent of the parties to the arbitration or the sanction of the sheriff.

Statement of case

20. The arbiter may at any stage of the proceedings, and shall, if so directed by the sheriff (which direction may be given on the application of any party), state a case for the opinion of the sheriff on any questions of law arising in the course of the arbitration. The opinion of the sheriff on any case shall be final.

Removal of arbiter and setting aside of award

21. Where an arbiter has misconducted himself the sheriff may remove him.

22. When an arbiter has misconducted himself, or an arbitration or award has been improperly procured, the sheriff may set the award aside.

Miscellaneous

23. Any amount paid in respect of the remuneration of the arbiter by any party to the arbitration in excess of the amount, if any, directed by the award to be paid by him in respect of the expenses of the award shall be recoverable from the other party or jointly from the other parties.

24. The Arbitration (Scotland) Act 1894(25) shall not apply to any arbitration carried out under this Schedule.

PART III

APPORTIONMENTS CARRIED OUT BY THE SCOTTISH LAND COURT

25. The provisions of the Small Landholders (Scotland) Acts 1886 to 1931 with regard to the Scottish Land Court shall, with any necessary modifications, apply for the purpose of the determination of any matter which they are required, in terms of paragraph 1 of this Schedule, to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under those Acts.

26. Where an apportionment or prospective apportionment is to be dealt with by the Scottish Land Court, the party making application to that Court shall notify the Minister in writing of the application within fourteen days of its being lodged with the Court.

27. Where, in terms of a notice given by the Minister under regulation 14, an apportionment or prospective apportionment is to be carried out by the Scottish Land Court, any fee payable by the Minister to the Court shall be recoverable by him as a debt due from the other parties to the case jointly or severally.

28. Any person having an interest in the holding to which the apportionment or prospective apportionment relates shall be entitled to be a party to the proceedings before the Scottish Land

(25) 1894 c. 13 (57 and 58 Vict.).

Court. The Minister shall be entitled to be a party where the apportionment follows on a notice given by him under regulation 14.

SCHEDULE 6

Regulations 11, 12, 13 and 14

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION—NORTHERN IRELAND

1. Paragraphs 3 to 18 below shall apply to every arbitration in Northern Ireland.

2.—(1) The Arbitration Act (Northern Ireland) 1937⁽²⁶⁾ shall, except insofar as it is inconsistent with paragraphs 3 to 18 below, apply to every arbitration in Northern Ireland as if that arbitration were pursuant to an arbitration agreement and as if paragraphs 3 to 17 below were contained in an arbitration agreement.

(2) In this paragraph “arbitration agreement” has the same meaning as in section 30 of the Arbitration Act (Northern Ireland) 1937.

Appointment of arbitrator

3.—(1) In any case where an apportionment is to be carried out by arbitration an arbitrator shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 8(1)(a) (referred to in this paragraph as “the relevant period”) and the appointment of the arbitrator within 14 days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the President of the Law Society of Northern Ireland (referred to in this Schedule as “the President”) for the appointment of an arbitrator and the person who makes such an application to the President shall notify the Minister in writing of that fact within fourteen days from the date of the application.

(3) If at the expiry of the relevant period an arbitrator has not been appointed by agreement between the transferor and the transferee nor an application made to the President under subparagraph (2) above, the Minister shall make an application to the President for the appointment of an arbitrator.

(4) Where the Minister gives a notice in accordance with regulation 14 he shall make an application to the President for the appointment of an arbitrator and the Minister shall be a party to the arbitration.

4.—(1) In any case where a prospective apportionment is to be made by arbitration an arbitrator shall be appointed—

- (a) where regulation 14 applies, by the President;
- (b) in any other case, by agreement between the occupier and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where subparagraph (1)(b) above applies, the occupier shall notify the Minister in writing of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator, within fourteen days from the date of the appointment of the arbitrator or the date of the application to the President, as appropriate.

5. An arbitrator appointed in accordance with paragraphs 1, 3 and 4 above shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to

(26) 1937 c. 8 (N.I.).

areas used for milk production in the five years preceding the change of occupation, or in the case of a prospective apportionment in the five years preceding the arbitration.

6. No application may be made to the President for an arbitrator to be appointed by him under this Schedule unless the application is accompanied by the fee which shall be £50 for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).

7. Where the Minister makes an application to the President under paragraphs 3(3) or (4) above, the fee payable to the President in respect of that application referred to in paragraph 6 above shall be recoverable by the Minister as a debt due from the parties to the arbitration jointly or severally.

8. Any appointment of an arbitrator by the President shall be made by him within fourteen days after receiving the application.

9. If the arbitrator dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

10. A party to the arbitration shall have power to revoke the appointment of the arbitrator with the consent of all other parties.

11. Every appointment, application, notice, revocation and consent under the foregoing paragraphs shall be in writing.

Statement of case

12. The parties to the arbitration shall, within thirty-five days from the appointment of the arbitrator, deliver to him a statement of their respective cases with all necessary particulars and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said thirty-five days except with the consent of the arbitrator;
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

Award

13. The arbitrator shall make and sign his award within fifty-six days of his appointment.

14. The arbitrator shall notify the terms of his award to the Minister within 8 days of the delivery of that award.

15. The arbitrator shall have power to correct in the award any clerical mistake or error arising from any accidental slip or omission.

Reasons for award

16. If requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award the arbitrator shall furnish such a statement.

17. For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment; and in the case of any such arbitrator the periods mentioned in paragraphs 12 and 13 above shall run from that time.

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18. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representation to the arbitrator.

SCHEDULE 7

Regulation 20

CONVERSION OF DIRECT SALES QUOTA AND WHOLESALE QUOTA

1. An applicant for the conversion of direct sales quota into wholesale quota or wholesale quota into direct sales quota in respect of a quota year who has both wholesale quota and direct sales quota shall submit his application to the Minister no later than a date to be determined by the Minister in respect of each quota year and published in the Gazette.

2. An application referred to in paragraph 1 shall, in respect of the quota year concerned—

- (a) state the amount of the applicant's direct sales quota and wholesale quota, his direct sales and wholesale deliveries of dairy produce, and
- (b) provide such other information as may reasonably be required to be provided in order to enable the Minister to assess the factors referred to in Article 6a of Council Regulation 857/84.

3. The Minister shall calculate the amount of the applicant's direct sales quota or wholesale quota which has not been used in that quota year and which the applicant has available for conversion into wholesale quota or direct sales quota, as the case may be.

4. The Minister shall convert into wholesale quota or direct sales quota, as the case may be, the total amount of direct sales quota or wholesale quota which has not been used in that quota year and which applicants have applied to convert.

SCHEDULE 8

Regulation 21

CALCULATION OF LEVY LIABILITY

Wholesale quota

1. The Minister shall determine the amount, if any, by which the wholesale deliveries of dairy produce to each purchaser exceeds its total purchaser quota after having completed in sequence the steps required by paragraphs 3 to 8.

2. The Minister shall determine the amount of levy to be paid by each purchaser by multiplying the amount, if any, referred to in paragraph 1, by the rate of levy established in accordance with Article 1 of Council Regulation 857/84.

3. The Minister shall determine the amount, if any, by which the quantity of wholesale deliveries of dairy produce to each purchaser must be adjusted to take account of its fat content, calculated in accordance with article 12(2) of the Commission Regulation.

4. The Minister shall determine for each purchaser the amount, if any, taking into account the amount of quota converted in accordance with Schedule 7, by which the purchaser quota of each purchaser exceeds or falls short of the quantity of wholesale deliveries of dairy produce made to it, and where the purchaser operates in more than one region shall make a determination in respect of each such region.

5. The Minister may, at the request of a purchaser which—

- (a) operates in more than one region; and
- (b) has an excess of purchaser quota in relation to the quantity of wholesale deliveries made to it in one region but a shortfall of such quota in another region,

reallocate the excess quota to the region where the shortfall exists, to the extent necessary to offset the purchaser's potential liability to levy.

6. The Minister shall—

- (a) determine the amount, if any, of excess purchaser quota remaining for each purchaser in each region after the determination in paragraph 4 and any reallocation in accordance with paragraph 5 have been made;
- (b) determine the total of all such amounts in each region.

7. The Minister shall reallocate the amount, if any, referred to in paragraph 6(b) among purchasers within that region in proportion to the amount by which the quantity of wholesale deliveries of dairy produce made to them adjusted to take account of its fat content exceeds the purchaser quota of each such purchaser.

8. The Minister shall determine the amount, if any, by which the purchaser quota of all purchasers in each region exceeds the total quantity of wholesale deliveries of dairy produce made to them, and shall reallocate such amount among purchasers in regions in which the wholesale deliveries exceed the sum of purchaser quotas available, in proportion to the amount by which the wholesale deliveries made to each purchaser exceeds its purchaser quota.

Direct sales quota

9. The Minister shall determine the amount, if any, by which the direct sales quota of all direct sellers, after taking into account the amount of quota converted in accordance with Schedule 7, falls short of the total quantity of dairy produce sold by direct sales by them.

10. The Minister shall determine for each direct seller the amount, if any, taking into account the amount of quota converted in accordance with Schedule 7, by which his direct sales quota falls short of the quantity of dairy produce sold by direct sale by him.

11. The Minister shall determine the aggregate of the amounts, if any, referred to in paragraph 10.

12. The Minister shall determine the total amount of levy payable by multiplying the amount, if any, referred to in paragraph 9 by the rate of levy calculated in accordance with Article 11 of Council Regulation 857/84.

13. The Minister shall calculate the rate of levy per litre, if any, to be paid by each direct seller on the amount, if any, at paragraph 10 by dividing the amount calculated in accordance with paragraph 12 by the aggregate referred to in paragraph 11.

14. Where a direct seller fails to notify the Minister within two months of the end of the quota year of the total quantity of milk or milk products sold by him by direct sales in that year, the Minister may require that rate of levy per litre, to be paid by that direct seller on the quantity not notified shall be the rate calculated in accordance with Article 1 of Council Regulation 857/84.

SCHEDULE 9

Regulation 24

ADDITIONAL MILK PRODUCTS

1. The Minister shall award quota under regulation 24 to a producer whose application for such quota is received by the Minister on or before 11th November 1991.

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Primary quota

2. The Minister shall award quota (in this Schedule called “primary quota” to a producer who made sales of additional milk products in the calendar year 1990.

3.—(1) The amount of primary quota shall be 90 per cent of the quantity (in this paragraph called “the base quantity”) of additional milk products sold by the producer determined by the Minister in accordance with the following provisions of this paragraph.

(2) The base quantity shall be, for each producer, the quantity of all additional milk products made from milk produced on his holding, and sold by him in one of the calendar years 1988, 1989 or 1990, whichever quantity is, in the opinion of the Minister, the greatest.

(3) In determining the base quantity, the Minister shall take into account of evidence provided by the producer as to the quantities referred to in subparagraph (2) above.

Secondary quota

4. The Minister shall establish from the national direct sales reserve an additional milk products development provision for the purpose of meeting awards of quota made under paragraph 5, and shall publish in the Gazette the amount of quota comprising that provision.

5. The Minister shall award quota (in this Schedule called “secondary quota”) from the additional milk products development provision in accordance with paragraphs 6 to 8 to a producer who before 1st March 1991—

- (a) had expended money or had entered into a contract to expend money to establish, expand or improve facilities available to him for the production or increased production of additional milk products from milk produced on his holding; or
- (b) had expended money or had entered into a contract to expend money to establish, expand or improve facilities available to him for the production or increased production from his own dairy enterprise of milk for the manufacture of additional milk products, and—
 - (i) had available facilities for the production of additional milk products from the extra volume of milk to be produced, or
 - (ii) had expended money or entered into a contract to expend money to establish such facilities for production, or
 - (iii) had entered into a contract for the production on his behalf of additional milk products from the extra volume of milk to be produced.

6.—(1) For the purposes of an award of secondary quota under paragraph 5, the Tribunal shall determine in respect of each producer—

- (a) the quantity of additional milk products made from milk produced on his holding that might reasonably be expected to be produced annually using—
 - (i) the facilities available to the producer on 28th February 1991, and
 - (ii) the additional facilities expected to be available to the producer on 31st March 1992 by virtue of money expended or a contract entered into as mentioned in paragraph 5(a) and (b) before 1st March 1991;
- (b) the quantity of the additional milk products referred to in subparagraph (a) that might reasonably be expected to be sold by direct sale by the producer annually.

(2) In making the determination referred to in subparagraph 1(b) the Tribunal shall have regard to the producer’s established pattern of sales of additional milk products and to the producer’s commitment to supply such products.

(3) For the purposes of an award of secondary quota, the Tribunal may also determine in respect of each producer—

the quantity, or a part of the quantity, by which the sum of the producer's wholesale and direct sales quota (other than any primary quota awarded under paragraph 2), taking account of any wholesale and direct sales quota permanently or temporarily transferred by or to him since 28th February 1991, exceeds the quantity of the dairy produce other than additional milk products which that producer may be expected to sell by direct sale or deliver to a purchaser in the quota year ending on 31st March 1992,

if in the Tribunal's opinion it is fair and reasonable that such a quantity or a part of a quantity should be taken into account in making the award.

7. The Tribunal shall send to the Minister and to the producer a notification of its determination and a written statement of the reasons for that determination.

8. The Minister shall—

(a) in respect of each determination made by the Tribunal under paragraph 6, deduct from the quantity referred to in paragraph 6(1)(b) the base quantity in respect of which any primary quota is awarded to the producer and the quantity or part of a quantity, if any, referred to in paragraph 6(3);

(b) aggregate the quantities resulting from the calculations made under sub-paragraph (a) above in respect of all the producers who made applications in accordance with paragraph 1.

(a) (a) If the aggregate determined under paragraph 8(b) exceeds the additional milk products development provision established under paragraph 4, the quota awarded to each producer under paragraph 5 shall be calculated by multiplying the quantity calculated under paragraph 8(a) relating to that producer by a fraction the numerator of which shall be the additional milk products development provision and the denominator of which shall be that aggregate.

(b) If the said aggregate does not exceed the additional milk products development provision, the quota awarded to each producer under paragraph 5 shall represent 79.8 per cent of the quantity calculated under paragraph 8(a) relating to that producer, and any unallocated part of the additional milk products development provision shall be returned to the national direct sales reserve.

The Register

10. The Minister shall amend the direct sales register which is required to be maintained by regulation 28(1) of these Regulations so as to record the awards made under paragraphs 2 and 5 and shall inform each producer to whom an award relates in writing of that award.

Interpretation

11. In this Schedule—

(a) "quota" means direct sales quota, unless the context otherwise requires;

(b) "facilities" includes buildings, plant and equipment used for dairying purposes or for the manufacture of additional milk products but does not include land or cows; and

(c) a reference to a quantity of additional milk products shall be taken to be a reference to the quantity of milk expressed in kilograms or litres (one kilogram being 0.97116 litres of milk), required to produce the additional milk products in question.

SCHEDULE 10

Regulation 35

DAIRY PRODUCE QUOTA TRIBUNALS

PART 1

DAIRY PRODUCE QUOTA TRIBUNALS (OTHER THAN FOR SCOTLAND)

1. Each Dairy Produce Quota Tribunal shall consist of up to ninety members appointed by the Minister. The Minister shall designate one of the members of each Tribunal as the Chairman of that Tribunal and may, if he thinks fit, designate another member as the Deputy Chairman.
2. The quorum for any determination by a Dairy Produce Quota Tribunal shall be three.
3. Any determination to be made by a Dairy Produce Quota Tribunal shall be made by a majority.
4. Each Dairy Produce Quota Tribunal may be serviced by a Secretary and such other staff as the Minister may appoint.
5. Any document purporting to be signed by the Chairman or Deputy Chairman of, or the Secretary to, a Dairy Produce Quota Tribunal and purporting to state a determination (or guidance) of the Dairy Produce Quota Tribunal shall in any proceedings be evidence of such a determination (or such guidance).
6. The terms of appointment and the remuneration of the members, Secretary and other staff of a Dairy Produce Quota Tribunal shall be determined by the Minister.
7. Except as otherwise provided in these Regulations, the procedure of a Dairy Produce Quota Tribunal shall be such as the Chairman, or, in the absence of the Chairman, the Deputy Chairman, shall in his discretion determine.

PART II

THE DAIRY PRODUCE QUOTA TRIBUNAL FOR SCOTLAND

8. The Dairy Produce Quota Tribunal shall consist of up to twenty members appointed by the Minister.
9. The Dairy Produce Quota Tribunal shall sit in separate panels, and a determination of any such panel shall be treated as the determination of the Tribunal for the purpose of these Regulations.
10. Each panel constituted under paragraph 9 shall choose their own Chairman.
11. The quorum for any determination by the Dairy Produce Quota Tribunal shall be three.
12. Any determination to be made by the Dairy Produce Quota Tribunal shall be made by a majority.
13. Each panel constituted under paragraph 9 shall be serviced by a Secretary and such other staff as the Minister may appoint.
14. Any document purporting to be signed by the Chairman of, or the Secretary to, a panel constituted under paragraph 9 and purporting to state a determination of the Dairy Produce Quota Tribunal shall in any proceedings be evidence of such a determination.
15. The terms of appointment and the remuneration of—
 - (a) the members of the Dairy Produce Quota Tribunal, and

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(b) the Secretary and other staff of a panel constituted under paragraph 9 shall be determined by the Minister.

16. Except as otherwise provided in these Regulations, the procedure of a panel constituted under paragraph 9 shall be such as their Chairman shall in his discretion determine.

17. A panel constituted under paragraph 9 may consult with any person whom the panel consider to be capable of assisting them in reaching their determination and, in the event of such consultation, the applicant whose special case claim is being examined by the panel shall be afforded the opportunity to comment, before the panel reach their determination, on any advice given by that person.

PART III

GENERAL

18. The Dairy Produce Quota Tribunals for England and Wales, Scotland and Northern Ireland shall, if so required by the Ministers, issue a joint written statement of general guidance in respect of the criteria to be used in reaching any determination in relation to direct sales quota, and each Dairy Produce Quota Tribunal shall make its determinations in accordance with those criteria.

SCHEDULE 11

Regulation 36

REVOCATIONS

Regulations revoked	References
The Dairy Produce Quotas Regulations 1989	S.I. 1989/380
The Dairy Produce Quotas (Amendment) Regulations 1990	S.I. 1990/132
The Dairy Produce Quotas (Amendment) (No. 2) Regulations 1990	S.I. 1990/664
The Dairy Produce Quotas (Amendment) (No. 3) Regulations 1990	S.I. 1990/784
The Dairy Produce Quotas (Amendment) Regulations 1991	S.I. 1991/832

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate with amendments the Dairy Produce Quotas Regulations 1989 as amended. The Regulations implement in the United Kingdom—

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- (a) article 5c of Council Regulation (EEC) No. 804/68,
- (b) Council Regulation (EEC) No. 857/84, and
- (c) Commission Regulation (EEC) No. 1546/88,

which are referred to as “the Community legislation” in the Regulations (regulation 2 and Schedules 1, 2 and 3). Under the Community legislation, a levy is chargeable on dairy produce sold by direct sale by a producer or delivered by him wholesale to a dairy business, unless the sales or deliveries are within a reference quantity described in that legislation. The Community legislation establishes the system of what are commonly called “milk quotas” and in these Regulations the term “quota” is used to refer to the reference quantities described in the Community legislation.

The principal change introduced by these Regulations is provision for the award of quota to producers making sales of dairy produce other than milk, butter, cream or cheese (for example, yogurt and ice cream), for which quota has not previously been established (regulation 24 and Schedule 9). This provision gives effect to Council Regulation (EEC) No. 306/91 (OJ No. L37, 9.2.91, p. 4) amending the definition of “other milk products” in Article 12 of Council Regulation (EEC) No. 857/84. Applications from producers for awards of quota were invited before the coming into force of these Regulations and the provision establishes 11th November 1991 as the date by which applications must be made. Criteria for entitlement to quota are set out in Schedule 9. Awards will be made of “primary quota” and “secondary quota”; the former will be granted to established producers and the latter to producers who can show that by 1st March 1991 they were committed to developing their production. Secondary quota awards will be based on determinations made by the Dairy Produce Quota Tribunals.

Apart from minor and drafting amendments, the following changes have also been made by these Regulations:

- (a) provisions concerning *inter alia* recent awards of quota, which are now spent, have been omitted;
- (b) more detailed provision has been made concerning the adjustment of purchaser quotas following changes in deliveries made by producers (regulation 7) and consequential amendments have been made to the requirements for registering wholesale quota (regulation 28);
- (c) the date for notifying temporary transfers of quota has been omitted (regulation 17);
- (d) interest is made payable on amounts of levy not paid to the Intervention Board for Agricultural Produce on the due date (regulation 23);
- (e) the level of fine applicable under the Regulations is linked to the standard scale (regulation 34);
- (f) provision is made for the terms of awards, where the apportionment of quota is determined by arbitration, to be notified to the Minister (Schedules 4, 5 and 6);
- (g) the provisions concerning the conversion of direct sales quota into wholesale quota and vice versa are simplified (Schedule 7);
- (h) the provisions concerning the calculation of liability for levy are amended so as to preclude direct sellers who do not submit their sales declarations by the due date from benefiting from unused quota of other producers (Schedule 8);
- (i) provision is made for the appointment of a Deputy Chairman of the Dairy Produce Quota Tribunals for England and Wales and for Northern Ireland (Schedule 10).