STATUTORY INSTRUMENTS

1990 No. 132

FOOD

The Dairy Produce Quotas (Amendment) Regulations 1990

Made - - - -	*30th January 1990*
Laid before Parliament	*31st January 1990*
Coming into force	*21st February 1990*

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy of the European Economic Community, acting jointly, in exercise of 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 (Amendment) Regulations 1990, and shall come into force on 21st February 1990.

Interpretation

2. In these Regulations "the principal Regulations" means the Dairy Produce Quotas Regulations 1989(**c**).

Amendment of the principal Regulations

3. The principal Regulations shall be amended in accordance with the following provisions of these Regulations.

Definitions

4. In regulation 2(1) of the principal Regulations –

(a) before the definition of "Commission Regulation" there shall be inserted the definition: ""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;";

(b) after the definition of "Commission Regulation" there shall be inserted the definition: ""Community reserve" has the meaning assigned to it by Article 5c(4) of Council Regulation 804/68;";

(**a**) S.I. 1972/1811.
(**b**) 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.
(**c**) S.I. 1989/380.

(c) after the definition of "Council Regulation 857/84" there shall be inserted the definition: ""Council Regulation 775/87" means Council Regulation (EEC) No. 775/87(a) temporarily withdrawing a proportion of the reference quantity mentioned in Article 5c (1) of Council Regulation 804/68;";

(d) after the definition of "purchaser quota" there shall be inserted the definition: ""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;";

(e) at the end of the definition of "replacement number" there shall be added "and where 22 per cent of the total number is halfway between two integers the nearest even integer shall be deemed to be the nearest integer";

(f) after the definition of "secondary wholesale quota" there shall be inserted the definition: ""special quota" means the special reference quantity awarded under Article 3a of Council Regulation 857/84;";

(g) at the end of the definition of "wholesale quota" there shall be added the following proviso: "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".

Regions

5.—(1) In regulation 7(2) of the principal Regulations before the word "where" there shall be inserted "Subject to paragraph (2A),".

(2) After the said regulation 7(2) there shall be inserted the following paragraph–

"(2A) 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.".

Transfer of quota

6.—(1) For paragraph (e) of regulation 9(7) of the principal Regulations the following paragraph shall be substituted–

"(e) the termination of a tenancy or lease to which sub-paragraph (b), (c) or (d) applies."

(2) Paragraph (f) of the said regulation 9(7) shall be omitted.

(3) After the said regulation 9(7) there shall be inserted the following paragraphs–

"(8) Paragraphs (1), (5)(a), (6) and (7) of this regulation shall not apply in relation to the special quota.

(9) The words "Notwithstanding paragraph (1) above" in paragraph (2) of this regulation shall not apply in relation to its application to the special quota.".

Effect of land transfers on special quota

7. After regulation 9 of the principal Regulations there shall be inserted–

"Effect of land transfers on special quota

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

(a) that special quota shall be returned to the Community reserve if the holding is sold or leased by the producer; and

(b) a proportion of that special quota shall be returned to the Community 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 Community 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.

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

(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.

Exempt Transfers

9B. No part of the special quota shall be returned to the Community 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(**a**) (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),

(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 a holding or part of a holding

9C.—(1) Subject to regulation 9B 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 9B 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

8. In regulation 10 of the principal Regulations–

(a) after the word "regulations" there shall be inserted "9A, 10A,",

(b) in paragraph (a)(iii) after the word "notice" there shall be inserted: "provided by the transferor or his personal representative",

(c) at the end of paragraph (a) there shall be substituted for "that agreement" the words "the agreement specified in sub-paragraph (ii)".

Apportionment of special quota

9. After regulation 10 of the principal Regulations there shall be inserted the following regulation–

(**a**) 1986 c.5.

"**Apportionment of special quota**

10A. Where there is a transfer of part of a holding under regulation 9B, 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 9C(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 a 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 sub-paragraph (ii),

(b) in all other cases–

(i) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 4 and 6,

(ii) in Scotland in accordance with Schedule 5.".

Notification by the Minister of apportionment of quota by arbitration

10. In regulation 12 of the principal Regulations for the words "regulation 10(a)(ii) or 11(1)(c)(i) he shall give notice of this fact in writing to the person who made the statement " the following shall be substituted–

"regulation 9c, 10(a)(ii) or 11(1)(c)(i) or the Minister has reasonable grounds for believing 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".

Quota exchange

11. At the beginning of regulation 14 of the principal Regulations there shall be inserted "(1)" and at the end of that regulation there shall be added–

"(2) This regulation shall not apply in relation to the special quota.".

Management of quota

12. In paragraph (1) of regulation 15 of the principal Regulations for the words "may make a temporary transfer within one region of part of the wholesale quota registered as his to another producer for a period of one quota year" there shall be substituted–

"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".

Avoidance of levy

13. After regulation 19 of the principal Regulations there shall be inserted the following regulation–

"**Avoidance of levy**

19A.—(1) Subject to sub-paragraph (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) Sub-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.".

Registers to be prepared and maintained by the Minister

14. In regulation 25 of the principal Regulations–

(a) at the end of paragraph 1(a)(ii) the word "and" shall be omitted;

(b) after paragraph (1)(a)(ii) the following paragraph shall be inserted:
"(iia) the total amount of direct sales quota awarded or transferred to him as special quota, and";

(c) after paragraph (2)(a)(ii) the following paragraph shall be inserted–
"(iia) the total amount of wholesale quota awarded or transferred to him as special quota,";

(d) at the end of paragraph (3)(a)(ii) the word "and" shall be omitted–

(e) at the end of paragraph (3)(a)(iii) there shall be inserted the word "and"; and

(f) after paragraph (3)(a)(iii) there shall be inserted–
"(iv) his purchaser special quota.".

Amendment of Schedules

15.—(1) For Schedules 1, 2 and 3 to the principal Regulations there shall be substituted the provisions set out in the Schedule to these Regulations.

(2) In paragraph 20 of Schedule 4 to the principal Regulations "ad testificandum" shall be substituted for "and testificandum".

(3) In paragraph 1(a) of Schedule 8 to the principal Regulations "Article 12(1)" shall be substituted for "paragraph 12(1)".

(4) In paragraph 10 of Schedule 8 to the principal Regulations the words "direct each purchaser to" shall be omitted.

(5) In paragraph 14 of Schedule 8 to the principal Regulations "Schedule" shall be substituted for "regulation".

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 29th January 1990.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

Sanderson of Bowden
Minister of State, Scottish Office

30th January 1990

SCHEDULE

"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(1) 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 7a
763/89	L84, 29.3.89, p.1	5c(6)
3879/89	L378, 27.12.89, p.1	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

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
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 12(c)
1343/86	L119, 8.5.86, p.34	2(3) 4(1)(a) 4a(1) 6(4) 9(1), 9(4) Annex
1911/86	L165, 21.6.86, p.6	2 6(1)
2316/86	L202, 25.7.86, p.3	2(1), 2(2) 3 6(1)
774/87	L78, 20.3.87, p.3	1(1) 4a(1), 4a(3(a)) 9(4) 10
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)

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)
215/89	L25, 28.1.89, p.72	1
1033/89	L110, 21.4.89, p.27	1 3a 7a 9(1)(a) 12 14(1)(b) 19(4)
3835/89	L372, 21.12.89, p.27	1"

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Dairy Produce Quotas Regulations 1989 ("the principal Regulations").

The Regulations provide for the detailed implementation in the United Kingdom of Council Regulation (EEC) No. 764/89, which enabled qualifying producers who participated in the Non-Marketing of Milk or Dairy Herd Conversion Schemes to apply for the allocation of special quota. The principal new provisions are as follows:–

(a) the additional regional wholesale quota allocated to a region in the form of special quota will not create or be added to the running regional wholesale reserve for that region (regulation 5);

(b) the operation of the normal transfer rules is excluded in respect of the special quota (regulation 6);

(c) the method of calculating the porportion of the special quota which will be returned to the Community reserve when land is transferred on sale or lease is specified (regulation 7);

(d) transfers of land which do not require any part of the special quota to be returned to the Commission reserve are defined (regulation 7);

(e) requirements for notification to the Minister by the holder of special quota where land is to be transferred are specified (regulation 7);

(f) rules are provided for the apportionment of special quota where land is transferred by means of inheritance or any similar transaction (regulation 9);

(g) special quota is exempted from the rules relating to quota exchange (regulation 11);

(h) separate entries in the quota register are required for the special quota in addition to its inclusion in the entries for total wholesale quota and total direct sales quota (regulation 14).

In addition to making clarifying amendments, the Regulations amend the rules contained in the principal Regulations relating to temporary transfers of quota, so as to prohibit temporary transfers of quota from one producer to a producer who makes deliveries to a different purchaser (regulation 12). Transfers in Scotland of small areas of land constituting part of a holding and held on a short lease are no longer exempted from the rules relating to transfer of quota (regulation 6).

Rules are introduced concerning the use by a producer of another producer's quota. Where milk has already been sold or delivered by a producer and in the same quota year another producer makes sales or deliveries from the same cows he will be deemed to be acting as agent for the first producer. Exemptions are provided for cases where the cows have been sold or leased by the second producer and are kept on his holding (regulation 13).