

2008 No. 685 (W.72)

FOOD, WALES

**The Dairy Produce Quotas (Wales)
(Amendment) Regulations 2008**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1 April 2008, amend the Dairy Produce Quotas (Wales) Regulations 2005, S.I. 2005/537 (W.47) (“the 2005 Regulations”).

The 2005 Regulations implement Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector (OJ No. L270, 21.10.2003, p. 123) and Commission Regulation (EC) No. 595/2004 laying down detailed rules for applying Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector (OJ No. L94, 31.3.2004, p. 22).

Council Regulation (EC) No. 1788/2003 is repealed on 1 April 2008 and replaced by Articles 55(1)(a) and 55(2), in so far as it relates to milk and other milk products, and Section III of Chapter III of Part II (Articles 65 to 84) of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ No. L299, 16.11.2007, p. 1).

These Regulations replace the references in the 2005 Regulations to the provisions of the Council Regulation (EC) No. 1788/2003 with the corresponding references to the provisions of Council Regulation (EC) No. 1234/2007. These Regulations also re-enact the definitions in regulation 2(1) of the 2005 Regulations and add a new regulation 2(1A) which provides that the references to certain provisions of Council Regulation (EC) No. 1234/2007 and references to Commission Regulation (EC) No. 595/2004 are references to those provisions and to that Commission Regulation as amended from time to time.

A regulatory impact assessment has not been produced for this instrument.

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**The Dairy Produce Quotas (Wales)
(Amendment) Regulations 2008**

Made *10 March 2008*

Laid before the National Assembly for Wales

11 March 2008

Coming into force *1 April 2008*

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for—

- (a) the references in these Regulations to—
 - (i) Article 55(1)(a),
 - (ii) Article 55(2), in so far as it relates to milk and other milk products, and
 - (iii) the provisions of, or referred to in, Section III of Chapter III of Part II, of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)⁽³⁾; and
- (b) the references in these Regulations to Commission Regulation (EC) No. 595/2004 laying down detailed rules for applying Council Regulation(EC) No. 1788/2003

⁽¹⁾ S.I. 2005/2766. By virtue of sections 59(1) and 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly for Wales by this designation are exercisable by the Welsh Ministers.

⁽²⁾ 1972 c.68.

⁽³⁾ OJ No. L 299, 16.11.2007, p. 1.

establishing a levy in the milk and milk products sector⁽¹⁾,

to be construed as references to those Articles and provisions and to that Commission Regulation as amended from time to time.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽²⁾.

Title and commencement

1. The title of these Regulations is The Dairy Produce Quotas (Wales) (Amendment) Regulations 2008 and they come into force on 1 April 2008.

Amendment of the Dairy Produce Quotas Regulations 2005

2. The Dairy Produce Quotas (Wales) Regulations 2005⁽³⁾ are amended in accordance with the Schedule.

Consequential amendment

3. In regulation 2 of the Dairy Produce Quotas (Wales) (Amendment) Regulations 2007⁽⁴⁾, omit paragraph (2).

Elin Jones

Minister for Rural Affairs, one of the Welsh Ministers

10 March 2008

(1) OJ No. L 94, 31.3.2004 p. 22, as last amended by Commission Regulation (EC) No. 1913/2006 (OJ No. L365, 21.12.2006, p. 52). Although Council Regulation (EC) No. 1788/2003 (OJ No. L 270, 21.10.2003, p. 123) is repealed on 1 April 2008 by virtue of Article 201(1)(b) of Council Regulation (EC) No. 1234/2007 (“the 2007 Regulation”), the reference to Council Regulation (EC) No. 1788/2003 is to be read as a reference to the 2007 Regulation by virtue of Article 202 of the 2007 Regulation.

(2) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c..51).

(3) S.I. 2005/537 (W.47), amended by S.I. 2006/762 (W.72) and S.I. 2007/844 (W.76).

(4) S.I. 2007/844 (W.76).

SCHEDULE

Regulation 2

Amendments to the Dairy Produce Quotas (Wales) Regulations 2005

1. For regulation 2(1) substitute—

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

“the Commission Regulation” (“*Rheoliad y Comisiwn*”) means Commission Regulation (EC) No. 595/2004 laying down detailed rules for applying Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector;

“the Community legislation” (“*deddfwriaeth y Gymuned*”) means the Commission Regulation and—

- (a) Article 55(1)(a),
- (b) Article 55(2), in so far as it relates to milk and other milk products, and
- (c) the provisions of, or referred to in, Section III of Chapter III of Part II, of the Council Regulation;

“competent authority” (“*awdurdod cymwys*”) has the meaning given by regulation 2(1) of the General Provisions Regulations;

“consent or sole interest notice” (“*hysbysiad cydsyniad neu hysbysiad unig fuddiant*”) means a notice, in relation to a holding, which states that—

- (a) the person providing the notice is the occupier of that holding and that no other person has an interest in that holding or part of that holding; or
- (b) every person having an interest in that holding or any part of it, the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates, agrees to that apportionment or prospective apportionment;

“converted quota” (“*cwota addasedig*”) means quota converted by the Welsh Ministers following an application made under regulation 21;

“the Council Regulation” (“*Rheoliad y Cyngor*”) means Council Regulation (EC)

No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation);

“cow” (“*buwch*”) includes a heifer that has calved;

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

“dairy produce” (“*cynnyrch llaeth*”) means produce, expressed in kilograms or litres (one kilogram being 0.971 litres), in respect of which levy is payable;

“delivery” (“*danfoniad*”) has the same meaning as in Article 65(f) of the Council Regulation, and “deliver” (“*danfon*”) is construed accordingly;

“direct sale” (“*gwerthiant uniongyrchol*”) has the same meaning as in Article 65(g) of the Council Regulation;

“direct sales quota” (“*cwota gwerthiannau uniongyrchol*”) means the quantity of dairy produce which may be sold or transferred free of charge by direct sale by a producer in a quota year without that producer being liable to pay levy;

“direct sales quota holder” (“*deiliad cwota gwerthiannau uniongyrchol*”) means a person in whose name direct sales quota is registered pursuant to regulation 4;

“direct seller” (“*gwerthwr uniongyrchol*”) means a producer who produces milk and treats that milk or processes it into milk products on his or her holding and subsequently sells or transfers free of charge that milk or those milk products without their having been further treated or processed by a different undertaking which treats or processes milk or milk products;

“electronic communication” (“*cyfathrebu electronig*”) has the same meaning as in section 15 of the Electronic Communications Act 2000(1);

“the General Provisions Regulations” (“*y Rheoliadau Darpariaethau Cyffredinol*”) means the Dairy Produce Quotas (General Provisions) Regulations 2002(2);

(1) 2000 c.7.

(2) S.I. 2002/458, as amended by S.I. 2005/466, S.I. 2007/477 and S.I. 2008/438.

“holding” (“*daliad*”) has the same meaning as in Article 65(d) of the Council Regulation;

“interest” (“*buddiant*”) includes a licence to occupy land and the interest of a mortgagee and a trustee, but does not include the interest of a beneficiary under a trust or settlement;

“levy” (“*ardoll*”) means the surplus levy payable to the Welsh Ministers under the Community legislation and these Regulations;

“milk” (“*llaeth*”) has the same meaning as in Article 65(a) of the Council Regulation;

“national reserve” (“*y gronfa genedlaethol*”) has the same meaning as it has in regulation 4 of the General Provisions Regulations;

“occupier” (“*deiliad*”), in relation to land, includes the person entitled to grant occupation of that land to another, and, during the currency of an interest mentioned in regulation 16(1), the person entitled to grant occupation when that interest terminates, and “occupation” (“*deiliadaeth*”) is to be construed accordingly;

“producer” (“*cynhyrchwr*”) has the same meaning as in Article 65(c) of the Council Regulation;

“prospective apportionment” (“*dosraniad rhagolygol*”), in relation to quota in respect of a holding, means an apportionment of quota between the persons with an interest in the holding for the purposes of ascertaining the quota referable to a part of that holding in the event of a transfer of that part;

“purchaser” (“*prynwr*”) means a purchaser within the meaning of Article 65(e) of the Council Regulation and, other than in regulation 5(1) to (4) and regulation 31(7), approved by the Welsh Ministers pursuant to regulation 5 and Article 23 of the Commission Regulation;

“purchaser quota” (“*cwota prynwr*”) means the quantity of milk which may be delivered to a purchaser during a quota year without any liability for levy arising;

“quota” (“*cwota*”) means direct sales quota or wholesale quota, as the case may be;

“quota holder” (“*deiliad cwota*”), in relation to quota, means the person in whose name the quota is registered;

“quota year” (“*blwyddyn gwota*”) means any of the periods of 12 months referred to in Article 66(1) of the Council Regulation;

“registered wholesale quota” (“*gwota cyfanwerthol cofrestredig*”) means wholesale quota registered pursuant to regulation 4(3) and (4);

“relevant competent authority” (“*awdurdod cymwys perthnasol*”) has the same meaning as it has in regulation 3 of the General Provisions Regulations;

“relevant person” (“*person perthnasol*”) means a producer, a purchaser, any employee or agent of a producer or of a purchaser, any milk haulier, any person undertaking butterfat testing for purchasers in a laboratory, a processor of milk or milk products, or any other person involved in the buying, selling or supply of milk or milk products obtained directly from a producer or purchaser, but does not include a consumer of milk or milk products;

“Scottish Islands area” (“*ardal Ynysoedd yr Alban*”) means either—

- (a) the islands of Orkney except for the island of Stronsay; or
- (b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae, the Kintyre peninsula south of Tarbert and the areas of land within the Argyll and Bute District comprising those parts of the parishes of Dunoon and Kilmun and Inverchaolain shown bounded by a red line on a map marked “Map referred to in sub-paragraph (b) of the definition of Scottish Islands area in regulation 2(1) of the Dairy Produce Quotas Regulations 2005”, dated 31 January 2005, signed on behalf of the Secretary of State and deposited at the offices of the Department for Environment, Food and Rural Affairs at Nobel House, 17 Smith Square, London SW1P 3JR;

“transferee” (“*trosglwyddai*”) means—

- (a) where quota is transferred with a holding or part of a holding, a person who replaces another as occupier of that holding or part of a holding; and
- (b) in any other case, the person to whom quota is transferred;

“transferor” (“*trosglwyddwr*”) means—

- (a) where quota is transferred with a holding or part of a holding, a person

who is replaced by another occupier of that holding or part of a holding; and

(b) in any other case, the person from whom quota is transferred;

“unused quota” (“*cwota nas defnyddiwyd*”) means quota remaining unused after any direct sales or deliveries have been taken into account, following such adjustment (if any) as is required by Article 10(1) of the Commission Regulation (which concerns the fat content of milk), and “used quota” (“*cwota a ddefnyddiwyd*”) is construed accordingly;

“the Welsh Ministers” (“*Gweinidogion Cymru*”) means the Welsh Ministers as constituted under the Government of Wales Act 2006(1);

“wholesale producer” (“*cynhyrchwr cyfanwerthol*”) means a producer who delivers milk to a purchaser;

“wholesale quota” (“*cwota cyfanwerthol*”) means the quantity of milk which may be delivered to a purchaser by a producer in a quota year without that producer being liable to pay levy;

“wholesale quota holder” (“*deiliad cwota cyfanwerthol*”) means a person in whose name wholesale quota is registered pursuant to regulation 4; and

“working day” (“*diwrnod gwaith*”) means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(2).

(1A) References in these Regulations to—

- (a) Article 55(1)(a),
- (b) Article 55(2), in so far as it relates to milk and other milk products, and
- (c) the provisions of, or referred to in, Section III of Chapter III of Part II,

of the Council Regulation, and to the Commission Regulation, are references to those Articles and provisions and to the Commission Regulation as amended from time to time.”

2. In regulation 4(9), for “Article 15 of the Council Regulation” substitute “Article 72 of the Council Regulation”.

(1) 2006 c.32.
(2) 1971 c. 80.

3. In regulation 9(1), for “Article 17 of the Council Regulation” substitute “Article 74 of the Council Regulation”.

4. In regulation 13(2), for “Article 18 of the Council Regulation” substitute “Article 75 of the Council Regulation”.

5. In regulation 15(1), for “Article 16 of the Council Regulation” substitute “Article 73 of the Council Regulation”.

6. In regulation 19(2), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”.

7. In regulation 21—

- (a) in paragraphs (1)(a) and (2)(b), for “Article 6(2) and (5) of the Council Regulation”, substitute “Article 67(2) and (5) of the Council Regulation”; and
- (b) in paragraph (1)(b), for “Article 11(2) of the Council Regulation” substitute “Article 81(2) of the Council Regulation”.

8. In regulation 22(1), for “Article 17 of the Council Regulation” substitute “Article 74 of the Council Regulation”.

9. In regulation 23(2), for “Article 11(2) of the Council Regulation” substitute “Article 81(2) of the Council Regulation”.

10. In regulation 25(7), for “Article 10(2) of the Council Regulation” substitute “Article 80(2) of the Council Regulation”.

11. In regulation 27(1), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”.

12. In regulation 28—

- (a) in paragraph (1), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”; and
- (b) in paragraph (2)(b), for “Article 2 of the Council Regulation” substitute “Article 78(1) of the Council Regulation”.

13. In regulation 30—

- (a) in paragraph (1), for “Article 12 of the Council Regulation” substitute “Article 83 of the Council Regulation”; and
- (b) in paragraph (11)(b), for “Article 2 of the Council Regulation” substitute “Article 78(1) of the Council Regulation”.

14. In regulation 31—

- (a) in paragraph (2)—

- (i) for “Article 11(1) of the Council Regulation” substitute “Article 81(1) of the Council Regulation”, and
 - (ii) for “Article 12(4) of the Council Regulation” substitute “Article 83(4) of the Council Regulation”; and
- (b) in paragraph (3), for “Article 11(3) of the Council Regulation” substitute “Article 81(3) of the Council Regulation”.

15. In regulation 33(2), for “the total national reference quantity” to the end, substitute “the total national quota for the United Kingdom referred to in Article 66(3) and Annex IX of the Council Regulation.”.

16. In regulation 38, in paragraphs (1) and (3), for “Article 15 of the Council Regulation”, substitute “Article 72 of the Council Regulation”.

17. In regulation 39, in paragraphs (1) and (3), for “Article 15(1) of the Council Regulation” substitute “Article 72(1) of the Council Regulation”.