

REGULATORY APPRAISAL

FOOD, WALES

THE DAIRY PRODUCE QUOTAS (WALES) REGULATIONS 2005

Purpose and intended effect of measure

1. The objective is to implement European Community legislation and introduce technical changes to the milk quota regime, in particular on the method of calculating the butterfat levy. As this regime must operate on the same basis across the UK, similar Regulations will be coming forward in Scotland, Northern Ireland and England and are due to come into force throughout the UK on 31 March 2005. The proposed amendments will:
 - implement mandatory changes needed to implement community law, including, changing the method of milk quota levy calculation; requiring producers to keep invoices for purchases of feed; and making producers liable for any unpaid levy when purchasers default;
 - consolidate and rationalise the Dairy Produce Quota Regulations 2002; and
 - introduce further administrative changes, including: setting deadlines for receipt rather than despatch of documents; a requirement to keep records of feeding regimes; and omit milk destroyed off farm from the levy calculation.

Background

2. Milk production is managed within the Common Agricultural Policy by a system of milk quotas, with each Member State required to ensure that dairy production stays within its total quota ceiling in any year. The Rural Payments Agency (RPA) administers milk quotas within the UK and monitors production levels. The secondary legislation dealing with milk quota in Wales is the Dairy Produce Quotas Regulations (DPQR) 2002, as amended. The milk quota system is complex and the necessary legislation detailed and technical, driven by EU legislation.

Mandatory changes arising from new Community legislation

3. The recent Luxembourg Agreement on reform of the Common Agricultural Policy in June 2003 gave rise to a new Council Regulation (1788/2003) and Commission Regulation (595/2004), introducing changes to the administration of the milk quotas regime. These mandatory changes must be transposed into domestic legislation. The changes mean that:
 - i. Milk producers will, if they have not already paid levy to their purchaser/dairy processor, be liable for payment of levy where purchasers default.

- ii. Direct sellers who do not provide declarations of their sales by 14 May in any year, and are liable for levy payment, will not benefit from the reduced rate of levy payable by those who do meet the deadline.
- iii. Checks will be made on the compatibility between deliveries/direct sales of milk and production capacity. Since feeding affects production, producers will be required to keep records of feeding plans.
- iv. Milk destroyed off-farm for sanitary reasons will be omitted from the levy calculation.
- v. Where the sum of butterfat-adjusted deliveries is less than the volume deliveries, any levy will be calculated on the latter – as happens now. However, the Council Regulation also requires that in this case, downward adjustments of delivery figures must be proportionately reduced to bring the sum of adjusted deliveries into line with deliveries actually made.

Other mandatory changes

- 4. A number of other changes are also necessary. Two of these, (i-ii below) were included in a 2003 consultation paper on amendments to the DPQR. Following consultation it was decided to include the changes when these Regulations were next amended. A further two (iii-iv) correct the current DPQR and bring them into line with Community legislation.
 - i. In line with advice from the European Commission, deadlines for the submission of documents or making of applications to the Rural Payments Agency (RPA) will relate to the date of receipt, rather than despatch, of documents.
 - ii. The RPA will have the discretion to require new applicants seeking approval as purchasers to lodge a security.
 - iii. In line with Article 8(4) and (5) of the Commission Regulation, the RPA will impose a penalty where purchasers fail to submit a summary of producers' deliveries by 1 July in any year. This change corrects an omission in the DPQR.
 - iv. In line with Article 11(4) of the Commission Regulation, direct sellers of milk will, if they fail to submit a declaration of production by 1 July, have their quota confiscated 30 days after the RPA has served notice of confiscation. Legal advice is that the current 30-day period of grace between notification of the intention to confiscate and the confiscation itself is an incorrect interpretation of the Regulation.

Further changes

- 5. In 2003, we consulted on the proposed breaking of the link between quota and land. It was subsequently announced that we would not introduce such regulations in the light of the emerging Community legislation and responses received to the consultation. Instead it was decided to pursue

the issue of protecting tenants who buy quota in their own right in another way: by allowing them at the end of a tenancy, if they remain producers and have entered into no agreement with their landlord, to retain quota that they have purchased. This means tenants can buy quota in their own right without the fear that the quota will be subject to complex compensation negotiations at the end of the tenancy.

6. Quota is, in principle, attached to the land so, at the end of tenancies, tenants generally lose quota they have bought. Some tenants may consider the compensation arrangements for the loss provided for in the Agriculture Act 1986 and the Agricultural Tenancies Act 1995 inadequate or would prefer to take the quota with them to their next holding. After consideration of the legal and practical implications, the intention is to introduce a new Regulation which both complies with Article 17(4) of the Council Regulation, under which we propose to make the Regulation, and does not conflict with primary agricultural tenancies legislation. This change will allow tenants to take the quota with them to their next holding.
7. Currently producers who have permanently converted quota (from wholesale to direct sale or *vice versa*) may not in the same year transfer out quota of the type to which they have converted. The restriction does not apply to those who temporarily converted quota in the preceding quota year. The intention is for the restriction to be lifted only where the preceding temporary conversion was in the same direction as the permanent conversion.
8. Article 6(2) of the Council Regulation provides that quota conversion may take place only at the *duly justified* request of the producer. By making two consecutive transfers, firstly temporary and then permanent, in the same direction, the producer is demonstrating clear justification of their need for the quota type in question and can therefore be exempt from the restriction referred to. This is not, however, true of a producer who makes two different quota conversions and should remain subject to the restriction.
9. It is also intended to clarify the position regarding the use by two different parties within the same quota year of the same cows. Thus, it will be made clear that a producer who buys, leases or inherits cows from another mid-year and then keeps them on his holding and manages them with no involvement from the first producer, is not deemed to be acting as the first producer's agent. This is intended to fill a loophole that can be used to avoid the payment of levy and to ensure that non-producers do not retain producer status.

Risk assessment

10. Most of the changes are mandatory and we would be failing to comply with Community law or to follow up the 2003 consultation exercise if they were not implemented. Failure to adopt the tenants' quota proposal would mean that tenant farmers would be unable to benefit from the flexibility and protection afforded.

Options

11. In respect of this legislation the “Do nothing option” is not an option as it would lead to infraction proceedings against the National Assembly for Wales by the European Commission. Therefore, the “Make the legislation” option, to implement the changes required to comply with European legislation, is being implemented.
12. In addition, the Welsh Assembly Government decided to pursue the question of tenants’ quota and the proposal fulfils that commitment. We also decided to clarify the existing Regulations for administering the quota system, to tighten up the rules on quota conversion so that they reflect the intention of the Community legislation more accurately, and on levy avoidance.

Benefits

13. According to the Rural Payments Agency (RPA) there were 2,705 milk quota holders in Wales for quota year 2003/04 - representing roughly 12.4% of the UK total; they held 1,512 million litres of quota – roughly 10.7% of the UK quota total. There are currently 152 milk purchasers in the UK.

Economic benefits

Levy payment

14. It is producers who are liable to pay levy on any over-production but levy is collected by purchasers. The new regulation spells out, where there was previously some lack of clarity, that, where purchasers default without having collected levy, it must still be paid by producers. Thus, producers are not subject to any new financial burden but the taxpayer is afforded greater protection since any shortfall in levy payment is made good from the public purse.

Direct sales declarations

15. The higher rate of levy liability added to the existing penalty for the late submission of declarations should further encourage prompt returns and aid timely levy calculation.

Milk destroyed off-farm

16. Milk leaving the holding counts towards quota and is thus included in levy calculation. The new regulation stops farmers being penalised where they have to dispose of milk for sanitary reasons off-farm.

Butterfat adjustment

17. If there is a need to scale back downward butterfat adjustments there is no longer a redistribution of levy liability towards producers whose production has been below their butterfat base, with those who produce above their butterfat base seeing a reduction in their levy liability. The new arrangements will also allow greater certainty for all wholesale producers

as to their levy liability and would allow them to lease out, and earn from, surplus quota which they would need to retain under the current system.

Purchasers' security (paragraph 4 ii refers)

18. This will allow applicants without a track record in business the opportunity of operating as a purchaser while at the same time protecting taxpayers' funds as purchasers are responsible for collecting levy for the government and ultimately the EU.

Tenants' quota proposal (paragraph 6 refers):

19. According to the June 1999 Agricultural Census almost 4,000 dairy farmers in England and Wales were tenants and a further 5,800 were on holdings with mixed tenure, which could involve the holding of quota. It is uncertain how many tenants would prefer retention of quota to compensation but the Tenant Farmers Association has welcomed the proposal and we believe that, if adopted, it would give tenants more confidence to buy quota and help free up the movement of quota to areas where it is most needed. Some tenants may consider the compensation arrangements for the loss provided for in the Agriculture Act 1986 and the Agricultural Tenancies Act 1995 inadequate or would prefer to take the quota with them to their next holding.

Costs

20. The increased levy liability penalty *will only apply* if direct sellers fail to provide their sales declarations on time. In recent years the number of late returns in the UK has ranged from 41 in 2000/01 to 14 in 2002/03.

21. Producers will have to keep copies of documentation under the EU Animal By-Products Regulation (EC No. 1774/2002) if they wish to make use of the exemption for destroyed milk at 3 iii above.

22. The change in the butterfat adjustment may slightly increase the administrative burden on the Rural Payments Agency.

23. Most applicants are able to provide sufficient evidence of financial stability so there will be few cases where traders will be asked to lodge a security under para 4 above. A bank guarantee, the cost of which is met by the trader, will cover the maximum foreseeable levy liability which will vary according to the size of the business. The cost of the guarantee will vary too from bank to bank and according to the viability of the business. 1% of the value of the guarantee appears to be a representative figure.

24. Purchasers will only be subject to the newly applied penalty if they fail to provide declarations on time. The Regulations make clear that account will be taken of the volume of milk involved and the seriousness of the failure. The penalty may not be applied if the failure is deemed not to be deliberate or seriously negligent, negligible or attributable to *force majeure*.

25. Quota conversion proposal – the only financial implication arising at para 7 would be a difference in levy due on butterfat adjustment:

- if a producer was under quota, and
- if the purchaser was over quota and if so, by how much.

Exact figures are not available but the overall effect would be minimal.

26. There are no financial implications for the Assembly. Costs associated with the administration of these changes will fall to the Rural Payments Agency who administer the UK milk quota system.

Issues of equity and fairness

27. The proposals are neutral in effect.

Competition assessment

28. The proposals will have no effect on competition.

Enforcement and sanctions

29. The Rural Payments Agency (RPA) will enforce the proposal as part of the existing administration of the UK quotas system.

Monitoring and review

30. The operation of the DPQR is subject to continual review through mechanisms such as the quarterly meetings of the Milk Quotas Experts' Group organised by the RPA and attended by trade interests and UK agriculture departments.

Consultation

With Stakeholders

31. Formal consultation with stakeholders – including the farming Unions, the Central Association of Agriculture Valuers (CAAV) and the Countryside Council for Wales (CCW) - on these proposals was carried out in Wales between 3 August 2004 and 1 October 2004. The consultation covered both the proposed amendments to the existing Regulations and the draft Regulatory Appraisal. Respondents were supportive of the proposals set out in these Regulations, some stated that there should be protection for tenants who purchase quota in their own right throughout the tenancy not just as the tenancy ends. The trade has been informed of the regulatory changes at meetings and has contributed to the identification of the options for calculating butterfat-adjusted deliveries. There were no amendments to the Regulations as a result on the consultation.

With Subject Committee

32. This Instrument was included in the list of forthcoming legislation provided to the Environment, Planning and Countryside Committee on 6 October 2004 (paper No. EPC(2)-090-04(p.4) item No.3 and the consultation paper was also sent to the Committee Clerk. The item was not identified for formal Subject Committee scrutiny.

Summary and recommendation

33. Following reforms to the European milk quota legislation, we are obliged to introduce mandatory changes which must be implemented uniformly

across the UK. We have also taken the opportunity to clarify certain aspects of the existing Regulations and to assist tenant dairy producers.

Annex A

List of Consultees

Farmers' Union of Wales
National Farmers' Union (Wales)
Country Land & Business Association (Wales)
Wales Young Farmers' Clubs
Meat and Livestock Commission
Royal Institute of Chartered Surveyors Wales
Milk Development Council
ADAS
Welsh Development Agency - Food directorate, Cardiff Business Technology
centre - Food Directorate food centre Wales Llandysul
The Central Association of Agriculture Valuers (CAAV)
Countryside Council for Wales (CCW)
HSBC Bank
Bank of Wales
Lloyds Bank
Welsh Food Alliance
Barclays Bank
Womens Farming Union
Women in Agriculture
Institute of Grass land and Environmental Research (IGER)
Organic working group – Rachels Dairy

The Royal Welsh Agricultural Society
Milk Marque Developments
WWMPG (Llaeth Cymraeg)
Organic Centre Wales
Agri-Food Partnership Dairy Strategy Group for Wales

