

EXPLANATORY MEMORANDUM TO
THE DAIRY PRODUCE QUOTAS (AMENDMENT) REGULATIONS 2006

2006 No. 120

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

The amending Regulations correct errors and omissions in the Dairy Produce Quotas Regulations 2005 (S.I. 2005/465) and apply to the current (2005/06) quota year.

3. Matters of special interest to the Joint Committee on Statutory Instruments

There was no formal consultation on the proposed changes to be introduced by this instrument since there is no option but to make these corrections. Explanatory notes, copies of which are annexed, were, however, posted on the website of the Department for Environment, Food and Rural Affairs and sent to stakeholders. A full consultation was carried out prior to making the 2005 Regulations.

4. Legislative Background

The instrument amends the Dairy Produce Quotas Regulations 2005 to correct errors and omissions identified by both the Department and the European Commission. The 2005 Regulations reflected the provisions of new Community legislation governing the milk quotas system – Council Regulation 1788/2003 establishing a levy in the milk and milk products sector and Commission Regulation 595/2004 laying down detailed rules for applying Council Regulation 1788/2003. The 2005 Regulations also made changes to the administration of the milk quotas system.

5. Extent

The instrument applies on a territorial basis mainly in England. Equivalent regulations will be introduced in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The milk quotas system is based on Community law. Under the system all Member States are allocated a national milk quota. If in a quota year national production exceeds the quota, then all producers exceeding their quota have to pay a levy on their over-production. Administration of the quota system is complex and is carried out in the UK by the Rural Payments Agency, an executive agency of the Department for Environment, Food and Rural Affairs.

7.2 The 2005 Regulations constituted a major review and consolidation of the legislation. In the process, certain provisions were redrafted with unintended effects, or omitted.

7.3 The 2005 Regulations inadvertently prevent the transfer of quota necessary to cover production before the date of transfer. The instrument provides that such quota may be transferred, but cannot be identified as unused quota.

7.4 The instrument amends certain provisions requiring milk producers and purchasers to provide information to the Secretary of State by specified dates to make clear these dates refer to the date the information is dispatched, not the date of receipt by the Secretary of State.

7.5 Provision has been made for correction of certain penalty regulations. Thus, the penalty for purchasers who fail to submit accurate declarations of milk production, which was inadvertently omitted from the 2005 Regulations, is to be restored. It is also made clear that the penalty for purchasers who fail to submit a summary before 1 July in the year in which it is required, applies 30 days after the service of a notice by the Secretary of State.

8. Impact

A Regulatory Impact Assessment in respect of this instrument has not been prepared as it has no new impact on business, charities or voluntary bodies.

9. Contact

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EXPLANATORY NOTE: CHANGES TO MILK QUOTAS REGULATIONS

This note provides information on changes needed to the Dairy Produce Quotas Regulations 2005 (DPQR). The changes are intended to enter into force on 31 March 2006 and to apply to the current quota year. Equivalent changes will be made to the milk quotas regulations applicable in Scotland, Northern Ireland and Wales.

No formal consultation exercise will be carried out as the changes correct errors in the DPQR and are therefore mandatory.

The changes are as follows:

- The wording of **Regulation 16(3)** incorrectly prohibits the transfer of used quota. It will be amended to prohibit the transfer as unused of quota necessary to cover milk marketed before the date of transfer.
- **Regulation 35(1)** incorrectly requires direct sellers and purchasers to send their annual declarations for receipt by the Rural Payments Agency (RPA) on or before 14 May of the relevant year. It will be amended to require declarations to be sent by that date. Two associated amendments will also be made. The application referred to in **regulation 23(4)** (adjustment of purchaser quota) will have to be sent, rather than received, no later than 14 May of the year in question. The same will apply to the despatch by purchasers of the list of quota holders referred to in **regulation 33(5)**.

*The UK is seeking advice from the European Commission on whether the Community legislation similarly requires **Regulation 38(2)** to be amended so that direct sellers who fail to send their annual declarations on or before 1 July of the relevant year will be liable to confiscation of quota. We shall issue further information on this once we have received the advice.*

- The penalty for purchasers who fail to submit accurate declarations, which was incorrectly lost from the DPQR 2005, will be restored in **regulation 36**. The penalty is equivalent to the theoretical amount of levy that would be due on 0.5% of the quantity by volume of milk comprising the over- or understatement in the declaration.
- Purchasers are liable to pay a penalty if they fail to submit a declaration before 1 July of the relevant year. The penalty is not payable until 30 days after notice is served by the Secretary of State. The penalty is set out in **regulation 36(6)** but there is no reference to the period of notice - although the RPA does, in practice, implement the rule correctly. The amendment will make it clear that the penalty will not apply until 30 days after the Secretary of State serves notice of it (in the meantime the penalty for not meeting the 15 May deadline will still apply). The daily penalty will continue to apply from then on until the Rural Payments Agency sends a bill for the amount due.

SECOND EXPLANATORY NOTE: CHANGES TO MILK QUOTAS REGULATIONS

The earlier note of 29 September 2005 provided information on changes needed to the Dairy Produce Quotas Regulations 2005. It explained that the UK was seeking advice from the European Commission on whether the Community legislation required **Regulation 38(2)** to be amended so that direct sellers who fail to send their annual declarations before 1 July of the relevant year will be liable to confiscation of quota. The Commission has now confirmed that no amendment is necessary. Thus, the confiscation penalty will continue to apply to direct sellers whose annual declarations fail to reach the Rural Payments Agency before 1 July.