

Additional Guidance for

The Fair Dealing Obligations (Milk) Regulations 2024

Version 1.1

Published: 11/06/2025

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Background information

1. The Agriculture Act 2020 introduced powers to allow the creation of regulations that protect UK producers from unfair treatment within the supply chain.
2. Following this, we have engaged with several sectors in the agriculture industry to help us understand where there is a need for reform in the supply chain. In the dairy sector, a 12-week consultation was conducted in June 2020 seeking the views of producers and purchasers, asking whether new regulations could improve fairness and transparency.
3. After consultation responses demonstrated there was a need for this, engagement with industry has continued at all levels to create proposals that work. We have sought to protect and promote practices that are good for producers, purchasers, and consumers, and have only proposed regulations where there is potential for unfair practices.
4. The Fair Dealing Obligations (Milk) Regulations 2024 (“FDOM24”) are the first use of the powers in the Agriculture Act 2020 to impose obligations on business purchasers of agricultural products in relation to contracts they make. FDOM24 will come into force in the UK on 9 July 2024, at which point they will apply to all new contracts made for the purchase of milk from a producer. There will be a transition period of 12 months for existing agreements, after which all such contracts will need to be compliant with FDOM24 by 9 July 2025.

Summary

5. FDOM24 is intended to make milk purchase contracts agreed in the dairy industry fairer and clearer. They apply to contracts to purchase cow’s milk that are arranged directly between “purchasers” (such as dairy processors or dairy product manufacturers) and “producers” (such as dairy farmers) throughout the UK. We want to make sure both parties to a milk purchase contract know their rights and responsibilities in advance. To achieve this, contracts for the purchase of cow’s milk are now required to be in writing, signed and include the following as a minimum:
 - a) Clear terms around pricing, either offering a set price that a producer will be paid per unit of milk supplied (fixed price) or details on the ways that the price will be determined (variable price). Where a variable price is used, FDOM24 allows producers to request a written explanation of how the price was determined to ensure that the agreed pricing method has been used.

- b) The prohibition of unilateral changes to the milk purchase contract. We know businesses will need to adapt their arrangements from time to time, but this must (subject to certain exemptions) be agreed by both the producer and the purchaser.
- c) Clear terms on the length of milk purchase contracts and the process of termination.
 - a. Milk purchase contracts must include a start date of supply, if this is different to the day the contract is signed. From there, they must outline the length of time supply will last. This can be a fixed duration or on an evergreen basis.
 - b. Rules of termination will ensure that producers have stability, with a minimum notice period of 12 months required for purchasers to terminate a milk purchase contract. At the same time, producers must not be required to serve a notice period of longer than 12 months to terminate the milk purchase contract. There are some exemptions to this, which are laid out in the “immediate termination” section.
- d) A dispute resolution mechanism so that purchasers and producers can raise issues relating to the supply relationship. If necessary, unresolved disputes about whether FDOM24 has been complied with can be escalated by producers via the enforcement mechanism included in FDOM24. Acting on behalf of the Secretary of State for the Department for Environment, Food & Rural Affairs, The Agricultural Supply Chain Adjudicator (ASCA) is responsible for enforcing the Regulations and will consider all relevant complaints fairly and impartially (please see The Agricultural Supply Chain Adjudicator statutory guidance for more detail on enforcement).
- e) All contracts must include an express term that requires the purchaser to act in good faith in relation to the contract.

Please note: Non-performance of contractual obligations may constitute a breach of contract but not a breach of FDOM24. As such, please seek separate independent legal advice in this situation as the ASCA is only able to deal with cases where there has been a breach of FDOM24.

Important: As ever, businesses should seek their own independent legal advice concerning compliance with FDOM24 and possible contractual disputes. However, this guidance is intended to help industry understand the new rules.

New and Existing Contracts

6. From 9 July 2024 when FDOM24 comes into force, **all new** milk purchase contracts must be compliant with these rules. To ensure that the industry has time to adapt existing arrangements, there is a 12-month transition period until 9 July 2025 for milk purchase contracts that were already in place before FDOM24 came into force to become compliant. It is only if milk continues to be supplied under those milk purchase contracts after the 9 July 2025 that those existing contracts need to be compliant.
7. While it is usually clear what constitutes a 'new' or an 'existing' contract, there are some cases where this may be unclear. While we recommend that all parties seek their own legal advice, the status of contracts during the transition period could be as follows: a) **Scenario 1**

New milk purchase contracts entered into on or after 9 July 2024

Where a producer and a purchaser enter into a new supply agreement on or after 9 July 2024, they will need to agree a contract in writing that meets the requirements of FDOM24.

b) **Scenario 2**

Existing milk purchase contracts that remain unchanged after 9 July 2024

Where the parties have an existing milk purchase contract that was in place before the 9 July 2024, they can continue to make supplies under that contract until 9 July 2025, after which point, the contract will need to comply with the FDOM24. We anticipate that industry will use this transition period to ensure that their existing contracts meet the requirements of FDOM24. By 9 July 2025 all milk purchase contracts must be compliant.

c) **Scenario 3**

Existing milk purchase contracts that change between 9 July 2024 and 9 July 2025

It is possible that variations that are made to existing milk purchase contracts could constitute a new contract and bring it within scope of the requirements in FDOM24 before 9 July 2025. We therefore recommend that each party **seek their own legal advice** on whether any changes being made to the supply arrangement create a new milk purchase contract. This will ensure that both sides are clear about whether the existing milk purchase contract continues to operate or has, in effect, been rescinded and replaced. From the end of the transition period, **9 July 2025**, all milk purchase contracts will be covered by the terms of FDOM24.

Milk Purchase Contracts (Parts 2 & 3 of FDOM24)

Requirement to use a written milk purchase contract

8. We know many dairy producers and purchasers already have their milk purchase contracts in writing. We are making it a requirement for all milk purchase contracts entered into on or after 9 July 2024 to be in writing, to achieve greater transparency. The requirement to have a signed written milk purchase contract applies even where one or both parties are content with a verbal contract.
9. For producers and purchasers who have an existing supply arrangement that was entered into before 9 July 2024, they must have a written milk purchase contract that complies with the requirements of FDOM24 by 9 July 2025. This can be achieved by varying the terms of an existing written milk purchase contract to bring it into compliance or by terminating any existing noncompliant milk purchase contracts and entering into a new one. Where a written milk purchase contract is not already in place, a compliant **written milk purchase contract will need to be agreed and signed by all parties.**
10. Parties are advised to seek independent legal advice to ensure their milk purchase contracts are compliant with FDOM24 as compliance can be achieved in different ways depending on current supply arrangements:
 - a) **Existing Written Contract that is fully compliant with the FDOM24**
Where a fully compliant written contract is already in place there is no need for any changes to the contract.
 - b) **Existing Written Contract that is partly compliant with FDOM24**
Where a partly compliant written contract is already in place before 9 July 2024 a fully compliant contract must be agreed between the parties in writing by the 9 July 2025. This can be achieved by agreeing amendments to the existing contract in writing, or by entering into a new fully compliant contract.
 - c) **Existing Verbal/Informal Contract.**
Where a verbal supply agreement is in place before 9 July 2024 a new, written contract that is compliant with FDOM24 must be agreed and signed by 9 July 2025.
 - d) **No existing contract**
Where a new milk purchase contract is entered into on or after 9 July 2024, it must be in writing and fully comply with FDOM24.

Format and duration of milk purchase contracts

11. A written contract must be **signed** by all parties to comply with the FDOM24. This can be either a signature to a physical document or a digital document with an electronic signature. The following types of contracts are permitted:

a) **Evergreen Contracts**

These contracts can run on an ongoing basis until one of the parties decides to terminate it. The procedure for the termination of the contract must be in line with the requirements for termination set out in FDOM24.

b) **Fixed-Duration Contracts**

These contracts must have a pre-agreed point in time when they will expire. The way that this will be structured must be agreed by both parties and can be a specific date in the future when the agreement will end or a length of time that the agreement will remain in place.

12. The contract must state whether it is a fixed-duration or evergreen contract. It must also specify the date on which the obligation to supply milk begins if that date is different from the date on which the contract is signed.

Pricing & Payment (Part 4 of FDOM24)

Payment terms

13. Under FDOM24, contracts to set out how and when payments will be made to ensure that there is clarity for the benefit of producers. All contracts must include the method and frequency of payment, and must specify: a) The first date payment will be made.

b) The frequency with which payment will occur.

c) The method by which payment will be made.

Payment structures

14. FDOM24 requires milk purchase contracts to use:

a) a fixed price, or

b) a variable price,

c) or combination of the two.

15. A “fixed price” is a price, set out in the milk purchase contract, which is expressed per unit of milk or milk constituent and will be paid by the purchaser to the producer for milk supplied under the contract.
16. A “variable price” is a price per unit of milk or milk constituent that is not fixed at the point that the milk purchase contract is made but is determined in accordance with, or by reference to, factors set out in the milk purchase contract.

Fixed price contracts

17. A fixed price is an exact price set out in the contract that is to be paid to the producer per unit of milk. This means expressing a single monetary value, for each agreed measure of milk that is supplied.
18. More than one fixed price may be used during the life of the contract, but if the fixed price is to change within the duration of the contract, the contract must set out the start and end dates when each of the fixed prices will apply.

Fixed Price Exceptional Market Conditions

19. Even where a fixed price has been agreed, exceptional market conditions may require the price to be reviewed during the course of the agreement. To protect both parties and ensure this happens fairly, the contract must set out a procedure by which a fixed price may be reviewed where exceptional market conditions occur. The contract must also make clear what constitutes exceptional market conditions under which a fixed price can be reviewed.
20. The procedure for the price review must provide that, where requested by the producer, the purchaser must invite the producer to enter a discussion on the proposed price changes within 30 days.
21. As part of this process, both parties must then review the price payable and consider whether a change is needed. **Where there is agreement** between parties, the contract must be amended in writing to reflect the new price. Parties to the contract are advised to include provisions which set out what will happen in the event an agreement cannot be reached.

Variable price contracts

22. Variable price contracts are commonplace in the industry. However, we want to make sure that producers and purchasers are clear about the factors used to determine the milk price and that these are agreed in advance.
23. Where a milk purchase contract uses a variable price (whether or not in combination with a fixed price) it must do so in accordance the following requirements:

- a) the contract must set out the factors that will be used to calculate the milk price (for example, as part of a formula), or to which the purchaser must have due regard when determining the milk price.
 - b) the contract must outline the periods of time that each set of factors will apply, including the start and end dates. There can either be one set of factors that apply for the whole duration of the contract, or different factors that apply at different times.
 - c) the contract must include information on how often the price is to be determined, which must be no more than monthly but no less than every 3 months.
 - d) where any of the factors used to determine the price is confidential information that the purchaser does not wish to disclose to the producer, then the contract must also include a third-party verification procedure by which a producer can refer the explanation of how the price was determined to an independent person.
24. The factors used to determine the milk price can include a range of private or public metrics.
- For example, contracts could state that the price to be paid is: the Actual Milk Price Equivalent (AMPE), the AMPE plus or minus a certain amount or percentage or is to be determined in accordance with a combination of AMPE and other factors).
25. A contract can also specify that certain factors are weighted more heavily when determining the price.

When a variable price changes

26. FDOM24 requires that variable prices must be determined at **reasonable and regular intervals**. Contracts must set out the terms for when variable price changes occur, which must be no more than monthly but no less than every three months.
27. After a price has been determined, the FDOM24 gives the producer a right to request a written explanation of how the price was determined. **Where the price was determined by the purchaser**, this must include how the factors to which the purchaser had due regard influenced the price.
28. The producer must make the request for the written explanation in writing to the purchaser. The purchaser must provide the explanation within seven days of the day that the request was given. Producers can only request this written explanation once for every time the price is determined.

Independent verification for variable price

29. We know some of the factors purchasers use to determine their milk price may be commercially sensitive, such as onward sales prices or profit margins. Where this is the case, purchasers may not want to disclose this information to the producer.
30. Where the parties have agreed to use such confidential information to determine the milk price, the milk purchase contract must include a procedure by which producers can refer the explanation of how the price was determined to an independent third party who can verify that the confidential information is accurate and supports the explanation of the price given. This is to ensure transparency whilst also protecting the commercially sensitive data of their purchasers.
31. The purchaser must cooperate with the independent third party and provide such information and documentation as reasonably requested by them.
32. The independent person can be any individual or organisation agreed by both parties, although we would expect this to be a professional with relevant experience that would enable them to verify the confidential information, such as accountants, solicitors, or business consultants.
33. The milk purchase contract must also set out how the costs of the independent person will be apportioned between the parties.

Tiered Pricing

34. FDOM24 allows variable pricing and the use of different milk prices in an agreement. However, where a producer **is contractually tied to only supply one purchaser (i.e. has entered into an exclusive agreement)**, FDOM24 prohibits the use of tiered pricing (**i.e. pricing that changes based upon the volume of milk supplied**). This means that the price to be paid for milk under such a milk purchase contract cannot change based on whether the amount of milk provided by the producer exceeds a certain volume.
35. In the past it was possible for a purchaser to enter into an exclusive milk purchase contract with a producer, where the purchaser would pay a different price for any quantities of milk supplied over a certain volume, but the producer is prohibited from supplying their milk to anyone else. Under the FDOM24, this is no longer allowed. Instead, a milk purchase contract can only provide different prices for milk supplied over a specified volume so long as the producer is not prohibited from entering into milk purchase contracts with other purchasers.
36. Bonuses or penalties based on other factors, such as milk constituents or quality, are allowed.

Exemptions

37. The requirements on the inclusion of a fixed or variable price in a milk purchase contract, do not apply where:
- a) a recognised producer organisation or pre-commencement society has negotiated the terms that relate to the milk price on behalf of the producer, or
 - b) the producer has an ownership interest in the purchaser and the purchaser has an internal democratic structure that meets the criteria set out in FDOM24. Those criteria are that the purchaser must have an organisational structure set out in their constitution with a decision-making body that is:
 - a. made up of a majority of individuals democratically elected by the producer members; and
 - b. which has ultimate decision-making authority in relation to contracts for the purchase of milk.
38. The prohibition on tiered pricing in exclusive agreements does not apply where the producer has an ownership interest in the purchaser and the purchaser has an internal democratic structure meeting the criteria above. If tiered pricing is used in these circumstances, the milk purchase contract must specify the volume above which the price change will apply, and the amount per unit of milk by which the price will change.

Volumes (Part 5 of the FDOM24)

39. FDOM24 introduces rules about what producers and purchasers can agree about the volumes of milk that will be supplied. This is to ensure that both parties can ensure stability for their business, that they are able to plan, and to minimise any wastage.
40. Where a milk purchase contract specifies that a producer must supply a fixed, pre-determined volume of milk, it must also:
- a) Set out the period during which this volume must be supplied. This period must be no longer than 12 months.
 - b) Set out the volume that is to be provided, including upper and lower acceptable supply volumes applicable to that period.
41. The contract must also set out the remedies available to the purchaser where the volume of milk supplied fails to meet the acceptable supply volume. Where

supply is lower than expected, there could be several reasons and the contract could include different remedies for different scenarios.

42. **Exclusive contracts:** Any contract that prevents a producer from entering into a milk purchase contract with another purchaser cannot specify that the producer is to supply a fixed volume of milk. This includes putting a limit on the volume of milk supplied under the contract. This means an exclusive milk purchase contract must allow the producer to supply the purchaser all the milk produced.

Miscellaneous (Part 6 of the FDOM24)

Collection of milk

43. Under FDOM24, the milk purchase contract must set out the arrangements for the collection of milk.
44. The milk purchase contract must state that the milk will be collected from the producer by, or on behalf of, the purchaser. The agreement does not need to stipulate who will be collecting the milk on each occasion but must provide that the purchaser or a person acting on their behalf will do so.
45. In addition, the contract must specify when and how frequently the collections of milk will occur.

Force Majeure

46. Under FDOM24, all milk purchase contracts must include a provision that sets out the effect on the producer and purchaser when certain acts, events or circumstances occur that were unforeseeable and unavoidable and prevent either party from being able to fulfil their obligations under the contract ('Force Majeure events').
47. The specific acts, events or circumstances which will constitute a force majeure event in each milk purchase contract is a matter to be agreed between the parties and must be written into the contract.
48. Examples could include severe disease outbreaks on a farm, extreme weather events or natural disasters.

Notices under a milk purchase contract

49. FDOM24 requires that milk purchase contracts set out how notices must be given under the contract. The contract must provide that any notices must be in writing and sent either by email or by a method of post that requires the

recipient to sign on receipt. The contract must also provide that, where the notice is sent by post, it must be properly addressed and pre-paid.

50. The contract must provide that service of a compliant notice will be deemed to take effect:

- where email is used, at the time at which the notice would be delivered in the ordinary course of using the email service, or,
- where the post is used, at the time at which the notice would be delivered in the ordinary course of post.

51. The contract must state that the address for service by post for the parties is their ordinary business address unless a party specifies an alternative address. If an alternative address is to be used, this must be included in the contract.

Variation of Terms

52. A milk purchase contract must provide that any variation to its terms must be agreed in **writing** between the purchaser and the producer or, where the producer is represented by a recognised producer organisation or precommencement society, that representative organisation.

53. This requirement does not apply where the producer has an ownership interest in the purchaser and the purchaser has an internal democratic structure that meets the criteria set out in the FDOM24. Those criteria are that the purchaser must have an organisational structure set out in their constitution with a decision-making body that is:

- a) made up of a majority of individuals democratically elected by the producer members; and
- b) which has ultimate decision-making authority in relation to contracts for the purchase of milk.

Dispute Resolution (Part 7 of FDOM24)

54. FDOM24 requires that a dispute resolution procedure must be included in every contract setting out how a producer may make a complaint to the purchaser relating to their milk purchase contract.

55. The dispute resolution procedure must set out:

- a) That the producer must make the complaint to the purchaser in writing
- b) The details of the person to whom the producer's complaint should be given.
- c) That once a purchaser has received the written complaint, they will investigate and take all reasonable steps to resolve the complaint.

Escalating a dispute

56. It is hoped that the majority of the problems that might arise in relation to milk purchase contracts will be able to be resolved between the parties through the dispute resolution procedures set out in the contracts.

57. However, where there is a dispute about a suspected breach FDOM24 that remains unresolved after 28 days of being raised with the purchaser under the dispute resolution procedure, producers may refer the complaint for investigation by the Agricultural Supply Chain Adjudicator.

Termination (Part 8 of FDOM24)

58. FDOM24 provides rules about the provisions on termination that must be included in milk purchase contracts.

Cooling-off period

59. Under FDOM24, all milk purchase contracts must include a 21-day cooling-off period during which the producer has the right to terminate the contract without any penalty or liability.

60. The milk purchase contract must provide that:

- a) the producer may terminate the milk purchase contract with immediate effect at any point within the first 21 days from the date the contract was made.
- b) there is no penalty or liability for terminating the milk purchase contract during this period.
- c) the producer is not required to give any reason for terminating the milk purchase contract during this period.

Termination for evergreen or fixed contracts of 12 months or more

61. All milk purchase contracts, which are evergreen or have a fixed duration of longer than 12 months, must set out a process in accordance with which the contract can be terminated (the 'termination process').

Termination by the purchaser

62. The termination process must provide that the purchaser must give at least 12 months' notice to terminate the milk purchase contract without:

- a) the consent of the producer to the termination; or
- b) there being a material breach of the milk purchase contract by the producer.

Termination by the producer

63. The termination process must not require the producer to have to give more than 12 months' notice in order to terminate the milk purchase contract.

Termination for fixed contracts of less than 12 months

64. A milk purchase contract with a fixed duration of 12 months or less must not make any provision allowing the purchaser to give less than 12 months' notice to terminate the contract before the end of the fixed term without:

- a) the consent of the producer to the termination; or
- b) there being a material breach of the milk purchase contract by the producer.

65. This does not affect the ability to terminate the milk purchase contract once the fixed term period has expired.

Immediate Termination

66. All milk purchase contracts must also provide that the producer can immediately terminate the milk purchase contract by giving the purchaser written notice:

- a) Where the purchaser is insolvent.
- b) Within 14 days of the producer becoming aware of the purchaser materially breaching the contract.

- c) Where the purchaser fails to make a payment in accordance with the milk purchase contract and the producer gives notice to the purchaser about that failure; within 21 days of that notice being given if the payment was not made within 7 days of that same notice.
- d) Within 14 days of the third occasion on which the purchaser fails to make a payment in accordance with the milk purchase contract.
- e) Within 14 days of the death of a person specified in the milk purchase contract as someone whose death enables the milk purchase contract to be terminated.
- f) Within 14 days of a requirement to pay a civil penalty or compensation being imposed on the purchaser under FDOM24.

Additional provisions

- 67. FDOM24 prohibits changes to the pricing method or price paid for milk being made by the purchaser because of a termination notice being issued by the producer.
- 68. Further, FDOM24 prohibits any rule being included within a milk purchase contract that the termination notice can only be issued by the producer on a specific day.

Important: In line with the advice offered earlier in this guidance, and consistent with the approach that we suggest that businesses take throughout, both parties should seek independent legal advice when it comes to terminating their milk purchase contracts.

Glossary of Terms

In this guidance -

- “milk” means cow’s milk;
- “milk constituent” means a substance contained in, or which can be extracted from, milk;
- “milk purchase contract” means a contract made by a purchaser for the purchase of milk from a producer;
- “the parties” in relation to a milk purchase contract, means the purchaser and the producer who are party to the contract;
- “purchaser” means, in relation to the purchase of milk, a person who purchases milk in the course of carrying on a business that includes purchasing products of that kind.
- “producer” means a qualifying seller falling within section 29(3)(b)(i) of the Agriculture Act 2020;
- “fixed-duration contract” is a milk purchase contract that will terminate on the expiry of a specific period or on a specified date.
- “fixed price” is a price, set out in the milk purchase contract, that is expressed per unit of milk or milk constituent and will be paid by the purchaser to the producer for milk supplied under the contract.
- “evergreen contract” is a milk purchase contract that will continue until one of the parties terminates it.
- “variable price” is a price per unit of milk or milk constituent that is not fixed at the point that the milk purchase contract is made but is determined in accordance with, or by the purchaser, with reference to factors set out in the milk purchase contract.
- “internal democratic structure,” in relation to a purchaser, means an organisational structure—

(a) which is established in the purchaser’s constitution; and

(b) within which is a decision-making body—

(i) the membership of which includes a majority of individuals who are democratically elected by the producer members of the purchaser; and

(ii) which has ultimate decision-making authority in relation to contracts for the purchase of milk;

- “producer member” means a producer that has an ownership interest in the purchaser in question;
- “representative organisation” means—
 - (a) a producer organisation or an association of producer organisations recognised under Chapter 3 of Title 2 of Part 2 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013(3) establishing a common organisation of the markets in agricultural products; or
 - (b) a pre-commencement society, within the meaning of section 150 of the Cooperative and Community Benefit Societies Act 2014(4), that does not carry out processing activities(5);