

COMMISSION REGULATION (EEC) No 1565/79

of 25 July 1979

laying down rules for implementing Regulation (EEC) No 1422/78 concerning the granting of certain special rights to milk producer organizations in the United Kingdom

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 1761/78⁽²⁾, and in particular Article 25 (4) thereof,

Having regard to Council Regulation (EEC) No 1422/78 of 20 June 1978 concerning the granting of certain special rights to milk producer organizations in the United Kingdom⁽³⁾, and in particular Article 11 thereof,

Whereas the five Milk Marketing Boards (hereinafter called 'MMBs') listed in Article 1 (2) of Regulation (EEC) No 1422/78 have carried out a poll in accordance with the provisions of Article 2 of that Regulation; whereas the results of this poll show that each MMB is representative within the meaning of Article 25 (1) of Regulation (EEC) No 804/68; whereas the United Kingdom may therefore be authorized to grant to those MMBs the rights set out in Article 25 (1) of Regulation (EEC) No 804/68; whereas the maintenance of this authorization is conditional upon the respect of the conditions laid down in that Article, in Regulation (EEC) No 1422/78 and in the present Regulation;

Whereas, according to Article 1 (3) (b) and Article 5 of Regulation (EEC) No 1422/78, this authorization must contain special conditions to ensure compliance with the provisions of that Regulation; whereas certain implementing rules are required in order that these provisions may be applied;

Whereas the implementing rules must clarify certain provisions of the above Regulation; whereas the United Kingdom should be free, after consulting the Commission, to determine, on the basis of Community provisions, the detailed provisions and supervision measures which it considers most suitable; whereas, however, the Commission must reserve the right to supplement its implementing rules should this prove necessary;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 204, 28. 7. 1978, p. 6.

⁽³⁾ OJ No L 171, 28. 6. 1978, p. 14.

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

TITLE I

Authorization

Article 1

Subject to conditions laid down in Regulation (EEC) No 1422/78 and in this Regulation, the United Kingdom is hereby authorized to grant the rights set out in Article 25 (1) of Regulation (EEC) No 804/68 to the following producer organizations:

- the Milk Marketing Board of England and Wales,
- the Scottish Milk Marketing Board,
- the Aberdeen and District Milk Marketing Board,
- the North of Scotland Milk Marketing Board,
- the Milk Marketing Board for Northern Ireland.

TITLE II

Special conditions

Article 2

1. The United Kingdom shall adopt before 1 January 1980 the necessary detailed provisions to ensure compliance with Article 5 (1), (2) and (3) of Regulation (EEC) No 1422/78.

2. The United Kingdom shall inform the Commission in good time of the content of these detailed provisions, so that the Commission may make any comments before these provisions are applied.

3. Supplementary general implementing rules or specific decisions shall be adopted by the Commission should this prove necessary.

Article 3

1. Producers wishing to exercise the right referred to in Article 7 (1) (a) of Regulation (EEC) No 1422/78 shall inform the competent authority and the MMB of their intention in writing at least two months before the start of the withholding, stating :

- (a) the precise period of withholding or the minimum period envisaged for the withholding ;
- (b) whether all milk sold by the producer will be withheld or a proportion of the total sale ; where a proportion of milk sales by the producer is involved, the quantity of milk to be withheld shall be stated ;
- (c) in what form (unprocessed or processed) the milk withheld is intended to be marketed outside the United Kingdom.

2. If the information referred to in paragraph 1 (a) indicates only a minimum period of withholding, resumption of deliveries to the MMB is conditional upon a two month advance notice of resumption to the MMB.

3. The United Kingdom shall adopt detailed provisions to ensure that the quantities of milk concerned are exported from the United Kingdom, in unprocessed or processed form. These detailed provisions may include requirements that producers must keep, and reveal to the competent authority, contracts and other documents relating to the export of the milk concerned.

Article 2 (2) and (3) shall apply by analogy.

Article 4

1. The period referred to in Article 7 (1) (b) of Regulation (EEC) No 1422/78 shall be not more than five consecutive calendar months, for which the producer has received payment for milk sold to the MMB, and which occur within the 12 month period preceding the commencement date for withholding of milk from the MMB. The rights referred to in that Article may also be exercised if, during any period of 12 months, the average price paid to a producer for that period falls below the level referred to therein.

2. Producers wishing to exercise the right referred to in Article 7 (1) (b) of Regulation (EEC) No 1422/78 shall inform the competent authority and the MMB of their intention in writing at least one month before the start of withholding, stating the likely or precise period of withholding from the MMB, and whether all milk sold by the producer will be withheld or a proportion of the total sale. Where a proportion of milk sales by the producer is involved, the quantity of

milk to be withheld shall be stated. The intention to withhold can be presented immediately upon receipt of the first of the payments referred to in paragraph 1.

Without prejudice to earlier resumption of deliveries to the MMB, the period of withholding may not continue more than six months beyond a period of three consecutive months from which the MMB again pays a milk price in excess of the established equivalent of the intervention price level.

3. Any earlier resumption of deliveries to the MMB is conditional upon a two month advance notice of resumption to the MMB, unless a precise period of withholding was indicated in the information referred to in paragraph 2.

4. The United Kingdom :

- (a) shall adopt detailed provisions to enable the milk producer to determine the milk price resulting from the intervention prices applicable ; these provisions shall include the publication of an intervention price equivalent of milk established as a guide by an administrative authority, independent of the MMB, on the basis of average margins and conversion factors without prejudice to the intervention price equivalent of milk which can be established by the producer in relation to his or her individual circumstances ;
- (b) may adopt detailed provisions to guarantee that the quantities of milk communicated in accordance with paragraph 2 are actually processed into butter or skimmed-milk powder with a view to sale to the intervention agency and that these products are in fact offered for sale to the intervention agency ; these provisions may include requirements that producers must keep and reveal to the competent authority contracts and other documents relating to that milk.

Article 2 (2) and (3) shall apply by analogy to these detailed provisions.

Article 5

1. Unless he indicates a later date, a producer retailer shall be exempted pursuant to Article 8 of Regulation (EEC) No 1422/78 from two calendar months onwards following the month in which the MMB concerned has received his declaration pursuant to paragraph 2 (c) of that Article. No practices intended artificially to bring the individual producer within the production limits prescribed by Article 8 of Regulation (EEC) No 1422/78 shall be permitted.

Producers wishing to exercise the right referred to in Article 8 (1) (b) of Regulation (EEC) No 1422/78 shall inform the competent authority and the MMB of their

intention in writing at least 60 days before starting to sell to a producer retailer within the meaning of Article 8 (2) of Regulation (EEC) No 1422/78.

2. If the MMB concerned contests the producer's fulfilment of the conditions laid down in Article 8 of Regulation (EEC) No 1422/78, it shall submit the producer's declaration and all necessary documents and information to an administrative authority independent of the MMB appointed by the United Kingdom, and this authority shall, after giving the producer and the Board the opportunity of making representations, and after deciding whether or not the case falls within the conditions provided for in the aforementioned Article 8, grant or refuse the producer exemption in writing.

Exemption shall be considered granted if the administrative authority does not issue a reasoned decision rejecting the exemption within 60 days of the receipt of the producer's declaration by the MMB.

3. The period of at least five years referred to in Article 8 (2) (c) of Regulation (EEC) No 1422/78 shall begin on the day on which the exemption pursuant to paragraph 1 commences.

4. The administrative authority may withdraw the exemption if it is established that the average amount of liquid milk sold annually by the producer retailer concerned to the final consumer is more than twice his total annual average production established pursuant to Article 8 (2) (a) of Regulation (EEC) No 1422/78 or if it is established that the producer retailer concerned ceases to respect the conditions laid down in paragraphs 2 (b) or 3 of that Article.

5. The United Kingdom shall adopt the necessary measures for supervising compliance with Article 8 of Regulation (EEC) No 1422/78. Producer retailers who are exempted pursuant to paragraph 1 may be required to supply the administrative authority and the MMB with information about their production, purchases and sales of milk. Other producers who sell milk to producer retailers exempted pursuant to paragraph 1 may be required to supply to the administrative authority and the MMB information about their sales to these producer retailers. Article 2 (2) and (3) shall apply by analogy to these measures.

Article 6

1. The United Kingdom shall adopt the necessary detailed provisions for continuing supervision of compliance with Article 9 of Regulation (EEC) No 1422/78.

2. These provisions shall determine in particular for the application of paragraph 1 of that Article :

- a definition of the possible 'uses' in the sense of paragraph 1 (a),
- the 'other criteria' of an objective nature which may be taken into consideration under the procedure laid down in paragraph 4 of that Article.

Differentiating the selling price on the basis of the use to which the milk is put or on the basis of other objective criteria shall only be excluded in so far as it could lead to a discrimination between milk buyers and in so far as it may be an obstacle to the normal functioning of the common market organization and, in particular, its intervention system and Community aid schemes.

3. The minimum level of the selling prices referred to in Article 9 of Regulation (EEC) No 1422/78 shall be finally determined within the month immediately following the month of delivery of the milk to the buyer and may not be subject to any subsequent reduction, rebate or discount.

This provision shall not, however, prevent *bona fide* adjustments being made in exceptional cases, in particular where the milk delivered does not comply with the qualitative standards applicable to the transaction concerned.

4. For the application of Article 9 (3) of Regulation (EEC) No 1422/78, the United Kingdom shall adopt measures for the comparison on a regular basis of the first-hand selling prices realized on the United Kingdom market by the principal milk products made from milk sold by the MMB and by similar milk products imported into the United Kingdom from other Member States.

The United Kingdom shall communicate each month to the Commission the lowest first-hand selling price on the United Kingdom market for a commercially significant quantity of each of the principal domestic milk products and milk products imported from other Member States sold on that market during the previous month. The prices communicated should be for comparable qualities.

5. In cases where the first-hand selling price realized on the United Kingdom market by a commercially significant quantity of a domestic product falls below the lowest price of a commercially significant quantity of the milk product of a comparable quality imported from other Member States, an administrative authority, independent of the MMB appointed by the United Kingdom, shall investigate the price realized by the domestic product to determine whether it has fallen below the lowest price of the equivalent imported product as a result of the selling price applied by the MMBs for milk.

The United Kingdom shall communicate the results of these investigations to the Commission within one month of the authority concerned completing its enquiry.

6. Any complaints about failure to comply with Article 9 (3) of Regulation (EEC) No 1422/78 shall be submitted initially to the administrative authority referred to in paragraph 5 together with full supporting evidence. The United Kingdom shall communicate to the Commission a copy of every complaint and of the reasoned reply given to the complainant. A reasoned reply shall be dispatched to the complainant within two months of receipt by the administrative authority of the complaint.

7. If the administrative authority referred to in paragraph 5 establishes that the selling price applied by any of the MMBs for milk for any particular use is in contravention of Article 9 (3) of Regulation (EEC) No 1422/78, then the United Kingdom shall immediately take the necessary measures to ensure compliance, in particular that the MMB or MMBs concerned make the appropriate adjustments in their selling prices for the milk in question and for future sales. Details of these measures shall be communicated immediately to the Commission.

8. Article 2 (2) and (3) shall apply by analogy to the provisions adopted by the United Kingdom pursuant to the present Article.

TITLE III

Final provisions

Article 7

1. In order to ensure that the conditions laid down in Article 25 (2) of Regulation (EEC) No 804/68 continue to be fulfilled on a permanent basis, the Member States shall submit a report to the Commission once a year giving the quantities of fresh products within the meaning of Article 4 (2) of Regulation (EEC) No 1422/78 used within the previous calendar year for direct human consumption within their territories. The report shall be submitted by 1 May of each year.

2. The following milk equivalents shall apply for the purposes referred to in paragraph 1 :

1 kg whole drinking milk :	1 kg raw milk
1 kg semi-skimmed milk :	0.7 kg raw milk
1 kg skimmed milk :	0.5 kg raw milk
1 kg buttermilk for direct human consumption :	0.5 kg raw milk
1 kg yoghurt :	0.7 kg raw milk
1 kg cream :	6.2 kg raw milk

Article 8

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1979.

For the Commission

Finn GUNDELACH

Vice-President