

## SCHEDULE

Regulation 3

### PRESERVED SECTIONS OF THE SCOTTISH MILK MARKETING SCHEME 1989

#### **Title of Scheme**

1.—(1) This Scheme may be cited as the Scottish Milk Marketing Scheme 1989, and applies to Scotland.

#### **Interpretation**

2.—(1) In this Scheme, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“accounting period” means in the period prior to Vesting Day the final trading period and thereafter such period as shall be determined from time to time by the Board;

“buyer” means a person who buys raw milk in bulk from or through the agency of the Board;

“commercial activities” in relation to the Board means any activities carried out by the Board in the final trading period in exercise of their powers under paragraphs (a) and (b) of section 15 of the marketing scheme to produce commodities from milk, and to sell milk (other than raw milk in bulk) and commodities produced from milk, and such other of their powers under those paragraphs as are related thereto;

“General Meeting” means a duly convened meeting of registered producers;

“Minister” means the Secretary of State for Scotland;

“producer” means a producer of milk.

(3) Other expressions used in this Scheme have, insofar as the context admits, the same meanings as in the Scottish Milk Marketing Board (Residual Functions) Regulations 1994 and those Regulations shall be read with this Scheme as if they and this Scheme formed a single instrument.

#### **Restructuring of Board’s functions**

(a) 4. (7) (a) *Contracts with the Board.* A member of the Board shall not be disqualified by his office as a member of the Board from entering into any contract with the Board either as a vendor, purchaser, or otherwise, nor shall any such contract or any contract entered into by or on behalf of the Board in which a member of the Board shall be in any way interested, be avoided by reason thereof, nor shall a member of the Board so contracting or being so interested be liable to account to the Board for any profit realised by any such contract merely by reason of such member of the Board holding that office or of the fiduciary relations thereby established. Provided that the nature of the interest of a member of the Board so contracting or being so interested shall be disclosed by him at a meeting of the Board at which the contract is determined on, if his interest then exists, or in any other case at the first meeting of the Board after the acquisition of his interest. Provided further that a member of the Board shall, unless the Board otherwise determine, withdraw from any meeting of the Board when any question relating to such contract is being considered; he shall not be entitled to vote upon any question relating to such contract, and if he does vote his vote shall not be counted. A member of the Board shall not, however, be precluded from voting on a question relating to—

(i) the manner in which any milk which is the property of the Board is to be dealt with by reason only that he has sold milk to or through the Board; or

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(ii) any contract of insurance which the Board are empowered to effect under regulation 33 of the Scottish Milk Marketing Board (Residual Functions) Regulations 1994;

nor shall he be required to withdraw from a meeting of the Board at which such questions are being considered.

*Deeds.*

- (b) (i) All deeds and other writings to which the Board are a party shall be held to be validly executed on behalf of the Board by being sealed with the common seal of the Board and signed by two members of the Board or by one member of the Board and the Secretary, and such subscription on behalf of the Board shall be binding whether attested by witnesses or not.
- (ii) All deeds and other writings executed in any place out of Great Britain or Northern Ireland shall be validly executed by being signed by such persons as may be duly authorised by the Board.
- (iii) A document or proceedings requiring authentication by the Board may be signed by a member of the Board, Secretary or other person authorised by the Board, and need not be under the common seal of the Board.

(10) *Expenses of members of the Board.* Members of the Board shall be entitled, in the exercise of their duties, to payment of reasonable travelling and subsistence expenses.

**Meetings of the Board**

5.—(3) The Board shall at all times have power to act notwithstanding any vacancy among their members, and may appoint committees and may, subject to the provisions of this Scheme with respect to the application of the common seal of the Board, delegate any of their powers to any committee so appointed.

(5) All acts done at any meetings of the Board or of any committee thereof shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of any person purporting to be a member of the Board or the committee, or that a member of the Board had voted upon any question upon which he was not entitled to vote, be as valid as if that defect had not existed.

(6) The Board shall cause minutes to be made, in books provided for the purpose, of all resolutions and proceedings of meetings of the Board, or any committee thereof, and any such minutes, if signed by any person purporting to be the chairman of the meeting to which they relate, or at which they are read, shall be received as conclusive evidence of the facts therein stated. The meetings to which any such minutes relate shall be presumed, until the contrary is proved, to have been regularly convened and constituted.

**Chairman**

7. The Chairman shall preside at all General Meetings and at all meetings of the Board. If he is absent from a General Meeting or a meeting of the Board, the Board shall appoint another Chairman of the meeting from their own number.

**Address of office**

8. The Board shall have an office in Scotland at which communications and notices will at all times be received, and shall notify the Minister of the address.

### **Change of address of office**

9. In the event of any change in the address of the office, notice of such change shall be sent to the Minister within 14 days thereafter.

### **Staff**

10. The Board may appoint and may remove a secretary and such other officers and employees as they may deem necessary.

### **Auditor**

11.—(1) The Auditor or Auditors shall be appointed each year by the Annual General Meeting, but a person or firm other than the retiring Auditor or Auditors shall not be capable of being appointed Auditor or Auditors at the Annual General Meeting unless notice of intention to nominate that person or firm to the office has been given by a registered producer to the Board not later than the 28th day before the Meeting.

(2) No person or firm shall be eligible for appointment as Auditor or Auditors unless that person or firm would be eligible for appointment as Auditor or Auditors of a public limited liability company in terms of section 389 of the Companies Act 1985((1)).

(3) In case of a vacancy the Board may appoint a person or firm qualified as aforesaid to act as temporary Auditor or Auditors until the next Annual General Meeting, but a person or firm so appointed shall not be deemed to be a retiring Auditor for the purposes of subsection (1).

(4) The Auditor shall not hold any other office in connection with this Scheme.

### **Registration of producers**

12.—(2) For the purposes of this Scheme, a company, a society registered under the Industrial and Provident Societies Acts, a regional or district council, or other corporate body, or an institution, or a firm producing milk shall be deemed to be a single producer.

(3) Where, by reason of a registered producer dying or becoming subject to some legal disability or entering into a composition or scheme of arrangement with his creditors, the property in, or the control of, any business of producing milk is transferred from him to a personal representative, trustee, committee or other person, such personal representative, trustee, committee or other person shall, until he has disposed of the property in or control of such business of producing milk, be deemed to be a registered producer for all the purposes of this Scheme and shall apply for registration as such:

Provided that on the day of the transfer and for three months thereafter the personal representative, trustee, committee, or other person may do, without being registered, anything in relation to the business so transferred which the registered producer might have done.

(4) Within one month of Vesting Day the Board shall publish in such manner as they think fit a notice publicising the existence of the register and the place at, the hours during, and the days on which it may be inspected. The register shall be open for inspection at the office of the Board at any reasonable time during the days on which the office is open for business.

(5) A copy of the register, or any part thereof, shall be furnished by the Board to any person demanding it, within a period of 10 days from the date on which the demand is received by the Board, on payment to the Board of a fee to be determined by the Board which reasonably compensates the Board for the cost of furnishing the information.

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(1) 1985 c. 6.

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### **Information to be furnished by registered producers**

19. Every registered producer shall be required to furnish to the Board such estimates, returns, accounts and other information relating to the milk produced by him as the Board consider necessary for the discharge of their functions.

### **Expenses of collection of milk**

22.—(4) The cost of collecting milk from registered end year producers shall be an expense chargeable to the general fund, but in the event of the Board considering that any such collection is unreasonably difficult or unduly onerous or costly (whether by reason of difficulty of access, or inconvenience of location, or any other reason) then the Board may, in such a case, assess a Special Collection Charge. The amount of such a charge shall be fairly related to the actual extra cost of the collection compared to the average cost of collection as assessed by the Board, and shall be debited against the account of the individual producer concerned.

### **Financial provisions and payment for milk**

26.—(5) If a buyer shall have paid the Board a premium for any special service rendered to him in the final trading period by a registered end year producer, the Board shall pay such premium to that producer.

(6) For the purpose of promoting or maintaining the purity and good quality of milk, the Board may pay premiums or bonuses to registered end year producers in respect of such descriptions of milk produced and sold by them in the final trading period as the Board may determine. The Board may determine the conditions subject to which such premiums or bonuses will be paid, and may determine different premiums or bonuses and different conditions for different descriptions of milk and for different classes of sale.

(7) The Board may deduct from, or set off against, any sums payable to a registered end year producer in terms of subsections (5), (6) and (9) any contributions payable by such registered end year producer, and any other sums due to the Board by such registered end year producer.

(9) The moneys payable to the Board for the sale of raw milk in the final trading period, together with such other moneys (if any) as the Board think fit, but less—

- (a) sums payable under subsections (5) and (6), and
- (b) such sums as in the opinion of the Board are required to pay all or such part as the Board think fit of the Board's expenses, losses and outgoings of every description in respect of that accounting period,

shall be paid by the Board to registered end year producers, the proceeds of the sale of whose milk during that period are required to be paid into the general fund, in proportion to the quantity of milk sold by them to or through the agency of the Board during that accounting period or any part thereof, and that in such amounts and at such times and in such manner as the Board shall from time to time determine, so however that such registered end year producers, notwithstanding the price at which the milk of any individual registered end year producer has been disposed of, shall on the occasion of each such payment receive a uniform rate per litre (hereinafter referred to as the "pool price"):

Provided that—

- (i) if any such registered end year producer shall have sold milk which is of a standard of quality lower than that determined by the Board, the Board may pay him in respect of such milk such price lower than the pool price as the Board may determine,
- (ii) the Board shall where appropriate deduct from the pool price, or the lower price referred to in the foregoing proviso, the Special Collection Charge in accordance with the provisions of section 22, and

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- (iii) in the event of the Board being prevented from accepting milk of a registered end year producer or any part thereof due to an industrial dispute, adverse weather or other contingency beyond the control of the Board, the Board may make such deduction from the pool price payable to that producer in respect of such milk as may be determined by the Board.

(10) Any moneys payable to the Board from its commercial activities, together with such other moneys (if any) as the Board think fit, less such sums as in the opinion of the Board are required to pay all, or such part as the Board think fit, of the Board's expenses, losses and outgoings of every description incurred in respect of the final trading period in relation to the activities from which the moneys payable under this subsection have accrued, shall be paid by the Board to all registered end year producers in proportion to the quantity of milk sold by them under the provisions of the marketing scheme during the final trading period or any part thereof.

(11) *Power to borrow money.* The Board may obtain loans or advances from any persons, including loans or advances from banks or building societies by way of overdraft on current account, or otherwise, with or without security, and on such terms and conditions as may be arranged.

(12) *Power to invest money.* Any money for the time being standing to the credit of the general fund may be left on current or deposit account in any bank or building society, or, if not for the time being required for the purposes of the functions of the Board, may be invested in such manner as they may determine.

## **Sales by retail, semi-retail and wholesale**

### *Contributions to the Board*

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- (a) **27. (2) (a)** Every registered end year producer licensed by the Board to sell milk by retail, semi-retail or wholesale shall pay to the Board a contribution of such amount as the Board may determine in respect of every litre of milk (whether sold as whole milk or otherwise) of his own production which he has sold in the final trading period, or any part thereof, by retail, by semi-retail or by wholesale. The Board may determine different rates of contribution for different descriptions of milk and for the avoidance of doubt it is hereby declared that the Board may, in exercise of the power conferred upon them by this subsection, for any such rate fixed by them in that period determine in the first accounting period after Vesting Day that some other rate shall be payable. Such contributions shall be payable on such dates as may be fixed by the Board and shall be a debt due by the registered end year producer to the Board and recoverable by the Board accordingly. In determining the rate of any such contribution the Board shall have regard to the extent to which the prices determined by the Joint Committee for milk (whether sold as whole milk or otherwise) of the same description as that sold by the registered end year producer for the appropriate accounting period as estimated by the Board exceed the pool prices for that period as so estimated with intent that the average rate of contribution for the accounting period shall not be greater than the amount by which the simple average of such prices determined by the Joint Committee exceeds the simple average of such pool prices.
- (b) In addition to the contribution determined by the Board under subsection (2)(a), the Board may require registered end year producers, in respect of every litre of milk (whether sold as whole milk or otherwise) of their own production sold by them in the final trading period, or any part thereof, by retail, semi-retail or wholesale, to make contributions of such amounts as the Board may determine towards the expenses of the Joint Committee and towards the cost of advertising milk in the final trading period, or any part thereof.

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*Definitions of sale by retail, by semi-retail and by wholesale*

- (a) (3) (a) Sale by retail means the sale by a registered end year producer, licensed as aforesaid, of milk (whether sold as whole milk or otherwise) of his own production by his own hand or by the hand of a member of his family or that of a person directly employed by him to domestic consumers.
- (b) Sale by semi-retail means the sale by a registered end year producer, licensed as aforesaid, of milk (whether sold as whole milk or otherwise) of his own production by his own hand or by the hand of a member of his family or that of a person directly employed by him to a hospital, hotel, restaurant or such other class or classes of buyers (not being domestic consumers or persons carrying on business as distributors of milk or manufacturers of milk products) as the Board may determine.
- (c) Sale by wholesale means the sale by a registered end year producer, licensed as aforesaid, of milk (whether sold as whole milk or otherwise) of his own production packed on his premises in retail containers and sold by him to a buyer for subsequent retail sale. Provided that the Board may, at their discretion fix the quantity of milk (whether sold as whole milk or otherwise) which may be sold by any individual registered end year producer by wholesale under the provisions of this section.

**Arbitration in cases where producers or buyers are aggrieved**

**35.—**(1) In the event of any producer being aggrieved by any act or omission of the Board affecting the discharge of their functions under the Scottish Milk Marketing Board (Residual Functions) Regulations 1994 (and whether occurring before or on or after Vesting Day), he may make application to the Board demanding that the matter be referred to an arbiter to be agreed upon by the producer and the Board and, failing agreement, to be appointed, on application being made to him by either party, by the sheriff principal of the sheriffdom in which the producer has his place, or principal place, of business, and the Board shall, within 14 days of the receipt of any such application, appoint the arbiter agreed upon or, on failure to agree upon an arbiter within 14 days, each party or both parties may apply to the sheriff principal for the appointment to be made. If a person agreed upon or appointed dies or is incapable of acting, or for 7 days after written notice from either party to the dispute requiring him to act, fails to act, a new arbiter may be agreed upon or appointed as aforesaid, as if no arbiter had been appointed.

(2) *Time for award.* The arbiter shall make and sign his award within 28 days of his appointment.

*Evidence*

- (a) (3) (a) The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbiter may require.
- (b) The arbiter shall have power to administer oaths and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

*The award*

- (a) (4) (a) If the arbiter finds that the Board shall be required to rectify any matter, the subject of the reference, the award shall state the manner in which, and the date as and from which the matter shall be rectified by the Board.
- (b) The award of the arbiter shall be final and binding upon the parties.

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- (c) The arbiter may correct in an award any clerical mistake or error arising from an accidental slip or omission.

#### *Expenses*

- (a) (5) (a) The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner and within what time those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the Sheriff Court on the application of either party, but that taxation shall be subject to review by the Sheriff.
- (b) The arbiter shall, in awarding expenses, take into account the reasonableness or unreasonableness of the claim of the producer concerned either in respect of amount or otherwise and any unreasonable demand for particulars or refusal to supply particulars by either party, and generally all the circumstances of the case, and may disallow the expenses of any witness whom he considers to have been called unnecessarily, and any other expense which he considers to have been incurred unnecessarily.

#### **Accounts**

**39.**—(1) The Board shall cause to be kept, for every accounting period, proper accounting records with respect to—

- (a) all sums of money received and expended by the Board, and the matters in which respect of which the receipt and expenditure takes place;
- (b) all sales and purchases by the Board;
- (c) the assets and liabilities of the Board;

and the accounting records with respect to the Board's commercial activities in the final trading period shall be kept separate from the accounting records with respect to the Board's other activities.

(2) The Board shall charge to its commercial activities in respect of the final trading period such proportion of its general administrative expenses as is fairly attributable to such commercial activities.

(3) *Preparation of accounts.* Following the end of each accounting period, the Board shall prepare, in respect of the accounting period, an Income and Expenditure Account and a Cash Flow Statement. The Board shall also prepare a Balance Sheet as at the date at which these Accounts are made up. The Accounts shall make separate provision for the Board's commercial activities in the final trading period and for the Board's other activities, and shall be in a form approved by the Minister.

(4) *Audit of accounts.* The Board shall submit the Accounts prepared under subsection (3) above for audit to the Auditor appointed under section 11. The Auditor shall examine the Accounts and shall verify the same with the accounting records relating thereto, and shall either sign the Accounts as found by him to show a true and fair view of the state of the Board's affairs and of its results and to be in accordance with law, or shall report to the Board in what respect the Accounts do not show a true and fair view of the Board's affairs and results and are not in accordance with law.

(5) *Submission of audited accounts to the Minister and to registered producers.* Once in every year, the Board shall send to the Minister and to every registered producer, along with a notice calling the meeting at which the Accounts of the Board are to be submitted, the Accounts prepared in accordance with subsection (3) and the report of the Auditor thereon, together with a statement of the manner in which any moneys of the Board are invested in accordance with the provisions of subsection (12) of section 26, and such other information on the workings of the marketing scheme and after Vesting Day for the discharge of their functions in the period covered by the Accounts as the Board may consider necessary for the information of registered producers.

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(6) *Copy of Balance Sheet to be furnished to any person requiring it.* The Board shall furnish a copy of the Balance Sheet to any person requiring it on payment of a fee to be determined by the Board which reasonably compensates the Board for the cost of furnishing such Balance Sheet.

(7) The Board shall furnish the Minister with such information as he may from time to time require concerning any of the Board's activities and shall permit any person duly authorised in writing by the Minister, on production of his authority, to inspect such of the Board's Accounts and records as he may reasonably require to satisfy himself that the Board are complying with the requirements of Council Regulation (EEC) No.1422/78((2)) and of Commission Regulation (EEC) No.1565/79((3)).

### **Annual General Meeting**

40. The Annual General Meeting shall be held at such place, date and hour as the Board or a General Meeting think fit in each calendar year starting with 1995. At any General Meeting of the Board the questions to be put before the meeting shall be limited to the noting of the Board's accounts and appointment of the Board's auditors.

### **Special General Meetings**

41. Special General Meetings may be held where and when the Board or a General Meeting may determine, and shall be held on the requisition in writing of not less than 100 registered producers and which shall state the proposed business.

### **Notice of General Meetings**

42. Notice of the holding of every General Meeting specifying the place, date and hour of meeting and the business to be transacted shall, with the form of instrument appointing a proxy, be sent out by post to all registered producers at least 21 clear days before the date of the meeting. No business shall be transacted other than the business of which notice has been given as aforementioned. On the said notice, there shall appear with reasonable prominence a statement of the right conferred upon a registered producer by subsection (1) of section 43 to appoint a proxy.

### **Voting at General Meetings**

43.—(1) Any registered producer shall be entitled to appoint a proxy to attend and vote instead of him. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting, or he has been appointed to act as the proxy of a corporation or firm which is a registered producer.

(2) Every question put to the vote at the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(a) by the Chairman, or

(b) by at least 20 registered producers present in person or by proxy.

The demand for a poll may be withdrawn.

(3) At a poll, every registered producer shall have one vote and votes may be given, either personally or by proxy. In the case of an equality of votes, whether on a show of hands or a poll, the Chairman of a meeting at which the vote is taken shall, in addition to his other vote (if any), have a casting vote which he shall be required to exercise. In other respects, any poll shall be taken in such a manner as the Chairman of the meeting shall direct.

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(2) O.J. No. L171, 28.6.78, p.14.

(3) O.J. No. L188, 26.7.79, p.29.



(4) The instrument appointing a proxy shall be in writing under the hand of the appointer, or, if the appointer is a corporate body, or other organisation deemed to be a single producer in accordance with section 12(2), either under its common seal or under the hand of an officer or attorney duly authorised.

(5) The instrument appointing the proxy shall be deposited at the office of the Board not less than 72 hours before the time for holding the meeting at which the proxy named in the instrument proposes to vote, and in default, the instrument of proxy shall not be treated as valid.

(6) Every instrument appointing a proxy shall, as nearly as circumstances will permit, be in the form or to the effect set out in Schedule (1) below.

### **Quorum at General Meetings**

**44.** Unless otherwise determined by a previous General Meeting, a quorum at General Meetings shall consist of 25 registered producers personally present. If at any General Meeting a quorum is not present the Meeting shall stand adjourned until the same place and time in the following week, unless the Board otherwise determine, in which case the registered producers personally present at such adjourned Meeting shall constitute a quorum. In the event that less than two registered producers are then personally present, the General Meeting shall again stand adjourned.

### **Winding-up of the Board**

**47.—(1)** Part V of the 1986 Act (which relates to the winding up of unregistered companies) shall apply in relation to the Board subject to the modifications set out in section 47A of this Scheme.

(2) For the purposes of section 226 of the 1986 Act, and notwithstanding any exercise of the powers conferred on the Board or the Minister by section 17 of the Act, every registered eligible producer shall be liable to contribute to the payment of the debts and liabilities of the Board and to the costs and expenses of the winding up proportionately to the number of litres of milk produced and sold by him to the Board, or on which contributions were payable, during the period of 7 years ending on 31 March 1994, but such liability, taking account of any contributions made pursuant to section 17 of the Act, shall not exceed 0.02p per litre. Save as aforesaid, however, no person shall be liable to contribute to the assets of the Board in the winding up by reason only of his being, or having been, a registered producer or a member of the Board.

(3) Any surplus funds remaining on completion of the winding up, after payment of all liabilities and expenses, shall be distributed among the registered eligible producers who, if there had been a deficit on the winding up, would have been liable to contribute in terms of subsection (2), and in the same proportions as such liability to contribute.

**47A.—(1)** For the purposes of sections 221, 222 and 224 of the 1986 Act, the principal place of business of the Board is deemed to be the office of the Board the address of which has been notified to the Minister under section 8 of this Scheme.

(2) Section 221 of the 1986 Act shall apply in relation to the Board as if paragraph (a) of subsection (5) of that section were omitted.

(3) Section 223 of the 1986 Act shall not apply in relation to the Board.

(4) Section 224 of the 1986 Act shall apply in relation to the Board as if the words “or any member of it as such” were omitted.

(5) A petition for winding up of the Board may be presented by the Minister as well as any person authorised by section 124(1) of the 1986 Act (as applied in relation to the Board by section 221(1) of that Act) to present a petition for winding up of the Board.

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(6) Sections 204 and 205 of the 1986 Act shall not apply in relation to the Board, but the dissolution of the Board after winding up under the 1986 Act shall proceed in accordance with section 14(5) of the Act.

**Proof of posting**

**50.** Any requirement of this Scheme that a notice or document shall be sent to a person by the Board shall be deemed to have been complied with if, within the period, if any, limited for the sending of the notice or document, the notice or document is despatched to him by post, properly addressed and with the postage prepaid.