SCHEDULES

SCHEDULE 2

Section 12.

PROVISIONS RELATING TO CARRYING OUT OF APPROVED SCHEME OF REORGANISATION

PART I

TAXATION PROVISIONS

Modifications etc. (not altering text)

C1 Sch. 2 Pt. I modified (retrospectively) by 1996 c. 8, **s. 203(1)**

Transfer to successor bodies: general

1 (1) The following provisions shall apply for the purposes of the Corporation Tax Acts, namely—

(a) any trade, or part of a trade, carried on by a milk marketing board which is transferred under section 11 above to a qualifying body shall be treated as having been, at the time when it began to be carried on by the board and at all times since that time, carried on by that body;

(b) where any trade, or part of a trade, carried on by a milk marketing board is transferred under section 11 above to a qualifying body, the trade carried on by that body after the transfer under that section shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried on before the transfer under that section;

(c) any property, rights or liabilities of a milk marketing board which are transferred under section 11 above to a qualifying body shall be treated as having been, at the time when they became vested in the board and at all times since that time, property, rights or liabilities of that body;

(d) anything done by a milk marketing board in relation to property, rights or liabilities of its which are transferred under section 11 above to a qualifying body shall be deemed to have been done by that body.

(2) In its application to this paragraph, paragraph 31(1) below (definition of "qualifying body") shall have effect with the omission of paragraph (b).

(3) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the milk marketing board ending before the date of the transfer under section 11 above.

Modifications etc. (not altering text)

C2 Sch. 2 Pt. I para. 1 modified (retrospectively with effect as mentioned in s. 203(5) of the amending Act) by 1996 c. 8, **s. 203(5)(7)**

2 (1) The following provisions shall apply for the purposes of the Corporation Tax Acts, namely—

(a) any trade, or part of a trade, carried on by a subsidiary of a milk marketing board which is transferred under section 11 above to a qualifying body shall be treated as having been, at the time when it began to be carried on by the subsidiary and at all times since that time, carried on by that body;

(b) where any trade, or part of a trade, carried on by a subsidiary of a milk marketing board is transferred under section 11 above to a qualifying body, the trade carried on by that body after the transfer under that section shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried on before the transfer under that section;

(c) any property, rights or liabilities of a subsidiary of a milk marketing board which are transferred under section 11 above to a qualifying body shall be treated as having been, at the time when they became vested in the subsidiary and at all times since that time, property, rights or liabilities of that body;

(d) anything done by a subsidiary of a milk marketing board in relation to property, rights or liabilities of its which are transferred under section 11 above to a qualifying body shall be deemed to have been done by that body.

(2) In its application to this paragraph, paragraph 31(1) below (definition of "qualifying body") shall have effect with the omission of paragraph (b).

(3) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the subsidiary ending before the date of the transfer under section 11 above.

3 (1) This paragraph applies where—

(a) in accordance with an approved scheme, shares in a subsidiary of the board to which the scheme relates are transferred otherwise than under section 11 above to a qualifying body ("the successor"), and

(b) the scheme provides—

(i) for free shares in the successor to be issued or transferred to persons by virtue of their being, or having been, registered producers, and

(ii) for the taking of steps with a view to securing the quotation of the successor on the Stock Exchange.

(2) For the purposes of the Corporation Tax Acts—

(a) the shares transferred to the successor shall be treated as having been, at the time when they became vested in the transferor and at all times since that time, vested in the successor; and

(b) anything done by the transferor in relation to the shares transferred to the successor shall be deemed to have been done by the successor.

(3) For the purposes of sub-paragraph (1)(b)(i) above, shares are free if they are issued or transferred without any consideration being provided by the persons acquiring them, there being disregarded for this purpose any depreciatory effect of transfers under

the scheme on the value of a right to participate in the winding up of the board to which the scheme relates.

(4) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the transferor ending before the date of the transfer to the successor.

4 (1) Where—

(a) in accordance with an approved scheme, shares in a subsidiary of the relevant board ("the transferred company") are transferred otherwise than under section 11 above to a qualifying body ("the successor"),

(b) immediately after the transfer, the successor is a member of a group of which the relevant board is a member, and

(c) the scheme provides as mentioned in paragraph 3(1)(b) above,

sections 178 and 179 of the [M1]Taxation of Chargeable Gains Act 1992 shall not apply on the transferred company ceasing to be a member of a group of which the relevant board is a member if, immediately after doing so, it is a member of a group of which the successor is a member.

(2) Where by virtue of sub-paragraph (1) above sections 178 and 179 of the Taxation of Chargeable Gains Act 1992 do not apply, then, on the transferred company ceasing to be a member of a group of which the successor is a member, those sections shall apply—

(a) as if any assets acquired by the transferred company, at any time when it was a member of a group of which the relevant board was a member, from any member of that group had been acquired by it at that time from the successor, and

(b) as if the transferred company and the successor had at all material times been associated companies for the purposes of those sections.

(3) In this paragraph—

"group" has the meaning given by section 170 of the Taxation of Chargeable Gains Act 1992; and

"relevant board" means the board to which the scheme relates.

Marginal Citations

M1 1992 c. 12.

Chargeable gains

5 (1) This paragraph applies where—

(a) by virtue of a qualifying transfer a company would, but for paragraph 1, 2 or 3 above, cease to be a member of a group of which a milk marketing board is a member; and

(b) assets have been acquired by that company from that board or from any other member of that group, other than one which, but for paragraph 1, 2 or 3 above, would have ceased to be a member of that group at the same time and which, both immediately before and immediately after the transfer, is a member of the same group as that company.

(2) On the company ceasing to be a member of a group of which the body to which the qualifying transfer is made is a member, sections 178 and 179 of the [M2]Taxation of Chargeable Gains Act 1992 shall apply as if any assets acquired at any time as mentioned in sub-paragraph (1) above had been acquired by the company from that body at that time.

(3) In this paragraph—

"group" has the meaning given by section 170 of the Taxation of Chargeable Gains Act 1992; and

"qualifying transfer" means a transfer under an approved scheme to a qualifying body of shares in a subsidiary of the board to which the scheme relates, being a transfer which takes place under section 11 above or in circumstances in which paragraph 3 above applies.

Marginal Citations

M2 1992 c. 12.

Roll-over relief

6 (1) This paragraph applies where a milk marketing board has, before the vesting day under an approved scheme, disposed of (or of its interest in) any assets used, throughout the period of ownership, wholly or partly for the purposes of a trade or part of a trade transferred under section 11 above to a qualifying body.

(2) Sections 152 to 156 of the Taxation of Chargeable Gains Act 1992 (roll-over relief on replacement of business assets) shall have effect in relation to that disposal as if the board and the qualifying body were the same person.

Unallowed capital losses

7 (1) This paragraph applies where under an approved scheme there are one or more relevant successors in relation to the relevant board.

(2) Where there is one relevant successor in relation to the relevant board, any unallowed capital losses of the relevant board shall—

(a) be apportioned between the relevant board and the relevant successor in accordance with the scheme, and

(b) so far as apportioned to the relevant successor, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

(3) Where there is more than one relevant successor in relation to the relevant board, any unallowed capital losses of the relevant board shall—

(a) be apportioned amongst the relevant board and the relevant successors in accordance with the scheme, and

(b) in the case of each relevant successor to which such losses are so apportioned, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

(4) In this paragraph, references to relevant successor, in relation to the relevant board, include a body to which shares held by that board in a subsidiary of its are transferred in circumstances in which paragraph 3 above applies.

(5) In this paragraph—

"allowable capital losses" means losses which are allowable losses for the purposes of corporation tax on chargeable gains;

"relevant board" means the board to which the scheme relates; and

"unallowed capital losses" means any allowable capital losses which have accrued to the relevant board before the vesting day under the scheme, in so far as they have not been allowed as deductions from chargeable gains.

8 (1) This paragraph applies where an approved scheme provides for the transfer of all the property, rights and liabilities to which a subsidiary of the relevant board is entitled or subject on the vesting day under the scheme.

(2) Where there is one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall be treated as allowable capital losses accruing to the relevant successor on the disposal of an asset on the vesting day under the scheme.

(3) Where there is more than one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall—

(a) be apportioned between the relevant successors in accordance with the scheme, and

(b) in the case of each relevant successor to which such losses are so apportioned, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

(4) In this paragraph—

"allowable capital losses" means losses which are allowable losses for the purposes of corporation tax on chargeable gains;

"relevant board" means the milk marketing board to which the scheme relates; and

"unallowed capital losses" means any allowable capital losses which have accrued to the subsidiary before the vesting day under the scheme, in so far as they have not been allowed as deductions from chargeable gains.

9 (1) This paragraph applies where an approved scheme provides for the transfer of some, but not all, of the property, rights and liabilities to which a subsidiary of the relevant board is entitled or subject on the vesting day under the scheme.

(2) Where there is one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall—

(a) be apportioned between the subsidiary and the relevant successor in accordance with the scheme, and

(b) so far as apportioned to the relevant successor, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

(3) Where there is more than one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall—

(a) be apportioned amongst the subsidiary and the relevant successors in accordance with the scheme, and

(b) in the case of each relevant successor to which such losses are so apportioned, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

(4) Sub-paragraph (4) of paragraph 8 above shall apply for the purposes of this paragraph as it applies for the purposes of that.

10 Where by virtue of paragraph 8 or 9 above losses of one body are treated as accruing to another body, they shall not be allowed as deductions from chargeable gains accruing to that other body on a disposal of shares in, or securities of, the first-mentioned body.

Apportionment of losses and capital allowances

11 (1) This paragraph applies where a trade carried on by a milk marketing board is transferred under section 11 above to more than one qualifying body ("the successor bodies").

(2) There shall be apportioned between the successor bodies—

(a) the unallowed tax losses of the board, and

(b) any expenditure incurred by the board before the date of the transfer and by reference to which capital allowances may be made.

(3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—

(a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade transferred, and

(b) as respects the apportionment of such expenditure, to the division of the board's assets between the successor bodies.

(4) In this paragraph, "unallowed tax losses" means—

(a) any losses which, as at the end of the last complete accounting period of the board ending before the date of the transfer under section 11 above, are losses which under section 393(1) of the [M3]Income and Corporation Taxes Act 1988 are or, if a claim had been made under that subsection, would be available for relief against the board's trading income for the next accounting period, and

(b) any allowances which, as at the end of the last complete accounting period of the board ending before that date, are allowances which, under section 145(2) of the [M4]Capital Allowances Act 1990, are available for carry forward to the next accounting period.

Marginal Citations

M3 1988 c. 1.

M4 1990 c. 1.

12 (1) This paragraph applies where a trade carried on by a subsidiary of a milk marketing board is transferred under section 11 above to more than one qualifying body ("the successor bodies").

(2) There shall be apportioned between the successor bodies—

(a) the unallowed tax losses of the subsidiary, and

(b) any expenditure incurred by the subsidiary before the date of the transfer and by reference to which capital allowances may be made.

(3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—

(a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade transferred, and

(b) as respects the apportionment of such expenditure, to the division of the subsidiary's assets between the successor bodies.

(4) In this paragraph, "unallowed tax losses" means—

(a) any losses which, as at the end of the last complete accounting period of the subsidiary ending before the date of the transfer under section 11 above, are losses which under section 393(1) of the Income and Corporation Taxes Act 1988 are or, if a claim had been made under that subsection, would be available for relief against the subsidiary's trading income for the next accounting period, and

(b) any allowances which, as at the end of the last accounting period of the subsidiary ending before that date, are allowances which, under section 145(2) of the Capital Allowances Act 1990, are available for carry forward to the next accounting period.

13 (1) This paragraph applies where part of a trade carried on by a subsidiary of a milk marketing board is transferred under section 11 above to one qualifying body ("the successor body") and the remainder is retained by the subsidiary.

(2) There shall be apportioned between the subsidiary and the successor body—

(a) the unallowed tax losses of the subsidiary, and

(b) any expenditure incurred by the subsidiary before the date of the transfer and by reference to which capital allowances may be made.

(3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—

(a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade, and

(b) as respects the apportionment of such expenditure, to the division of the subsidiary's assets between itself and the successor body.

(4) In this paragraph, "unallowed tax losses" has the same meaning as in paragraph 12 above.

14 (1) This paragraph applies where part of a trade carried on by a subsidiary of a milk marketing board is transferred under section 11 above to more than one qualifying body ("the successor bodies") and the remainder is retained by the subsidiary.

(2) There shall be apportioned amongst the subsidiary and the successor bodies—

(a) the unallowed tax losses of the subsidiary, and

(b) any expenditure incurred by the subsidiary before the date of the transfer and by reference to which capital allowances may be made.

(3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—

(a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade, and

(b) as respects the apportionment of such expenditure, to the division of the subsidiary's assets amongst itself and the successor bodies.

(4) In this paragraph, "unallowed tax losses" has the same meaning as in paragraph 12 above.

15 (1) Any question which arises as to the manner in which the apportionment under any of paragraphs 11 to 14 above is to be made shall be determined, for the purposes of the tax of the parties concerned—

(a) in a case where one body of General Commissioners have jurisdiction with respect to all the parties concerned, by those Commissioners, unless the parties concerned agree that it shall be determined by the Special Commissioners;

(b) in a case where more than one body of General Commissioners have jurisdiction with respect to the parties concerned, by such of those bodies of General Commissioners as the Commissioners of Inland Revenue may direct, unless the parties concerned agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners.

(2) The Commissioners by whom the question falls to be determined shall make the determination in like manner as if it were an appeal except that the parties concerned shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.

(3) In this paragraph, references to the parties concerned are to the persons between or amongst whom the apportionment in question falls to be made.

Distributions

16 (1) This paragraph applies to the following events—

(a) the issue or transfer under an approved scheme on or before the vesting day under the scheme of any shares in, or securities of, a relevant body;

(b) the issue or transfer under an approved scheme to trustees of any shares in, or securities of, a company on terms which provide for the transfer of those shares or securities to persons by virtue of their being, or having been, registered producers;

(c) the conferring of any right under an approved scheme on or before the vesting day under the scheme, being a right to a distribution out of the assets of a relevant body;

(d) the conferring under an approved scheme on or before the vesting day under the scheme of any such right as is mentioned in paragraph (a), (b) or (c) of paragraph 26(1) below;

(e) the transfer under an approved scheme on or before the vesting day under the scheme of any property or rights of a milk marketing board, or of a subsidiary of such a board, to a qualifying body; and

(f) the transfer under an approved scheme on or before the vesting day under the scheme of any relevant asset of a milk marketing board, or of a subsidiary of such a board, to any person by virtue of his being, or having been, a registered producer.

(2) None of the events to which this paragraph applies, and no combination of the events mentioned in paragraphs (a) (so far as relating to the issue or transfer of shares) and (e) of sub-paragraph (1) above, shall be regarded as—

(a) a distribution for the purposes of the Corporation Tax Acts, or

(b) a capital distribution for the purposes of section 122 of the [M5]Taxation of Chargeable Gains Act 1992.

(3) In this paragraph—

(a) "relevant asset" means an item of plant or machinery used for the production or storage of milk, dairy produce or any produce of which milk is an ingredient;

(b) "relevant body" means—

(i) a relevant successor of a milk marketing board,

(ii) a subsidiary of such a board, or

(iii) a relevant successor of such a subsidiary; and

(c) references to relevant successor—

(i) in relation to a milk marketing board, include a body to which shares held by the board in a subsidiary of its are transferred in circumstances in which paragraph 3 above applies, and

(ii) in relation to a subsidiary of such a board, include a body to which shares held by the subsidiary in a subsidiary of its are transferred in circumstances in which that paragraph applies.

Modifications etc. (not altering text)

C3 Sch. 2 Pt. I para. 16 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, **s. 203(6)(7)**

C4 Sch. 2 Pt. I para. 16(1) modified (retrospectively) by 1996 c. 8, **s. 203(1)(3)**

Marginal Citations

M5 1992 c. 12.

Disapplication of section 22 of the Taxation of Chargeable Gains Act 1992

17 Section 22 of the Taxation of Chargeable Gains Act 1992 (disposal where capital sums derived from assets) shall not apply in relation to any of the events to which paragraph 16 above applies.

Depreciatory transactions

18 (1) This paragraph applies where—

(a) by virtue of the occurrence of any of the events to which paragraph 16 above applies ("the relevant event"), one company ("the first company") would, apart from the provisions of this Part of this Schedule, be treated for the purposes of the taxation of chargeable gains as disposing of, or of an interest in, any shares in, or securities of, another company ("the second company"), and

(b) as a result of the occurrence of that event the value of those shares or securities ("the shares or securities concerned") is materially reduced.

(2) Section 176 of the [M6]Taxation of Chargeable Gains Act 1992 shall apply to any disposal to which sub-paragraph (3), (4) or (5) below applies—
   (a) as if the relevant event were a depreciatory transaction, and
   (b) if the first company and the second company and, if different, the company which makes the disposal are not, throughout the period beginning with the occurrence of the relevant event and ending with the disposal, members of a group of companies (within the meaning of that section), as if they were.

(3) This sub-paragraph applies to any disposal by the first company which—
   (a) is a disposal of the asset of which the shares or securities concerned are deemed for the purposes of the Taxation of Chargeable Gains Act 1992 to consist at the time of the event, and
   (b) is not a disposal which by virtue of any enactment is treated as one on which neither a gain nor a loss accrues to the person making the disposal.

(4) This sub-paragraph applies to any disposal, by a company to which shares or securities comprised in the asset mentioned in sub-paragraph (3) above are transferred under section 11 above, or in circumstances in which paragraph 3 above applies, which—
   (a) is a disposal of the asset which those shares or securities are deemed for the purposes of the Taxation of Chargeable Gains Act 1992 to consist of, or to be included in, immediately after the transfer, and
   (b) is not a disposal which by virtue of any enactment is treated as one on which neither a gain nor a loss accrues to the person making the disposal.

(5) This sub-paragraph applies to any disposal, by a company which acquires shares or securities on an excepted disposal, which—
   (a) is a disposal of the asset which those shares or securities are deemed for the purposes of the Taxation of Chargeable Gains Act 1992 to consist of, or to be included in, immediately after the acquisition, and
   (b) is not a disposal which by virtue of any enactment is treated as one on which neither a gain nor a loss accrues to the person making the disposal.

(6) In sub-paragraph (5) above, the reference to an excepted disposal is to a disposal to which sub-paragraph (3), (4) or (5) above would have applied but for paragraph (b) of that sub-paragraph.

(7) In this paragraph, "company" has the same meaning as in the Taxation of Chargeable Gains Act 1992.

Marginal Citations

M6 1992 c. 12.

Acquisition of assets by registered producers

19 (1) This paragraph applies where an asset in the form of an item of production equipment is acquired under an approved scheme by any person by virtue of his being, or having been, a registered producer.

(2) The acquisition of the asset shall not be taken into account as a receipt in computing, under Case I or VI of the Schedule set out in section 18 of the [M7]Income and Corporation Taxes Act 1988 (Schedule D), the profits of the person acquiring it.

(3) The person acquiring the asset shall, for the purposes of tax on chargeable gains, be treated as acquiring the asset for no consideration, and without making a disposal.

(4) No allowance in respect of the asset shall be made under **[**[F1]the Capital Allowances Act 2001**]** to the person acquiring it.

(5) The person disposing of the asset shall—

(a) for the purposes of tax on chargeable gains, be treated as if the consideration for the disposal were of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

(b) for the purposes of **[**[F2]the Capital Allowances Act 2001**]**, be treated as neither entitled to any balancing allowance nor subject to any balancing charge by virtue of the disposal.

(6) In sub-paragraph (1) above, the reference to production equipment is to plant or machinery used for the production or storage of milk, dairy produce or any produce of which milk is an ingredient.

Textual Amendments

F1 Words in Sch. 2 para. 19(4) substituted (22.3.2001 with effect as mentioned in s. 579(1)) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 90**

F2 Words in Sch. 2 para. 19(5)(b) substituted (22.3.2001 with effect as mentioned in s. 579(1)) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 90**

Marginal Citations

M7 1988 c. 1.

20 (1) This paragraph applies where an asset of any of the following descriptions—

(a) a share in, or security of, a body which is a relevant successor of the relevant board,

(b) a right to participate in the winding up of such a body,

(c) a share in, or security of, a subsidiary of the relevant board, and

(d) a share in, or security of, a body which is a relevant successor of such a subsidiary,

is acquired under an approved scheme by any person by virtue of his being, or having been, a registered producer, and is so acquired without any consideration being provided by the person acquiring it.

(2) The acquisition of the asset shall not be taken into account as a receipt in computing, under Case I or VI of the Schedule set out in section 18 of the Income and Corporation Taxes Act 1988 (Schedule D), the profits of the person acquiring it.

(3) The person acquiring the asset shall, for the purposes of tax on chargeable gains, be treated as acquiring the asset for no consideration, and without making a disposal.

(4) Where the asset is acquired on a disposal, the person disposing of it shall, for the purposes of tax on chargeable gains, be treated as if the consideration for the disposal

were of such amount as would secure that on the disposal neither a gain nor a loss accrues to him.

(5) For the purposes of this paragraph, a person shall not be regarded as providing consideration by virtue only of the fact that transfers under the scheme reduce the value of his right to participate in a winding up of the relevant board.

(6) In this paragraph—

(a) references to the relevant board are to the board to which the scheme relates, and

(b) references to relevant successor—

(i) in relation to the relevant board, include a body to which shares held by that board in a subsidiary of its are transferred in circumstances in which paragraph 3 above applies, and

(ii) in relation to a subsidiary of that board, include a body to which shares held by the subsidiary in a subsidiary of its are transferred in circumstances in which that paragraph applies.

Modifications etc. (not altering text)

C5 Sch. 2 Pt. I para. 20 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, **s. 203(6)(7)**

Sch. 2 Pt. I para. 20 excluded (retrospectively with effect as mentioned in s. 203(8) of the amending Act) by 1996 c. 8, **s. 203(8)**

Trusts for registered producers

21 (1) This paragraph applies where—

(a) under an approved scheme, shares in, or securities of, a company are issued or transferred to trustees on terms which provide for the transfer of those shares or securities to persons by virtue of their being, or having been, registered producers, and

(b) the circumstances are such that in the hands of the trustees the shares or securities constitute settled property within the meaning of the [M8]Taxation of Chargeable Gains Act 1992.

(2) For the purposes of tax on chargeable gains—

(a) where the trustees acquire the shares or securities on a disposal, the person making the disposal shall be treated as if the consideration for the disposal were of such amount as would secure that on the disposal neither a gain nor a loss accrues to him,

(b) the shares or securities shall be treated as acquired by the trustees for no consideration,

(c) the interest of any beneficiary in the settled property constituted by the shares or securities shall be treated as acquired by him for no consideration and as having no value at the time of its acquisition,

(d) where a beneficiary becomes absolutely entitled as against the trustees to any of the settled property, both the trustees and the beneficiary shall be treated as if, on his becoming so entitled, the shares or securities in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within section 60(1) of the Taxation of Chargeable Gains Act 1992, for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees (and accordingly section 71 of that Act shall not apply in relation to that occasion), and

(e) on the disposal by a beneficiary of an interest in the settled property, other than the disposal treated as occurring for the purposes of paragraph (d) above, any gain accruing shall be a chargeable gain (and accordingly section 76(1) of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to the disposal).

Marginal Citations
M8 1992 c. 12.

22 (1) This paragraph applies where, under an approved scheme, shares in, or securities of, a company are issued or transferred to trustees on terms which provide for the transfer of those shares or securities to persons by virtue of their being, or having been, registered producers.

(2) The trust shall not be treated as a unit trust scheme for the purposes of **[**[F3]the Tax Acts **]** or section 99 of the Taxation of Chargeable Gains Act 1992 if it would not fall to be so treated were there disregarded—

(a) any depreciatory effect of transfers under the approved scheme on a right to participate in a winding up of the board to which that scheme relates, and

(b) any management of the trust property as a whole by or on behalf of the trustees.

Textual Amendments
F3 Words in Sch. 2 para. 22(2) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 362** (with Sch. 2)

Reserve funds

23 (1) This paragraph applies where under an approved scheme the board to which the scheme relates is required to make such a payment as is referred to in section 509(1) of the [M9]Income and Corporation Taxes Act 1988 (payment of trading receipts into reserve fund).

(2) The board shall, notwithstanding the revocation of the marketing scheme formerly administered by it, be treated as a body to which section 509(1) of that Act applies.

(3) The reference in section 509(1) of that Act to producers shall be construed as a reference to the persons who, under the approved scheme, are entitled to share in any surplus assets of the board remaining on the winding up of its affairs.

Marginal Citations
M9 1988 c. 1.

Securities of successor bodies

24 (1) This paragraph applies where under an approved scheme any shares are allotted, or issued without prior allotment—

(a) to any person by virtue of his being, or having been, a registered producer and without any consideration being provided by him,

(b) to trustees on terms which provide for the transfer of the shares to persons by virtue of their being, or having been, registered producers, or

(c) to the relevant board,

by a body to which sub-paragraph (2) below applies.

(2) This sub-paragraph applies to a body which—

(a) is a relevant successor of the relevant board, or of a subsidiary of that board, and

(b) is not a body in relation to which the scheme makes provision for the transfer to it of anything other than shares in a subsidiary of the relevant board.

(3) The shares shall be treated for the purposes of the enactments relating to the taxation of company distributions as if they had been issued wholly in consideration of a subscription paid to the relevant successor of an amount equal to the market value of the shares at the time of allotment or, if issued without prior allotment, at the time of issue.

(4) In sub-paragraph (3) above, the reference to the market value of the shares is to the price which they might reasonably be expected to fetch on a sale in the open market.

(5) Section 272(2) to (4) of the [M10]Taxation of Chargeable Gains Act 1992 (general principles for determining market value of shares) shall apply for the purposes of this paragraph.

(6) Where, as at the time at which the market value of any shares falls to be determined for the purposes of this paragraph, the shares are not quoted on a recognised stock exchange, subsection (3) of section 273 of that Act (assumption with respect to information available to prospective purchaser) shall apply for the purposes of the determination as it applies for the purposes of a determination falling within subsection (1) of that section.

(7) In sub-paragraph (6) above, “recognised stock exchange” has the meaning given by section 841 of the Income and Corporation Taxes Act 1988.

(8) Sub-paragraphs (5) and (6) of paragraph 20 above shall apply for the purposes of this paragraph as they apply for the purposes of that.

Marginal Citations

M10 1992 c. 12.

25 (1) This paragraph applies where under an approved scheme any debenture—

(a) is issued by a body which is a relevant successor of the relevant board, or of a subsidiary of that board, and

(b) is either—

(i) issued to any person by virtue of his being, or having been, a registered producer and without any consideration being provided by him, or

(ii) included in an issue of debentures to trustees on terms which provide for the debentures to be transferred to persons by virtue of their being, or having been, registered producers.

(2) The debenture shall be treated for the purposes of the enactments relating to the taxation of company distributions, or to the taxation of the income of companies, as if it had been issued—

(a) wholly in consideration of a loan made to the relevant successor of an amount equal to the principal sum payable under the debenture, and

(b) wholly and exclusively for the purposes of the trade carried on by the relevant successor.

(3) For the purposes of section 117(1) of the [M11]Taxation of Chargeable Gains Act 1992 (meaning of "qualifying corporate bond"), the indebtedness acknowledged by the debenture shall be treated as representing a normal commercial loan at any time after the debenture has been acquired by a person as a result of a disposal which is not excluded for the purposes of section 117(7) of that Act.

(4) Except as provided by sub-paragraph (3) above, the indebtedness acknowledged by the debenture shall not be treated for those purposes as representing a normal commercial loan.

(5) Sub-paragraphs (5) and (6) of paragraph 20 above shall apply for the purposes of this paragraph as they apply for the purposes of that.

Modifications etc. (not altering text)

C6 Sch. 2 Pt. I para. 25 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, **s. 203(6)(7)**
Sch. 2 Pt. I para. 25 modified (29.4.1996) by 1996 c. 8, **s. 203(9)**

Marginal Citations

M11 1992 c. 12.

26 (1) This paragraph applies where under an approved scheme there is conferred on any person by virtue of his being, or having been, a registered producer—

(a) any right to acquire shares in a body which is a relevant successor of the relevant board, or of a subsidiary of that board, in priority to other persons,

(b) any right to acquire shares in that body for consideration of an amount or value lower than the market value of the shares, or

(c) any right to free shares in that body.

(2) The right shall be regarded for the purposes of tax on chargeable gains as an option (within the meaning of section 144 of the Taxation of Chargeable Gains Act 1992) granted to, and acquired by, him for no consideration and having no value at the time of that grant and acquisition.

(3) For the purposes of sub-paragraph (1)(c) above, shares are free if they are issued or transferred without any consideration being provided by the person acquiring them, there being disregarded for this purpose any depreciatory effect of transfers under the scheme on the value of a right to participate in a winding up of the relevant board.

(4) Sub-paragraph (6) of paragraph 20 above shall apply for the purposes of this paragraph as it applies for the purposes of that.

Modifications etc. (not altering text)

C7 Sch. 2 Pt. I para. 26 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, **s. 203(6)(7)**

Levies under section 17

27 Any sum required to be paid under section 17 above by a person carrying on a trade as a milk producer shall be allowed as a deduction in computing the profits of the trade for the purposes of tax.

Stamp duty

28 (1) No transfer effected under section 11 above shall give rise to any liability to stamp duty.

(2) Stamp duty shall not be chargeable—

(a) on an approved scheme, or

(b) on an instrument which is certified to the Commissioners of Inland Revenue by the relevant authority—

(i) to be an instrument made in pursuance of such a scheme, and

(ii) to be an instrument in respect of which no disqualifying consideration has been given.

(3) For the purposes of sub-paragraph (2)(b)(ii) above, consideration given in respect of an instrument made in pursuance of an approved scheme shall be treated as disqualifying consideration unless—

(a) it is given by the milk marketing board to which the scheme relates ("the relevant board"),

(b) it is given by a person to whom property, rights or liabilities of the relevant board, or of a subsidiary of that board, are transferred under the scheme, other than a person who is, or has been, a registered producer, or

(c) it is given by a person who is, or has been, a registered producer and takes the form of a surrender in whole or part of a right to participate in the winding up of the relevant board.

(4) For the purposes of sub-paragraph (3)(b) above, a person to whom property is leased shall be treated as a person to whom property is transferred if the scheme could, without breaching the requirement in paragraph 7(2) of Schedule 1 to this Act, have provided for the property concerned to be transferred to him.

(5) No instrument which is certified as mentioned in paragraph (b) of sub-paragraph (2) above shall be taken to be duly stamped unless—

(a) it is stamped with the duty to which it would, but for that sub-paragraph, be liable, or

(b) it has, in accordance with section 12 of the [M12]Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped.

(6) In sub-paragraph (2)(b) above, "relevant authority" means—

(a) in the case of a certificate with respect to a scheme relating to the England and Wales Milk Marketing Board, the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly,

(b) in the case of a certificate with respect to a scheme relating to the board established under the Milk Marketing Scheme (Northern Ireland) 1989, the Department of Agriculture for Northern Ireland, and

(c) in the case of a certificate with respect to any other scheme, the Secretary of State.

Modifications etc. (not altering text)

C8 Sch. 1 Pt. I para. 28 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, **s. 203(6)(7)**

Marginal Citations

M12 1891 c. 39.

Stamp duty reserve tax

29 No agreement made in pursuance of an approved scheme shall give rise to a charge to stamp duty reserve tax.

Modifications etc. (not altering text)

C9 Sch. 2 Pt. I para. 29 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, **s. 203(6)(7)**

Interpretation

30 (1) In this Part of this Schedule, references to relevant successor, in relation to a milk marketing board, are to a body—

(a) to which property, rights or liabilities of the board are transferred under section 11 above, and

(b) which is a qualifying body in relation to the transfer.

(2) In this Part of this Schedule, references to relevant successor, in relation to a subsidiary of a milk marketing board, are to a body—

(a) to which property, rights or liabilities of the subsidiary are transferred under section 11 above, and

(b) which, by virtue of paragraph 31(1)(a), (c), (d) or (e) below, is a qualifying body in relation to the transfer.

31 (1) For the purposes of this Part of this Schedule, a body is a qualifying body, in relation to a transfer under an approved scheme, if it is—

(a) a development council established under the [M13]Industrial Organisation and Development Act 1947,

(b) a company registered under the [M14]Companies Act 1985 which was, immediately before the day on which this Act is passed, a 100 per cent. subsidiary of the board to which the scheme relates,

(c) a company registered under the Companies Act 1985 in relation to which either or both of the first and second conditions are met and in relation to which the third condition is met,

(d) a society registered under the [M15]Industrial and Provident Societies Act 1965 in relation to which either or both of the fourth and fifth conditions are met, or

(e) a company registered under the Companies Act 1985 in relation to which the sixth condition is met.

(2) The first condition is that—

(a) the scheme makes provision for the issue or transfer of shares in the company to members of the relevant class without any consideration, or with only a nominal consideration, being provided by the members acquiring them, and

(b) the members of that class who fall within the provision represent at least 90 per cent. of the total number of members of that class.

(3) The second condition is that—

(a) the company is one of a number of companies registered under the Companies Act 1985 in relation to each of which the scheme provides as mentioned in sub-paragraph (2)(a) above, and

(b) the members of the relevant class who fall within the provision relating to the company, when taken together with the members of that class who fall within the provision, or provisions, relating to the other company, or companies, represent at least 90 per cent. of the total number of members of that class.

(4) The third condition is that, immediately after the transfer, at least 90 per cent. of the ordinary share capital of the company consists of shares which—

(a) are owned directly or indirectly by the board to which the scheme relates,

(b) have been issued or transferred under the scheme to members of the relevant class without any consideration, or with only a nominal consideration, being provided by the members acquiring them,

(c) have been issued or transferred under the scheme to persons who are, or have been, registered producers in settlement of claims against the board to which the scheme relates, being claims arising out of the supply or production of milk,

(d) have been issued or transferred under the scheme to trustees on terms which provide for their transfer to members of the relevant class, or

(e) are held by persons to whom they have been issued or transferred under the scheme in connection with securing the quotation of the company on the Stock Exchange.

(5) The fourth condition is that—

(a) the scheme provides for membership of the society to be open to members of the relevant class, and

(b) the members of that class who fall within the provision represent at least 90 per cent. of the total number of members of that class who are engaged in milk production on the day of the transfer.

(6) The fifth condition is that—

(a) the society is one of a number of societies registered under the [M16]Industrial and Provident Societies Act 1965 in relation to each of which the scheme provides as mentioned in sub-paragraph (5)(a) above, and

(b) the members of the relevant class who fall within the provision relating to the society, when taken together with the members of that class who fall within the provision, or provisions, relating to the other society, or societies, represent at least 90 per cent. of the total number of members of that class who are engaged in milk production on the day of the transfer.

(7) The sixth condition is that the company is a 100 per cent. subsidiary of a company falling within paragraph (c) of sub-paragraph (1) above or of a society falling within paragraph (d) of that sub-paragraph.

(8) For the purposes of this paragraph, a body corporate shall be deemed to be a 100 per cent. subsidiary of another body corporate if and so long as the whole of its ordinary share capital is owned directly or indirectly by that other body corporate.

(9) In determining for the purposes of this paragraph whether under an approved scheme shares are issued or transferred without any consideration, or with only a nominal consideration, being provided by the persons acquiring them, there shall be disregarded any depreciatory effect of transfers under the scheme on the value of a right to participate in the winding up of the board to which the scheme relates.

(10) For the purposes of this paragraph, the relevant class, in relation to an approved scheme, consists of those to whom property or rights are to be distributed under the scheme by virtue of their being, or having been, registered producers.

(11) Subsections (4) to (10) of section 838 of the [M17]Income and Corporation Taxes Act 1988 (rules for determining amount of share capital owned) shall apply for the purposes of this paragraph as they apply for the purposes of that section.

(12) In this paragraph—

(a) "ordinary share capital" has the same meaning as in the Income and Corporation Taxes Act 1988,

(b) "owned directly or indirectly", in relation to a body corporate, means owned directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate, and

(c) references to ownership shall be construed as references to beneficial ownership.

Modifications etc. (not altering text)

C10 Sch. 2 Pt. I para. 31(4) modified (retrospectively) by 1996 c. 8, **s. 203(1)(4)**

Marginal Citations

M13 1947 c. 40.
M14 1985 c. 6.
M15 1965 c. 12.
M16 1965 c. 12.
M17 1988 c. 1.

Northern Ireland

32 (1) In this Part of this Schedule—

(a) "approved scheme" includes a scheme of reorganisation approved under any provision in Northern Ireland legislation corresponding to section 3 above (with any variation approved under any provision in such legislation corresponding to section 5 above) and in relation to which approval has not been withdrawn under any provision in such legislation corresponding to section 6 above, and

(b) "milk marketing board" includes the board established under the Milk Marketing Scheme (Northern Ireland) 1989.

(2) In the application of this Part of this Schedule by virtue of sub-paragraph (1) above—

(a) any reference to section 11 above shall be construed as a reference to any corresponding provision in Northern Ireland legislation;

(b) any reference to the [M18]Industrial and Provident Societies Act 1965 shall be construed as a reference to the [M19]Industrial and Provident Societies Act (Northern Ireland) 1969;

(c) any reference to the [M20]Companies Act 1985 shall be construed as a reference to the [M21]Companies (Northern Ireland) Order 1986;

(d) "registered producers", in relation to the board established under the Milk Marketing Scheme (Northern Ireland) 1989, means persons registered as producers under the marketing scheme administered by the board; and

(e) "subsidiary" has the same meaning as in the Companies (Northern Ireland) Order 1986.

(3) In paragraph 27 above, the reference to section 17 above shall be construed as including a reference to any corresponding provision in Northern Ireland legislation.

Marginal Citations

M18 1965 c. 12.

M19 1969 c. 24 (N.I.).

M20 1985 c. 6.

M21 S.I. 1986/1032 (N.I. 6).

PART II

OTHER PROVISIONS

Disclosure of information

33 Nothing in section 47(2) of the [M22]Agricultural Marketing Act 1958 (restriction on disclosure of information obtained under the Act) shall restrict the disclosure of information by a milk marketing board in accordance with the provisions of an approved scheme or in connection with the establishment of a development council under the [M23]Industrial Organisation and Development Act 1947.

Marginal Citations

M22 1958 c. 47.

M23 1947 c. 40.

Application of Trustee Investments Act 1961 to allocated shares

34 Where, under an approved scheme, shares are issued or transferred to a trustee, the shares issued or transferred to him shall, so far as concerns his powers, not be treated as excluded by virtue of paragraph 3(b) of Part IV of Schedule 1 to the [M24]Trustee Investments Act 1961 (exclusion of shares of a company which has not paid a dividend for each of the last five years) from paragraph 1 of Part III of that Schedule (wider-range investments).

Marginal Citations
M24 1961 c. 62.

Application of Transfer of Undertakings (Protection of Employment) Regulations 1981

35 The [M25]Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to any transfer under an approved scheme of the whole or any part of the undertaking of a milk marketing board, or of a subsidiary of such a board, whether or not that undertaking would, apart from this provision, be treated as an undertaking in the nature of a commercial venture for the purposes of those Regulations.

Marginal Citations
M25 S.I. 1981/1794.

Pension schemes

36 (1) Sub-paragraph (2) below applies to any occupational pension scheme operated by a milk marketing board or a subsidiary of such a board.

(2) Any power under the scheme to change the identity of the principal employer shall not be treated as improperly exercised by virtue only of the fact that it is used to substitute for the existing principal employer a body—

(a) which already participates in the scheme, or

(b) to which property, rights or liabilities of the existing principal employer are transferred under section 11 above.

(3) Sub-paragraph (2) above shall not apply if the substitution is made otherwise than in connection with the carrying out of an approved scheme.

Statutory accounts

37 (1) The following provisions of this paragraph have effect for the purpose of any statutory accounts of a successor body, that is to say, a body to which property, rights or liabilities of a milk marketing board are transferred under section 11 above.

(2) The transfer to the successor body under section 11 above shall be taken to have been effected immediately after the end of the last complete accounting period of the transferor to end before the date of the transfer under that section and—

(a) in a case where all the property, rights and liabilities of the transferor are transferred to the successor body under that section, to have been a transfer of all the property, rights and liabilities to which the transferor was entitled or subject immediately before the end of that period;

(b) in any other case, to have been a transfer of such of the property, rights and liabilities to which the transferor was so entitled or subject as are determined by or under the relevant scheme of reorganisation.

(3) The value of any asset and the amount of any liability which is taken by virtue of sub-paragraph (2) above to have been transferred to the successor body shall be taken to have been—

(a) in a case where all the property, rights and liabilities of the transferor are transferred to the successor body under section 11 above, the value or amount assigned to the asset or liability for the purposes of the statement of accounts prepared by the transferor in respect of the last complete accounting period of the transferor to end before the date of the transfer under that section;

(b) in any other case, the value or amount so assigned or, if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the relevant scheme of reorganisation.

(4) The amount to be included in respect of any item shall be determined—

(a) where all the property, rights and liabilities of the transferor are transferred to the successor body under section 11 above, as if anything done by the transferor (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor body;

(b) in any other case, as if so much of anything done by the transferor (as mentioned in paragraph (a) above) as may be determined by or under the relevant scheme of reorganisation had been done by the successor body.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included from time to time in any reserves of the successor body as representing its accumulated realised profits shall be determined—

(a) where all the property, rights and liabilities of the transferor are transferred to the successor body under section 11 above, as if any profits realised and retained by the transferor had been realised and retained by the successor body;

(b) in any other case, as if such proportion of any such profits as is determined by or under the relevant scheme of reorganisation had been realised and retained by the successor body.

(6) In this paragraph—

"accounting period", in relation to the transferor, means the period by reference to which it prepares accounts under the marketing scheme which it administers;

"relevant scheme of reorganisation" means the scheme of reorganisation under which the transfer to the successor body takes place; and

"statutory accounts", in relation to a successor body, means any accounts prepared for the purpose of any provision of the legislation under which the body is registered.

Restraints on alienation etc.

38 (1) No right of pre-emption or other like right affecting any property or rights of a milk marketing board, or of a subsidiary of such a board, shall be exercisable by virtue of the making of any application under section 2 or 5 above.

(2) Sub-paragraph (1) above shall not apply where the making of such an application is specifically identified by the right of pre-emption or other like right as a circumstance in which the right is exercisable.

39 (1) Any provision which imposes a prohibition (whether absolute or qualified) on the transfer of any property or rights of a milk marketing board, or of a subsidiary of such a board, shall be treated as not applying in the case of a transfer under section 11 above.

(2) Sub-paragraph (1) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of a milk marketing board being transferred otherwise than to a board constituted by a scheme under Part I of [M26]the Agricultural Marketing Act 1958.

(3) For the purposes of this paragraph, any provision which has the effect of penalising a transfer shall be treated as prohibiting it.

Marginal Citations

M26 1958 c. 47.

40 (1) Any provision which imposes a prohibition (whether absolute or qualified) on the transfer of any property or rights of a milk marketing board, or of a subsidiary of such a board, shall, unless the prohibition is imposed for public purposes, be treated as not applying in the case of a transfer under an approved scheme otherwise than under section 11 above.

(2) Sub-paragraph (1) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of a milk marketing board being transferred otherwise than to a board constituted by a scheme under Part I of the Agricultural [M27]Marketing Act 1958.

(3) For the purposes of this paragraph, any provision which has the effect of penalising a transfer shall be treated as prohibiting it.

Marginal Citations

M27 1958 c. 47.

41 (1) This paragraph applies to any provision which imposes a qualified prohibition on the effecting of any description of transaction, other than a transfer, with respect to any property or rights of a milk marketing board, or of a subsidiary of such a board.

(2) Where the prohibition imposed by a provision to which this paragraph applies is imposed for purposes other than public purposes, it shall, subject to sub-paragraph (3) below, be treated as not applying in the case of a transaction effected under an approved scheme.

(3) Sub-paragraph (2) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of a milk marketing board being transferred otherwise than to a board constituted by a scheme under Part I of the Agricultural Marketing Act 1958.

(4) For the purposes of this paragraph, any provision which has the effect of penalising the effecting of any description of transaction shall be treated as prohibiting it.

42 (1) If any person suffers a diminution in the value of any property or interest in consequence of the operation of paragraph 40 or 41 above or, where sub-paragraph (2) below applies, paragraph 39 above, such compensation as may be just shall be paid to that person by one or more of the parties to the transfer or other transaction.

(2) This sub-paragraph applies where the effect of the transfer is to sever the ownership of the property or rights to which the provision concerned relates.

(3) Any dispute as to whether, and, if so, how much, compensation is payable under this paragraph, or as to the person by whom it shall be paid, shall be referred to and determined by an arbitrator appointed—

(a) in the case of a dispute concerning anything which takes place under a scheme relating to the England and Wales Milk Marketing Board, in accordance with regulations made by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, and

(b) in any other case, in accordance with regulations made by the Secretary of State.

43 (1) For the purposes of this paragraph, a provision is a qualifying provision if—

(a) it imposes an absolute prohibition on the effecting of any description of transaction, other than a transfer, with respect to any property or rights of a milk marketing board, or of a subsidiary of such a board, and

(b) the prohibition which it imposes is imposed for purposes other than public purposes.

(2) Where an approved scheme—

(a) identifies a qualifying provision as one to which this paragraph applies, and

(b) specifies one of the relevant bodies as the body against which any claim under paragraph 44 below, in relation to the identified provision, is to be made,

that provision shall, subject to any provision of regulations under sub-paragraph (3)(c) below, be treated as not applying in the case of a transaction effected under the scheme.

(3) The appropriate authority may make regulations—

(a) with respect to the giving of notice of a provision of an approved scheme which identifies a qualifying provision as one to which this paragraph applies,

(b) with respect to the giving by the authority of a certificate of compliance in relation to the giving of notice under paragraph (a) above, and

(c) excluding sub-paragraph (2) above where no certificate of compliance under paragraph (b) above has been given at the time that a transaction is effected.

(4) Sub-paragraph (2) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of a milk marketing board being transferred otherwise than to a board constituted by a scheme under Part I of [M28]the Agricultural Marketing Act 1958.

(5) In sub-paragraph (2)(b) above, the reference to the relevant bodies is to—

(a) the milk marketing board to which the scheme relates, and

(b) the body or bodies to which property, rights or liabilities of that board are, under the scheme, to be transferred under section 11 above.

(6) In sub-paragraph (3) above, "appropriate authority" means—

(a) in the case of an approved scheme relating to the England and Wales Milk Marketing Board, the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, and

(b) in any other case, the Secretary of State.

(7) For the purposes of this paragraph, any provision which has the effect of penalising the effecting of a description of transaction shall be treated as prohibiting it.

Marginal Citations

M28 1958 c. 47.

44 (1) If any person suffers a diminution in the value of any property or interest in consequence of the operation of paragraph 43 above in relation to any provision, such compensation as may be just shall be paid to him by the nominated body.

(2) Any dispute as to whether, and, if so, how much, compensation is payable under this paragraph shall be referred to and determined by an arbitrator appointed—

(a) in the case of a dispute concerning anything which takes place under a scheme relating to the England and Wales Milk Marketing Board, in accordance with regulations made by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, and

(b) in any other case, in accordance with regulations made by the Secretary of State.

(3) In sub-paragraph (1) above, the reference to the nominated body is to the body specified by the approved scheme concerned as the body against which any claim for compensation under this paragraph, in relation to the provision concerned, is to be made.

Restrictions on change of location

45 (1) For the purposes of this paragraph, a provision is a qualifying provision if—

(a) it is contained in a qualifying agreement,

(b) it imposes an absolute or qualified prohibition on the movement outside a specified area of property to which the agreement relates, and

(c) the prohibition which it imposes is imposed for purposes other than public purposes.

(2) For the purposes of sub-paragraph (1) above, an agreement is a qualifying agreement if—

(a) it is an agreement under which moveable property is leased to a milk marketing board or to a subsidiary of such a board, and

(b) an approved scheme makes provision for the transfer of rights and liabilities of the lessee under the agreement.

(3) Where an approved scheme—

(a) identifies a qualifying provision as one to which this paragraph applies,

(b) specifies a relevant modification in relation to that provision,

(c) specifies a commencement date in relation to the modification, and

(d) specifies one of the relevant bodies as the body against which any claim under paragraph 46 below, in relation to that provision, is to be made,

then, subject to any provision of regulations under sub-paragraph (4)(c) below, that provision shall have effect subject to the specified modification on and after the commencement date specified in relation to it.

(4) The appropriate authority may make regulations—

(a) with respect to the giving of notice of a provision of an approved scheme which does any of the things mentioned in paragraphs (a) to (c) of sub-paragraph (3) above,

(b) with respect to the giving by the authority of a certificate of compliance in relation to the giving of notice under paragraph (a) above, and

(c) excluding sub-paragraph (3) above where no certificate of compliance under paragraph (b) above has been given before such date as may be specified in the regulations.

(5) Where by virtue of sub-paragraph (3) above a qualifying provision is modified in its application to any property, the fact that, at any time in the week beginning with the date on which the modification first has effect, that property is outside the permitted area shall not be treated as constituting a breach of the provision if the property—

(a) is in the area which was the permitted area before the modification had effect, or

(b) is in transit from that area to the permitted area.

(6) In sub-paragraph (3)(b) above, “relevant modification”, in relation to a qualifying provision, means a change, in relation to any of the property to which the provision applies, in the area by reference to which the qualifying provision has effect.

(7) In sub-paragraph (3)(d) above, the reference to the relevant bodies is to—

(a) the milk marketing board to which the scheme relates, and

(b) the body or bodies to which property, rights or liabilities of that board are, under the scheme, to be transferred under section 11 above.

(8) In sub-paragraph (4) above, “appropriate authority” means—

(a) in the case of an approved scheme relating to the England and Wales Milk Marketing Board, the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, and

(b) in any other case, the Secretary of State.

(9) For the purposes of this paragraph, any provision which has the effect of penalising the movement of property outside a specified area shall be treated as prohibiting it.

46 Paragraph 44 above shall apply in relation to a person who suffers a diminution in the value of any property or interest in consequence of the operation of paragraph

45 above as it applies in relation to a person who suffers a diminution in the value of any property or interest in consequence of the operation of paragraph 43 above.

Transfers relevant to flotation

47 (1) Where an approved scheme provides for rights and liabilities of a lessee under a qualifying agreement to be transferred to a company on a day earlier than the vesting day under the scheme, the provision shall have effect by virtue of this paragraph if, immediately before the day of the transfer, the company is a qualifying transferee.

(2) In sub-paragraph (1) above, "qualifying agreement" means an agreement under which moveable property is leased to the board to which the scheme relates or to a subsidiary of that board.

(3) For the purposes of sub-paragraph (1) above, a company is a qualifying transferee if it is—

(a) a company in relation to which the scheme provides for the taking of steps with a view to securing its quotation on the Stock Exchange,

(b) a subsidiary of a company falling within paragraph (a) above, or

(c) a company which, if the scheme is carried out, will become a subsidiary of a company falling within paragraph (a) above before that company is quoted on the Stock Exchange.

48 (1) Where—

(a) an approved scheme provides for the taking of steps with a view to securing the quotation of a company on the Stock Exchange, and

(b) the board to which the scheme relates makes under the scheme a qualifying transfer of shares in a subsidiary of its,

then, if the shares transferred were subject in the hands of that board to a resulting or constructive trust, they shall by virtue of the transfer cease to be subject to that trust.

(2) For the purposes of sub-paragraph (1) above, a transfer is a qualifying transfer if—

(a) it takes place in connection with the carrying out of the provision mentioned in paragraph (a) of that sub-paragraph, or

(b) the transferee is a qualifying person and the shares transferred are of the same class as other shares in the subsidiary which fall to be transferred as mentioned in that paragraph.

(3) For the purposes of sub-paragraph (2) above, the transferee is a qualifying person if the shares are transferred to him—

(a) by virtue of his being, or having been, a registered producer, or

(b) as trustee for persons who are entitled to participate in the trust by virtue of their being, or having been, registered producers.

(4) For the purposes of this paragraph, shares of a company shall not be treated as being of the same class unless they are so treated by the practice of the Stock Exchange or would be so treated if dealt with on the Stock Exchange.

Certificates of vesting

49 (1) Where section 11(1) above applies on the vesting day under an approved scheme, the authority which approved the scheme shall give to each person identified by the scheme as a person to whom any property, right or liability of the relevant board

is to be transferred under section 11 above ("a relevant transferee") a certificate ("qualification certificate") stating—

(a) that he is identified by the scheme as a relevant transferee,

(b) whether the concurrence of any person is required to the issue by him of a certificate of vesting in relation to the relevant board, and

(c) if it is, whose concurrence is so required.

(2) For the purposes of sub-paragraph (1) above, the following are the persons whose concurrence is required to the issue of a certificate of vesting in relation to the relevant board by the person to whom a qualification certificate is given—

(a) where the scheme identifies anyone other than that person as a relevant transferee, that other person, or, if more than one, each of those other persons, and

(b) where the scheme does not provide for all the property, rights and liabilities to which the relevant board is entitled or subject on the vesting day to be transferred under section 11 above, that board.

(3) Where a person to whom a qualification certificate is given issues a certificate of vesting in relation to the relevant board, then, subject to sub-paragraphs (4) to (6) below, it shall be conclusive evidence for all purposes of any fact stated in it with respect to the effect of section 11 above in relation to any property, right or liability of the relevant board.

(4) Where a qualification certificate states that the concurrence of one or more persons is required to the issue of a certificate of vesting in relation to the board, sub-paragraph (3) above shall not apply in relation to such a certificate issued by the person to whom the qualification certificate is given unless it is issued with the concurrence of the person, or each of the persons, identified by the qualification certificate as a person whose concurrence is required.

(5) Sub-paragraph (3) above shall not apply to a certificate of vesting in relation to the relevant board to the extent that the certificate relates to land which is registered land at the time the certificate is issued if a person has, at that time, been registered as the proprietor of the land in reliance on the operation of section 11 above in relation to it.

(6) Sub-paragraph (3) above shall cease to apply to a certificate of vesting in relation to the relevant board—

(a) to the extent that the certificate relates to land which is not registered land at the time the certificate is issued, on the land becoming registered land, and

(b) to the extent that the certificate relates to land which is registered land at the time the certificate is issued, on a person being registered as the proprietor of the land in reliance on the operation of section 11 above in relation to it.

(7) In this paragraph—

(a) "the relevant board" means the milk marketing board to which the approved scheme relates,

(b) references to a certificate of vesting in relation to the relevant board are to a certificate with respect to the effect of section 11 above in relation to any property, right or liability of the relevant board, and

(c) references to registered land are to registered land within the meaning of the [M29]Land Registration Act 1925.

Marginal Citations
M29 1925 c. 21.

50 (1) This paragraph applies where an approved scheme includes provision for any property, right or liability of a subsidiary of the milk marketing board to which the scheme relates to be transferred under section 11 above.

(2) Where subsection (1) of that section applies on the vesting day under the scheme, the authority which approved the scheme shall give to each person identified by the scheme as a person to whom any property, right or liability of the subsidiary is to be transferred under that section ("a relevant transferee") a certificate ("qualification certificate") stating—

(a) that he is identified by the scheme as a relevant transferee,

(b) whether the concurrence of any person is required to the issue by him of a certificate of vesting in relation to the subsidiary, and

(c) if it is, whose concurrence is so required.

(3) For the purposes of sub-paragraph (2) above, the following are the persons whose concurrence is required to the issue of a certificate of vesting in relation to the subsidiary by the person to whom a qualification certificate is given—

(a) where the scheme identifies anyone other than that person as a relevant transferee, that other person, or, if more than one, each of those other persons, and

(b) where the scheme does not provide for all the property, rights and liabilities to which the subsidiary is entitled or subject on the vesting day to be transferred under section 11 above, the subsidiary.

(4) Where a person to whom a qualification certificate is given issues a certificate of vesting in relation to the subsidiary, then, subject to sub-paragraphs (5) to (7) below, it shall be conclusive evidence for all purposes of any fact stated in it with respect to the effect of section 11 above in relation to any property, right or liability of the subsidiary.

(5) Where a qualification certificate states that the concurrence of one or more persons is required to the issue of a certificate of vesting in relation to the subsidiary, sub-paragraph (4) above shall not apply in relation to such a certificate issued by the person to whom the qualification certificate is given unless it is issued with the concurrence of the person, or each of the persons, identified by the qualification certificate as a person whose concurrence is required.

(6) Sub-paragraph (4) above shall not apply to a certificate of vesting in relation to the subsidiary to the extent that the certificate relates to land which is registered land at the time the certificate is issued if a person has, at that time, been registered as the proprietor of the land in reliance on the operation of section 11 above in relation to it.

(7) Sub-paragraph (4) above shall cease to apply to a certificate of vesting in relation to the subsidiary—

(a) to the extent that the certificate relates to land which is not registered land at the time the certificate is issued, on the land becoming registered land, and

(b) to the extent that the certificate relates to land which is registered land at the time the certificate is issued, on a person being registered as the proprietor of the land in reliance on the operation of section 11 above in relation to it.

(8) In this paragraph—
(a) references to a certificate of vesting in relation to the subsidiary are to a certificate with respect to the effect of section 11 above in relation to any property, right or liability of the subsidiary, and
(b) references to registered land are to registered land within the meaning of the [M30]Land Registration Act 1925.

Marginal Citations
M30 1925 c. 21.

Land registration

51 (1) Where section 11(1) above applies on the vesting day under an approved scheme, the appropriate authority shall—
(a) give a copy of the order under section 1(5) above to each person from or to whom property, rights or liabilities are transferred under section 11 above in accordance with the scheme, and
(b) annex to the copy order a copy of the scheme certified by it to be a true copy.

(2) A copy of the scheme given under sub-paragraph (1) above shall be treated for land registration purposes in England and Wales as conclusive evidence of the terms of the scheme.

52 (1) This paragraph applies where any registered land in England and Wales is transferred under section 11 above.

(2) The transferee shall be entitled to be registered as proprietor in place of the transferor on an application in that behalf made to the Chief Land Registrar.

(3) On an application under sub-paragraph (2) above, the transferee shall supply to the Chief Land Registrar such information and produce to him such documents as he may require for the purpose of enabling him to deal with the application.

(4) Section 43 of the Land Registration Act 1925 (effect of transmissions) shall apply in relation to any person registered in place of the transferor as it applies in relation to any person registered in place of a deceased or bankrupt proprietor, but with the omission of the words from "upon the trusts" to "applicable by law, and".

(5) In this paragraph, "registered land" has the same meaning as in the Land Registration Act 1925.

53 (1) This paragraph applies where any land in England and Wales which is not registered land is transferred by virtue of section 11 above.

(2) Unless the transferee, or his successor in title or assign, has before the end of six months from the date of the transfer applied to be registered as proprietor of the land, section 11 above shall be deemed never to have had effect to transfer the legal estate in the land.

[[F4](3) The Chief Land Registrar may, if satisfied on the application of any interested person that there is good reason for doing so, make an order extending or further extending the period mentioned in sub-paragraph (2); and if he does so at a time when that sub-paragraph has operated to negative the transfer effected by section 11 above, it shall be taken not to have so operated.]

(4) Any rules made by virtue of [F5section 123A(10)(a)] of the Land Registration Act 1925 shall—

(a) apply to dealings with the land which may take place between the date of the transfer and the date of the application to register as if the land had been the subject of a conveyance or assignment on the date of the transfer, and

(b) apply in relation to an application for registration under this paragraph as they apply in relation to an application for registration under [F6section 123A] of that Act.

(5) On an application for first registration under this paragraph, the applicant shall supply to the Chief Land Registrar such information and produce to him such documents as he may require for the purpose of enabling him to deal with the application.

(6) In this paragraph, "registered land" has the same meaning as in the M31Land Registration Act 1925.

54 In relation to Scotland, any transfer under an approved scheme shall have effect subject to the provisions of any enactment which provides for transactions of that description to be given effect to by registration in any statutory register.

Statutory transfers: transition

55 (1) Any agreement, transaction or other thing which—

(a) is made, effected or done with respect to anything transferred under section 11 above or paragraph 47 above in accordance with an approved scheme,

(b) is made, effected or done by, to or in relation to the transferor, and

(c) is in force or effective immediately before the day of the transfer under the scheme,

shall, on and after that day, have effect as if made, effected or done by, to or in relation to the transferee in all respects as if the transferee were the same person in law as the transferor.

(2) Sub-paragraph (1) above shall not affect the construction of any provision which is formulated specifically with reference to the possibility of the undertaking of a milk marketing board being transferred otherwise than to a board constituted by a scheme under Part I of the M32Agricultural Marketing Act 1958.

Marginal Citations

M32 1958 c. 47.

Provisions of scheme effective on statutory vesting

56 (1) Where section 11(1) above applies on the vesting day under an approved scheme, the provisions of the scheme shall, to the extent that they fall within sub-paragraph (2) below, have effect by virtue of this paragraph.

(2) The provisions of an approved scheme fall within this sub-paragraph to the extent that they purport—

(a) to impose on one of the relevant bodies an obligation on or after the vesting day under the scheme to enter into a written agreement with, or execute an instrument in favour of, another of the relevant bodies;

(b) to create for one of the relevant bodies, on the vesting day under the scheme, an interest in or right over property transferred under section 11 above to another of the relevant bodies; or

(c) to adapt, with effect from the vesting day under the scheme, references to members or officers of the relevant board in a document or oral agreement relating to anything transferred under section 11 above to a relevant successor body.

(3) The provisions of an approved scheme only fall within sub-paragraph (2) above by virtue of paragraph (c) of that sub-paragraph to the extent that their purpose is to prevent, so far as reasonably possible, the effect of the provisions in which the references concerned occur being materially altered as a result of the transfer.

(4) For the purposes of sub-paragraph (2) above, the relevant bodies, in relation to an approved scheme, are—

(a) the relevant board, and

(b) the relevant successor bodies.

(5) In this paragraph—

(a) "relevant board", in relation to an approved scheme, means the milk marketing board to which the scheme relates; and

(b) "relevant successor body", in relation to such a scheme, means a body to which property, rights or liabilities are transferred under section 11 above in accordance with the scheme.

57 (1) Where section 11(1) above applies on the vesting day under an approved scheme, the provisions of the scheme shall, to the extent that they fall within sub-paragraph (2) below, have effect by virtue of this paragraph.

(2) The provisions of an approved scheme fall within this sub-paragraph to the extent that they purport—

(a) to impose on—

(i) the relevant board, or

(ii) all or any of the bodies to which property, rights or liabilities of the relevant board are transferred under section 11 above ("the relevant successor bodies"),

duties to take, on or after the vesting day under the scheme, such steps as may be requisite to secure that the vesting under section 11 above of any foreign property, right or liability of the relevant board in any of those bodies is effective under the relevant foreign law;

(b) to impose on the relevant board a duty, in relation to any foreign property, right or liability of its which is transferred under section 11 above, to hold that property or right for the benefit of, or discharge that liability on behalf of, the body to which it is so transferred, until the vesting of that property, right or liability in that body is effective under the relevant foreign law;

(c) to require a body to which any foreign property, right or liability of the relevant board is transferred under section 11 above to act on behalf of that board (so far as possible) for the purposes of, or in connection with, the performance of any duty of the board under the scheme in relation to any foreign property, right or liability of its so transferred to that body; or

(d) to require any of the relevant successor bodies to meet expenses incurred by the relevant board in consequence of provisions of the scheme which fall within this sub-paragraph by virtue of paragraph (a) or (b) above.

(3) Nothing in any provision which has effect by virtue of this paragraph shall be taken as prejudicing the effect, under the law of any part of the United Kingdom, of the vesting under section 11 above of any foreign property, right or liability in any of the relevant successor bodies.

(4) Where provisions of an approved scheme have effect by virtue of this paragraph, the relevant board shall have all such powers as may be requisite for the performance of any duty to which it is subject as a result.

(5) In this paragraph—

(a) "relevant board", in relation to an approved scheme, means the milk marketing board to which the scheme relates; and

(b) references to any foreign property, right or liability are to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

Changes to legislation:
There are currently no known outstanding effects for the Agriculture Act 1993, SCHEDULE 2.