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## STATUTORY INSTRUMENTS

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# 1982 No. 1080

## The Agricultural Marketing (Northern Ireland) Order 1982

### PART II

#### AGRICULTURAL MARKETING SCHEMES

*Submission and approval of schemes and procedure  
for determining whether scheme to remain in force*

***Submission of agricultural marketing schemes***

**3**<sup>F1</sup>.—(1) An agricultural marketing scheme regulating the marketing of an agricultural product by the producers thereof, other than a substitutional scheme, may be submitted to the Department for its approval by any persons who satisfy the Department that they are substantially representative of the persons who produce that product.

(2) Subject to paragraphs (5) and (6), a substitutional scheme may be submitted to the Department for its approval by the board or boards administering the scheme or schemes revoked by the substitutional scheme.

(3) The application of a scheme shall not be restricted to any particular part or parts of Northern Ireland.

(4) For the purpose of satisfying itself as mentioned in paragraph (1), the Department shall have regard both to the number of persons represented and to the quantity of the agricultural product to which the scheme relates produced by them during some recent period before the scheme is submitted.

(5) Before a substitutional scheme is submitted to the Department under paragraph (2) it shall be published in the prescribed manner to all producers registered under the scheme or schemes revoked by it.

(6) If, within the prescribed period after it has been so published to producers registered under a scheme revoked by it, a poll on the question whether it shall be submitted to the Department is demanded by the prescribed number or the prescribed proportion, as the case may be, of the producers registered under the scheme revoked, the substitutional scheme shall not be submitted to the Department unless a poll on that question has been taken and the result thereof shows that the requisite majority of those producers has voted in favour on its submission.

(7) In paragraphs (5) and (6) “prescribed” means, in relation to a scheme revoked by a substitutional scheme, prescribed by the scheme revoked.

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### **Approval of schemes**

**4**<sup>F2</sup>.—(1) Before approving a scheme submitted under Article 3, the Department shall cause to be published, in the Belfast Gazette and in such other manner as it thinks best for informing persons affected, a notice—

- (a) stating that the scheme has been submitted to it;
- (b) specifying the place where copies of the scheme may be obtained, on payment of such fee as may be specified in the notice, and inspected; and
- (c) specifying the period, which shall not be less than six weeks after the date of publication of the notice in the Belfast Gazette, within which objections and representations with respect to the scheme may be made.

(2) Every objection shall be made to the Department in writing and shall state the grounds of objection and the specific modifications required.

(3) Where an objection has been duly made to a scheme by a person affected thereby and has not been withdrawn, the Department, unless it considers the objection to be frivolous, or unless it proposes to modify the scheme to meet the objection, shall, before taking any further action under this Article, direct a public inquiry to be held and consider the report of the person who held the inquiry.

(4) After considering any scheme duly submitted to it under Article 3 and any objections and representations duly made with respect thereto, and after holding such inquiries, if any, as it thinks fit or is required to hold under this Article, the Department may, subject to paragraph (5), make such modifications in the scheme as it thinks proper.

(5) Before making any modifications in a scheme, the Department shall give notice of the proposed modifications to such persons (not being less than nine nor more than twenty-one) as may be nominated for the purpose, at the time of the submission of the scheme, by the persons submitting the scheme, and unless, within four weeks after notice has been so given or such longer time as the Department may allow, more than half the persons so nominated notify the Department that they assent to the modifications, the Department shall take no further action under this Article.

(6) If the Department after making such modifications, if any, as aforesaid, is satisfied that the scheme will conduce to the more efficient production and marketing of the regulated product, it may lay before the Assembly a draft of the scheme, and if the Assembly resolves that the scheme shall be approved the Department shall make an order approving the scheme in terms of the draft.

(7) The Department, on laying before the Assembly a draft of a scheme under paragraph (6), shall at the same time lay before the Assembly—

- (a) if the scheme is not a substitutional scheme, a report as to the evidence by which it has been satisfied for the purposes of Article 3(1) that the persons submitting the scheme were duly representative; or
- (b) if the scheme is a substitutional scheme, a report showing that the provisions of Article 3(5) and (6) have been complied with.

(8) Where the Department has made an order under paragraph (6) approving a scheme, the scheme shall, subject to paragraph (9), come into force on such date as may be specified in the order, being a date after that on which the Assembly resolves that the scheme shall be approved.

(9) Except in the case of a substitutional scheme, the operation of any provision of a scheme made in pursuance of Article 8(1), (2) or (3), 9, 10(2), 11(2), 15(1)(b) or (c) or (3) or 16(1) shall be suspended until the expiration of the suspensory period.

(10) The Department may by regulations subject to negative resolution provide for such matters as it thinks necessary regarding an inquiry held under paragraph (3); and<sup>F3</sup> Schedule A1 to the

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Interpretation Act (Northern Ireland) 1954 shall, in its application to any such inquiry by virtue of section 23 of that Act,] be subject to the provisions of any regulations made under this paragraph.

(11) Such expenses of any inquiry under this Article as may be incurred by the Department with the approval of the Department of Finance and Personnel shall be defrayed out of moneys appropriated by Measure.

(12) A scheme may be amended or revoked in accordance with the provisions of Schedule 1.

**F2** mod. by 1984 NI 12, SR 1995/103  
**F3** 2005 c. 12

### ***Constitution of boards to administer schemes***

**5**<sup>F4</sup>.—(1) Every scheme shall constitute a board to administer the scheme.

(2) The provisions of Schedule 2 shall have effect with respect to the incorporation, constitution, registration and winding up of boards.

**F4** mod. by 1984 NI 12, SR 1995/103

### ***Registration of producers and taking of poll of registered producers on question whether scheme to remain in force***

**6**<sup>F5</sup>.—(1) Every scheme shall provide for the registration of any producer who makes application for that purpose.

(2) Every scheme, other than a substitutional scheme, shall require a poll of the registered producers to be taken, within such time as may be specified in the scheme, on the question whether the scheme shall remain in force.

(3) Subject to paragraph (4), if the poll aforesaid shows that the requisite majority of registered producers has voted in favour of the scheme remaining in force, the provisions of the scheme, the operation of which are by virtue of Article 4(9) suspended until the expiration of the suspensory period, shall come into force at the expiration of that period; but in any other case the scheme shall cease to have effect at the date on which the result of the poll is declared and the provisions of paragraph 8(2) of Schedule 2 shall apply as if the scheme had been revoked.

(4) If it is proved to the satisfaction of the Department at any time before the expiration of the suspensory period that the number of producers voting on the poll was less than half the total number of producers (excluding producers exempted, or entitled to exemption, from registration by or under the provisions of the scheme), it shall forthwith by order revoke the scheme.

(5) Every scheme shall provide for the manner in which polls are to be taken for the purposes of this Part, and in particular but without prejudice to the generality of the foregoing provision—

- (a) may apply with any necessary modifications any statutory provision (including the penal provisions thereof) relating to parliamentary, Assembly or local government elections and to the prevention of corrupt and illegal practices thereat;
- (b) may prescribe the manner in which the quantity of the regulated product which any registered producer is capable of producing is to be determined for the purposes of the poll;
- (c) may prescribe the information relating to the regulated product which is to be furnished by every registered producer before or at the time of voting, and the manner in which the information is to be furnished, and may require the rejection of the vote of any producer who fails to furnish the prescribed information in the prescribed manner, and may impose penalties for furnishing false information;

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(d) shall prescribe the manner in which the result of the poll is to be declared and published.

(6) In the case of a scheme regulating the marketing of two or more separate products, the foregoing provisions of this Article shall apply subject to the following modifications, that is to say—

- (a) references to a poll on the question whether the scheme shall remain in force shall be construed as references to a poll, in respect of each product, on the question whether the scheme shall remain in force so far as it applies to that product;
- (b) paragraphs (3) and (4) shall apply, in relation to each poll, as if the provisions of the scheme, so far as they apply to the product in respect of which the poll is taken, were a separate scheme;

and the question whether any product is to be treated as a separate product for the purpose of this paragraph shall be determined by the provisions of the scheme.

(7) For the purposes of paragraph (2) to (4) a person who is registered as a producer notwithstanding that he has been exempted from registration by or under the provisions of the scheme shall not be deemed to be a registered producer.

(8) Registration under a scheme of the name or style under which two or more persons carry on business in partnership as producers shall operate as the registration of all the partners for the time being; but for the purposes of those provisions of this Part and of the scheme which relate to elections, polls and voting at meetings, and to the assessment of contributions on registered producers, all the partners shall be treated as constituting together a single registered producer.

F5 mod. by 1984 NI 12, SR 1995/103

***Information to be furnished for purposes of register, etc***

7<sup>F6</sup>.—(1) As soon as practicable after any scheme, other than a substitutional scheme, comes into force the board shall cause to be published in such newspapers as the Department may direct a form of application for registration as a producer under the scheme, together with a notice stating—

- (a) the nature of the regulated product;
- (b) the classes or descriptions of producers which are exempted from registration and the procedure required, if any, for securing exemption from registration;
- (c) that a poll of registered producers (other than producers exempted from registration) is to be taken in pursuance of this Part on the question whether the scheme shall remain in force;
- (d) that no person will be entitled to vote on the poll aforesaid unless he is registered within the time specified in the notice but that no person so registered will, if it is decided as the result of the poll that the scheme shall not remain in force, incur any financial liability by reason of his registration;
- (e) that, if it is decided as a result of the poll that the scheme shall remain in force, every producer who is not registered or exempted from registration will be prohibited from selling the regulated product;
- (f) the place where copies of the scheme may be obtained on payment therefore;
- (g) such other particulars as the board may think fit.

(2) The Department, as soon as practicable after any scheme approved by it, other than a substitutional scheme, comes into force—

- (a) shall cause a list to be compiled containing the names of all such persons as it has reason to believe are producers, together with their respective addresses so far as known to it, and forward a copy of the list to the board; or

(b) if it appears to the Department that it has so little information at its disposal that the list aforesaid would serve no useful purpose, shall inform the board accordingly.

(3) As soon as practicable after receiving such a list as aforesaid the board shall send by post to every person named in the list, and to every other person who the board has reason to believe is a producer, being a person who is not registered as a producer, a notice addressed to him at his last known address, stating the particulars required to be stated in the notice published under paragraph (1), together with a form of application for registration.

*Para. (4) rep. by 2004 NI 7*

**F6** mod. by 1984 NI 12, SR 1995/103

*Provisions as to regulation of marketing and other matters which must or may be included in schemes*

### **Regulation of sales of regulated products**

**8<sup>F7</sup>.**—(1) Every scheme shall require that no sale of the regulated product shall be made by any producer who is not either a registered producer or a person exempted from registration by or under the provisions of the scheme.

(2) Subject to the approval of the Department, a scheme may provide—

- (a) for requiring registered producers to sell the regulated product or any description thereof, or such quantity thereof or of any description thereof as may from time to time be determined by the board, only to, or through the agency of, the board;
- (b) for the determination from time to time of the quantity of the regulated product or of any description thereof which may be sold by any registered producer;
- (c) for the determination from time to time—
  - (i) of the descriptions of the regulated product which may be sold by any registered producer;
  - (ii) of the price at, below or above which, the terms on which, and the persons to, or through the agency of whom, the regulated product, or any description or quantity thereof, may be sold as aforesaid;
- (d) for empowering the board to receive the whole or any part of any sums payable by purchasers of the regulated product in respect of sales of that product by registered producers, and for securing that any sums so received are distributed by the board to the sellers in such manner as may be specified in the scheme or prescribed by the board.

(3) A scheme which provides for the matter set out in paragraph (2)(b) shall either specify the method of determination or require the board to prescribe it, and without prejudice to the generality of the foregoing provision, the method of determination may be such as to secure that the quantity (if any) which any particular registered producer may sell is determined wholly or partly by reference to the quantity of that product or description, as the case may be, which was, in some past period, produced, sold or otherwise dealt with on some particular land or premises or by particular persons.

(4) A scheme may provide for securing that, for all or any of the purposes of the scheme and of this Part, the sale of any product wholly or partly manufactured or derived from the regulated product shall be deemed to be a sale of the regulated product if the substance of the transaction between the seller and the buyer is that the seller, being in possession of the regulated product, agrees to subject it, or cause it to be subjected, to some process and to sell the resulting product to the buyer; and where, in the case of any scheme, the regulated product is livestock of any kind, then, without prejudice to the foregoing provisions of this paragraph, the scheme may provide for securing that, for all or

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any of the purposes aforesaid, a person shall be deemed to sell the regulated product if he sells the carcasses or parts of the carcasses of any livestock of that kind, being livestock produced by him.

(5) Any producer who sells the regulated product in contravention of the provisions of a scheme made in pursuance of paragraph (1) shall be guilty of an offence and for each offence be liable—

- (a) on summary conviction to a fine not exceeding<sup>[F8]</sup> level 5 on the standard scale] and to an additional fine not exceeding half the price at which the product was sold;
- (b) on conviction on indictment to a fine.

(6) Where any court imposes a fine for an offence under paragraph (5), the court may, if it thinks fit, having regard to the prejudicial effect which the commission of the offence has had or is likely to have on the operation of the scheme, direct the whole or any part of the fine to be paid to the board.

**F7** mod. by 1984 NI 12, SR 1995/103

**F8** 1984 NI 3

***Further provisions as to marketing of regulated product and provisions for encouragement of co-operation, education and research***

**9**<sup>F9</sup>.—(1) Subject to the approval of the Department, a scheme may provide—

- (a) for empowering the board to buy the regulated product or goods wholly or partly manufactured or derived from that product, to produce goods wholly or partly manufactured or derived from that product and to sell, grade, pack, store, adapt for sale, insure, advertise, promote the sale of and transport the regulated product and any goods so bought or produced by the board;
- (b) for empowering the board to buy from the board administering any corresponding scheme any product the marketing of which is regulated by that scheme, to produce from anything so bought any goods which the board is authorised to produce from the regulated product, and to sell, grade, pack, store, adapt for sale, insure, advertise, promote the sale of and transport anything so bought and any goods produced therefrom by the board;
- (c) for empowering the board to exercise, as agents for the board administering any corresponding scheme, any power of that board to sell, grade, pack, store, adapt for sale, insure, advertise, promote the sale of and transport any product the marketing of which is regulated by that scheme;
- (d) for empowering the board to manufacture or acquire, and to sell or let for hire to register producers and other persons, anything required for the production, grading, packing, storing, adaptation for sale, transport or sale of the regulated product;
- (e) for empowering the board to render to registered producers and other persons, on payment or otherwise, any service which is calculated to promote the more efficient production, grading, packing, storing, adaptation for sale, transport or sale of the regulated product;
- (f) for empowering the board to co-operate with any other person in doing anything which the board is or might be empowered to do by virtue of any of the foregoing provisions of this paragraph;
- (g) for empowering the board to do anything calculated to procure, promote or facilitate the doing by any other person of anything in the doing of which the board is or might be empowered to co-operate by virtue of sub-paragraph (f);
- (h) for regulating the manner in which the regulated product or any description or quantity thereof is to be graded by or on behalf of registered producers, or the manner in which the regulated product or any description or quantity thereof is to be marked, packed, stored, adapted for sale, insured, advertised or transported by or on behalf of registered producers;

- (i) without prejudice to any functions of the Department under section 5 of the Agriculture Act (Northern Ireland) 1949<sup>F10</sup>, for enabling the board to encourage, promote or conduct agricultural co-operation, research and education;
- (j) for empowering the board to acquire, hold and dispose of securities in, and arrange for the formation of, a body corporate whose principal object is to do anything which the board is or might be empowered to do by virtue of sub-paragraph (a), (d) or (e) and for regulating the exercise by the board of any powers exercisable by it in relation to the appointment of directors of any such body corporate.

(2) A provision included in a scheme by virtue of paragraph (1)(d) or (e) shall be so framed as to secure that the things sold or let for hire, and the services rendered, are sold, let for hire or rendered, either exclusively or primarily, in such circumstances as to be likely to be utilised, either wholly or mainly, by, or in connection with the regulated product produced by, registered producers, and paragraphs (1)(f), (g) and (j) shall be construed accordingly.

(3) In this Article “corresponding scheme” means, in relation to a scheme, any scheme under corresponding legislation enacted by the Parliament of the United Kingdom, being a scheme for regulating the marketing of the same product as the product the marketing of which is regulated by the first-mentioned scheme.

**F9** mod. by 1984 NI 12, SR 1995/103

**F10** 1949 c. 2 (NI)

### ***Miscellaneous provisions of schemes***

**10**<sup>F11</sup>.—(1) Every scheme shall provide—

- (a) for exempting from all or any of the provisions of the scheme producers and sales of such classes or descriptions as may be specified in the scheme or determined by the board;
- (b) for securing that any producer who is aggrieved by any act or omission of the board may refer the matter to one or more arbitrators appointed in such manner as may be provided by the scheme, and for the manner in which any such reference is to be heard and determined;
- (c) for requiring the register of producers to be open for inspection at such times as may be specified by the scheme, and for requiring the board to furnish a copy of the register or of any part thereof to any person demanding it, on payment of such fee as may be specified by the scheme;
- (d) for the removal from the register of producers of the names of persons who have ceased to be producers or are exempted from registration.

(2) Subject to the approval of the department, a scheme may provide—

- (a) for empowering any person authorised in writing by the board, for the purpose of securing compliance with the scheme, to enter and inspect, at any reasonable time and on production of his authority, any part of the land or premises occupied by any registered producer (being a producer specified in the authority) which the person so authorised has reason to believe is used for producing the regulated product or for doing any of the following things which is regulated by the scheme, that is to say, grading, marking, packing or storing the regulated product or adapting it for sale;
- (b) for requiring registered producers to furnish to the board such estimates, returns, accounts and other information relating to the regulated product as the board considers necessary for the operation of the scheme.

(3) A scheme may provide for securing that where, by reason of a registered producer dying, or becoming subject to some legal disability, or entering into a composition or scheme of arrangement

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with his creditors, any property in, or control of, the regulated product is transferred from the registered producer to a personal representative, trustee, assignee, committee or other person, the personal representative, trustee, assignee, committee or other person, as the case may be, shall, in such circumstances and in respect of such matters as may be specified in the scheme, be deemed to be a registered producer.

(4) A scheme shall provide for the calling by the board of annual general and other meetings of registered producers and may make provision for the business to be conducted at such meetings.

(5) Every scheme may further provide for such matters as are incidental to or consequential on the provisions of this Part relating to the contents of schemes or are necessary for giving effect to those provisions.

**F11** mod. by [1984 NI 12](#), SR 1995/103

### *Imposition of penalties, etc.*

#### ***Disciplinary provisions of schemes***

**11**<sup>F12</sup>.—(1) Every scheme shall be so framed as to secure that there is a committee of the board, to be known as the disciplinary committee, constituted, at each sitting thereof, of not less than four nor more than six members of the board and a chairman who is not a member of the board but is an independent person who is a barrister of not less than seven years' standing or a solicitor of not less than seven years' standing and is approved by the Department.

(2) Subject to the provisions of this Article, every scheme shall require the disciplinary committee to impose on, and the board to recover from, any registered producer who contravenes any provision of the scheme made in pursuance of Article 8(2), 9(1)(h) or 10(2) such monetary penalties as may be specified by the scheme.

(3) No such penalty shall be imposed in respect of a contravention of the scheme which constitutes an offence under this Part or any other statutory provision.

(4) Every scheme shall be so framed as to secure—

- (a) that no such penalty is imposed on a registered producer except after a hearing by the disciplinary committee and by the decision thereof, taken in accordance with the opinion of all or the majority of the members thereof;
- (b) that notice of the time and place of every such hearing and a written statement of the charge against the producer in question is served personally or by registered post or the recorded delivery service on that producer at least fourteen days before the hearing;
- (c) that no penalty is imposed for any such contravention which occurred more than six years, or such less time as is specified in the scheme, before the service of the said written statement of the charge;
- (d) that, where such a written statement of a charge against a producer has been sent to or served on him as aforesaid and the charge is withdrawn or is not substantiated before the said committee, the board has the power, and, to such extent as the said committee may decide, the duty, to make payments to the producer in respect of his costs in connection with the charge; and
- (e) that, in such circumstances and subject to such conditions as may be specified in the scheme, the said committee has the power and the duty to reconsider and, if need be, vary its decisions and that effect is given to any such variation.



(5) For the purposes of Article 10(1)(b) and of any provision of a scheme made in pursuance of that sub-paragraph acts or omissions of the disciplinary committee shall be deemed to be acts or omissions of the board.

(6) Every hearing by the disciplinary committee of a board shall be held in public unless the committee for special reasons direct that the whole or part thereof shall not be so held.

(7) The chairman of the disciplinary committee of a board may direct that any evidence given at a hearing by the committee shall be given on oath and may for that purpose administer oaths.

(8) If, at any sitting of the disciplinary committee of a board, there is an equal division of opinion on any question, the opinion of the chairman shall prevail, and the reference in paragraph (4)(a) to the opinion of the majority of the members of such committee shall be construed accordingly.

F12 mod. by 1984 NI 12, SR 1995/103

### ***Losses sustained by boards to be recoverable in the same way as penalties***

**12**<sup>F13</sup>.—(1) Where a contravention of a provision of a scheme (being a contravention for which the disciplinary committee has the duty to impose, and the board the duty to recover, a penalty) causes loss to the board, the disciplinary committee may, if the written statement of the charge served on the producer in accordance with the provisions of Article 11(4) embodies an estimate by the board of the amount of the loss, together with a statement of the grounds on which that estimate is based, require by its decision that the producer shall pay to the board, in addition to any penalty imposed, each sum, to be stated in the decision, as the committee may think fit, not exceeding either—

- (a) the sum which appears to the committee justly to represent the amount of the loss; or
- (b) the amount stated in the said estimate.

(2) Where the written statement of the charge served on a producer in accordance with the provisions Article 11(4) embodies such an estimate of the loss caused to the board as is referred to in paragraph (1), no loss caused to the board by the contravention to which the charge relates shall be recoverable from the producer otherwise than in the manner for which provision is made by paragraph (1), and, whether or not the written statement of the charge embodies such an estimate as aforesaid, the penalty itself shall not be fixed with a view to recovering the whole or any part of any loss caused to the board by the contravention.

(3) Where such a contravention as aforesaid is concerned with the giving of information or returns to the board and as a result of the contravention the board fails to assess on or demand from the producer a contribution or other payment, or the full amount of a contribution or other payment, which it is entitled to receive from him, the contribution or payment, or the amount not assessed or demanded, as the case may be, shall, if the board so elects by including an estimate of the amount thereof in the written statement of the charge served on the producer in accordance with the provisions of Article 11(4), be treated for the purposes of this Article as lost to the board by reason of the contravention.

F13 mod. by 1984 NI 12, SR 1995/103

### ***Power to postpone imposition of penalty***

**13**<sup>F14</sup>. So much of any scheme as, in pursuance of Article 11(2), requires the disciplinary committee to impose penalties on a registered producer and the board to recover penalties from such a producer shall not be construed as preventing the disciplinary committee, if it finds that a contravention has occurred, from postponing the imposition of a penalty for such period, not exceeding twelve months, as may be specified in the scheme, but save as aforesaid nothing in this

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Article, Article 11(4) to (8) or Article 12 shall be construed as derogating from the duty to impose and recover penalties which is required by the said Article 11(2) to be provided for by every scheme.

**F14** mod. by 1984 NI 12, SR 1995/103

#### ***Enforcement of decisions of disciplinary committee and power to state cases***

**14**<sup>F15</sup>. [<sup>F16</sup>Section 45 and 69 of the Arbitration Act 1996 (which relate to the determination by the court of questions of law) and section 66 of that Act (enforcement of awards) apply] in relation to the hearing and determination of the matters which by virtue of any of the provisions of this Part are referred to the disciplinary committee of a board, and in relation to the enforcement of the decisions of that committee, as if the proceedings were an arbitration under<sup>F16</sup> [arbitral proceedings] agreement to which the board and the producer were parties and as if the disciplinary committee were the arbitrator or umpire appointed by the agreement.

**F15** mod. by 1984 NI 12, SR 1995/103

**F16** 1996 c. 23

#### *Financial powers and duties of boards*

#### ***Schemes to provide for establishment of a fund, payment of contributions, accounting, etc.***

**15**<sup>F17</sup>.—(1) Every scheme shall provide—

- (a) for the establishment of a fund (in this Article referred to as “the fund”) to be administered and controlled by the board, for the payment into the fund of all moneys received by the board, and for the payment out of the fund of any moneys required by the board for the operation of the scheme or otherwise for the purposes of this Part;
- (b) for the payment by registered producers of contributions to the fund of such amounts as may be necessary for the operation of the scheme or otherwise for the purposes of this Part, and for the assessment of the contributions of producers in such manner and subject to such limitations as may be provided by the scheme;
- (c) for the distribution, in such manner as may be provided by the scheme, of all moneys standing to the credit of the fund which are not required for the operation of the scheme or otherwise for the purposes of this Part;
- (d) for the accounts to be kept by the board and for the audit of those accounts;
- (e) for the furnishing by the board to the Department and to registered producers of accounts, returns and other information, including (without prejudice to the generality of the foregoing)—
  - (i) an annual report upon the operation of the scheme administered by the board;
  - (ii) an annual balance sheet and either an annual profit and loss account or, in the case of a board which does not trade for profit, an annual income and expenditure account; and
  - (iii) an annual statement in accordance with Schedule 3;
- (f) for the furnishing by the board, on payment of such reasonable fee (if any) as the board may determine, of a copy of the balance sheet of the board to any person requiring it.

(2) The Department shall lay before the Assembly copies of every annual report received by the Department by virtue of paragraph (1) (e) (i).

(3) Compensation shall be payable under, and in accordance with, a scheme by the board to registered producers in such class of cases as may be specified in the scheme; and any scheme may provide for empowering the board, in such class of cases as may be specified in the scheme, to pay compensation to registered producers in respect of any loss which, in the opinion of the board, has been occasioned to those producers by the operation of any scheme, whether administered by that board or not.

F17 mod. by 1984 NI 12, SR 1995/103

***Power of boards to make loans and grants and to enter into guarantees***

**16**<sup>F18</sup>.—(1) A scheme may provide for empowering the board to pay on account or lend to any registered producer a portion of the amount which the board estimates that he will receive from the sale of any quantity of the regulated product produced or in course of production or held in store by him.

(2) A scheme may provide for empowering the board, subject to such limitations as may be specified in the scheme—

- (a) to lend or grant money to any other board or to a board administering an agricultural marketing service scheme under Part III;
- (b) to guarantee payment by any board mentioned in sub-paragraph (a) of any sums which that board may be liable to pay on account of principal or interest in respect of any loan made to it.

(3) Any scheme which contains such a provision as is authorised by paragraph (2) may further provide for securing that any loan, grant or guarantee nor specifically authorised by the scheme shall not be made or given by the board except in pursuance of a resolution of the board specifying all material particulars relating to the proposed transaction, being a resolution which has been previously notified to, and approved by, the registered producers in accordance with such requirements in that behalf as may be contained in the scheme.

F18 mod. by 1984 NI 12, SR 1995/103

***Borrowing power of boards and provisions as to loans and grants made to boards***

**17**<sup>F19</sup>.—(1) Every scheme shall provide for empowering the board to borrow money for the purpose of exercising its functions under the scheme.

(2) A board shall have power to accept from any other person any grant to be applied for any of the purposes for which the board is empowered to expend money.

(3) A scheme may provide for empowering the board, in any case where a loan or grant is proposed to be made to it, to agree with the person proposing to make the loan or grant, as the case may be, and, in the case of a loan, with any person proposing to guarantee the repayment thereof, that if the loan or grant is duly made or the guarantee duly given, the board will apply the money obtained by it by means of the loan or grant subject to such conditions (including conditions as to the persons on whose advice the board is to act in applying the said money) as may be specified in the agreement.

(4) Where a said scheme provides for empowering the board to make any such agreement as aforesaid, the scheme—

- (a) shall impose upon the board the duty of carrying into effect any such agreement entered into by it; and

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- (b) may provide that where such an agreement contains conditions requiring the board to act on the advice of any specified persons, the provisions of the scheme entitling a registered producer who is aggrieved by any act or omission of the board to refer the matter to arbitration shall not apply in relation to anything done, or omitted to be done, by the board in pursuance of the agreement.

(5) The Department may make to the board administering any scheme approved under this Part a loan of such amount and on such terms and conditions as it thinks fit.

**F19** mod. by 1984 NI 12, SR 1995/103

### ***Investment of surplus funds of boards***

**18** <sup>F20</sup>. Every scheme shall provide for the manner in which the moneys of the board may be invested and shall be so framed as to secure that—

*Sub#para. (a) rep. by 2001 c. 14 (NI)*

- (b) a statement of the manner in which any such moneys as aforesaid are invested is included in the annual report made by the board to the Department and to registered producers.

**F20** mod. by 1984 NI 12, SR 1995/103

### *Effect of schemes on contracts*

#### ***Effect of schemes on contracts***

**19** <sup>F21</sup>.—(1) Subject to the provisions of paragraphs (2) and (3), a contract of which neither the making nor the performance was, at the time when the contract was made, prohibited by or under any scheme in force, shall not, unless the terms of the contract otherwise provide, be void or unenforceable by reason that, at the time for the performance of any provision of the contract, the performance thereof is so prohibited.

(2) Where the performance of any such contract as is referred to in paragraph (1) is prohibited by or under any scheme in force, paragraph (1) shall cease to apply to that contract on the expiration of three months after the prohibition first takes effect, unless the contract is registered under Article 20.

(3) Where any scheme in force provides—

- (a) for requiring registered producers to sell the regulated product or any description thereof only to, or through the agency of, the board, or
- (b) for the determination of the quantity of the regulated product or of any description thereof which may be sold by any registered producer,

then, notwithstanding anything in paragraph (1), every contract (whether made before or after the making of this Order) whereby a registered producer undertakes to sell, otherwise than to, or through the agency of, the board a quantity of an agricultural product determined by reference to the total quantity thereof from time to time produced by the registered producer or produced by him in any area or premises specified in the contract, shall, if and in so far as the performance of the contract is prohibited by or under the scheme, be void and unenforceable.

(4) Where, in conformity with a scheme, any contract for the sale of the regulated product by a registered producer otherwise than to, or through the agency of, the board purports to confer on the board any right to receive from the purchaser the whole or any part of the purchase price payable under the contract, or of any damages for which the purchaser may be liable in respect of a wrongful rejection of articles tendered in accordance with the contract, the board may enforce that right against

the purchaser, notwithstanding that the board is not a party to the contract and notwithstanding that, as between the board and the purchaser, there is no consideration.

(5) No person shall be liable to any penalty in respect of a contravention of any scheme if he proves that contravention was necessary for the performance of a contract which, by reason of paragraphs (1) and (2), was not, at the time of the contravention, void or enforceable.

**F21** mod. by 1984 NI 12, SR 1995/103

### **Registration of certain contracts**

**20** <sup>F22</sup>.—(1) It shall be the duty of the board, on the application of any party to such a contract as is referred to in Article 19 (1), not being such a contract as is referred to in Article 19 (3), to register the contract within the period of fourteen days after the application is made unless—

- (a) the application is made after Article 19 (1) has, by virtue of Article 19 (2), ceased to apply to the contract; or
- (b) in the case of a contract made during the relevant period, the board is of opinion that the contract was made with a view to evading the operation of the scheme by or under which the performance of the contract is prohibited.

(2) If any party to a contract is aggrieved by the omission of a board to register the contract within the period referred to in paragraph (1), he may, within twenty-one days after the expiration of that period, appeal to the county court, and, pending the determination of any such appeal, Article 19 (1) shall, notwithstanding anything in Article 19 (2), continue to apply to the contract.

(3) On any appeal under this Article, the board concerned and any party to the contract may appear and be heard, and if, on the hearing of any such appeal, the county court finds—

- (a) that the application for registration of the contract was made before the expiration of the period on the expiration of which Article 19 (1) ceased, by virtue of Article 19 (2), to apply to the contract, and
- (b) in the case of a contract made during the relevant period, that the contract was not made with a view to evading the operation of the scheme,

the court shall by order direct the registration of the contract, and thereupon the contract shall be deemed to have been registered as from the date of the order.

(4) Where the county court does not by order direct the registration of a contract, being a contract made during the relevant period, any party to the contract who is certified by the court to have entered into the contract in good faith without a view to evading the operation of the scheme may recover the amount of any damage suffered by him by reason of the avoidance of the contract from any other party to the contract who is certified by the court to have entered into the contract with a view to evading the operation of the scheme.

(5) For the purpose of this Article, “the relevant period”, in relation to a scheme, means a period beginning twelve months before the date when notice of the submission of the scheme was published in the Belfast Gazette and ending six months after the expiration of the suspensory period, or, in the case of a substitutional scheme, ending six months after the date when the scheme comes into force.

**F22** mod. by 1984 NI 12, SR 1995/103

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*Relations of boards with Department, etc.*

**Committee of investigation**

**21**<sup>F23</sup>.—<sup>F24</sup>(1) The Head of the Department may, if he thinks fit, appoint a committee of investigation to consider, and report to the Department, on—

- (a) a report made by the General Consumer Council for Northern Ireland under Article 7 of the General Consumer Council (Northern Ireland) Order 1984;
- (b) any complaint made to the Department as to the operation of any scheme which, in the opinion of the Head of the Department, could not be considered by the Council under that Article.]

(2) A committee of investigation appointed under paragraph (1) shall consist of a chairman and either four or five other members.

(3) The Department may appoint a secretary to a committee of investigation and the committee may employ such officers, agents and servants as the Department may, with the approval of the Department of Finance and Personnel determine.

(4) The Department may pay such remuneration to the chairman and other members and the secretary, officers, agents and servants of a committee of investigation and such other expenses of the committee as the Department may, with the approval of the Department of Finance and Personnel, determine.

(5) The chairman and other members of a committee of investigation shall be appointed by the Head of the Department for such period and subject to such conditions as may be determined by him, and the meetings, quorum and procedure of a committee shall be regulated in accordance with regulations made by the Department for the purpose, and a committee of investigation shall have power to act notwithstanding any vacancy among the members thereof.

(6) Regulations made under this Article shall be subject to negative resolution.

**F23** mod. by 1984 NI 12, SR 1995/103

**F24** 1984 NI 12

**Action following report by a committee of investigation**

**22**<sup>F25</sup>.—(1) On receiving the report of a committee of investigation appointed under Article 21 the Department shall forthwith publish the conclusions of the committee in such manner as it thinks fit.

(2) For the purpose of enabling any committee appointed under Article 21 to consider any<sup>F26</sup> matter], the board administering the scheme to which the<sup>F26</sup> matter] relates shall furnish the committee with such accounts and other information relating to the affairs of the board as the committee may reasonably require, and shall be entitled to make representations to the committee with respect to the matter in such manner as may be prescribed by regulations made under Article 21 (5).

(3) If a committee of investigation reports to the Department that any provision of a scheme or any act or omission of a board administering a scheme—

- (a) is contrary to the interests of consumers of the regulated product, or
- (b) is contrary to the interests of any persons affected by the scheme and is not in the public interest,

the Department, if it thinks fit to do so after considering the report—

- (i) may by order make such amendments in the scheme as it considers necessary or expedient for the purpose of rectifying the matter;
- (ii) may by the order revoke the scheme;
- (iii) in the event of the matter being one which it is within the power of the board to rectify, may by order direct the board to take such steps to rectify the matter as may be specified in the order, and thereupon it shall be the duty of the board forthwith to comply with the order;

but before taking any action under this paragraph the Department shall give the board of notice of the action which it proposes to take and shall consider any representations made by the board within 28 days after the date of the notice.

(4) The Department may at any time, after consultation with the board concerned, by order revoke or vary any order in force under paragraph (3)(iii) so as either—

- (a) to withdraw the whole or any part of the directions in force thereunder; or
- (b) to vary or add to those directions in any manner which it thinks necessary or expedient in order better to attain the purposes for which those directions were given;

but, except with the consent of the board, the Department shall not vary or add to any directions under sub-paragraph (b) where, in its opinion, the need for the variation or addition arose from circumstances not obtaining at the date when the directions were given.

(5) Any order made under paragraph (4) shall state the general nature of the reasons for the making thereof.

(6) Any order made under paragraph (3)(i) or (iii) or paragraph (4) shall be subject to negative resolution, and any order made under paragraph 3(ii) shall be subject to affirmative resolution.

**F25** mod. by [1984 NI 12](#), SR 1995/103

**F26** [1984 NI 12](#)

### <sup>F27</sup> **Action following report by Competition Commission**

**23.**—(1) Paragraph (5) applies in any of the following cases.

(2) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.

(3) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.

(4) The third case is where—

- (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
  - (i) certain matters indicated in the report operate against the public interest, and
  - (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
- (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).

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(5) The Department shall have the like power to make orders under Article 22 as if a report of a committee of investigation had contained the conclusion that the provision of the scheme in question, or the act or omission in question, is contrary to the interests of consumers of the regulated product.

(6) An order made by virtue of this Article in a case falling within paragraph (2) or (3) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).]

**F27** 2002 c. 40

### ***Consultation between boards and other persons***

**24**<sup>F28</sup>.—(1) A board shall have power to negotiate with any other persons in respect of any matter concerning the marketing of the regulated product, or of any agricultural product from which the regulated product is wholly or partly manufactured or derived, or of any goods wholly or partly manufactured or derived from the regulated product, and to agree with the other parties to the negotiations to bring into consultation in connection therewith such person as may be agreed between the parties or, in default of agreement, nominated by the Department.

(2) A board may pay the whole or any part of the remuneration and expenses of any person whose function it is to advise the board in connection with the exercise of its powers under the scheme, or who is brought into consultation in connection with negotiations entered into by the board in pursuance of this Article.

(3) Any expenses incurred by a board by virtue of this Article shall be deemed to be expenses incurred under the scheme.

**F28** mod. by 1984 NI 12, SR 1995/103

### *Special provisions as to Milk Marketing Board*

### ***Power to sell other products by retail delivery***

**25**<sup>F29</sup>. Subject to the approval of the Department, a scheme administered by the Milk Marketing Board for Northern Ireland may provide for empowering the Board to sell by retail delivery to domestic consumers in addition to milk such other products as may, in the opinion of the Board, conveniently be sold with milk.

**F29** mod. by 1984 NI 12, SR 1995/103

### ***Poll pursuant to Council Regulations (EEC) No. 1422/78***

**26**<sup>F30</sup>.—(1) If not less than 10 producers, not being disqualified producers, comprising at least 1 per cent. of the producers who sell milk to the Milk Marketing Board for Northern Ireland so request, the Board shall cause a poll to be taken in accordance with the relevant polling rules on the question specified in Article 2(2) of Council Regulation (EEC) No. 1422/78<sup>F31</sup> (that is, whether the voter agrees to the Board's carrying on the activities and exercising the rights resulting from the Regulation) except where it is precluded from giving effect to the request by Article 3(2) of that Regulation.

(2) In this Article—



“disqualified producers” means producers who are disqualified from requesting or taking part in a poll on the question referred to in this Article by Article 3 (1) of the Regulation referred to in this Article; and “relevant polling rules” means, in addition to the rules in Article 2 of that Regulation, such rules in the scheme administered by the Board as relate to a poll on the question referred to in this Article.

- (3) The Board shall as soon as may be inform the Department of—
- (a) any valid request for a poll under this Article, and
  - (b) the results of any such poll.

**F30** mod. by 1984 NI 12, SR 1995/103

**F31** OJL 171, 28.6.78, p. 14

### ***Transitional provisions—the Milk Marketing Board for Northern Ireland***

**27**<sup>F32</sup>.—(1) The Milk Marketing Board for Northern Ireland shall, within the period of one year beginning with the date on which this Order is made, prepare and submit to the Department a milk marketing scheme.

(2) The Department, after consultation with the Milk Marketing Board for Northern Ireland and with representatives of any other interests appearing to the Department to be directly affected by the scheme, may make such modifications in a scheme submitted under paragraph (1) as it thinks proper.

(3) The Department shall make an order approving the scheme submitted to it under paragraph (1) (or that scheme as modified under paragraph (2), as the case may be).

- (4) A scheme under this Article shall provide—
- (a) that the Milk Marketing Board for Northern Ireland shall continue in existence as constituted under the scheme;
  - (b) that a person who immediately before the date on which the scheme comes into force is registered as a producer under the Milk Marketing Scheme (Northern Ireland) 1955<sup>F33</sup> shall on that date be registered as a producer under the scheme;
  - (c) for such other transitional provisions as appear to the Board or the Department (as the case may be) to be necessary or expedient in the circumstances.
- (5) A scheme approved by an order under paragraph (3)—
- (a) shall come into force on such date as may be specified in the order;
  - (b) shall, for the purposes of this Part, be treated as a substitutional scheme;
  - (c) shall, for the purposes of this Part, have effect as if approved by an order under Article 4(6) and as if all the requirements of Articles 3 and 4(1) to (7) had been duly complied with.

(6) If the Milk Marketing Board for Northern Ireland does not comply with paragraph (1) within the period mentioned in that paragraph, the Department may by order revoke the Milk Marketing Scheme (Northern Ireland) 1955.

- (7) In this Article—
- “the Milk Marketing Board for Northern Ireland” means the Milk Marketing Board for Northern Ireland constituted under the Milk Marketing Scheme (Northern Ireland) 1955;
- “milk marketing scheme” means a scheme for regulating the marketing of cows' milk.

**F32** mod. by 1984 NI 12, SR 1995/103

**F33** SR & O (NI) 1955 No. 43

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## *Supplementary*

### ***Payment of certain expenses incurred in connection with preparation of schemes***

**28**<sup>F34</sup>.—(1) Subject to the following provisions of this Article, the board administering a scheme, not being a substitutional scheme, shall pay to the persons by whom the scheme was submitted, such sum, if any, as may be certified by the Department to represent the expenses reasonably incurred by those persons in connection with the promotion, submission or bringing into operation of the scheme.

(2) The board administering a scheme, not being a substitutional scheme, shall not make any payment under this Article before the expiration of the suspensory period, and if a scheme ceases to have effect at or before the expiration of the suspensory period, no payment under this Article shall be made at any time by the board.

(3) Any expenses incurred by a board by virtue of this Article shall be deemed to be expenses incurred under the scheme.

(4) Where a motion made in the Assembly for the approval of a scheme the draft of which has been laid before the Assembly in accordance with Article 4 (6) is negatived or withdrawn, there shall be paid by the Department to the persons by whom the scheme was submitted such sum, if any, as may be certified by the Department to represent the expenses reasonably incurred by those persons in connection with the promotion or submission of the scheme.

**F34** mod. by 1984 NI 12, SR 1995/103

### ***Restrictions on disclosing certain information obtained under Part II***

**29**<sup>F35</sup>.—<sup>F36</sup>(1) No information with respect to any particular undertaking (other than the undertaking of a board) shall, without the consent of the owner of that undertaking, be included in any report laid before the Assembly in pursuance of this Part.

(2) Subject to paragraph (3), no information obtained by any person in the exercise of any power conferred on him by or under the provisions of this Part relating to polls, or in the exercise of any power conferred by or under<sup>F37</sup> this Part or Article 7 of the General Consumer Council (Northern Ireland) Order 1984 on any board or committee of investigation or on the General Consumer Council for Northern Ireland] shall be disclosed by him.

(3) Nothing in paragraph (2) shall restrict the disclosure of information—

- (a) made by a board in compliance with a requirement of the Department of Agriculture under Article 43 of the Diseases of Animals (Northern Ireland) Order 1981<sup>F38</sup>;
- (b) made for the purposes of legal proceedings (including arbitrations) under this Part of any scheme, or for the purpose of any report of such proceedings;
- (c) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any of the staff of that Commission, or to the Director General of Fair Trading or any of the staff appointed by that Director General, if it is made for the purpose of enabling the Commission or the Director General to perform any functions of its or his under the Fair Trading Act 1973 or the Competition Act 1980;
- (d) if, and in so far as, the disclosure is required or authorised by this Part or any scheme<sup>F37</sup> or by the General Consumer Council (Northern Ireland) Order 1984]

(4) Any person who discloses any information in contravention of paragraph (2) shall be guilty of an offence and be liable—

- (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding<sup>F39</sup> level 5 on the standard scale], or both;

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- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or both.

**F35** mod. by [1984 NI 12](#), SR 1995/103

**F36** mod. by SR 1994/672

**F37** [1984 NI 12](#)

**F38** [1981 NI 22](#)

**F39** [1984 NI 3](#)

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

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