

SCHEDULE 1

regulations 9(b),10(1)(b) and (4)(b), 11(2)  
and 33(5)(b)(iii)

**Apportionment and prospective apportionment by arbitration**

1. Paragraphs 3 to 19 shall apply to every arbitration in Northern Ireland.

2.—(1) Parts I, II and IV of the Arbitration Act 1996<sup>(1)</sup> shall, except insofar as they are inconsistent with paragraphs 3 to 19, apply to every arbitration in Northern Ireland as if that arbitration were pursuant to an arbitration agreement and as if paragraphs 3 to 11 and 13 to 18 were contained in an arbitration agreement.

(2) For the purpose of this paragraph “arbitration agreement” shall be construed in accordance with sections 5(1) and 6 of the Arbitration Act 1996.

**Appointment of arbitrator**

3.—(1) Subject to sub-paragraph (2), in any case where an apportionment is to be carried out by arbitration, an arbitrator shall be appointed by agreement between the transferor and transferee, and the transferee shall give notice of the appointment of the arbitrator to the Department.

(2) The transferor or the transferee may at any time make an application to the President of the Law Society of Northern Ireland (referred to in this Schedule as “the President”) for the appointment of an arbitrator and the person who makes such an application to the President shall give notice of that fact to the Department.

(3) If an arbitrator has not been appointed by agreement between the transferor and the transferee and no application has been made to the President under sub-paragraph (2), the Department may make an application to the President for the appointment of an arbitrator.

(4) Where the Department gives a notice in accordance with regulation 11, it shall make an application to the President for the appointment of an arbitrator and the Department shall be a party to the arbitration.

(5) Where an apportionment under regulation 33(5)(b)(iii) is to be carried out by arbitration, the producer shall either appoint an arbitrator by agreement with all persons with an interest in the holding or make an application to the President for the appointment of an arbitrator.

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbitrator shall be appointed—

- (a) where regulation 11 applies, by the President;
- (b) where regulation 10 applies, by agreement between the occupier of the holding to which the prospective apportionment relates and any other interested party, or, in default, by the President on an application by that occupier.

(2) Where sub-paragraph (1)(b) applies, the occupier shall give notice to the Department of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator.

5.—(1) An arbitrator appointed in accordance with paragraph 3(1) to (4) or 4 shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to areas used for milk production in the last five year period during which production took place before the change of occupation, or, in the case of a prospective apportionment, in the last five year period during which production took place before the appointment of the arbitrator.

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(1) 1996 c. 23

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(2) An arbitrator appointed in accordance with paragraph 3(5) shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to the areas used for milk production in the last five-year period during which production took place before the appointment of the arbitrator.

(3) An arbitrator appointed under any paragraph of this Schedule shall base his award on findings made by him in accordance with the law in force at the time the event giving rise to an application for arbitration took place.

6. No application may be made to the President for an arbitrator to be appointed by him under this Schedule unless the application is accompanied by a fee which shall be £50 for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).

7. Where the Department makes an application to the President under paragraph 3(3) or (4), the fee payable to the President in respect of that application referred to in paragraph 6 shall be recoverable by the Department as a debt due from the other parties to the arbitration jointly or severally.

8. Any appointment of an arbitrator by the President shall be made by him as soon as possible after receiving the application.

9. If the arbitrator dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

10. A party to the arbitration shall have power to revoke the appointment of the arbitrator with the consent of all other parties.

11. Every appointment, application, notice, revocation and consent under paragraph 3, 4, 5, 9 or 10 shall be in writing.

#### **Persons with an interest in the holding**

12.—(1) In any arbitration to which this Schedule applies, the arbitrator may, in his absolute discretion, subject to sub-paragraph (2), join as a party to the arbitration any person having an interest in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

(2) Where an apportionment under regulation 33(5)(b)(iii) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign the statement referred to in regulation 33(5)(b)(ii) shall be a party to the arbitration.

#### **Statement of case**

13. The parties to the arbitration shall, within 35 days of the appointment of the arbitrator, or within such further period as the arbitrator may determine, deliver to him a statement of their respective cases with all necessary particulars and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said 35 days except with the consent of the arbitrator; and
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

### **Award**

14.—(1) Subject to sub-paragraph (2), the arbitrator shall make and sign his award within 56 days of his appointment.

(2) The President may from time to time extend the time limited for making the award, whether that time has expired or not.

15. The arbitrator shall notify the terms of his award to the Department within eight days of delivery of that award.

16. The arbitrator shall have power to correct in the award any clerical mistake or error arising from any accidental slip or omission.

### **Reasons for award**

17. If requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award the arbitrator shall furnish such a statement.

18. For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment, and in the case of any such arbitrator the periods mentioned in paragraphs 13 and 14 shall run from that time.

19. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbitrator.