

SCHEDULE 2

Regulations 9, 10 and 32

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR THE SCOTTISH LAND COURT

PART I

GENERAL

1.—(1) Subject to sub-paragraphs (2) and (3), all apportionments and prospective apportionments in respect of holdings in Scotland shall be carried out by arbitration and the provisions of Part II of this Schedule shall apply.

(2) The Scottish Land Court shall carry out the apportionment or prospective apportionment where the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted—

- (a) a croft within the meaning of section 3 of the Crofters (Scotland) Act 1993⁽¹⁾;
- (b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911⁽²⁾; or
- (c) the holding of a statutory small tenant under section 32 of the Small Landholders (Scotland) Act 1911.

(3) Where sub-paragraph (2) does not apply and the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991⁽³⁾, the Scottish Land Court shall carry out the apportionment or prospective apportionment if requested to do so by a joint application of all parties interested in the apportionment, not later than 28 days after the change of occupation of the holding or part of the holding.

(4) Where the Scottish Land Court carries out any apportionment or prospective apportionment, Part III of this Schedule shall apply.

2.—(1) An arbiter or the Scottish Land Court, as the case may be, shall decide the apportionment on the basis of findings made by that arbiter or the Scottish Land Court, as the case may be, 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 arbiter or the application to the Scottish Land Court.

(2) Notwithstanding sub-paragraph (1), an arbiter appointed in accordance with paragraph 3(4) shall conduct the arbitration in accordance with this Schedule and shall base the award on findings made by that arbiter as to the areas used for milk production in the last five-year period during which production took place.

(3) Where production has taken place for less than five years before the change of occupation or of appointment of the arbiter or of the application to the Scottish Land Court, the period of production before the change of occupation or the appointment of the arbiter or the application to the Scottish Land Court as the case may be shall be substituted for the five-year period referred to in sub-paragraphs (1) and (2).

(1) 1993 c. 44.

(2) 1911 c. 49.

(3) 1991 c. 55.

PART II

APPORTIONMENTS CARRIED OUT BY ARBITRATION

Appointment and remuneration of arbiter

3.—(1) In any case where an apportionment is to be carried out by arbitration, an arbiter shall be appointed by agreement between the transferor and transferee within the period of 28 days from the change of occupation of the holding or part of the holding and the transferee shall give notice of the appointment of the arbiter to the Scottish Ministers within fourteen days from the date of the appointment.

(2) Notwithstanding sub-paragraph (1), the transferor or the transferee may at any time within the period of 28 days referred to in sub-paragraph (1) make an application to the Scottish Ministers for the appointment of an arbiter.

(3) If at the expiry of the period of 28 days referred to in sub-paragraph (1) an arbiter has not been appointed by agreement between the transferor and the transferee nor an application made to the Scottish Ministers under sub-paragraph (2), the Scottish Ministers shall at their own instance proceed to appoint an arbiter.

(4) Where an apportionment under regulation 32(4)(b)(iii) is to be carried out by arbitration, the producer shall either appoint an arbiter with the agreement of all persons with an interest in the holding or make an application to the Scottish Ministers for the apportionment of an arbiter.

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbiter shall be appointed by agreement between the occupier and any other interested party or, in default of agreement, by the Scottish Ministers on an application by the occupier.

(2) Where an arbiter is appointed by agreement in terms of sub-paragraph (1), the occupier shall give notice of the appointment of the arbiter to the Scottish Ministers within fourteen days from the date of the appointment.

5.—(1) Where, in terms of a notice given by the Scottish Ministers under regulation 11, an apportionment or prospective apportionment is to be carried out by arbitration, the Scottish Ministers shall apply to the Scottish Land Court for the appointment of an arbiter.

(2) Any fee payable by the Scottish Ministers on an application to the Scottish Land Court under sub-paragraph (1) shall be recoverable by them as a debt due from the other parties to the arbitration jointly and severally.

(3) Where the Scottish Ministers are to be a party to an arbitration (otherwise than in terms of a notice given under regulation 11), the arbiter shall, in lieu of being appointed by the Scottish Ministers, be appointed by the Scottish Land Court.

6.—(1) If the person appointed arbiter dies, or is incapable of acting, or is removed by the sheriff under paragraph 21, or for seven days after notice from any party requiring that person to act fails to act, a new arbiter may be appointed as if no arbiter had been appointed.

(2) If an award is set aside by the sheriff under paragraph 22, a new arbiter may be appointed as if no arbiter had been appointed.

7. No party to the arbitration shall have power to revoke the appointment of the arbiter without the consent of all of the other parties.

8. Every appointment, application, notice, revocation and consent under paragraphs 1 to 7 must be in writing.

9. The remuneration of the arbiter shall be—

- (a) where the arbiter is appointed by agreement between the parties, such amount as may be agreed upon by the arbiter and the parties or, in default of agreement, fixed by the auditor of the sheriff court (subject to an appeal to the sheriff) on an application made by the arbiter or one of the parties;
- (b) where the arbiter is appointed by the Scottish Ministers, such amount as may be fixed by the Scottish Ministers;
- (c) where the arbiter is appointed by the Scottish Land Court, such amount as may be fixed by that Court;

and shall be recoverable by the arbiter as a debt due from any one of the parties to the arbitration.

Conduct of proceedings and witnesses

10. The parties to the arbitration shall within twenty-eight days of the appointment of the arbiter deliver to the arbiter 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 twenty-eight days except with the consent of the arbiter;
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by that party and any amendment or addition duly made.

11. The parties to the arbitration, and all persons claiming through them, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute and shall, subject to any such objection, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power which may be required or called for, and do all other things as the arbiter reasonably may require for the purposes of the arbitration.

12. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter and the Scottish Ministers may make such representations where the arbitration follows on a notice given by them under regulation 11.

13. The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

Award

14.—(1) The arbiter shall make and sign the award within three months of the appointment of the arbiter or within such longer period as may, either before or after the expiry of the aforesaid period, be agreed to in writing by the parties or fixed by the Scottish Ministers.

(2) The arbiter shall notify the terms of that award to the Scottish Ministers within eight days of the delivery of the award.

(3) The award shall fix a date not later than one month after the delivery of the award for the payment of any expenses awarded under paragraph 17.

15. The award to be made by the arbiter shall be final and binding on the parties and any persons claiming under them.

16. The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

Expenses

17. The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the sheriff court on the application of any party, but that taxation shall be subject to review by the sheriff.

18.—(1) The arbiter shall, in awarding expenses, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of amount or otherwise;
- (b) any unreasonable demand for particulars or refusal to supply particulars; and
- (c) generally all the circumstances of the case.

(2) The arbiter may disallow any expenses which the arbiter considers to have been incurred unnecessarily, including the expenses of any witness whom the arbiter considers to have been called unnecessarily.

19. It shall not be lawful to include in the expenses of and incidental to the arbitration and award, or to charge against any of the parties, any sum payable in respect of remuneration or expenses to any person appointed by the arbiter to act as clerk or otherwise to assist the arbiter in the arbitration unless such appointment was made after submission of the claim and answers to the arbiter and with either the consent of the parties to the arbitration or the sanction of the sheriff.

Statement of case

20. The arbiter may at any stage of the proceedings, and shall, if so directed by the sheriff (which direction may be given on the application of any party), state a case for the opinion of the sheriff on any questions of law arising in the course of the arbitration. The opinion of the sheriff on any case shall be final.

Removal of arbiter and setting aside of award

21. Where an arbiter has committed any misconduct, the sheriff may remove that arbiter.

22. Where an arbiter has committed any misconduct, or an arbitration or award has been improperly procured, the sheriff may set the award aside.

Miscellaneous

23. Any amount paid in respect of the remuneration of an arbiter by any party to the arbitration in excess of the amount, if any, directed by the award to be paid by that person in respect of the expenses of the award shall be recoverable from the other party or jointly from the other parties.

24. The Arbitration (Scotland) Act 1894⁽⁴⁾ shall not apply to any arbitration carried out under this Schedule.

PART III

APPORTIONMENTS CARRIED OUT BY THE SCOTTISH LAND COURT

25. The provisions of the Scottish Land Court Act 1993⁽⁵⁾ with regard to the Scottish Land Court shall apply for the purpose of the determination of any matter which they are required, in

(4) 1894 c. 13 (57 and 38 Vict).

(5) 1993 c. 45.

terms of paragraph 1, to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under that Act.

26. Where an apportionment or prospective apportionment is to be dealt with by the Scottish Land Court, the party making application to that Court shall notify the Scottish Ministers in writing of the application within fourteen days of its being lodged with the Court.

27. Where, in terms of a notice given by the Scottish Ministers under regulation 11, an apportionment or prospective apportionment is to be carried out by the Scottish Land Court, any fee payable by the Scottish Ministers to the Court shall be recoverable by them as a debt due from the other parties to the case jointly and severally.

28. Any person having an interest in the holding to which the apportionment or prospective apportionment relates shall be entitled to be a party to the proceedings before the Scottish Land Court and the Scottish Ministers shall be entitled to be a party where the apportionment follows on a notice given by them under regulation 11.