

1989 No. 1806 (S.133)

AGRICULTURE

The Scottish Milk Marketing Scheme (Consolidation)
Approval Order 1989

Made - - - - 28th September 1989

Coming into force 25th October 1989

Whereas the Secretary of State has considered it appropriate to prepare a consolidation of the Scottish Milk Marketing Scheme 1933(a) as it has effect with amendments;

Now therefore, in exercise of the powers conferred on him by section 52(1) of, and paragraph 5A of Schedule 1 to, the Agricultural Marketing Act 1958(b) and of all other powers enabling him in that behalf, he hereby makes the following Order:

1. This Order may be cited as the Scottish Milk Marketing Scheme (Consolidation) Approval Order 1989 and shall come into force on 25th October 1989.
2. The Scottish Milk Marketing Scheme 1989 set out in Schedule 1 to this Order is hereby approved and shall come into force on 25th October 1989.
3. The Scottish Milk Marketing Scheme 1933 is hereby revoked.
4. This Order is made for the purposes of consolidation only.
5. The Orders and Regulations specified in column (1) of Schedule 2 to this Order are hereby revoked to the extent specified in relation thereto in column (3) of that Schedule.

St. Andrew's House, Edinburgh
28th September 1989

Sanderson of Bowden
Minister of State,
Scottish Office

(a) S.R. & O.1933/479, amended by S.R. & O. 1934/645, 1935/691, 1246, 1937/624; S.I. 1950/2057, 1956/650, 1965/644, 2193, 1968/391, 1978/583, 1979/319, 1981/445, 864, 1982/616, 1988/182.

(b) 1958 c. 47; section 52(1) contains a definition of "the Minister" relevant to the exercise of the statutory powers under which this Order is made; paragraph 5A of Schedule 1 was inserted by the Agriculture Act 1986 (c. 49), section 11.

THE SCOTTISH MILK MARKETING SCHEME 1989

INDEX

Section

| | | |
|-----|--|----|
| 1. | Title of Scheme and the regulated product | 4 |
| 2. | Interpretation | 4 |
| 3. | Area of the Scheme | 4 |
| 4. | Board to administer the Scheme..... | 4 |
| 5. | Meetings of the Board | 7 |
| 6. | Title of the Board | 7 |
| 7. | Chairman and Vice-Chairman..... | 7 |
| 8. | Address of office | 7 |
| 9. | Change of address of office | 7 |
| 10. | Staff | 7 |
| 11. | Auditor | 7 |
| 12. | Registration of producers..... | 8 |
| 13. | Exemption from registration | 8 |
| 14. | Penalty for furnishing false information | 8 |
| 15. | Provisions for the purchase and sale of milk, the production of commodities therefrom, and for other matters | 9 |
| 16. | Financial management and administration of commercial activities..... | 9 |
| 17. | Prohibition of sale except to or through the Board and the Board's obligation to accept milk | 10 |
| 18. | Prohibition of sale by unregistered producers not exempted | 10 |
| 19. | Information to be furnished by registered producers | 10 |
| 20. | Conditions of sale of milk | 10 |
| 21. | Notification of certain matters to the Minister..... | 11 |
| 22. | Haulage | 11 |
| 23. | Milk containers | 11 |
| 24. | Negotiation with buyers' representatives | 11 |
| 25. | Consultation with haulage contractors | 13 |
| 26. | Financial provisions and payment for milk | 13 |
| 27. | Sales by retail, semi-retail and wholesale | 15 |
| 28. | Contributions by exempt producers | 16 |
| 29. | Sale of Premium milk in retail containers otherwise than by retail or semi-retail..... | 16 |
| 30. | Liability of the Board for bad debts | 17 |
| 31. | Hospitals, mental hospitals and other such institutions which are registered producers— partial exemption | 17 |
| 32. | Exemptions | 17 |
| 33. | Power of inspection of lands and premises of registered producers..... | 19 |
| 34. | Penalties for contravention of the provisions of the Scheme or of determinations of the Board; the Disciplinary Committee | 19 |
| 35. | Arbitration in cases where producers are aggrieved | 20 |
| 36. | Statutory polls | 21 |
| 37. | Polls taken in accordance with section 41A of the Act | 21 |
| 38. | Corrupt and illegal practices at statutory polls and penalties therefor | 22 |
| 39. | Accounts | 22 |
| 40. | Annual General Meeting | 23 |
| 41. | Special General Meetings..... | 23 |
| 42. | Notice of General Meetings..... | 23 |
| 43. | Voting at General Meetings | 23 |
| 44. | Quorum at General Meetings | 24 |
| 45. | Amendment of the Scheme | 24 |
| 46. | Revocation of the Scheme | 24 |
| 47. | Winding-up of the Board..... | 24 |

| | | |
|-----|----------------------------|----|
| 48. | The common seal | 24 |
| 49. | Deeds | 24 |
| 50. | Proof of posting | 24 |
| 51. | Reprinting of Scheme | 25 |

SCHEDULES

| | | |
|-----|---|----|
| (1) | Members of Board | 26 |
| (2) | Form of Voting Paper for Statutory Polls under section 36 | 27 |
| (3) | Form of Voting Paper for EEC Polls under section 37 | 28 |
| (4) | Form of Proxy | 29 |

SCHEME FOR THE REGULATION OF THE MARKETING OF MILK IN SCOTLAND
UNDER THE AGRICULTURAL MARKETING ACT 1958

Title of Scheme and the regulated product

- 1.—(1) This Scheme may be cited as the Scottish Milk Marketing Scheme 1989.
- (2) The agricultural product the marketing of which is regulated by this Scheme is milk.

Interpretation

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

“accounting period” means such period comprising twelve consecutive calendar months as shall be determined from time to time by the Board;

“the Act” means the Agricultural Marketing Act 1958(a), as amended by any subsequent Act;

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

“Chairman” means any Chairman duly appointed in accordance with section 7 of the Scheme;

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

“cow” means a cow kept for dairy purposes whether dry or in milk, but does not include a heifer which has never calved;

“exempt producer” means a registered producer who is the holder of a certificate of exemption issued under subsection (12) or (15) of section 32 of this Scheme;

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

“intervention price equivalent of milk” means the intervention price equivalent of milk calculated pursuant to regulation 5 of the Milk Marketing Boards (Special Conditions) Regulations 1981(b);

“milk” means cows’ milk produced in the area of the Scheme;

“Minister” means the Secretary of State for Scotland;

“Premium milk” and “Standard milk” means milk of these designations being special designations the use of which is authorised by any order made by the Minister;

“producer” means a producer of milk;

“registered” means registered under the Scheme, and “registration” shall be construed accordingly;

“the Scheme” means the Scottish Milk Marketing Scheme 1989, and any amendment thereof;

“statutory poll” means a poll concerning the amendment or revocation of the Scheme, as the case may be.

(2) In this Scheme, unless the context otherwise requires, any reference to a numbered section is a reference to the section so numbered in the Scheme and any reference in a section to a numbered subsection is a reference to the subsection so numbered in that section.

Area of the Scheme

3. The Scheme shall apply to the Counties of Angus, Perth, Clackmannan, Kinross, Fife, Stirling, Dunbarton, Renfrew, Ayr, Bute, Wigtown, Kirkcudbright, Dumfries, Lanark, West Lothian, Mid Lothian, East Lothian, Berwick, Peebles, Selkirk, Roxburgh; the following Parishes in the County of Argyll - Lochgoilhead and Kilmorack, Strachur, Strathlachlan, Kilmodan, Dunoon and Kilmun, Inverchaolain, Kilfinan, Kilcaimonell, Saddell and Skipness, Killean and Kilchenzie, Campbeltown and Southend; and the Counties of the Cities of Edinburgh, Glasgow and Dundee. The Scheme shall apply to all burghs within the aforementioned counties and parishes.

Board to administer the Scheme

4.—(1) *The Board.* The Scheme shall be administered by a Board which shall be a body corporate with a common seal.

(2) *Composition of Board*

- (a) Subject to the provisions of subsection (2)(b) with regard to sitting members and of subsection (5) with regard to the filling of casual vacancies in the case of elected members, the Board shall consist of 8 members elected for the 8 sub-areas enumerated in the first column of Schedule (1) to the Scheme in accordance with subsection (4) and 2 members appointed by the Minister in accordance with section 2(1)(b) of the Second Schedule to the Act.

(a) 1958 c.47.

(b) S.I. 1981/322.

- (b) The 8 members of the Board duly elected in accordance with the provisions of the Scottish Milk Marketing Scheme 1933 and serving immediately prior to 1st April 1982 (hereinafter referred to as "the sitting members") shall be deemed to have been elected for the sub-areas shown opposite their respective names in the third column of Schedule (1) to the Scheme.
- (c) Each year, one quarter of the elected members of the Board shall retire from office at 24.00 hours on the day of the Annual General Meeting, but subject to the provisions of subsection (3) shall be eligible for election or re-election. The members to retire shall consist of those who have been longest in office since their last election, and for this purpose service prior to 1st April 1982 shall count (including in the case of a sitting member elected to fill a casual vacancy the portion of the term of office of the member who caused that vacancy). Where it is necessary, in order to make up the number to retire, that one or more members should retire out of the number of those who have been in office for an equal period the member or members to retire shall be determined by the Board, or in default of determination by the Board, by lot.
- (d) No member shall continue on the Board beyond the date of the next Annual General Meeting after reaching the age of 70, except that a sitting member of the Board as defined in subsection (2)(b) who reached the age of 70 before the end of his term of office current at 1st April 1982 shall not be required to retire from the Board until his normal retirement date determined in accordance with subsection (2)(c).

(3) *Nomination of candidates*

- (a) Before each Annual General Meeting the Board shall publish, in such manner and with such additional information as the Board shall think fit, notice of any vacancy in the membership of the Board due to be filled at the Annual General Meeting (and in the case of an election in accordance with subsection (5) the unexpired portion of the term of office of the member causing the casual vacancy), the sub-area for which members are to be elected, the address at which the Board are prepared to receive nominations and the last date (hereinafter called "the closing date for nominations") on which the Board are prepared to receive them; provided that the period between publication as aforesaid and the closing date for nominations shall not be less than 20 days.
- (b) No person shall be nominated to represent a sub-area unless he has been duly nominated in accordance with the provisions of this subsection.
- (c) A candidate for a sub-area shall be nominated in writing by at least 20 registered producers in the sub-area in which a vacancy has occurred but a candidate need not be resident in that sub-area. No person who has attained the age of 70 shall be eligible for nomination as a candidate.
- (d) Forms of nomination for candidates for sub-areas shall be available on request from the Secretary of the Board and must be lodged at the Board's Head Office by 17.00 hours on the closing date for nominations specified in the form.
- (e) If, at the end of the 3rd day after the closing date for nominations, there is no duly nominated candidate for the vacancy, the Board shall nominate a candidate for that vacancy.

(4) *Election of members.* The following provisions shall have effect when an election of a member for a sub-area is required to be held:-

- (a) at an election of a member for a sub-area all registered producers in the Board's area shall be entitled to vote and each of them shall have one vote, except that each producer registered in the sub-area where the vacancy has occurred shall have one extra vote;
- (b) subject to the provisions of subsection (4)(f) the Board shall, not later than the 35th day before the Annual General Meeting, send to every registered producer entitled to vote in the election a voting paper stating the names of the duly nominated candidates, in the case of an election under subsection (5) the period of office, such questions as will enable the Board to ascertain the number of votes the producer is entitled to have, the address to which the voting paper is to be sent and the date (not being less than 28 clear days after the despatch of the voting paper) by which the completed voting paper is to be received by the Board;
- (c) a voting paper shall not be counted unless it is received by the Board at the said address by 17.00 hours on the day by which it is required to be received, sufficiently completed and signed;
- (d) if any question shall arise as to whether any voting paper is sufficiently completed and signed, the decision of the Secretary of the Board shall be final;
- (e) the conduct of the voting for Board membership shall be in the hands of the Secretary of the Board who will notify the Board of the results of the election at least one clear day before the date of the Annual General Meeting so that the name(s) of the successful candidate(s) who receive the most votes can be declared to have been elected;
- (f) in the event of there being only one duly nominated candidate for a vacancy in a sub-area, that candidate shall be deemed to have been elected to the Board. In such event the provisions of subsection (4)(b) shall not apply, but the Board shall, not later than the 35th day before the Annual General Meeting, publish for the information of registered producers, in such manner as the Board think fit, the name of the candidate duly elected.

(5) *Filling of casual vacancies in the Board*

- (a) A casual vacancy shall occur in the case of any of the following events occurring amongst the elected members of the Board:-
- (i) the death of any such member;
 - (ii) the resignation of office of any such member;
 - (iii) any such member vacating office in consequence of coming under any of the disqualifications specified in subsection (6), or his removal under subsection (11);
 - (iv) any such member attaining the age of 70 years and retiring in accordance with subsection (2)(d);
 - (v) any election being abortive in consequence of any error or irregularity in the proceedings;
 - (vi) a vacancy occurring from any cause other than those above stated, and other than retirement in ordinary rotation.
- (b) A casual vacancy occurring more than 150 days before the date of the next Annual General Meeting, shall be filled *ad interim* by the Board at a meeting, of which the notices stating that the matter is to be dealt with shall be sent out by the Secretary within 2 weeks of the vacancy occurring, and which shall be held not sooner than 5 days and not later than 10 days from the date of such notice. The member so elected *ad interim* shall retire at 24.00 hours on the day of the next Annual General Meeting following upon his election but shall be eligible for re-election. The vacancy then arising shall be filled by election in accordance with the provisions of subsections (3) and (4). The member so elected shall retire at the time at which the member who caused the casual vacancy would in the ordinary course have retired but shall be eligible for re-election.
- (c) Where the casual vacancy occurs within 150 days of the date of the next Annual General Meeting, the vacancy shall be deemed to have arisen by retirement in accordance with subsection (2)(c) and the provisions of subsections (3) and (4) shall apply to the same effect and extent as if the member causing the casual vacancy had completed his normal term of office. The member elected in his place shall retire at the time at which the member who caused the casual vacancy would in the ordinary course have retired but shall be eligible for re-election.

(6) *Disqualification of members of the Board.* Any elected member of the Board who is appointed to any other office or place of profit under the Scheme, or becomes bankrupt or insolvent, or compounds with his creditors, or becomes of unsound mind, or is convicted of an indictable offence, or absents himself from meetings of the Board for a period of six months without the consent of the Board, or gives the Board notice in writing that he resigns office, shall forthwith cease to be a member of the Board.

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

(8) *Improper disclosure of information by members of the Board.* Every member of the Board shall within 7 days of his election or appointment thereto sign and lodge with the Secretary of the Board a declaration stating that he has read and understands the provisions of section 47 of the Act(a) relating to the improper disclosure of information obtained by him as a member of the Board.

(9) *Remuneration of the Board.* The remuneration of the Board shall be determined by the Annual General Meeting, and such remuneration shall be divisible amongst the members as the Board may determine.

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

(a) Section 47 was amended by the Fair Trading Act 1973 (c.41), Schedule 12, and by the Competition Act 1980 (c.21), section 19(4)(a).

(11) *Removal of members of the Board.* Any elected members of the Board may be removed at any time by a resolution passed at any General Meeting, provided that notice of such resolution with full names and addresses of the registered producers respectively proposing and seconding the resolution has been lodged in writing with the Secretary of the Board not later than 60 days prior to the date of the meeting. The Board shall then be bound to send a copy of such notice to each registered producer along with the notice referred to in section 42. Voting at the meeting shall be in accordance with section 43, except that each producer registered in the sub-area represented by the member in question shall have one extra vote.

Meetings of the Board

5.—(1) The Board shall arrange their hours and place of meeting and shall meet as often as is found necessary. Provided, however, that the Secretary shall call a meeting of the Board on the requisition in writing of any two members of the Board.

(2) A quorum at meetings of the Board shall consist of three members.

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

(4) All questions at meetings of the Board or any committee thereof, other than the Disciplinary Committee appointed under section 34, shall be decided by the majority of votes of the members present. Each member present shall have one vote, and if there be an equality of votes the member acting as chairman of the meeting shall, in addition, have a casting vote which he shall be required to exercise.

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

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

Title of the Board

6. The name of the Board shall be "The Scottish Milk Marketing Board".

Chairman and Vice-Chairman

7. A Chairman and a Vice-Chairman of the Board shall be appointed annually by the Board from their own number. The Chairman, or in his absence the Vice-Chairman, shall preside at all General Meetings and at all meetings of the Board. If both are absent from a General Meeting or a meeting of the Board, the Board shall appoint another chairman of the meeting from their own number.

Address of office

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

Change of address of office

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

Staff

10. The Board shall appoint and may remove a secretary and such other officers as they may deem necessary, and shall determine their respective duties and remuneration. Every officer of the Board having charge of any of the moneys of the Board shall, before entering on his duties, give such security as the Board shall deem sufficient.

Auditor

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

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

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

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

Registration of producers

12.—(1) The Board shall cause a register to be kept in which shall be recorded the name and address of every producer who applies to the Board for registration, the date of registration, and in the case of a registered producer who ceases to be a registered producer, the date on which he ceased to be a registered producer.

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

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

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

(4) The register shall be open for inspection at the office of the Board at any reasonable time during the days on which the office is open for business.

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

(6) The Board shall cause to be removed from the register the name of any producer who ceases to produce milk or who becomes exempt or is exempted by the Board from registration, provided that the name of a person shall not be removed from the register without his consent by reason only that he becomes exempt or is exempted from registration. It shall be conclusive evidence that a producer has ceased to produce milk that he has not sold milk for 12 consecutive months.

(7) In making application for registration, producers shall use the form of application issued by the Board, and shall furnish thereon the following information:—

- (a) full name and address;
- (b) the number of cows in their possession on such date preceding the date of application as may be determined by the Board; and
- (c) the address of the farm, farms or other premises on which the cows are kept.

Cows for the use of which a producer pays a consideration, whether in money or in kind, shall, for the purposes of the Scheme, be deemed to be in his possession.

Exemption from registration

13. There shall be exempt from registration under the Scheme producers who sell milk only to persons in their employment or to neighbours for their own consumption, provided that the number of such neighbours and the total daily sales to such neighbours do not exceed such number and quantity respectively as the Board may from time to time determine. If any question arises as to whether a producer is exempt under this section such question shall be determined by the Board. Notwithstanding the provisions of this section the Board shall register any producer who makes application for that purpose.

Penalty for furnishing false information

14. Should any producer fail to furnish the information prescribed in subsection (7) of section 12, his vote, on any statutory poll under the Scheme, shall be rejected, and should any producer wilfully furnish information which is false in any material particular, he shall be liable to a penalty not exceeding

(a) 1985 c.6.

£100, such penalty to be imposed by the Disciplinary Committee in accordance with the provisions of section 34.

Provisions for the purchase and sale of milk, the production of commodities therefrom, and for other matters

15. The Board shall have power—

- (a) to buy milk and to produce any of the commodities as listed in section 24(6), and to sell, grade, pack, store, adapt for sale, insure, advertise and transport milk and any of the commodities referred to in section 24(6);
- (b) (i) to buy from a board administering any corresponding scheme (within the meaning of section 7(4) of the Act) any milk, the marketing of which is regulated by that scheme, and produce from milk so bought any of the commodities referred to in paragraph (a) hereof;
 - (ii) to sell, grade, pack, store, adapt for sale, insure, advertise and transport any milk or commodities referred to in subparagraph (i) of this paragraph; and
 - (iii) to exercise as agents for a board administering any corresponding scheme any power of that board to deal in any manner mentioned in subparagraph (ii) of this paragraph with any milk, the marketing of which is regulated by that scheme;
- (c) subject to section 24 to determine, for such period as may be fixed by the Board on the occasion of each determination, the description (being a description authorised by the Milk and Dairies (Scotland) Acts 1914 to 1949(a), or by any order or regulation made thereunder) of milk which may be sold by registered producers, the price at, below or above which, the terms on which, and the persons to or through the agency of whom, milk of any such description as aforesaid or any quantity thereof may be sold by the Board or by registered producers through the Board or otherwise, and to determine different prices and terms for different classes of sale. Provided that the Board shall not recall for sale for liquid consumption milk which has been allocated to buyers if such milk, whether in unprocessed or processed form, is intended by the buyers for export outside the United Kingdom;
- (d) to determine from time to time the place or places at or to which delivery of milk produced by any registered producer shall be made;
- (e) to manufacture or acquire (whether by purchase or lease) and to sell or let for hire to registered producers and other persons anything (whether heritable or moveable, real or personal) required for the production, grading, packing, storing, adaptation for sale, transport or sale of milk. Provided that any such thing sold or let for hire shall be sold or let for hire primarily in such circumstances as to be likely to be utilised mainly by registered producers or in connection with milk produced by them;
- (f) to co-operate with any person in doing anything which the Board are empowered to do in virtue of paragraphs (a) and (g) hereof, and to do anything calculated to procure, promote or facilitate the doing by any other person of such things;
- (g) to encourage, promote or conduct agricultural co-operation, research and education in furtherance of the efficient production and marketing of milk and commodities derived from milk, and to devote such sums of money for these purposes as the Board may from time to time determine;
- (h) to deal in any way with any kind of livestock which the Board may require for the purposes of the Scheme;
- (i) to sell semen and to provide a service of artificial insemination of cattle owned by registered producers or other persons;
- (j) to make payments or provide financial guarantees to any persons in respect of the performance by them of such functions as in the opinion of the Board assist or may assist in the efficient distribution, sale or use of milk, or the efficient manufacture, distribution, sale or use of any commodity referred to in paragraph (a) hereof, and to enter into agreements with any such persons as to the terms and conditions on which such payments shall be made or guarantees provided; and
- (k) to do all such other things as are incidental to or consequential on the powers conferred on the Board by the provisions of the Scheme.

Financial management and administration of commercial activities

16. The Board, to the intent that so far as practicable their commercial activities shall be put on an equal footing with similar commercial activities carried on by independent commercial undertakings, shall place their commercial activities under a system of financial management and administration which

(a) 1914 c.46, 1922 c.54, 1934 c.51, 1949 c.34.

is separately accountable from the system of financial management and administration for the Board's other activities.

Prohibition of sale except to or through the Board and the Board's obligation to accept milk

17.—(1) All registered producers shall, subject to the provisions of sections 27, 29 and 32, sell milk only to or through the agency of the Board, and, subject to the provisions of subsections (2) and (3), the Board shall be bound to accept all milk legally tendered to them by registered producers and to make payment therefor in manner provided in section 26.

(2) The Board may—

- (a) reject or cause to be rejected any consignment or part of any consignment of milk tendered by a registered producer if they are satisfied that the milk does not comply with any of the standards of quality determined by them with the approval of the Minister and in force for the time being or with any warranty subject to which the milk is sold;
- (b) for such period as they may in any particular case determine, refuse to accept further consignments of milk from a registered producer who, on more than 3 occasions in any period of 30 days falling within a period of 120 days immediately prior to such refusal, has had milk rejected under the immediately preceding paragraph;
- (c) for such period as they may in any particular case determine, refuse to accept further consignments of milk from a registered producer whose milk has failed to meet the standards of quality specified by the Board with the approval of the Minister from time to time over a period of 62 consecutive days on at least 6 separate occasions:

Provided, however, that, before exercising the power of refusal in subsection (2)(b), the Board shall notify the registered producer in writing of the action they propose to take thereunder, and if so requested by the registered producer within 7 days of the service of such notification shall give him an opportunity of showing cause why such action should not be taken.

(3) The Board shall not be required to accept milk where this cannot reasonably be done on account of industrial dispute, adverse weather or other contingency beyond its control. Any registered producer whose milk has not been accepted under the provisions of this subsection shall, during such a period of non-acceptance, be free to sell milk otherwise than to or through the agency of the Board, but in the event of such producer being unable to sell his milk or any part thereof otherwise than to or through the agency of the Board, the Board may in their absolute discretion make payment for such milk at such reduced price as may be determined in accordance with proviso (iii) to section 26(9).

Prohibition of sale by unregistered producers not exempted

18. The sale of milk, either within the area of the Scheme or elsewhere, by any producer who is not either a registered producer or a person exempt or exempted from registration by or under the provisions of the Scheme, is prohibited except as provided for by Articles 7 and 8 of Council Regulation (EEC) No. 1422/78(a), and subsection (6) of section 6 of the Act shall apply accordingly.

Information to be furnished by registered producers

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

Conditions of sale of milk

20. Without prejudice to the generality of the powers conferred on the Board by section 15—

- (a) subject to section 24 the Board shall determine from time to time and for such period as may be fixed by the Board on the occasion of each determination, the price at which milk (not being milk of any of the special designations the use of which is authorised by any order made by the Minister) may be sold by registered producers to or through the agency of the Board;
- (b) subject to the provisions of subsection (1) of section 27, subsection (1) of section 29 and subsection (2) of section 32, milk shall be sold by the litre. Where buyers are in the habit of ascertaining the amount of milk supplied to them by registered producers by weighing the milk for this purpose, the average weight of a litre of milk may be assumed to be 1.03 kg, it being understood that all machines used for this purpose are subject to the requirements of the Weights and Measures Act 1985(b);
- (c) subject to the provisions of subsection (1) of section 27, subsection (1) of section 29 and subsection (2) of section 32, registered producers shall comply with such invoicing procedure as the Board may from time to time determine;

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

(b) 1985 c.72.

- (d) the Board shall pay the proceeds of all sales of milk by or through the agency of the Board into the fund hereinafter referred to, and thereafter make payment to registered producers in the manner prescribed in section 26.

Notification of certain matters to the Minister

21. The Board shall, not less than 14 days before making any determination under paragraph (c) of section 15 or paragraph (a) of section 20, give notice to the Minister in writing of their proposal to make such a determination:

Provided that—

- (a) in cases in which representations are made by the Board to the Minister that the period of 14 days is excessive, the Minister may fix such period shorter than 14 days as he may agree with the Board, and
- (b) this section shall not apply in such cases or classes of case as the Minister may from time to time specify by notice in writing given to the Board.

Haulage

22.—(1) The Board shall have power to specify the person or persons by whom and the manner or manners in which the milk of any registered producer shall be transported.

(2) The Board shall have power to determine the rates payable by the Board for the transport of milk by road, and may exercise this power in relation to all persons specified by them under subsection (1), or in relation to particular classes of such persons or to individual specified persons.

(3) Except as otherwise provided in subsection (4), all accounts for the transport, whether by road or otherwise, of milk sold to or through the agency of the Board shall be paid by the Board.

(4) The cost of collecting milk from registered producers shall be an expense chargeable to the fund established in terms of section 26(3), but in the event of the Board considering that any such collection is unreasonably difficult or unduly onerous or costly (whether by reason of difficulty of access, or inconvenience of location, or any other reason) then the Board may, in such a case, assess a Special Collection Charge. The amount of such a charge shall be fairly related to the actual extra cost of the collection compared to the average cost of collection as assessed by the Board, and shall be debited against the account of the individual producer concerned.

Milk containers

23. Each registered producer consigning milk to the Board shall maintain in good condition refrigerated farm tank equipment to permit of his milk being collected at his farm by tanker (unless the Board has determined that some other form of collection will apply).

Negotiation with buyers' representatives

24.—(1) A Committee (hereinafter called the "Joint Committee") shall be established which shall consist of members appointed by the Board and members appointed by bodies for the time being representative of buyers of raw milk in bulk from the Board including the Scottish Dairy Trade Federation, the Scottish Co-operative Milk Trade Association and the Scottish Association of Milk Product Manufacturers, and agreed by such bodies to be so representative. Failing agreement, the last mentioned members shall be appointed by the body or bodies which appear to the Minister to be representative of such buyers.

(2) The Joint Committee may appoint sub-committees consisting of one or more of their members and such other person or persons as the Joint Committee may appoint. Any such sub-committee may be empowered by the Joint Committee to consider any matters referred to it by the Joint Committee.

(3) The Joint Committee may appoint a Chairman who need not be one of their members.

(4) All questions to be decided by the Joint Committee shall be decided by a vote taken on a resolution when the members appointed by the Board and the members representing buyers of milk appointed as in subsection (1) shall each collectively have one vote. The Joint Committee shall not be taken to have agreed unless both such votes have been cast to the same effect.

(5) The parties represented in the Joint Committee shall negotiate the following matters:—

- (a) the description of milk to be sold by the Board;
- (b) the delivery of milk to be sold by the Board;
- (c) the terms on which milk is to be sold by the Board, including the prices thereof;
- (d) the amounts of any allowances to be made to buyers;
- (e) the classes of persons and premises to whom or in respect of which such allowances are to be made;
- (f) the conditions on which such allowances are to be made;

- (g) the amounts of any premiums to be paid by buyers and the conditions on which such premiums are to be paid;
- (h) the arrangements for making milk available to buyers including the Board's processing and manufacturing enterprises, proposals for which may be submitted to the Joint Committee by a sub-committee set up under the terms of subsection (2).

(6) Subject to subsections (7) and (8), the price of all milk to be sold by the Board shall be the same for all buyers, except that the Joint Committee may negotiate different prices for milk sold by the Board for use in production of the following commodities:-

- (a) cheese, with prices differentiated according to the variety of the cheese;
- (b) butter, with prices differentiated according to the type and fat content of the butter;
- (c) cream, with prices differentiated according to the type and fat content of the cream;
- (d) evaporated milk;
- (e) condensed milk;
- (f) milk powder;
- (g) milk chocolate crumb;
- (h) milk puddings;
- (i) custard;
- (j) ice cream;
- (k) cultured milk products;
- (l) sauces, desserts, soups, catering products and bakery products, with prices differentiated according to the product; and
- (m) subject to the approval of the Minister, other commodities of which milk is an ingredient.

If whole milk is fractionated and only part of the solid constituents is utilised in the production of any of the commodities specified above, the Joint Committee may negotiate different prices according to the uses of each constituent, except that prices in respect of any constituent shall be set at the same level for all uses which qualify that constituent, or any milk product derived therefrom, for sale to the Intervention Board for Agricultural Produce or for the benefit of any Community aid scheme.

(7) The price of milk to be sold by the Board shall be set at the same level for all buyers who intend to use the milk for the same purpose and, without prejudice to the generality of this subsection, no price shall be differentiated by reason only that the milk or any milk product derived therefrom is intended for export outside the United Kingdom or for sale to the Intervention Board for Agricultural Produce.

(8) The Joint Committee may negotiate different prices to take account of-

- (a) the region or district in which the milk is to be produced, processed or consumed;
- (b) the description, quality or condition of the milk;
- (c) the period during which, and the dates when, deliveries of milk are to be made;
- (d) the place of delivery;
- (e) the quantity of milk to be delivered;
- (f) any special services to be rendered to the buyer, including the delivery of milk in specified quantities at specified times;
- (g) subject to the approval of the Minister, any other criteria of an objective nature.

(9) After the end of the calendar month following the month of delivery the Joint Committee shall not agree to any reduction in the prices they have negotiated in accordance with subsections (5), (13) and (14).

(10) If the Joint Committee fail to agree a minimum price for any use of milk for manufacture, they shall as soon as is practicable and in any case not later than the 22nd day of the month following the month of delivery, refer their disagreement to the Arbitration Panel set up under subsection (13) or, if both parties so agree, to a single arbiter. The Arbitration Panel, or the single arbiter, as the case may be, shall decide the final minimum price before the end of the month following the month of delivery of the milk.

(11) Notwithstanding the foregoing provisions of this section, the price of milk sold by the Board shall not be set at such a level that the sale of milk by the Board at that price would contravene Article 9 of Council Regulation (EEC) No. 1422/78 or Article 6.2 of Commission Regulation (EEC) No. 1565/79(a). In the event of any such contravention or any other failure by the Board to comply with the Community principles, rules or special conditions referred to in Article 10 of Council Regulation (EEC) No. 1422/78, the Board shall make such adjustment in their arrangements for milk sold or to be sold as shall satisfy the Minister that the effect of such contravention or failure has been counteracted.

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

(12) The Joint Committee may also discuss any other matters agreed by the Joint Committee to be of mutual interest and arising out of the Community obligations of the United Kingdom.

(13) If the Joint Committee are unable to agree upon any matter which is referred to in subsections (5), (6) and (8), the matter may be referred by either party to an Arbitration Panel thereon. Such Panel shall consist of four members, namely a Chairman and three other members (though only three of the four members shall sit on any particular reference) appointed by the Joint Committee and shall include persons who, in the opinion of the Joint Committee or, failing agreement by the Joint Committee, in the opinion of the Minister, are qualified for appointment as having had experience and shown capacity in commerce or in law or in accountancy or economics. If the Joint Committee fail to agree upon any or all of these members, the appointment or appointments shall be made by the Minister. The procedure of a reference to the Arbitration Panel may be varied by agreement within the Joint Committee so that any matter of disagreement may be referred to a single arbiter to be appointed from time to time by the Joint Committee. A decision of such Panel or of such single arbiter shall be binding on the Joint Committee unless the Joint Committee agree not to accept it. The procedure may also be adopted if the Joint Committee so agrees in relation to any matter raised under subsection (12).

(14) The Joint Committee or, failing agreement, either of the parties represented in the Joint Committee may invite the Chairman or any other member of the Arbitration Panel to attend all or any of their meetings. If the two parties represented in the Joint Committee cannot agree on which member of the Arbitration Panel should be invited, then the Chairman of the Arbitration Panel shall decide. The Committee may also consult the Chairman or any other member of the Arbitration Panel or seek his advice in relation to any other matter which is referred to in subsections (5), (6) and (8) or raised under subsection (12), provided that, if the Chairman or any other member of the Arbitration Panel attends any meeting of the Joint Committee during discussion of a particular issue or is consulted by the Joint Committee thereon, he shall not sit on the Arbitration Panel if that issue is referred to the Arbitration Panel.

Consultation with haulage contractors

25. For the purpose of facilitating the determination of any matter mentioned in subsections (1) and (2) of section 22, and of promoting harmony in the relations between the Board and persons engaged in the haulage of milk by road, the Board shall invite such associations representing those so engaged, as may be known to the Board, to appoint representatives to a committee to be known as the Joint Haulage Committee to which the Board shall also appoint representatives.

Financial provisions and payment for milk

26.—(1) The Board shall exercise their powers under this section subject to the provisions of any order made under Part I of the Agriculture Act 1947(a).

(2) For the purpose of securing for registered producers the benefits of any guarantee under Part I of the Agriculture Act 1947, or any other enactment, the Board may enter into any agreement with the Minister or his nominee, and pay or receive money in pursuance of any such agreement.

(3) The Board shall establish a fund (hereinafter referred to as the "fund"). All money received by the Board shall be paid into the fund, and any moneys required by the Board for the operation of the Scheme shall be paid out of the fund:

Provided that—

- (a) the moneys payable to the Board for the sale of raw milk and from other non-commercial activities in any accounting period shall be kept separate from the moneys payable to the Board from their commercial activities, and
- (b) the Board shall not make moneys held in the fund or due to be paid into the fund, other than moneys arising from their commercial activities, or other financial benefits available for use in their commercial activities, except on the market terms then prevailing.

(4) If the Board think fit, having regard to any arrangements which are in operation by virtue of any enactment, including the Scheme, and of which in the opinion of the Board the object or one of the objects is the maintenance of guaranteed prices or an assured market for milk, the Board may pay to registered producers in respect of milk which they have produced and sold, otherwise than to or through the agency of the Board, such sum per litre as the Board may determine, and the Board may determine different sums for different descriptions of milk or classes of sale, and may determine the conditions subject to which any such sums shall be paid.

(5) If a buyer shall have paid the Board a premium for any special service rendered to him by a registered producer, the Board shall pay such premium to that producer.

(6) For the purpose of promoting or maintaining the purity and good quality of milk, the Board may pay premiums or bonuses to registered producers in respect of such descriptions of milk produced and

(a) 1947 c.48.

sold by them as the Board may determine. The Board may determine the conditions subject to which such premiums or bonuses will be paid, and may determine different premiums or bonuses and different conditions for different descriptions of milk and for different classes of sale.

(7) The Board may deduct from, or set off against, any sums payable to a registered producer in terms of subsections (4), (5), (6) and (9) any contributions payable by such registered producer under sections 27 and 29, and any other sums due to the Board by such registered producer.

(8)(a) The Board may from time to time set aside to reserve such sums as they think fit, and may utilise such reserves in the operation of the Scheme at such times and in such manner as they may determine;

(b) in the event of the Board at any time being of the opinion that the moneys set aside to reserve are more than are required for the operation of the Scheme, such sum as the Board may think fit shall be distributed to such persons and in such manner as shall be recommended by the Board and approved by resolution passed at a General Meeting.

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

(a) sums payable under subsections (4), (5) and (6), and

(b) such sums as in the opinion of the Board are required to provide reserves and to pay all or such part as the Board think fit of the Board's expenses, losses and outgoings of every description in respect of that accounting period,

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

Provided that—

(i) if any such registered producer shall have sold milk which is of a standard of quality lower than that determined by the Board, the Board may pay him in respect of such milk such price lower than the pool price as the Board may determine,

(ii) the Board shall where appropriate deduct from the pool price, or the lower price referred to in the foregoing proviso, the Special Collection Charge in accordance with the provisions of section 22, and

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

(10) Any moneys payable to the Board from its commercial activities, together with such other moneys (if any) as the Board think fit, less—

(a) sums set aside by the Board under subsection (8)(a) and not deducted under subsection (9), and

(b) such sums as in the opinion of the Board are required to pay all, or such part as the Board think fit, of the Board's expenses, losses and outgoings of every description incurred in respect of that accounting period in relation to the activities from which the moneys payable under this subsection have accrued,

shall be paid by the Board to all registered producers in proportion to the quantity of milk sold by them under the provisions of the Scheme during that accounting period or any part thereof.

(11) *Power to borrow money.* The Board may obtain loans from the Agricultural Marketing (Scotland) Fund, as provided in section 22 of the Act, and from registered producers and other persons, including loans or advances from banks by way of overdraft on current account, or otherwise, with or without security, and on such terms and conditions as may be arranged.

(12) *Power to invest money.* Any money for the time being standing to the credit of the fund may be left on current or deposit account in any bank, or, if not for the time being required for the purposes of the functions of the Board, may be invested, but, except with the approval of the Minister, shall not be invested otherwise than in the investments specified in Part I and Part II of the First Schedule to the Trustee Investments Act 1961(a).

(13) *Power to lend money to registered producers.* The Board may lend to any registered producer, on such terms and conditions as the Board may deem fit, a portion of the amount which the Board estimate that he will receive from the sale of milk produced or in course of production by him, provided,

(a) 1961 c.62.

however, that the amount lent by the Board to any registered producer shall at no time exceed the amount which the Board estimate he will receive from the sale of two months' supply of milk.

(14) *Power to raise a capital contribution.* The Board shall have power to require registered producers who sell milk to or through the agency of the Board to make contributions of such amounts as may be necessary for the operation of the Scheme towards the capital expenditure, or other capital purposes, of the Board. These contributions shall be payable in respect of every litre of milk sold by them to or through the agency of the Board during such period or periods and at such rates per litre as the Board may from time to time determine. Such contributions shall be payable on such dates as may be fixed by the Board and shall be a debt due by the registered producer to the Board and recoverable by the Board accordingly. Any contribution so payable by any registered producer may be deducted by the Board from any moneys payable by the Board to that producer.

Sales by retail, semi-retail and wholesale

27.—(1) The following provisions of the Scheme shall not apply to milk (whether sold as whole milk or otherwise) sold by retail, semi-retail or wholesale (as hereinafter defined) by registered producers who are licensed by the Board to sell milk by retail, semi-retail or wholesale:—

- (a) subsection (1) of section 17,
- (b) paragraphs (b), (c) and (d) of section 20,
- (c) section 22, and
- (d) subsections (9) and (14) of section 26.

(2) Contributions to the Board

- (a) Every registered producer shall pay to the Board a contribution of such amount as the Board may from time to time determine in respect of every litre of milk (whether sold as whole milk or otherwise) of his own production which he has sold by retail, by semi-retail or by wholesale. The Board may determine different rates of contribution for different descriptions of milk and for the avoidance of doubt it is hereby declared that the Board may, in exercise of the power conferred upon them by this subsection, for any such rate fixed by them in an accounting period determine during that period that some other rate shall be payable. Such contributions shall be payable on such dates as may be fixed by the Board and shall be a debt due by the registered producer to the Board and recoverable by the Board accordingly. In determining the rate of any such contribution the Board shall have regard to the extent to which the prices determined by the Joint Committee for milk (whether sold as whole milk or otherwise) of the same description as that sold by the registered producer for the appropriate accounting period as estimated from time to time by the Board exceed the pool prices for that period as so estimated with intent that the average rate of contribution for the accounting period shall not be greater than the amount by which the simple average of such prices determined by the Joint Committee exceeds the simple average of such pool prices.
- (b) In addition to the contribution determined by the Board under subsection (2)(a), the Board may require registered producers, in respect of every litre of milk (whether sold as whole milk or otherwise) of their own production sold by them by retail, semi-retail or wholesale, to make contributions of such amounts as the Board may from time to time determine towards the expenses of the Joint Committee referred to in section 24 and towards the cost of advertising milk.
- (c) In addition to the powers conferred on the Board under subsections (2)(a) and (b), the Board shall have power to require registered producers, who sell milk (whether sold as whole milk or otherwise) of their own production by retail, semi-retail or wholesale, to make contributions of such amounts as may be necessary for the operation of the Scheme towards the capital expenditure or other capital purposes of the Board. These contributions shall be payable in respect of every litre of milk (whether sold as whole milk or otherwise) of their own production sold by them by retail, semi-retail or wholesale during such period or periods, and at such rates per litre, as the Board may from time to time determine. Such contributions shall be payable on such dates as may be fixed by the Board and shall be a debt due by the registered producer to the Board and shall be recoverable by the Board accordingly. Any contributions so payable by any registered producer may be deducted by the Board from any moneys payable by the Board to that producer.

(3) Definitions of sale by retail, by semi-retail and by wholesale

- (a) Sale by retail means the sale by a registered producer, licensed as aforesaid, of milk (whether sold as whole milk or otherwise) of his own production by his own hand or by the hand of a member of his family or that of a person directly employed by him to domestic consumers.
- (b) Sale by semi-retail means the sale by a registered producer, licensed as aforesaid, of milk (whether sold as whole milk or otherwise) of his own production by his own hand or by the hand of a member of his family or that of a person directly employed by him to a hospital, hotel, restaurant or such other class or classes of buyers (not being domestic consumers or

persons carrying on business as distributors of milk or manufacturers of milk products) as the Board may from time to time determine.

- (c) Sale by wholesale means the sale by a registered producer, licensed as aforesaid, of milk (whether sold as whole milk or otherwise) of his own production packed on his premises in retail containers and sold by him to a buyer for subsequent retail sale. Provided that the Board may, at their discretion, and from time to time, fix the quantity of milk (whether sold as whole milk or otherwise) which may be sold by any individual registered producer by wholesale under the provisions of this section.

Contributions by exempt producers

28. The Board may in respect of any accounting period require exempt producers to pay into the fund contributions proportional to the services rendered to them, in respect of milk sold under the terms of their exemption, at such amount per litre as the Board may from time to time determine with the approval of the Minister.

Sale of Premium milk in retail containers otherwise than by retail or semi-retail

29.—(1) The following provisions of the Scheme shall not apply to Premium milk put into retail containers on his farm and sold by a registered producer otherwise than by retail or semi-retail as defined in subsection (3) of section 27:—

- (a) subsection (1) of section 17,
- (b) paragraphs (b), (c) and (d) of section 20,
- (c) section 22, and
- (d) subsections (9) and (14) of section 26.

Provided, however, that the Board may, after consultation with such persons as they deem best qualified to express the views of the registered producers concerned, determine that the aforementioned provisions of the Scheme shall apply to such milk as aforesaid and that from such date and to such extent as is specified in the determination.

(2) Contributions to the Board

- (a) Every registered producer of Premium milk shall pay to the Board a contribution of such amount as the Board may from time to time determine in respect of every litre of Premium milk of his own production put into retail containers on his farm, which he has sold as Premium milk otherwise than by retail or semi-retail. For the avoidance of doubt it is hereby declared that the Board may, in exercise of the power conferred upon them by this subsection, for any such contribution fixed by them in an accounting period determine during that period that a contribution of some other amount shall be payable. Such contribution shall be payable on such dates as may be fixed by the Board and shall be a debt due by the registered producer to the Board and recoverable by the Board accordingly. In determining the amount of any such contribution the Board shall have regard to the extent to which the prices determined by the Joint Committee for milk of the same description as that sold by the registered producer for the appropriate accounting period as estimated from time to time by the Board exceed the pool prices for that period as so estimated with intent that the average rate of contribution for the accounting period shall not be greater than the amount by which the simple average of such prices determined by the Joint Committee exceeds the simple average of such pool prices.
- (b) In addition to the contribution determined by the Board under paragraph (a) hereof, the Board may require registered producers, in respect of every litre of Premium milk of their own production put into retail containers on their farms and sold by them as Premium milk otherwise than by retail or semi-retail, to make contributions of such amounts as the Board may from time to time determine, towards the expenses of the Joint Committee referred to in section 24 and towards the cost of advertising milk.
- (c) In addition to the powers conferred on the Board under paragraphs (a) and (b) hereof, the Board shall have power to require registered producers who sell Premium milk of their own production to make contributions of such amounts as may be necessary for the operation of the Scheme towards the capital expenditure or other capital purposes of the Board. These contributions shall be payable in respect of every litre of Premium milk of their own production put into retail containers on their farms and sold by them as Premium milk otherwise than by retail or semi-retail during such period or periods and at such rates per litre as the Board may from time to time determine. Such contributions shall be payable on such dates as may be fixed by the Board and shall be a debt due by the registered producer to the Board and shall be recoverable by the Board accordingly. Any contributions so payable by any registered producer may be deducted by the Board from any moneys payable by the Board to that producer.

Liability of the Board for bad debts

30. The Board's responsibility for any bad debts that may be contracted in respect of the sale of milk under the provisions of the Scheme, shall extend only to sales, the proceeds of which are required by the provisions of the Scheme to be paid into the fund.

Hospitals, mental hospitals and other such institutions which are registered producers — partial exemption

31. The provisions of the Scheme governing the sale of milk shall not apply to milk produced by hospitals, mental hospitals and such other institutions which are registered producers, being milk supplied to their own patients and staff, but shall apply to all sales of milk by such registered producers.

Exemptions

32.—(1) The Board shall have power at any time to exempt from any or all of the provisions of the Scheme producers and sales of such classes or descriptions as they may determine, and from time to time to withdraw or vary exemptions granted under this subsection.

(2) The provisions of paragraphs (c) and (d) of section 15, subsection (1) of section 17, section 20, section 22, subsections (4), (6) and (9) of section 26 and section 29 shall not apply—

- (a) to milk which a registered producer withholds from the Board—
 - (i) for export, in unprocessed or processed form, outside the United Kingdom; or
 - (ii) for conversion into butter or skimmed milk powder to be sold to the intervention agency; or
 - (iii) for sale to an exempt producer;
- (b) to milk produced by an exempt producer.

(3) A registered producer may act jointly with other registered producers or through intermediaries or with and through both for the purpose of subsection (2)(a)(i) but a registered producer who withholds milk for those purposes shall give at least 2 months' prior notice in writing to the Minister and to the Board stating—

- (a) the precise or minimum period during which he intends to withhold milk;
- (b) whether all milk to be sold by him will be withheld or the quantity of milk which he intends to withhold where this is less than the total amount which he is to sell; and
- (c) whether the milk which is to be marketed outside the United Kingdom is to be marketed in unprocessed or processed form.

(4) A registered producer may act jointly with other registered producers or through intermediaries or with and through both for the purposes of subsection (2)(a)(ii) but a registered producer who withholds milk for those purposes shall give at least one month's prior notice in writing to the Minister and to the Board stating—

- (a) the precise or likely period during which he intends to withhold milk; and
- (b) whether all milk to be sold by him will be withheld or the quantity of milk which he intends to withhold where this is less than the total amount which he is to sell.

(5) Where a registered producer has given the notice referred to in subsection (3)(a) or (4)(a) above, the Board shall not be bound to buy from him any milk to which the notice relates until the expiry of the period specified therein; and where a registered producer does not specify the precise period during which he intends to withhold milk, the Board shall not be bound to resume the purchase of such milk from him until the expiry of 2 months after the Board shall have received notice in writing of his intention to resume sales of such milk to the Board.

(6) A registered producer shall not be entitled to withhold milk under subsection (2)(a)(ii) unless—

- (a) for a period of 5 consecutive months in the period of 12 consecutive months immediately preceding the date from which he intends to withhold milk the price paid by the Board to him each month shall have been less than either—
 - (i) the intervention price equivalent of milk for that month calculated pursuant to regulation 5 of the Milk Marketing Boards (Special Conditions) Regulations 1981; or
 - (ii) an intervention price equivalent of milk for that month calculated as aforesaid but by the registered producer using the margins and conversion factors applicable to the milk produced by him that month, provided that he is able to satisfy the qualified person specified in the said regulation 5 as to the validity of his calculation; or
- (b) during the period of 12 consecutive months immediately preceding the date from which he intends to withhold milk the average price paid by the Board to him shall have been less than the average intervention price equivalent of milk over the same period.

(7) A registered producer may give notice under subsection (4) of his intention to withhold milk under subsection (2)(a)(ii) upon receipt by him of the first payment for one month's supply of milk

establishing that the price paid by the Board is less than the intervention price equivalent of milk for that month.

(8) A registered producer shall not be entitled to withhold milk under subsection (2)(a)(ii) for more than a period of 6 consecutive months beyond the period of 3 consecutive months during which the price paid by the Board to registered producers shall have exceeded the intervention price equivalent of milk.

(9) A registered producer who withholds milk for the purposes of subsection (2)(a)(iii) shall give not less than 60 days prior notice to the Minister and to the Board in writing of his intention to do so.

(10) Every such registered producer as referred to in subsection (9) shall keep such books and records relating to the sale of the said milk as the Board shall reasonably require and shall make such returns and give such information as the Board shall reasonably require to enable the Board, and if he so desires, the Minister, to be satisfied that the milk has been sold to an exempt producer, and shall produce such books and records to and give such information to any person authorised in writing by the Board or Minister to inspect them.

(11) Any registered producer who intends to sell milk direct to the final consumer may send to the Board a declaration that from the date specified therein, being a date not less than 2 months later than the month in which the Board has received the declaration, and for a period specified therein, being a period of not less than 5 years from the date of the commencement of the exemption, he wishes to be exempted from his obligation to sell milk to the Board and to forego his right to require the Board to buy milk from him.

(12) Subject to the following subsections, the Board shall issue a certificate of exemption to any registered producer from whom such a declaration as referred to in subsection (11) has been received and who—

- (a) produces information showing that during the 3 consecutive years immediately preceding the date of lodging his declaration with the Board the average annual production of milk from all the cows in his possession has not exceeded 100,000 kilograms; and
- (b) intimates that he intends to sell not less than 75% of the annual production of milk from all the cows in his possession directly to the final consumer in the form of liquid milk.

(13) If the Board contests the right of any registered producer to become an exempt producer on the grounds that he is unable to fulfil the requirements of subsections (12) and (16)(c), they shall as soon as practicable and in any case not later than 21 days after receipt of the declaration send it with all material documents to the Minister, and shall give to the registered producer written notice of their decision, of the reasons for their decision, and of their having sent his declaration to the Minister.

(14) The Minister shall on receipt of the declaration and documents from the Board invite the registered producer and the Board to make representations to him concerning the exemption and shall consider the exemption having regard to any such representations received by him within the time specified by him. The provisions of subsections (11) and (12) shall apply to the Minister's consideration of the exemption as if the reference in those subsections to the Board were references to the Minister.

(15) If the Minister decides the exemption in favour of the registered producer, or if the Minister within 60 days of the receipt of the declaration by the Board has not sent to the registered producer written notice of his refusal of the exemption with reasons for his decision when he shall be deemed to have acceded to the exemption, the Board shall forthwith issue a certificate of exemption to the registered producer.

(16) Every certificate of exemption—

- (a) shall state the period of its validity;
- (b) shall record the average annual production from cows in the possession of the exempt producer during the 3 calendar years immediately preceding the lodging of his application with the Board; and
- (c) shall be issued subject to the following conditions:-
 - (i) that the exempt producer shall sell not less than 75% of the annual production of milk from the cows in his possession directly to the final consumer in the form of liquid milk;
 - (ii) that the exempt producer shall not buy from other registered producers a quantity of milk exceeding in any year 25% of the production of milk in that year from the cows in his possession and shall only sell the milk so bought by him directly to the final consumer in the form of liquid milk;
 - (iii) that the total amount of milk in liquid form sold by the exempt producer directly to the final consumer in any calendar year shall not exceed double the average annual production recorded in the certificate of exemption; and
 - (iv) that the exempt producer shall keep such books and records relating to his production, purchase and sales of milk as the Board shall reasonably require and shall make such returns and give such information to the Board as the Board shall reasonably require to enable the Board and, if he so desires, the Minister, to be satisfied that the conditions

of the certificate of exemption are being complied with, and shall produce such books and records to any person authorised in writing by the Board or the Minister to inspect them.

(17) A certificate of exemption may be revoked by the Minister, whether or not it was issued by him, upon breach of any of its conditions on the part of the exempt producer.

(18) For the purposes of this section a registered producer shall be deemed to have cows in his possession if, but only if, they and the buildings in which they are tended or milked are in his exclusive possession; however, if a registered producer satisfies the Minister that it is necessary for the time being for his cows to be tended or milked in buildings which are not in his exclusive possession, he shall for such period as the Minister may determine be deemed for the purposes of this section to have the cows in his possession.

Power of inspection of lands and premises of registered producers

33. For the purpose of securing compliance with the Scheme, any person authorised in writing by the Board may 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 milk, and, subject to the provisions of this section, any person so authorised may take samples of milk of any registered producer.

Penalties for contravention of the provisions of the Scheme or of determinations of the Board; the Disciplinary Committee

34.—(1) If any person being a registered producer under the Scheme—

- (a) sells milk or any description or quantity thereof at a price, or in a manner, or to a person, or on terms, other than those determined for the time being by the Board or by the Joint Committee as the case may be; or
- (b) fails to furnish such information relating to the milk produced by him as may be required from time to time by the Board; or
- (c) wilfully furnishes to the Board information which is false in any material particular; or
- (d) obstructs or interferes with any person duly authorised by the Board in terms of section 33 in the performance of his duties thereunder; or
- (e) withholds milk for the purposes of section 32(2)(a)(iii) (for sale to an exempt producer) and fails without reasonable excuse to comply with any of the requirements of section 32(10),

the Disciplinary Committee hereinafter described shall impose upon such producer, and the Board shall recover from him, such monetary penalty not exceeding £1,000 as that Committee think just:

Provided always that no such penalty shall be imposed in respect of such a contravention as aforesaid which constitutes an offence under any Act other than the Act.

(2) (a) There shall be a committee of the Board to be known as the Disciplinary Committee, constituted, at each sitting thereof, of not less than 4 nor more than 6 members of the Board and a chairman who is not a member of the Board but is an independent person who is an advocate of not less than 7 years' standing, or a solicitor of not less than 7 years' standing, and is approved by the Minister.

- (b) No penalty shall be imposed on a registered producer under this section except after a hearing by the said Committee and by the decision thereof, taken in accordance with the opinion of all or the majority of the members thereof, provided that, if there is an equal division of opinion, the opinion of the chairman shall prevail. At any such hearing the producer shall be entitled to appear and be heard in person or by counsel or solicitor or by any other person authorised by him.
- (c) Notice of the time and place of every such hearing and a written statement of the charge against the producer in question shall be served personally or by registered post on that producer at least 14 days before the hearing.
- (d) No penalty shall be imposed for any contravention which occurred more than 6 years before the service of the said written statement of the charge.
- (e) 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 shall have the power, and, to such extent as the said Committee may decide, the duty, to make payments to the producer in respect of his expenses in connection with the charge.
- (f) The said Committee, if they find that a contravention has occurred, may postpone the imposition of a penalty for a period not exceeding 12 months.

(3) As soon as may be after the Disciplinary Committee have concluded the hearing of a case written notice of their decision shall be sent to the registered producer in question and he may, on or before the 14th day after the date on which the notice was so sent to him, give notice to the Board referring

the matter to arbitration under the provisions of the Scheme, and, if the matter is so referred, no proceedings shall be taken by the Board otherwise than for the purposes of the arbitration or to enforce the award of the arbiter; and the arbiter may award payment by the producer of such penalty or other sums as he thinks just but not exceeding the maximum penalty or other sums respectively which could have been imposed or required by the Disciplinary Committee.

(4) The said Committee shall have the power to reconsider their decision in relation to the case of any such producer if, upon considering any written application in that behalf by the registered producer in question made within 3 months after the date of the original hearing by the said Committee, they are satisfied that—

- (a) there may be facts relevant to the case other than the facts which were before the Committee at the original hearing, and
 - (b) if such other facts had been previously known to the Committee, their decision would have been influenced thereby, and
 - (c) the matter has not been referred to arbitration under subsection (3).
- (5)(a) If under subsection (4) the said Committee decide to reconsider any case it shall be their duty to rehear the case, and, if as a result they are of opinion that a substantial miscarriage of justice has occurred, they shall vary the previous decision of the Committee, and the Board shall thereupon give effect to such variation.

(b) The provisions of paragraph (b) of subsection (2) and subsection (3) shall apply to every such rehearing.

(6) Subject as aforesaid every penalty imposed and every sum required to be paid by a decision of the Disciplinary Committee shall be a debt due to the Board and recoverable accordingly.

(7) Where a contravention of a provision of the Scheme or of a determination of the Board (being a contravention in respect of which the Board have the duty to recover a penalty) causes loss to the Board, the provisions of section 10 of the Act shall apply.

(8) A person whose name appeared upon the register of producers at the date when he contravened any provision of the Scheme shall, notwithstanding that his name has since been removed from the register, be deemed to remain a registered producer for the purpose only of this section.

Arbitration in cases where producers are aggrieved

35.—(1) In the event of any producer being aggrieved by any act or omission of the Board he may make application to the Board demanding that the matter be referred to an arbiter appointed by the Minister, and the Board shall, within 14 days of the receipt of any such application, apply to the Minister for the appointment of an arbiter. If a person appointed dies or is incapable of acting, or for 7 days after written notice from either party to the dispute requiring him to act, fails to act, a new arbiter may be appointed by the Minister, as if no arbiter had been appointed.

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

(3) *Evidence*

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

(4) *The award*

- (a) If the arbiter finds that the Board shall be required to rectify any matter, the subject of the reference, the award shall state the manner in which, and the date as and from which the matter shall be rectified by the Board.
- (b) The award of the arbiter shall be final and binding on the parties.
- (c) The arbiter may correct in an award any clerical mistake or error arising from an accidental slip or omission.

(5) *Expenses*

- (a) The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner and within what time those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the Sheriff Court on the application of either party, but that taxation shall be subject to review by the Sheriff.

- (b) The arbiter shall, in awarding expenses, take into account the reasonableness or unreasonableness of the claim of the producer concerned either in respect of amount or otherwise and any unreasonable demand for particulars or refusal to supply particulars by either party, and generally all the circumstances of the case, and may disallow the expenses of any witness whom he considers to have been called unnecessarily, and any other expense which he considers to have been incurred unnecessarily.

Statutory polls

- 36.—(1) A statutory poll shall be taken in accordance with the provisions of this section.
- (2) The returning officer shall be such person as the Minister may, on the application of the Board, appoint. The remuneration and expenses of the returning officer shall be defrayed by the Board.
- (3) The returning officer may by writing under his hand appoint any fit person or persons to be his deputy or deputies for all or any of the purposes of the poll. A deputy returning officer shall have the powers and duties of the returning officer in relation to the matters in respect of which he is appointed to act as a deputy.
- (4) The Board shall furnish to the returning officer a list of the names and addresses of the registered producers who are entitled to vote on the poll.
- (5) The producers who are entitled to vote shall be the producers who are registered on such day as may be determined by the Board (hereinafter referred to as the "qualifying date").
- (6) The poll shall be conducted by post and the returning officer shall, not later than the 14th day after the qualifying date, send a voting paper to every producer entitled to vote. In the event of the loss of a voting paper so sent the returning officer may supply a duplicate voting paper.
- (7) The voting paper shall be substantially in the form set out in Schedule (2) hereto, and only voting papers which are properly completed and which reach the office of the returning officer at or before 18.00 hours on the 28th day after the qualifying date shall be taken into account. Any person who knowingly makes any false statement in a voting paper shall be liable, on summary conviction, to imprisonment for a period not exceeding 3 months or to a fine not exceeding £100, or to both such imprisonment and fine.
- (8) For the purpose of any statutory poll the basis of determining the capacity of a registered producer to produce milk shall be the number of cows in his possession in the area of the Scheme at 12.00 hours on the qualifying date.
- (9) The votes given on any poll shall be counted by the returning officer and his decision on any question arising with respect to any vote shall be final and conclusive.
- (10) The returning officer shall draw up and deliver to the Minister and the Board a certificate showing the result of the poll, and including particulars of the number of voting papers sent out by the returning officer, the number of voting papers received by him timeously, the number of such papers which were rejected because they were not properly completed, and the number of registered producers who voted in favour of the amendment or revocation, as the case may be, of the Scheme and against it respectively, and the number of cows in their possession respectively in the area of the Scheme at 12.00 hours on the qualifying date.
- (11) The result of the poll as shown in the certificate given by the returning officer shall be published in *The Glasgow Herald*, *The Scotsman*, *The Courier and Advertiser*, and such other newspapers as the Board may think fit.

Polls taken in accordance with section 41A of the Act

- 37.—(1) A poll under section 41A of the Act(a) shall be taken in accordance with the provisions of this section as read with paragraphs (4), (5) and (6) of Article 2 of Council Regulation (EEC) No. 1422/78.
- (2) The returning officer shall be such person as the Minister may, on the application of the Board, appoint. The remuneration and expenses of the returning officer shall be defrayed by the Board.
- (3) The returning officer may by writing under his hand appoint any fit person or persons to be his deputy or deputies for all or any of the purposes of the poll. A deputy returning officer shall have the powers and duties of the returning officer in relation to the matters in respect of which he is appointed to act as a deputy.
- (4) No member or servant of the Board and no producer shall be appointed as a returning officer or be appointed to be a deputy of the returning officer.

(a) Section 41A was inserted by S.I. 1981/864.

(5) The Board shall obtain and furnish to the returning officer a list of the names and addresses of the registered producers who are entitled to vote in the poll and such other information as he may require for the purposes of conducting the poll and drawing up the certificate referred to in subsection (10).

(6) The producers who are entitled to vote shall be the producers who are registered on such day (hereinafter referred to as the "qualifying date") as may be determined by the Minister, but excluding any producer who has sent to the Board the declaration referred to in section 32(11).

(7) The poll shall be conducted by post and the returning officer shall, not later than the 14th day after the qualifying date, send a voting paper to every producer entitled to vote. In the event of the loss of a voting paper so sent the returning officer may supply a duplicate voting paper.

(8) The voting paper shall be substantially in the form set out in Schedule (3) hereto, and only voting papers which are properly completed and which reach the office of the returning officer at or before 18.00 hours on the 28th day after the qualifying date shall be taken into account.

(9) The votes cast in any poll shall be counted by the returning officer and his decision on any question arising with respect to any vote shall be final and conclusive.

(10) The returning officer shall draw up and deliver to the Board a certificate showing the result of the poll, and including particulars of—

- (a) the number of voting papers sent out by the returning officer and the number of producer and production votes represented by them;
- (b) the number of valid voting papers received by him and the number of producer and production votes represented by them;
- (c) the number of voting papers received by him and declared not valid and the number of producer and production votes represented by them;
- (d) the number of voting papers not returned and the number of producer and production votes represented by them; and
- (e) the number of producer votes and production votes cast in favour of the question and against it respectively.

(11) The result of the poll as shown in the certificate given by the returning officer shall be published in *The Glasgow Herald*, *The Scotsman*, *The Courier and Advertiser*, and such other newspaper as the Board may think fit.

(12) "Producer vote" and "production vote" have the meanings which they have in Article 2(4) of Council Regulation (EEC) No. 1422/78 concerning the granting of certain rights to milk producers' organisations in the United Kingdom.

Corrupt and illegal practices at statutory polls and penalties therefor

38. For the purpose of the Scheme corrupt and illegal practices committed in connection with any statutory poll shall have the meanings assigned to them in the Representation of the People Act 1983(a), and any person guilty of any such practices in connection with any such poll shall, on summary conviction, be liable to the appropriate penalty or penalties specified in the said Act.

Accounts

39.—(1) The Board shall cause to be kept proper accounting records with respect to—

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

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

(2) The Board shall charge to its commercial activities such proportion of its general administrative expenses as is fairly attributable to such commercial activities.

(3) *Preparation of accounts.* Following the end of each accounting period, the Board shall prepare, in respect of the accounting period, an Income and Expenditure Account for the fund established in accordance with section 26(3), and a Profit and Loss Account in respect of the Board's commercial activities. The Board shall also prepare a Balance Sheet as at the date at which these Accounts are made up. The Accounts shall make separate provision for the Board's commercial activities and for the Board's other activities, and shall be in a form approved by the Minister.

(4) *Audit of accounts.* The Board shall submit the accounts prepared under subsection (3) above for audit to the Auditor appointed under section 11. The Auditor shall examine the Accounts and shall

(a) 1983 c.2.

verify the same with the accounting records relating thereto, and shall either sign the Accounts as found by him to show a true and fair view of the state of the Board's affairs and of its results and to be in accordance with law, or shall report to the Board in what respect the Accounts do not show a true and fair view of the Board's affairs and results and are not in accordance with law.

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

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

(7) The Board shall furnish the Minister with such information as he may from time to time require concerning the Board's commercial activities and shall permit any person duly authorised in writing by the Minister, on production of his authority, to inspect such of the Board's accounts and records as he may reasonably require to satisfy himself that the Board are complying with the requirements of sections 16 and 26(3) of the Scheme, of Council Regulation (EEC) No. 1422/78 and of Commission Regulation (EEC) No. 1565/79.

Annual General Meeting

40. The Annual General Meeting shall be held at such place, date and hour as the Board or a General Meeting shall determine.

Special General Meetings

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

Notice of General Meetings

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

Voting at General Meetings

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

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

(a) by the Chairman, or

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

The demand for a poll may be withdrawn.

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

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

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

(6) Every instrument appointing a proxy shall, as nearly as circumstances will permit, be in the form or to the effect set out in Schedule (4) below.

Quorum at General Meetings

44. Unless otherwise determined by a previous General Meeting, a quorum at General Meetings shall consist of 50 registered producers personally present.

Amendment of the Scheme

45. A copy of any proposed amendment of the Scheme shall be published by post to every registered producer. A poll on the question of whether or not an amendment shall be submitted to the Minister may, within 28 days of the publication thereof, be demanded in writing by not less than 500 registered producers.

Revocation of the Scheme

46. A poll on the question whether or not the Scheme is to be revoked may be demanded in writing by not less than 1,000 registered producers, but no poll shall, without the consent of the Board, be taken on that question within 2 years from the date of the declaration of the result of any previous poll on that question.

Winding-up of the Board

47.—(1) Part V of the Insolvency Act 1986(a) (which relates to the winding-up of unregistered companies) shall apply in relation to the Board subject to the modifications set out in paragraph 4 of the Second Schedule to the Act(b).

(2) Contributions under paragraph 5 of the Second Schedule to the Act shall be assessed in relation to each contributor proportionately to the number of litres of milk produced and sold by him during the relevant period and shall not exceed 0.137p per litre, but declaring that the amount of the liability under this subsection of any registered producer, who during the whole of the relevant period was exempt from the provisions of the Scheme, shall not exceed 5 pence. Save as aforesaid, however, no person shall be liable to contribute to the assets of the Board in the winding-up by reason only of his being, or having been, a registered producer or a member of the Board.

(3) Any surplus funds remaining on completion of the winding-up, after payment of all liabilities and expenses, shall be distributed among the registered producers who, if there had been a deficit on the winding-up, would have been liable to contribute in terms of subsection (2), and in the same proportions as such liability to contribute. Provided, however, that a registered producer who, during the whole of the relevant period, was exempt from the provisions of the Scheme shall not be entitled to any share of such surplus funds.

The common seal

48.—(1) *The Use of the common seal.* The common seal shall have the Board's name engraved in legible characters thereon and shall not be affixed to any document without the express authorisation of the Board.

(2) *Custody of the common seal.* The common seal shall be kept in the custody of the Secretary, or such other employee as the Board shall direct.

Deeds

49.—(1) All deeds and other writings to which the Board are a party shall be held to be validly executed on behalf of the Board by being sealed with the common seal of the Board and signed by two members of the Board and the Secretary, and such subscription on behalf of the Board shall be binding whether attested by witnesses or not.

(2) All deeds and other writings executed in any place out of Great Britain or Northern Ireland shall be validly executed by being signed by such persons as may be duly authorised by the Board.

(3) A document or proceedings requiring authentication by the Board may be signed by a member of the Board, Secretary or other person authorised by the Board, and need not be under the common seal of the Board.

Proof of posting

50. Any requirement of the Scheme (other than that contained in subsection (2) of section 34) that a notice or document shall be sent to a person by the Board shall be deemed to have been complied with if, within the period, if any, limited for the sending of the notice or document, the notice or document is despatched to him by post, properly addressed and with the postage prepaid.

(a) 1986 c.45.

(b) Paragraph 4 was amended by the Insolvency Act 1986, Schedule 14.

Reprinting of Scheme

51.—(1) Where by an affirmative resolution of both Houses of Parliament any articles or words are resolved to be added to, or omitted from, the Scottish Milk Marketing Scheme 1989, or to be substituted for any other articles or words in that Scheme, then copies of that Scheme printed under the authority of Her Majesty's Stationery Office, after such resolutions take effect, may be printed with the articles or words added, or omitted, or substituted for other articles or words as such resolutions require, and with the articles and paragraphs thereof numbered in accordance with such resolutions, and the Scheme shall be construed as if it had at the time when such resolutions take effect been made with such addition, omission or substitution.

(2) A reference in any document to the Scottish Milk Marketing Scheme 1989, or to any provisions thereof, shall, unless the context otherwise requires, be construed as referring to that Scheme as amended.

SCHEDULE (1)

Section 4(2)

Members of Board

| <i>Name of Sub-Area</i> | <i>Extent of Sub-Area</i> | <i>Sitting Member</i> |
|-------------------------|--|------------------------|
| 1. NORTH-EAST | Angus Dundee Perth & Kinross N.E. Fife Kirkcaldy Dunfermline Clackmannan Stirling | Mr. D. Yellowlees |
| 2. CENTRAL & SOUTH-EAST | Falkirk Edinburgh East Lothian Mid Lothian West Lothian Berwickshire Clydebank Bearsden & Milngavie Strathkelvin Cumbernauld & Kilsyth Roxburgh Ettrick & Lauderdale Lauderdale Tweeddale | Mr. H. B. Christie |
| 3. CLYDE & WEST | Argyll & Bute Dumbarton Glasgow Inverclyde Renfrew | Sir William J. Lithgow |
| 4. LANARK | East Kilbride Hamilton Motherwell Monklands Clydesdale | Mr. J. A. Minto |
| 5. NORTH AYR | Kilmarnock & Loudoun Cunninghame Eastwood | Mr. A. L. Howie |
| 6. SOUTH AYR | Kyle & Carrick Cumnock & Doon Valley | Mr. W. Weir |
| 7. GALLOWAY | Wigtown Stewartry | Mr. R. A. Lammie |
| 8. DUMFRIES | Nithsdale Annandale & Eskdale | Mr. A. Gray |

SCHEDULE (2)

Section 36(7)

Form of Voting Paper for Statutory Polls under section 36

THE SCOTTISH MILK MARKETING BOARD

(1) The returning officer must fill in the name and address of registered producer.

To (1)
.....
.....

(2) The returning officer must fill in the question on which the poll is being taken.

A poll is being held under the Scottish Milk Marketing Scheme 1989, on the following question, to which voters must answer "Yes" or "No", viz.:

(2)
.....

(3) The returning officer must fill in the qualifying date.

How many cows being kept for dairy purposes were in your possession in the area of the Scheme at 12.00 hours on (3)
excluding heifers which had never calved before 12.00 hours on that date?

..... COWS

Signature of registered producer

Address

(4) The returning officer must fill in the address of the office to which the form is to be returned.

N.B. — Your vote will not count unless this paper, properly filled in and signed, reaches (4)

(5) The returning officer must fill in the 28th day after the qualifying date.

on or before (5)

If you wilfully mis-state the number of cows which you are asked to state above, you will render yourself liable to imprisonment or a heavy fine or both.

.....
Returning Officer.

SCHEDULE (3)

Section 37(8)

Form of Voting Paper for EEC Polls under section 37

THE SCOTTISH MILK MARKETING BOARD

(Identification Number)

(1) The returning officer must fill in the name and address of registered producer.

To (1)
.....
.....

A poll is being held under section 41A of the Agricultural Marketing Act 1958 on the following question, which is based on Article 2.2 of Council Regulation (EEC) No. 1422/78, to which voters must answer "Yes" or "No":-

Are you in agreement with maintaining the Scottish Milk Marketing Board carrying on the activities and exercising the rights resulting from Council Regulation (EEC) No. 1422/78?

(2) To record your vote mark X in the box of your choice.

(2) Yes

No

NOTES —

(i) The ballot is confidential as between the voter and the returning officer. You are not required to sign the ballot paper.

(3) The returning officer must fill in the address to which the form is to be returned.

(ii) Your vote will only be valid if it is entered on this voting paper and reaches the returning office at (3)
.....

(4) The returning officer must fill in the 28th day after the qualifying date.

on or before (4)

(iii) Your vote counts as a single producer vote and as a multiple production vote. If you fail to return a vote, or if your voting paper is declared not valid by the returning officer for any reason, under Council Regulation (EEC) No. 1422/78 your producer vote will be disregarded and your production votes will be counted as negative votes.

(5) The returning officer must ensure that this date is on or before the 14th day after the qualifying date.

.....
Returning Officer

.....
Date (5).

SCHEDULE (4)

Section 43(6)

Form of Proxy

THE SCOTTISH MILK MARKETING BOARD

FULL NAME
OF
REGISTERED
PRODUCER IN
BLOCK
LETTERS

I/We
of
in the District of being (a) registered producer(s) under the
Scottish Milk Marketing Scheme 1989, hereby appoint

.....
of
as my/our proxy, to vote for me/us and on my/our behalf at the General
Meeting of registered producers to be held on

the day of
19 and at any adjournment thereof.

In witness whereof I/we hereto have
set my/our hand this

..... day of
19.....

Signature

Address.....

(IN BLOCK LETTERS)

SCHEDULE 2

Article 5

REVOCATIONS

| (1) <i>Title</i> | (2) <i>Reference</i> | (3) <i>Extent of revocation</i> |
|---|-------------------------|------------------------------------|
| The Scottish Milk Marketing Scheme (Approval) Order 1933 | S.R. & O. 1933/479 | The whole Order |
| The Scottish Milk Marketing Board (Co-opted Members) Order 1934 | S.R. & O. 1934/645 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendment) Order 1935 | S.R. & O. 1935/691 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendment No. 2) Order 1935 | S.R. & O. 1935/1246 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendment) Order 1937 | S.R. & O. 1937/624 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendment) Order 1950 | S.I. 1950/2057 | The whole Order |
| The Scottish Milk Marketing Scheme Amendments (Approval) Order 1956 | S.I. 1956/650 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendments) Approval Order 1965 | S.I. 1965/644 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendment) (No. 2) Approval Order 1965 | S.I. 1965/2193 | The whole Order |
| The Scottish Milk Marketing Scheme (Amendment) Approval Order 1968 | S.I. 1968/391 | The whole Order |
| The Scottish Milk Marketing Schemes Amendment Regulations 1978 | S.I. 1978/583 | Regulation 3(1) |
| The Scottish Milk Marketing Schemes (Amendment) Regulations 1979 | S.I. 1979/319 | Regulation 2(1) |
| The Scottish Milk Marketing Scheme (Amendment) Regulations 1981 | S.I. 1981/445 | The whole Regulations |
| The Agricultural Marketing Act 1958 and Milk Marketing Schemes (Amendment) Regulations 1981 | S.I. 1981/864 | Schedule 2 |
| The Scottish Milk Marketing Scheme (Amendment) Approval Order 1982 | S.I. 1982/616 | The whole Order |
| The Scottish Milk Marketing Schemes (Amendment) Regulations 1988 | S.I. 1988/182 | Regulation 2 |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 25th October 1989, approves a consolidated milk marketing scheme to replace the Scottish Milk Marketing Scheme 1933, as amended. The consolidated scheme is set out in Schedule 1 to the Order. The various Orders and Regulations approving the 1933 Scheme and subsequent amendments thereto are revoked by Schedule 2 to this Order.

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