

## SCHEDULE 1

Regulations 10, 11 and 12

### APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION—ENGLAND AND WALES

#### **Appointment and remuneration of arbitrator**

1.—(1) In any case where an apportionment is to be carried out by arbitration an arbitrator shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbitrator within fourteen days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the President of the Royal Institution of Chartered Surveyors (referred to in this Schedule as “the President”) for the appointment of an arbitrator from among the members of the panel referred to in paragraph 8 and the person who makes such an application to the President shall notify the Minister in writing of that fact within fourteen days from the date of the application.

(3) If at the expiry of the relevant period an arbitrator has not been appointed by agreement between the transferor and the transferee nor an application made to the President under subparagraph (2) above, the Minister shall make an application to the President for the appointment of an arbitrator.

(4) Where the Minister gives a notice in accordance with regulation 12 he shall make an application to the President for the appointment of an arbitrator and the Minister shall be a party to the arbitration.

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

- (a) where regulation 12 applies, by the President,
- (b) in any other case, by agreement between the occupier and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where subparagraph (1)(b) above applies, the occupier shall notify the Minister in writing of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator, within fourteen days from the date of the appointment of the arbitrator or the date of the application to the President, as appropriate.

3. An arbitrator appointed in accordance with paragraphs 1 and 2 above shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to areas used for milk production in the last five-year period during which production took place before the change of occupation, or in the case of a prospective apportionment, in the last five-year period during which production took place before the appointment of the arbitrator.

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

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(2) The prescribed fee for the purposes of this paragraph shall be that which from time to time is prescribed as the fee payable to the President under paragraph 1(2) of Schedule 11 to the Agricultural Holdings Act 1986(1).

5. Where the Minister makes an application to the President under paragraphs 1(3) or (4) above, the fee payable to the President in respect of that application referred to in paragraph 4 above shall be recoverable by the Minister as a debt due from the other parties to the arbitration jointly or severally.

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

7. A person appointed by the President as arbitrator shall, where the arbitration relates to a holding in Wales, and any party to the arbitration so requires, be a person who possesses a knowledge of the Welsh language.

8. For the purposes of paragraph 1(2) the panel of arbitrators shall be the panel appointed by the Lord Chancellor under paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986.

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

10. No party to the arbitration shall have power to revoke the appointment of the arbitrator without the consent of the other party; and his appointment shall not be revoked by the death of any party.

11. Every appointment, application, notice, revocation and consent under the foregoing paragraphs must be in writing.

12. The remuneration of the arbitrator shall be—

- (a) where he is appointed by agreement between the parties, such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the registrar of the county court (subject to an appeal to the judge of the court) on an application made by the arbitrator or one of the parties,
- (b) where he is appointed by the President, such amount as may be agreed upon by the arbitrator and the parties or, in default of agreement, fixed by the President,

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

### **Conduct of proceedings and witnesses**

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

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

14. The parties to the arbitration and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute and shall, subject to any such objection, produce before the arbitrator all samples 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 arbitrator may require.

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(1) 1986 c. 5.

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

16. Witnesses appearing at the arbitration shall, if the arbitrator thinks fit, be examined on oath or affirmation, and the arbitrator shall have power to administer oaths to, or to take the affirmation of, the parties and witnesses appearing.

17. The provisions of county court rules as to the issuing of witness summonses shall, subject to such modifications as may be prescribed by such rules, apply for the purposes of the arbitration as if it were an action or matter in the county court.

18.—(1) Subject to subparagraphs (2) and (3) below, any person who—

(a) having been summoned in pursuance of county court rules as a witness in the arbitration refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or

(b) having been so summoned or being present at the arbitration and being required to give evidence, refuses to be sworn or give evidence,

shall forfeit such fine as the judge of the county court may direct.

(2) A judge shall not have power under subparagraph (1) above to direct that a person shall forfeit a fine of an amount exceeding £10.

(3) No person summoned in pursuance of county court rules as a witness in the arbitration shall forfeit a fine under this paragraph unless there has been paid or tendered to him at the time of the service of the summons such sum in respect of his expenses (including, in such cases as may be prescribed by county court rules, compensation for loss of time) as may be so prescribed for the purposes of section 55 of the County Courts Act 1984(2).

(4) The judge of the county court may at his discretion direct that the whole or any part of any such fine, after deducting costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

19.—(1) Subject to subparagraph (2) below, the judge of the county court may, if he thinks fit, upon application on affidavit by any party to the arbitration, issue an order under his hand for bringing up before the arbitrator any person (in this paragraph referred to as a “prisoner”) confined in any place under any sentence or under committal for trial or otherwise, to be examined as a witness in the arbitration.

(2) No such order shall be made with respect to a person confined under process in any civil action or matter.

(3) Subject to subparagraph (4) below, the prisoner mentioned in any such order shall be brought before the arbitrator under the same custody, and shall be dealt with in the same manner in all respects, as a prisoner required by a writ of habeas corpus to be brought before the High Court and examined there as a witness.

(4) The person having the custody of the prisoner shall not be bound to obey the order unless there is tendered to him a reasonable sum for the conveyance, and maintenance of a proper officer or officers and of the prisoner in going to, remaining at, and returning from, the place where the arbitration is held.

20. The High Court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before the arbitrator, if the prisoner is confined in any prison under process in any civil action or matter.

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(2) 1984 c. 28.

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## **Award**

**21.**—(1) Subject to subparagraph (2) below, the arbitrator shall make and sign his award within fifty-six days of his appointment.

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

(3) The arbitrator shall notify the terms of his award to the Minister within 8 days of delivery of that award.

(4) The award shall fix a date not later than one month after the delivery of the award for the payment of any costs awarded under paragraph 25 below.

**22.** The award shall be final and binding on the parties and the persons claiming under them respectively.

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

## **Reasons for award**

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

## **Costs**

**25.** The costs of, and incidental to, the arbitration and award shall be in the discretion of the arbitrator who may direct to and by whom and in what manner the costs, or any part of the costs, are to be paid. The costs for the purposes of this paragraph shall include any fee paid to the President in respect of the appointment of an arbitrator and any sum paid to the Minister pursuant to paragraph 5.

**26.** On the application of any party, any such costs shall be taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the arbitrator under paragraph 25 above, or, in the absence of any such direction, by the county court.

**27.**—(1) The arbitrator shall, in awarding costs, take into consideration—

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

(2) The arbitrator may disallow the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been unnecessarily incurred.

## **Special case, setting aside award and remission**

**28.** The arbitrator may, at any stage of the proceedings, and shall, upon a direction in that behalf given by the judge of the county court upon an application made by any party, state in the form of a special case for the opinion of the county court any question of law arising in the course of the arbitration and any question as to the jurisdiction of the arbitrator.

**29.**—(1) Where the arbitrator has misconducted himself, the county court may remove him.

(2) Where the arbitrator has misconducted himself, or an arbitration or award has been improperly procured, or there is an error of law on the face of the award, the county court may set the award aside.

**30.—(1)** The county court may from time to time remit the award, or any part of the award, to the reconsideration of the arbitrator.

(2) In any case where it appears to the county court that there is an error of law on the face of the award, the court may, instead of exercising its power of remission under subparagraph (1) above, vary the award by substituting for so much of it as is affected by the error such award as the court considers that it would have been proper for the arbitrator to make in the circumstances; and the award shall thereupon have effect as so varied.

(3) Where remission is ordered under that subparagraph, the arbitrator shall, unless the order otherwise directs, make and sign his award within thirty days after the date of the order.

(4) If the county court is satisfied that the time limited for making the said award is for any good reason insufficient, the court may extend or further extend that time for such period as it thinks proper.

### **Miscellaneous**

**31.** Any amount paid, in respect of the remuneration of the arbitrator by any party to the arbitration in excess of the amount, if any, directed by the award to be paid by him in respect of the costs of the award, shall be recoverable from the other party or jointly from the other parties.

**32.** For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment; and in the case of any such arbitrator the periods mentioned in paragraphs 13 and 21 above shall accordingly run from that time.

**33.** Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraphs 1, 2, 6, 7, 12 or 21 above and to be signed by or on behalf of the President shall be taken to be such an instrument or document unless the contrary is shown.

**34.** The Arbitration Act 1950(3) shall not apply to an arbitration determined in accordance with this Schedule.

## SCHEDULE 2

Regulations 10, 11 and 12

### APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR SCOTTISH LAND COURT—SCOTLAND

## PART I

### GENERAL

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

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

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(3) 1950 c. 27, to which there are amendments not relevant to these Regulations.

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- (a) a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1955(4);
- (b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911(5); or
- (c) the holding of a statutory small tenant under section 32 of the Small Landholders (Scotland) Act 1911.

(3) Where subparagraph (2) above does not apply and the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991(6), the Scottish Land Court shall carry out the apportionment or prospective apportionment if requested to do so by a joint application of all parties interested in the apportionment made within the period of two months referred to in regulation 7(1)(a).

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

2. An arbiter or the Scottish Land Court, as the case may be, shall decide the apportionment on the basis of findings made as to areas used for milk production in the last five-year period during which production took place before the change of occupation or, in the case of a prospective apportionment, in the last five-year period during which production took place before the appointment of the arbiter or the application to the Scottish Land Court.

## PART II

### APPORTIONMENTS CARRIED OUT BY ARBITRATION

#### Appointment and remuneration of arbiter

3.—(1) In any case where the apportionment is to be carried out by arbitration, an arbiter shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbiter within fourteen days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the Minister for the appointment of an arbiter.

(3) If at the expiry of the relevant period an arbiter has not been appointed by agreement between the transferor and the transferee nor an application made to the Minister under subparagraph (2) above, the Minister shall at his own instance proceed to appoint an arbiter.

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

(2) Where an arbiter is appointed by agreement in terms of subparagraph (1) above, the occupier shall notify the Minister in writing of the appointment of the arbiter within fourteen days from the date of the appointment.

5.—(1) Where, in terms of a notice given by the Minister under regulation 12, an apportionment or prospective apportionment is to be carried out by arbitration, the Minister shall apply to the Scottish Land Court for the appointment of an arbiter.

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(4) 1955 c. 21; section 3(1) was amended by The Crofters (Scotland) Act 1961 (c. 58), Schedule 1, Part II, paragraph 9.

(5) 1911 c. 49.

(6) 1991 c. 55.

(2) Any fee payable by the Minister on an application to the Scottish Land Court under subparagraph (1) above shall be recoverable by him as a debt due from the other parties to the arbitration jointly or severally.

(3) Where the Minister is to be a party to an arbitration (otherwise than in terms of a notice given under regulation 12), the arbiter shall, in lieu of being appointed by the Minister, be appointed by the Scottish Land Court.

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

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

8. Every appointment, application, notice, revocation and consent under the foregoing paragraphs must be in writing.

9. The remuneration of the arbiter shall be—

(a) where he is appointed by agreement between the parties, such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the auditor of the sheriff court (subject to an appeal to the sheriff) on an application made by the arbiter or one of the parties;

(b) where he is appointed by the Minister, such amount as may be fixed by the Minister;

(c) where he is appointed by the Scottish Land Court, such amount as may be fixed by that Court;

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

### **Conduct of proceedings and witnesses**

10. The parties to the arbitration shall within twenty-eight days from the appointment of the arbiter deliver to him a statement of their respective cases with all necessary particulars; and—

(a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said twenty-eight days except with the consent of the arbiter;

(b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

11. 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.

12. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter. The Minister may make such representations where the arbitration follows on a notice given by him under regulation 12.

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

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## **Award**

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

(2) The arbiter shall notify the terms of his award to the Minister within 8 days of the delivery of that award.

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

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

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

## **Expenses**

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

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

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

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

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

## **Statement of case**

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

## **Removal of arbiter and setting aside of award**

**21.** Where an arbiter has misconducted himself the sheriff may remove him.

**22.** When an arbiter has misconducted himself, or an arbitration or award has been improperly procured, the sheriff may set the award aside.



## Miscellaneous

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

**24.** The Arbitration (Scotland) Act 1894(7) shall not apply to any arbitration carried out under this Schedule.

## PART III

### APPORTIONMENTS CARRIED OUT BY THE SCOTTISH LAND COURT

**25.** The provisions of the Small Landholders (Scotland) Acts 1886 to 1931 with regard to the Scottish Land Court shall, with any necessary modifications, apply for the purpose of the determination of any matter which they are required, in terms of paragraph 1 of this Schedule, to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under those Acts.

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

**27.** Where, in terms of a notice given by the Minister under regulation 12, an apportionment or prospective apportionment is to be carried out by the Scottish Land Court, any fee payable by the Minister to the Court shall be recoverable by him as a debt due from the other parties to the case jointly or severally.

**28.** Any person having an interest in the holding to which the apportionment or prospective apportionment relates shall be entitled to be a party to the proceedings before the Scottish Land Court. The Minister shall be entitled to be a party where the apportionment follows on a notice given by him under regulation 12.

## SCHEDULE 3

Regulations 10, 11 and 12

### APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION—NORTHERN IRELAND

**1.** Paragraphs 3 to 18 below shall apply to every arbitration in Northern Ireland.

**2.—(1)** The Arbitration Act (Northern Ireland) 1937(8) shall, except insofar as it is inconsistent with paragraphs 3 to 18 below, apply to every arbitration in Northern Ireland as if that arbitration were pursuant to an arbitration agreement and as if paragraphs 3 to 17 below were contained in an arbitration agreement.

(2) In this paragraph “arbitration agreement” has the same meaning as in section 30 of the Arbitration Act (Northern Ireland) 1937.

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(7) 1894 c. 13 (57 and 58 Vict.).

(8) 1937 c. 8 (N.I.).

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### **Appointment of arbitrator**

**3.—(1)** In any case where an apportionment is to be carried out by arbitration an arbitrator shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbitrator within 14 days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the President of the Law Society of Northern Ireland (referred to in this Schedule as “the President”) for the appointment of an arbitrator and the person who makes such an application to the President shall notify the Minister in writing of that fact within fourteen days from the date of the application.

(3) If at the expiry of the relevant period an arbitrator has not been appointed by agreement between the transferor and the transferee nor an application made to the President under subparagraph (2) above, the Minister shall make application to the President for the appointment of an arbitrator.

(4) Where the Minister gives a notice in accordance with regulation 12 he shall make an application to the President for the appointment of an arbitrator and the Minister shall be a party to the arbitration.

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

- (a) where regulation 12 applies, by the President;
- (b) in any other case, by agreement between the occupier and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where subparagraph (1)(b) above applies, the occupier shall notify the Minister in writing of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of the arbitrator, within 14 days from the date of the appointment of the arbitrator or the date of the application to the President, as appropriate.

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

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

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

**8.** Any appointment of an arbitrator by the President shall be made by him within 14 days after receiving the application.

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

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

11. Every appointment, application, notice, revocation and consent under the foregoing paragraphs shall be in writing.

#### **Statement of case**

12. The parties to the arbitration shall, within 35 days from the appointment of the arbitrator, deliver to him a statement of their respective cases with all necessary particulars and—

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

#### **Award**

13. The arbitrator shall make and sign his award within 56 days of his appointment.

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

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

#### **Reasons for award**

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

17. For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment; and in the case of any such arbitrator the periods mentioned in paragraphs 12 and 13 above shall run from that time.

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

### SCHEDULE 4

Regulation 19

#### REALLOCATION OF QUOTA AND CALCULATION OF LEVY LIABILITY

##### **Wholesale quota**

1. The Minister shall determine the amount, if any, by which the wholesale deliveries of dairy produce to each purchaser exceeds its total purchaser quota, after having completed in sequence the steps required by paragraphs 3 to 7.

2. The Minister shall determine the amount of levy to be paid by each purchaser by multiplying the amount, if any, referred to in paragraph 1, by the rate of levy established in accordance with Article 1 of the Council Regulation.

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3. The Minister shall determine the amount, if any, by which the quantity of wholesale deliveries of dairy produce to each purchaser must be adjusted to take account of its fat content, calculated in accordance with Article 2(2) of the Commission Regulation.

4. The Minister shall adjust (to the extent possible from within the quota available to the purchaser to whom the producer makes deliveries) the quota of any producer making wholesale deliveries to whom a temporary reallocation of quota has been made to take account of that reallocation, and any purchaser whose unused quota is insufficient to meet a temporary reallocation shall notify the Minister of the amount of the shortfall.

5. The Minister shall determine for each purchaser the amount, if any, taking into account the amount of quota converted in accordance with regulation 17, and taking into account any temporary reallocation made in accordance with paragraph 4, by which the purchaser quota of each purchaser exceeds or falls short of the quantity of wholesale deliveries of dairy produce made to it.

6. The Minister shall determine the total amount, if any, of excess quota remaining for those purchasers whose purchaser quota exceeds the quantity of wholesale deliveries of dairy produce made to them, as determined in accordance with paragraph 5, and shall add this to any quantities available in the national reserve.

7. The Minister shall reallocate the amount, if any, referred to in paragraph 6—

- (a) in the first instance, to meet any award of a temporary reallocation of quota (subject, where appropriate, to the restriction on the amount of any award set out in regulation 15(5)(a), and
- (b) thereafter, to offset the amount by which the deliveries made to any purchaser exceed its purchaser quota, such allocation being made proportionately to the amount of the excess of deliveries over quota.

8. Where a purchaser fails to notify the Minister within 45 days of the end of the quota year of the total quantity of milk or milk products delivered to him in that year, the Minister may require that the purchaser shall not benefit from the reallocation of quota referred to in paragraph 7.

9. Where, for any quota year, a purchaser cannot supply such proof as the Minister may reasonably require of the quantities of dairy produce delivered to him in that year, the Minister shall make his own determination of those quantities, based on all the information available to him, for the purposes of calculating any levy payable by that purchaser, and shall inform the purchaser of his determination.

### **Direct sales quota**

10. The Minister shall determine for each direct seller the amount, if any, after taking into account the amount of quota converted in accordance with regulation 17, by which his direct sales quota exceeds the quantity of dairy produce sold by direct sale by him.

11. The Minister shall make any award of a temporary reallocation of direct sales quota, under the terms of regulation 15, from the aggregate of amounts, if any, referred to in paragraph 10.

12. The Minister shall determine the aggregate amount, if any, by which the direct sales quota of all direct sellers, after taking into account the amount of quota converted in accordance with regulation 17, and after taking into account any temporary reallocation in accordance with paragraph 11, falls short of the total quantity of dairy produce sold by direct sales by them.

13. The Minister shall determine for each direct seller the amount, if any, taking into account the amount of quota converted in accordance with regulation 17, and taking into account any temporary reallocation of quota made in accordance with paragraph 11 and regulation 15, by which his direct sales quota falls short of the quantity of dairy produce sold by direct sale by him.

14. The Minister shall determine the aggregate of the amounts, if any, referred to in paragraph 13.

15. The Minister shall determine the total amount of the levy payable by multiplying the amount, if any, referred to in paragraph 12 by the rate of levy calculated in accordance with Article 1 of the Council Regulation.

16. The Minister shall calculate the rate of levy per litre, if any, to be paid by each direct seller on the amount, if any, at paragraph 13 by dividing the amount calculated in accordance with paragraph 15 by the aggregate referred to in paragraph 14.

17. Where a direct seller fails to notify the Minister within 45 days of the end of the quota year of the total quantity of milk or milk products sold by him by direct sales in that year, the Minister may require that the rate of levy per litre to be paid by that direct seller on the quantity not notified shall be the rate calculated in accordance with Article 1 of the Council Regulation.

18. Where, for any quota year, a direct seller cannot supply such proof as the Minister may reasonably require of the quantities of dairy produce sold by him in that year, the Minister shall make his own determination of those quantities, based on all the information available to him, for the purposes of calculating any levy payable by that direct seller, and shall inform the direct seller of his determination.

## SCHEDULE 5

Regulation 33

### DAIRY PRODUCE QUOTA TRIBUNALS

#### PART I

##### DAIRY PRODUCE QUOTA TRIBUNALS (OTHER THAN FOR SCOTLAND)

1. Each Dairy Produce Quota Tribunal shall consist of up to ninety members appointed by the Minister. The Minister shall designate one of the members of each Tribunal as the Chairman of that Tribunal and may, if he thinks fit, designate another member as the Deputy Chairman.

2. The quorum for any determination by a Dairy Produce Quota Tribunal shall be three.

3. Any determination to be made by a Dairy Produce Quota Tribunal shall be made by a majority.

4. Each Dairy Produce Quota Tribunal may be serviced by a Secretary and such other staff as the Minister may appoint.

5. Any document purporting to be signed by the Chairman or Deputy Chairman of, or the Secretary to, a Dairy Produce Quota Tribunal and purporting to state a determination (or guidance) of the Dairy Produce Quota Tribunal shall in any proceedings be evidence of such a determination (or such guidance).

6. The terms of appointment and the remuneration of the members, Secretary and other staff of a Dairy Produce Quota Tribunal shall be determined by the Minister.

7. Except as otherwise provided in these Regulations, the procedure of a Dairy Produce Quota Tribunal shall be such as the Chairman, or, in the absence of the Chairman, the Deputy Chairman, shall in his discretion determine.

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

## PART II

### THE DAIRY PRODUCE QUOTA TRIBUNAL FOR SCOTLAND

**8.** The Dairy Produce Quota Tribunal shall consist of up to twenty members appointed by the Minister.

**9.** The Dairy Produce Quota Tribunal shall sit in separate panels, and a determination of any such panel shall be treated as the determination of the Tribunal for the purpose of these Regulations.

**10.** Each panel constituted under paragraph 9 shall choose their own Chairman.

**11.** The quorum for any determination by the Dairy Produce Quota Tribunal shall be three.

**12.** Any determination to be made by the Dairy Produce Quota Tribunal shall be made by a majority.

**13.** Each panel constituted under paragraph 9 shall be serviced by a Secretary and such other staff as the Minister may appoint.

**14.** Any document purporting to be signed by the Chairman of or the Secretary to a panel constituted under paragraph 9 and purporting to state a determination of the Dairy Produce Quota Tribunal shall in any proceedings be evidence of such a determination.

**15.** The terms of appointment and the remuneration of—

- (a) the members of the Dairy Produce Quota Tribunal, and
- (b) the Secretary and other staff of a panel constituted under paragraph 9 shall be determined by the Minister.

**16.** Except as otherwise provided in these Regulations, the procedure of a panel constituted under paragraph 9 shall be such as their Chairman shall in his discretion determine.

**17.** A panel constituted under paragraph 9 may consult with any person whom the panel consider to be capable of assisting them in reaching their determination and, in the event of such consultation, the applicant whose special case claim is being examined by the panel shall be afforded the opportunity to comment, before the panel reach their determination, on any advice given by that person.

## PART III

### GENERAL

**18.** The Dairy Produce Quota Tribunals for England and Wales, Scotland and Northern Ireland shall, if so required by the Ministers, issue a joint written statement of general guidance in respect of the criteria to be used in reaching any determination and each Dairy Produce Quota Tribunal shall make its determinations in accordance with those criteria.