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STATUTORY INSTRUMENTS

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**1994 No. 2591**

**The Scottish Milk Marketing Board  
(Residual Functions) Regulations 1994**

**PART I**

**PRELIMINARY**

**Citation, extent and commencement**

1. These Regulations may be cited as the Scottish Milk Marketing Board (Residual Functions) Regulations 1994, shall apply in Scotland and shall come into force on 1st November 1994.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Agriculture Act 1993;

“the 1986 Act” means the Insolvency Act 1986((1));

“approved scheme” means the approved scheme (within the meaning of section 24(1) of the Act) of the Board;

“the Board” means the Scottish Milk Marketing Board established under the marketing scheme;

“contributions” means contributions payable pursuant to section 27(2) of the marketing scheme;

“eligible producer” means any producer—

(a) who produced and sold milk to the Board, or

(b) by whom contributions were payable,

at any time during the period of 7 years ending on 31 March 1994;

“end year producer” means any producer who produced and sold milk to the Board in the final trading period or from whom contributions become due in respect of that period;

“final trading period” means the period commencing on 1st April 1994 and ending immediately before Vesting Day;

“general fund” means the fund established under regulation 17;

“Joint Committee” means the Committee established under section 24 of the marketing scheme;

“the marketing scheme” means the Scheme set out in Schedule 1 to the Scottish Milk Marketing Scheme (Consolidation) Approval Order 1989((2));

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(1) 1986 c. 45.

(2) S.I. 1989/1806, as amended by S.I. 1991/1735 and 1992/3142. Section 1(1) as read with section 1(4) of the Act revokes the marketing scheme on Vesting Day, apart from the winding up provisions which are continued in force, subject to the

“pool price” has the meaning assigned to it in section 26(9) of the marketing scheme;

“preserved”, in relation to a specified provision of the marketing scheme, means subjected to section 14(3)(a) of the Act (which provides that, notwithstanding section 1(1) of the Act (which provides for the revocation of the marketing scheme on Vesting Day) the provision shall continue to have effect by virtue of these Regulations, subject to such modifications as may be specified in these Regulations);

“register” has the meaning assigned to it in regulation 14(1);

“registered” means registered under these Regulations;

“retained” means retained by the Board following the transfer under section 11 of the Act;

“Vesting Day” means 1st November 1994 being the day on which under the approved scheme and in accordance with that scheme certain property, rights and liabilities of the Board are transferred to successor bodies under section 11 of the Act.

(2) Section 1(1) of the marketing scheme is preserved, subject to the modification that there shall be inserted at the end the words “, and applies to Scotland.”.

(3) Section 2(1) of the marketing scheme in so far as it relates to the following expressions and definitions assigned to them is preserved:—

- (a) “buyer”;
- (b) “General Meeting”;
- (c) “Minister”; and
- (d) “producer”

and in these Regulations any reference to any one of these expressions has the meaning assigned to it in that scheme.

(4) Section 2(1) of the marketing scheme in so far as it relates to the expressions “accounting period” and “commercial activities” is preserved, subject to the modification that—

- (a) in the definition “accounting period”—
  - (i) before the words “such period” there shall be inserted the words “in the period prior to Vesting Day the final trading period and thereafter”; and
  - (ii) the words “comprising twelve consecutive calendar months” shall be omitted; and
- (b) in the definition “commercial activities”—
  - (i) after the words “out by the Board” there shall be inserted the words “in the final trading period”; and
  - (ii) for the word “Scheme” there shall be substituted the words “marketing scheme”;

and in these Regulations any reference to any one of those expressions has the meaning assigned to it in that scheme as modified by this regulation.

(5) At the end of section 2 of the marketing scheme there shall be inserted the following subsection:—

“(3) Other expressions used in this Scheme have, in so far as the context admits, the same meanings as in the Scottish Milk Marketing Board (Residual Functions) Regulations 1994 and those Regulations shall be read with this Scheme as if they and this Scheme formed a single instrument.”.

(6) In these Regulations unless the context otherwise requires any reference to a numbered regulation shall be construed as a reference to that regulation so numbered in these Regulations.

### **Effect of provisions of the marketing scheme as preserved or continuing in force**

- 3.—(1) The sections of the marketing scheme which—
- (a) are preserved; or
  - (b) by virtue of section 13 of the Act continue in force subject to the provisions of Part VII of these Regulations,

shall in aggregate have effect as set out in the Schedule to these Regulations.

(2) In the sections of the marketing scheme which are preserved for any reference to “the Scheme” there shall be substituted a reference to “this Scheme”, save where other express provision is made.

## **PART II**

### **CONSTITUTION AND MEMBERSHIP OF THE BOARD**

#### **Restructuring of the Board’s functions**

4.—(1) The Board shall immediately after the transfer under section 11 of the Act continue to exist until dissolved by order made under section 14(5) of the Act as a body corporate, with a common seal, called the Scottish Milk Marketing Board but with their functions confined to winding up their affairs, in accordance with and subject to Part VII of these Regulations, and in particular—

- (a) managing or otherwise dealing with the interests and rights in or in relation to property which are for the time being vested in them;
- (b) carrying on such other functions in relation to the assets and liabilities which are for the time being vested in them as are specified in Part V of these Regulations;
- (c) maintaining and preserving the Board’s minute books, accounting records and all other records and making appropriate arrangements for their final disposal;
- (d) carrying on the other functions conferred by these Regulations; and
- (e) undertaking any functions ancillary or incidental to the functions mentioned above,

in such a manner, having regard to the interests of registered producers, as they consider is best calculated to secure the purposes specified in paragraph (2) below.

- (2) The purposes referred to in paragraph (1) above are that—
- (a) the Board’s assets are advantageously realised and the proceeds applied in or towards discharging their liabilities and other functions under these Regulations;
  - (b) while any particular asset of the Board remains unrealised, it is held and managed as advantageously as is consistent with its eventual realisation; and
  - (c) the liabilities of the Board so far as not discharged in pursuance of sub-paragraph (a) above are discharged.

(3) The Board may enter into such agreements, acquire such property and do such things as may, in their opinion, be necessary or desirable for the purpose of discharging any of their functions and may sell or otherwise dispose of any property acquired by them which they do not need for such purpose.

(4) The Board shall not be regarded as acting on behalf of, and their property shall not be regarded as property of, or held on behalf of, the Crown and neither the Board nor their members nor the members of their staff shall be regarded as Crown servants.

## Members of the Board

5.—(1) The Board shall consist of not more than five nor less than three members whom the Minister shall appoint.

(2) The Minister shall designate one of the members appointed under this regulation as the chairman of the Board.

(3) In appointing a person to be a member of the Board, the Minister shall have regard to the desirability of appointing—

- (a) persons who have experience of, and have shown capacity in, some matter relevant to the Board's functions, and
- (b) (without prejudice to sub-paragraph (a) above) persons who are producers.

(4) Subject to the following provisions of this regulation, a member of the Board shall hold and vacate office in accordance with the terms of his appointment specified in the instrument by which the Minister appoints him.

(5) Any appointment of a person as a member of the Board shall be for a term not exceeding two years, but a person who ceases to be such a member at the end of the term shall be eligible for re-appointment.

(6) A member of the Board may at any time by notice to the Minister resign his office.

(7) The Minister may remove a member of the Board if he is satisfied that—

- (a) the member has been absent without the consent of the Board from two consecutive meetings of the Board;
- (b) the member has been sequestered, has become bankrupt or has granted a trust deed in favour of his creditors or that he is otherwise apparently insolvent (within the meaning of the Bankruptcy (Scotland) Act 1985((3));
- (c) the member is unable or unfit to carry out the functions of a member;
- (d) the member has not complied with the terms of his appointment; or
- (e) the member has been convicted of an indictable offence.

(8) Section 4(7) of the marketing scheme is preserved, subject to the modification that—

- (a) after the figure “(7)” there shall be inserted the letter “(a)”;
- (b) for the last sentence there shall be substituted the following sentence:—

“A member of the Board shall not, however, be precluded from voting on a question relating to—

- (i) 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; or
- (ii) any contract of insurance which the Board are empowered to effect under regulation 33 of the Scottish Milk Marketing Board (Residual Functions) Regulations 1994;

nor shall he be required to withdraw from a meeting of the Board at which such questions are being considered.”; and

- (c) there shall be added after subsection (7)(a) the following subsection:—

“Deeds.

- (b) (i) 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 or by one member of the Board and the Secretary, and such subscription on behalf of the Board shall be binding whether attested by witnesses or not.

- (ii) 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.
- (iii) 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.”.

### **Remuneration and expenses of Board members**

6.—(1) The Board shall pay to the members of the Board such remuneration as may from time to time be determined by the Minister having regard to the functions to be discharged by the Board.

- (2) Section 4(10) of the marketing scheme is preserved, subject to the modification that—
  - (a) after the words “their duties, to” there shall be inserted the words “payment of”; and
  - (b) for the word “allowances” there shall be substituted the word “expenses”.

### **Committees**

- 7. Section 5(3) of the marketing scheme is preserved.

### **Proceedings of the Board**

8.—(1) Subject to the provisions of these Regulations the Board may determine their own quorum and procedure and the quorum and procedure of any committee appointed by them.

(2) In the case of an equality of votes at any meeting of the Board the chairman, if present, or the person who is the chairman of that meeting shall have a second or casting vote.

(3) Section 5(5) of the marketing scheme is preserved, subject to the modification that after the words “of the Board or the committee” there shall be inserted the words “or that a member of the Board had voted upon any question upon which he was not entitled to vote”.

### **Minutes**

- 9. Section 5(6) of the marketing scheme is preserved.

### **Chairman**

- 10. Section 7 of the marketing scheme is preserved, subject to the modification that—
  - (a) the first sentence is omitted;
  - (b) the words “, or in his absence the Vice Chairman,” shall be omitted; and
  - (c) for the words “If both are” there shall be substituted the words “If he is”.

### **Address and change of address of office**

- 11. Sections 8 and 9 of the marketing scheme are preserved.

### **Staff**

- 12.—(1) Section 10 of the marketing scheme is preserved, subject to the modification that—

- (a) for the word “shall”, where it first occurs, there shall be substituted the word “may”;
  - (b) the words beginning with “, and shall determine their respective duties and remuneration.” to the end of the section shall be omitted; and
  - (c) after the words “such other officers” there shall be inserted the words “and employees”.
- (2) The Board may by factory and commission or by power of attorney or otherwise—
- (a) appoint a person to be the agent of the Board;
  - (b) delegate to that person any of their functions,
- for such purposes, for such time and on such terms and conditions (including as to remuneration) as they think fit and may at any time revoke or alter such terms and conditions.
- (3) The Board may—
- (a) pay such remuneration, pensions, allowances or gratuities to or in respect of any persons who have been or are their officers or employees as they may determine;
  - (b) make such payments as they may determine towards provision for the payment of remuneration, pensions, allowances or gratuities to or in respect of such persons; and
  - (c) provide and maintain, or participate in, such schemes as they may determine (whether contributory or not) for the payment of remuneration, pensions, allowances or gratuities to or in respect of such persons.
- (4) Any reference in paragraph (3) above to remuneration, pensions, allowances or gratuities to or in respect of such persons as are mentioned in that paragraph includes a reference to remuneration, pensions, allowances or gratuities by way of compensation to or in respect of any of the Board’s officers or employees who suffer loss of office or employment or loss or diminution of emoluments.
- (5) If any person—
- (a) on ceasing to hold any office or employment with the Board, becomes or continues to be one of their members, and
  - (b) was, by reference to his office or employment with the Board, a participant in a pension scheme maintained by the Board for the benefit of any of their officers or employees,
- the Board may make provision for him to continue to participate in that scheme, on such terms and conditions as they may determine, as if his service as a member were service as an officer or employee of the Board; and any such provision shall be without prejudice to regulation 6 above.

**Auditor**

**13.** Section 11 of the marketing scheme is preserved, subject to the modification that the words “Secretary of the” in subsection (1) are omitted.

**PART III**

**REGISTRATION OF PRODUCERS**

**Registration of producers and maintenance of register**

**14.—(1)** The Board shall compile and thereafter maintain a register (in these Regulations referred to as “the register”) of the entry of every person who they have reasonable grounds to believe is an eligible producer or an end year producer, Part I of which shall consist of entries of eligible producers and Part II of which shall consist of entries of end year producers.

(2) Any person whose entry does not appear in the register shall be entitled, on application to the Board and on demonstrating to their reasonable satisfaction that he is an eligible producer or an end year producer (as the case may be), to be entered on the register.

(3) It shall be the duty of every registered producer to notify the Board of any changes to his registered entry.

(4) The Board shall be entitled to assume that information provided to them for the purposes of paragraph (2) or (3) above is correct.

(5) The Board may arrange for the register to be maintained on their behalf by a third party.

(6) In this regulation—

“entry” means name and address.

**15.—**(1) Section 12(2) of the marketing scheme is preserved.

(2) Section 12(3) of the marketing scheme is preserved, subject to the modification that—

(a) for the words “deemed to be a producer” there shall be substituted the words “deemed to be a registered producer”; and

(b) for the words “one month” there shall be substituted the words “three months”.

### **Inspection of register**

**16.** Section 12(4) and (5) of the marketing scheme is preserved, subject to the modification that in section 12(4) at the beginning there shall be inserted the words “Within one month of Vesting Day the Board shall publish in such manner as they think fit a notice publicising the existence of the register and the place at, the hours during, and the days on which it may be inspected.”.

## **PART IV**

### **FINANCIAL PROVISIONS**

#### **General fund**

**17.** There shall be established a general fund which shall be administered and controlled by the Board. All moneys received by the Board shall be paid into the general fund and any moneys required by the Board for the discharge of their functions shall be paid out of that fund.

#### **Information to be furnished by registered producers**

**18.** Section 19 of the marketing scheme is preserved, subject to the modification that for the words “operation of the Scheme” there shall be substituted the words “discharge of their functions”.

#### **Expenses of collection of milk**

**19.** Section 22(4) of the marketing scheme is preserved, subject to the modification that—

(a) after the word “registered” there shall be inserted the words “end year”;

(b) before the word “fund” there shall be inserted the word “general”; and

(c) the words “established in terms of section 26(3)” shall be omitted.

#### **Financial provisions and payment for milk**

**20.—**(1) Section 26(5) of the marketing scheme is preserved, subject to the modification that—

- (a) after the words “rendered to him” there shall be inserted the words “in the final trading period”; and
  - (b) after the words “registered” there shall be inserted the words “end year”.
- (2) Section 26(6) of the marketing scheme is preserved, subject to the modification that—
- (a) after the word “registered” there shall be inserted the words “end year”; and
  - (b) after the words “sold by them” there shall be inserted the words “in the final trading period”.
- (3) Section 26(7) of the marketing scheme is preserved, subject to the modification that—
- (a) after the word “registered”, wherever occurring, there shall be inserted the words “end year”;
  - (b) the figure “(4),” shall be omitted; and
  - (c) the words “under sections 27 and 29” shall be omitted.
- (4) Section 26(9) of the marketing scheme is preserved, subject to the modification that—
- (a) for the words “in any accounting period” there shall be substituted the words “in the final trading period”;
  - (b) the figure “(4),” shall be omitted;
  - (c) the words “to provide reserves and” shall be omitted;
  - (d) after the word “registered”, wherever occurring, there shall be inserted the words “end year”; and
  - (e) before the word “fund” there shall be inserted the word “general”.
- (5) Section 26(10) of the marketing scheme is preserved, subject to the modification that—
- (a) the words “-(a) sums set aside by the Board under subsection (8)(a) and not deducted under subsection (9), and (b)” shall be omitted;
  - (b) for the words “that accounting”, wherever occurring, there shall be substituted the words “the final trading”;
  - (c) after the word “registered” there shall be inserted the words “end year”; and
  - (d) for the word “Scheme” there shall be substituted the words “marketing scheme”.
- (6) Section 26(11) of the marketing scheme is preserved, subject to the modification that—
- (a) after the words “obtain loans” there shall be inserted the words “or advances”;
  - (b) the words from “the Agricultural Marketing” to “and other” shall be omitted;
  - (c) for the word “persons” there shall be substituted the words “any persons”; and
  - (d) after the words “from banks” there shall be inserted the words “or building societies”.
- (7) Section 26(12) of the marketing scheme is preserved, subject to the modification that—
- (a) after the words “credit of the” there shall be inserted the word “general”;
  - (b) after the words “in any bank” there shall be inserted the words “or building society”; and
  - (c) for the words “, but, except” to the end of the subsection there shall be substituted the words “in such manner as they may determine.”

### **Sales in final trading period by retail, semi-retail and wholesale**

**21.** Section 27(2)(a) and (b) and (3) of the marketing scheme is preserved, subject to the modification that—



- (a) in subsections (2) and (3) after the word “registered”, wherever occurring, there shall be inserted the words “end year”;
- (b) in subsection (2) after the words “production which he has sold”, “their own production sold by them” and “cost of advertising milk”, where they respectively occur, there shall be inserted the words “in the final trading period, or any part thereof”;
- (c) in subsection (2)(a)–
  - (i) after the word “producer” in the first line there shall be inserted the words “licensed by the Board to sell milk by retail, semi-retail or wholesale”;
  - (ii) the words “from time to time”, wherever occurring, shall be omitted;
  - (iii) for the words “an accounting period” there shall be substituted the words “that period”; and
  - (iv) for the words “during that period” there shall be substituted the words “in the first accounting period after Vesting Day”;
- (d) in subsection (2)(b) the words “from time to time” and the words “referred to in section 24” shall be omitted;
- (e) in subsection (3)(b) the words “from time to time” shall be omitted; and
- (f) in subsection (3)(c) the words “, and from time to time,” shall be omitted.

#### **Arbitration in cases where producers or buyers are aggrieved**

**22.**—(1) Section 35 of the marketing scheme is preserved, subject to the modification that in subsection (1)–

- (a) after the words “omission of the Board” there shall be inserted the words “affecting the discharge of their functions under the Scottish Milk Marketing Board (Residual Functions) Regulations 1994 (and whether occurring before or on or after Vesting Day)”;
- (b) for the words “appointed by the Minister”, “apply to the Minister for the appointment of an arbiter.” and “by the Minister” where they respectively occur there shall be substituted the words “to be agreed upon by the producer and the Board and, failing agreement, to be appointed, on application being made to him by either party, by the sheriff principal of the sheriffdom in which the producer has his place, or principal place, of business”, “appoint the arbiter agreed upon or, on failure to agree upon an arbiter within 14 days, each party or both parties may apply to the sheriff principal for the appointment to be made.” and “as aforesaid” respectively; and
- (c) after the words “If a person” and “new arbiter may be” respectively there shall be inserted the words “agreed upon or”.

(2) Section 35 of the marketing scheme, as modified by paragraph (1) above, shall apply in the case of buyers as it applies in the case of producers.

#### **Accounts**

**23.** Section 39 of the marketing scheme is preserved, subject to the modification that–

- (a) in subsection (1)–
  - (i) after the words “cause to be kept” there shall be inserted the words “, for every accounting period,”; and
  - (ii) after the words “commercial activities” there shall be inserted the words “in the final trading period”;

- (b) in subsection (2) after the words “its commercial activities” there shall be inserted the words “in respect of the final trading period”;
- (c) in subsection (3)–
  - (i) the words from “for the fund established” to “in respect of the Board’s commercial activities.” shall be omitted;
  - (ii) after the words “Expenditure Account” there shall be inserted the words “and a Cash Flow Statement”; and
  - (iii) after the words “commercial activities”, there shall be inserted the words “in the final trading period”;
- (d) in subsection (5) for the words “workings of the Scheme” there shall be substituted the words “workings of the marketing scheme and after Vesting Day for the discharge of their functions”; and
- (e) in subsection (7)–
  - (i) for the words “the Board’s commercial activities” there shall be substituted the words “any of the Board’s activities”; and
  - (ii) the words “of sections 16 and 26(3) of the Scheme,” shall be omitted.

## PART V

### FUNCTIONS OF THE BOARD

#### Functions

- 24.**—(1) The functions mentioned in regulation 4(1)(b) are–
- (a) collecting sums owed in payment for milk supplied by the Board in the final trading period and sums owed in respect of other debts to the Board as they fall due;
  - (b) making payments in accordance with section 26 of the marketing scheme, as modified by regulation 20, to registered end year producers and discharging other liabilities as they fall due;
  - (c) disposing of assets by sale or other realisation of values;
  - (d) collecting from registered end year producers sums owed by way of contributions in respect of the final trading period which become payable pursuant to section 27(2) of the marketing scheme, as modified by regulation 21;
  - (e) where in the judgement of the Board it seems financially prudent so to do, making to each registered eligible producer an interim distribution of assets, in the manner specified in relation to the final distribution of assets in regulation 30(2)(a); and
  - (f) collecting sums due from registered eligible producers in the exercise of any power conferred on the Board by order made under section 17(2) of the Act.
- (2) In discharging their liabilities as they fall due the Board shall have the power if they deem it necessary or expedient to remit the whole or any part of their liabilities by way of composition or arrangement with their creditors.

#### Prohibition on buying and selling milk

- 25.** Nothing in these Regulations shall be construed as authorising the Board to engage in the business of buying and selling milk.

## PART VI

### MEETINGS OF REGISTERED PRODUCERS

#### Annual and Special General Meetings

- 26.—(1) Section 40 of the marketing scheme is preserved, subject to the modification that—
- (a) for the words “shall determine” there shall be substituted the words “think fit in each calendar year starting with 1995”;
  - (b) at the end of the section there shall be inserted “At any General Meeting of the Board the questions to be put before the meeting shall be limited to the noting of the Board’s accounts and appointment of the Board’s auditors.”.
- (2) Section 41 of the marketing scheme is preserved.

#### Notice of General Meetings

27. Section 42 of the marketing scheme is preserved.

#### Voting at General Meetings

28. Section 43 of and Schedule (4) to the marketing scheme are preserved, subject to the modification that—
- (a) for the words “Schedule (4)” in subsection (6) there shall be substituted the words “Schedule (1)”;
  - (b) for the figure “(4)” in Schedule (4) there shall be substituted the figure “(1)” and for the words “Scheme 1989” there shall be substituted the words “Board (Residual Functions) Regulations 1994”.

#### Quorum at General Meetings

29. Section 44 of the marketing scheme is preserved, subject to the modification that—
- (a) for the figure “50” there shall be substituted the figure “25”; and
  - (b) at the end there shall be inserted the following:—

“If at any General Meeting a quorum is not present the Meeting shall stand adjourned until the same place and time in the following week, unless the Board otherwise determine, in which case the registered producers personally present at such adjourned Meeting shall constitute a quorum. In the event that less than two registered producers are then personally present, the General Meeting shall again stand adjourned.”.

## PART VII

### FINAL WINDING UP OF THE BOARD

#### Winding up by the Board

- 30.—(1) Subject to paragraph (3) below, this regulation applies where—
- (a) all requisite payments to registered end year producers have been made in accordance with regulation 24(1)(b);

- (b) the Board are satisfied that—
  - (i) all their assets have been gathered in and realised; and
  - (ii) all their liabilities and functions under these Regulations (other than those specified in this Part) have been discharged; and
- (c) there is a surplus in the general fund.
- (2) Where this regulation applies the Board shall—
  - (a) make to each registered eligible producer a final distribution of assets in proportion to the volume of milk produced and sold by him to the Board, or on which contributions were payable, in the period of 7 years ending on 31 March 1994;
  - (b) prepare final accounts in accordance with section 39 of the marketing scheme, as modified by regulation 23, and submit those accounts when audited to—
    - (i) the Minister; and
    - (ii) registered producers, along with a notice calling a Special General Meeting at which the accounts are to be submitted; and
  - (c) having had regard to any views expressed by the registered producers at that Special General Meeting, notify the Minister for the purpose of section 14(5) of the Act that the Board have wound up their affairs.
- (3) The winding up of the Board under this regulation does not bar the right of any creditor or registered eligible producer (being a contributory for the purposes of section 124 of the 1986 Act<sup>(4)</sup>) to have the Board wound up by the court under regulation 31; but in the case of a registered eligible producer the court must be satisfied that the rights of registered eligible producers will be prejudiced if the Board are permitted to wind up their affairs under this regulation.

### **Winding up under the 1986 Act**

**31.**—(1) Section 47 of the marketing scheme (which by virtue of section 13 of the Act but subject to these Regulations continues in force notwithstanding the revocation of the marketing scheme on Vesting Day) shall be amended in accordance with this regulation.

- (2) In section 47(1)—
  - (a) for the words “Insolvency Act 1986” there shall be substituted the words “1986 Act”; and
  - (b) for the words “paragraph 4 of the Second Schedule to the Act” there shall be substituted the words “section 47A of this Scheme”.
- (3) In section 47(2)—
  - (a) for the words from the beginning to “each contributor” there shall be substituted the words “For the purposes of section 226 of the 1986 Act, and notwithstanding any exercise of the powers conferred on the Board and the Minister by section 17 of the Act, every registered eligible producer shall be liable to contribute to the payment of the debts and liabilities of the Board and to the costs and expenses of the winding up”;
  - (b) after the words “sold by him” there shall be inserted the words “to the Board, or on which contributions were payable,”;
  - (c) the word “relevant”, where it first occurs, shall be omitted;
  - (d) after the word “period”, where it first occurs, there shall be inserted the words “of 7 years ending on 31 March 1994”;

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(4) Section 124 was amended by the Criminal Justice Act 1988 (c. 33), section 62(2)(b) and by the Companies Act 1989 (c. 40), section 60(2).

- (e) for the words “and shall” there shall be substituted the words “, but such liability, taking account of any contributions made pursuant to section 17 of the Act, shall”;
  - (f) for the figure “0.137” there shall be substituted the figure “0.02”; and
  - (g) the words from “, but declaring” to “shall not exceed 5 pence” shall be omitted.
- (4) In section 47(3)–
- (a) after the word “registered”, where it first occurs, there shall be inserted the word “eligible”; and
  - (b) the words from “Provided” to the end shall be omitted.
- (5) At the end of section 47 there shall be inserted the following section:–

“**47A.**—(1) For the purposes of sections 221, 222 and 224 of the 1986 Act, the principal place of business of the Board is deemed to be the office of the Board the address of which has been notified to the Minister under section 8 of this Scheme.

(2) Section 221 of the 1986 Act shall apply in relation to the Board as if paragraph (a) of subsection (5) of that section were omitted.

(3) Section 223 of the 1986 Act shall not apply in relation to the Board.

(4) Section 224 of the 1986 Act shall apply in relation to the Board as if the words “or any member of it as such” were omitted.

(5) A petition for winding up of the Board may be presented by the Minister as well as any person authorised by section 124(1) of the 1986 Act (as applied in relation to the Board by section 221(1) of that Act) to present a petition for winding up of the Board.

(6) Sections 204 and 205 of the 1986 Act shall not apply in relation to the Board, but the dissolution of the Board after winding up under the 1986 Act shall proceed in accordance with section 14(5) of the Act.”.

## PART VIII

### MISCELLANEOUS

#### **Proof of posting**

**32.** Section 50 of the marketing scheme is preserved, subject to the modification that the words “(other than that contained in subsection (2) of section 34)” shall be omitted.

#### **Indemnity**

**33.**—(1) Subject to paragraph (2) below, every member or officer or auditor of the Board shall be indemnified out of the assets of the Board and against–

(a) any action, cost, charge, loss, damage and expense which he may incur; and

(b) any liability which by virtue of any rule of law or equity would otherwise attach to him,

by reason of, or in connection with, any act done, incurred in, or omitted in or about the execution of his duty in relation to the affairs of the Board.

(2) Paragraph (1) above shall not apply where–

(a) the Board has purchased and maintains for any such member, officer or auditor insurance against any such action, cost, charge, loss, damage, expense or liability; or

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

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- (b) such action, cost, charge, loss, damage, expense or liability has arisen from or been contributed to by any dishonest, fraudulent or wilfully negligent act or omission of such member, officer or auditor.

5th October 1994

*James Douglas-Hamilton*  
Parliamentary Under Secretary of State,  
Scottish Office