
STATUTORY INSTRUMENTS

1994 No. 2591 (S.127)

AGRICULTURE

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

<i>Made</i>	- - - -	<i>5th October 1994</i>
<i>Laid before Parliament</i>		<i>10th October 1994</i>
<i>Coming into force</i>	- -	<i>1st November 1994</i>

The Secretary of State, in exercise of the powers conferred on him by section 14(2), (3) and (6) of the Agriculture Act 1993((1)) and all other powers enabling him in that behalf, hereby makes the following Regulations:

**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((2));

“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;

(1) 1993 c. 37; see section 24(2) for the meaning of “the appropriate authority”.
(2) 1986 c. 45.

“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((3));

“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

(3) [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 provisions of these Regulations, by section 13, and such other provisions as are preserved by these Regulations, pursuant to section 14(3)(a).

- (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(~~(4)~~));
 - (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)”; and
 - (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⁽⁵⁾) 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

(5) 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).

- (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”;
 - (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
- (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

SCHEDULE

Regulation 3

PRESERVED SECTIONS OF THE SCOTTISH MILK MARKETING SCHEME 1989

Title of Scheme

1.—(1) This Scheme may be cited as the Scottish Milk Marketing Scheme 1989, and applies to Scotland.

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 in the period prior to Vesting Day the final trading period and thereafter such period as shall be determined from time to time by the Board;

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

“commercial activities” in relation to the Board means any activities carried out by the Board in the final trading period in exercise of their powers under paragraphs (a) and (b) of section 15 of the marketing 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;

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

“Minister” means the Secretary of State for Scotland;

“producer” means a producer of milk.

(3) Other expressions used in this Scheme have, insofar 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.

Restructuring of Board’s functions

(a) 4. (7) (a) *Contracts with the 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—

(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

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(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.

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.

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

Meetings of the Board

5.—(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 provisions of this Scheme with respect to the application of the common seal of the Board, delegate any of their powers to any committee so appointed.

(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, or that a member of the Board had voted upon any question upon which he was not entitled to vote, 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.

Chairman

7. The Chairman shall preside at all General Meetings and at all meetings of the Board. If he is 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 may appoint and may remove a secretary and such other officers and employees as they may deem necessary.

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 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((6)).

(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 this Scheme.

Registration of producers

12.—(2) For the purposes of this 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 registered producer for all the purposes of this Scheme and shall apply for registration as such:

Provided that on the day of the transfer and for three months 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) 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. 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) 1985 c. 6.

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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 discharge of their functions.

Expenses of collection of milk

22.—(4) The cost of collecting milk from registered end year producers shall be an expense chargeable to the general fund, 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.

Financial provisions and payment for milk

26.—(5) If a buyer shall have paid the Board a premium for any special service rendered to him in the final trading period by a registered end year 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 end year producers in respect of such descriptions of milk produced and sold by them in the final trading period 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 end year producer in terms of subsections (5), (6) and (9) any contributions payable by such registered end year producer, and any other sums due to the Board by such registered end year producer.

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

- (a) sums payable under subsections (5) and (6), 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 in respect of that accounting period,

shall be paid by the Board to registered end year producers, the proceeds of the sale of whose milk during that period are required to be paid into the general 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 end year producers, notwithstanding the price at which the milk of any individual registered end year 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 end year 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

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- (iii) in the event of the Board being prevented from accepting milk of a registered end year 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 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 the final trading 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 end year producers in proportion to the quantity of milk sold by them under the provisions of the marketing scheme during the final trading period or any part thereof.

(11) *Power to borrow money.* The Board may obtain loans or advances from any persons, including loans or advances from banks or building societies 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 general fund may be left on current or deposit account in any bank or building society, or, if not for the time being required for the purposes of the functions of the Board, may be invested in such manner as they may determine.

Sales by retail, semi-retail and wholesale

Contributions to the Board

Contributions to the Board

- (a) **27. (2) (a)** Every registered end year producer licensed by the Board to sell milk by retail, semi-retail or wholesale shall pay to the Board a contribution of such amount as the Board may determine in respect of every litre of milk (whether sold as whole milk or otherwise) of his own production which he has sold in the final trading period, or any part thereof, 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 that period determine in the first accounting period after Vesting Day 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 end year 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 end year producer for the appropriate accounting period as estimated 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 end year producers, in respect of every litre of milk (whether sold as whole milk or otherwise) of their own production sold by them in the final trading period, or any part thereof, by retail, semi-retail or wholesale, to make contributions of such amounts as the Board may determine towards the expenses of the Joint Committee and towards the cost of advertising milk in the final trading period, or any part thereof.

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Definitions of sale by retail, by semi-retail and by wholesale

- (a) (3) (a) Sale by retail means the sale by a registered end year 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 end year 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 determine.
- (c) Sale by wholesale means the sale by a registered end year 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 fix the quantity of milk (whether sold as whole milk or otherwise) which may be sold by any individual registered end year producer by wholesale under the provisions of this section.

Arbitration in cases where producers or buyers are aggrieved

35.—(1) In the event of any producer being aggrieved by any act or omission of the Board 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), he may make application to the Board demanding that the matter be referred to an arbiter 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, and the Board shall, within 14 days of the receipt of any such application, 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. If a person agreed upon or 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 agreed upon or appointed as aforesaid, 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.

Evidence

- (a) (3) (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.

The award

- (a) (4) (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 upon the parties.

- (c) The arbiter may correct in an award any clerical mistake or error arising from an accidental slip or omission.

Expenses

- (a) (5) (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.

Accounts

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

- (a) all sums of money received and expended by the Board, and the matters in which 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 in the final trading period 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 in respect of the final trading period 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 and a Cash Flow Statement. 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 in the final trading period 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 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 marketing scheme and after Vesting Day for the discharge of their functions in the period covered by the Accounts as the Board may consider necessary for the information of registered producers.

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(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 any of the Board's 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 Council Regulation (EEC) No.1422/78((7)) and of Commission Regulation (EEC) No.1565/79((8)).

Annual General Meeting

40. The Annual General Meeting shall be held at such place, date and hour as the Board or a General Meeting think fit in each calendar year starting with 1995. 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.

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.

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

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

(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 (1) below.

Quorum at General Meetings

44. Unless otherwise determined by a previous General Meeting, a quorum at General Meetings shall consist of 25 registered producers personally present. 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.

Winding-up of the Board

47.—(1) Part V of the 1986 Act (which relates to the winding up of unregistered companies) shall apply in relation to the Board subject to the modifications set out in section 47A of this Scheme.

(2) For the purposes of section 226 of the 1986 Act, and notwithstanding any exercise of the powers conferred on the Board or 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 proportionately to the number of litres of milk produced and sold by him to the Board, or on which contributions were payable, during the period of 7 years ending on 31 March 1994, but such liability, taking account of any contributions made pursuant to section 17 of the Act, shall not exceed 0.02p per litre. 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 eligible 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.

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.

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(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.

Proof of posting

50. Any requirement of this Scheme 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

On 7th July 1994 in accordance with the Agriculture Act 1993 (“the Act”) the Secretary of State for Scotland granted an application by the Scottish Milk Marketing Board (“the Board”) for the approval of a scheme of reorganisation (“the approved scheme”) which provides for the transfer under section 11 of the Act (“the transfer”) of the Board’s property, rights and liabilities on 1st November 1994. Certain assets in the form of shares pass to milk producers who were registered with the Board during the period 1st April 1987 to 31st March 1994.

As a result of the transfer, section 1 of the Act provides that the Scottish Milk Marketing Scheme (Consolidation) Approval Order 1989 (“the marketing scheme”), which constitutes the Board, is also revoked with effect from 1st November 1994 although, under section 13 of the Act, the Board shall not be deemed to be dissolved by reason of the revocation but shall continue to exist in residual form and so much of the marketing scheme as relates to the winding up of the Board shall continue in force, subject to any regulations which may be made under section 14 of the Act.

These Regulations, which are made under section 14 of the Act and come into force on 1st November 1994, make provision for the purpose of giving effect to so much of the approved scheme as relates to the Board in the period after the transfer (including however the completion of certain of the Board’s responsibilities under the marketing scheme (other than the buying and selling of milk) with respect to the period before the transfer), and make provision in relation to the constitution of the Board and for the purposes of enabling the Board to wind up its affairs. In accordance with that section the Regulations provide for certain provisions of the marketing scheme to continue to have effect, subject to certain modifications, and contain new provisions.

A compliance cost assessment has been prepared and copies can be obtained from the Scottish Office Agriculture and Fisheries Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TW. A copy has been placed in the library of each House of Parliament.