
STATUTORY INSTRUMENTS

1994 No. 2759

The Milk Marketing Board (Residuary Functions) Regulations 1994

PART I

PRELIMINARY

Title, extent and commencement

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

Interpretation; preservation of preliminary provisions of the old marketing scheme

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

“the Act” means the Agriculture Act 1993;

“the 1958 Act” means the Agricultural Marketing Act 1958⁽¹⁾;

“the 1986 Act” means the Insolvency Act 1986⁽²⁾;

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

“assets” includes interests, property and rights;

“the Board” means the Milk Marketing Board established to administer the old marketing scheme;

“the B Reserve Fund” has the meaning assigned to it in regulation 18(1);

“Dairy Crest Limited” means the company registered under the Companies Act 1985⁽³⁾ with registration number 2085882 as Dairy Crest Limited;

“Dairy Crest plc” means the company registered under the Companies Act 1985 with registration number 02845500 as Twicesimple Projects Limited;

“Dairy Crest shares” means any shares in Dairy Crest Limited or Dairy Crest plc which are retained;

“distribution entitlement” means the entitlement specified in Schedule 1;

“eligible producer” has the meaning assigned to it in Part I of Schedule 2;

“end year producer” has the meaning assigned to it in Part II of Schedule 2;

“entry” has the meaning assigned to it in regulation 14(8);

“final distribution” has the meaning assigned to it in regulation 27(3);

(1) 1958 c. 47.

(2) 1986 c. 45.

(3) 1985 c. 6.

“the final liquidation of the Board” has the meaning assigned to it in regulation 27(1);

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

“the general fund” has the meaning assigned to it in regulation 18(2);

“interim distribution” has the meaning assigned to it in regulation 21(1)(g);

“the old marketing scheme” means the Milk Marketing Scheme 1933(4);

“preserved”, in relation to a given provision of the old marketing scheme or any prescriptive resolution made under such a provision, 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 old 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);

“property” includes any retained undertaking whether or not it has been retained for the purposes of the Board’s commercial activities;

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

“registered” means registered under Part III of these Regulations;

“relevant asset total” means–

- (a) where in accordance with these Regulations the Board at any given time intends to transfer or procure to be transferred or requires to be issued and allotted any shares in Dairy Crest Limited, Dairy Crest plc, or any other company formed to acquire the shares or business of Dairy Crest Limited to registered eligible producers, the total number of such shares to be so transferred or, as the case may be, issued and allotted at that time;
- (b) on any occasion where, in accordance with these Regulations, the Board intends by means of an interim distribution or a final distribution to distribute, or procure to be distributed, the proceeds of realised assets of the Board, or any other assets, to registered eligible producers, the total amount of such proceeds or assets to be so distributed on that occasion;

“relevant period” means the period commencing on 1st April 1992 and ending on 31st March 1993;

“relevant producer” means any producer who at any material time was registered with the Board under the old marketing scheme;

“retained” means retained by the Board following the transfer referred to in the definition of Vesting Day below;

“rights” includes contingent rights;

“Vesting Day” means 1st November 1994 being the day on which, in accordance with the approved scheme, certain property, rights and liabilities of the Board are, as a result of section 11 of the Act, transferred by virtue of the Act.

(2) Paragraph 3(1) of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(3) Paragraph 3(2) of the old marketing scheme in so far as it relates to the following expressions and the definitions assigned to them is preserved–

- (a) “company”;
- (b) “milch cow”;
- (c) “prescription” and “prescribe”;

(4) See S.R. & O. 1933 No. 789, as amended by S.R. & O. 1936/767, 1937/228 and 744, 1939/324 and S.I. 1950/1029, 1955/946, 1969/1812, 1977/900, 1979/249, 1981/323, 1981/864, 1984/1330, 1986/83, 1987/735, 1988/132 and 1992/3142.

- (d) “producer”;
- (e) “secretary”;
- (f) “subsidiary”;

and shall have effect as set out in Schedule 3 and in these Regulations, unless the context otherwise requires, any reference to one of these expressions has the meaning assigned to it in that scheme, save that the expressions “eligible producer” and “end year producer” shall not be taken to exclude any person solely by virtue of his having ceased to be a producer.

(4) Paragraph 3(2) of the old marketing scheme in so far as it relates to the expressions “retail” and “semi-retail” is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(5) Paragraph 3(2) of the old marketing scheme in so far as it relates to the expressions “commercial activities”, “milk”, “Minister” and “prescriptive resolution” is preserved, subject to modifications, and shall have effect as set out in Schedule 3 and in these Regulations each of those expressions has the meaning assigned to it in that scheme as modified by this paragraph.

(6) At the end of paragraph 3 of the old marketing scheme there shall be inserted a new sub-paragraph (3) and this shall have effect as set out in Schedule 3.

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

Effect of provisions of the old marketing scheme as preserved, inserted or continuing in force

3. The provisions of the old marketing scheme which—
- (a) are preserved, whether or not subject to modifications,
 - (b) are inserted by virtue of these Regulations, or
 - (c) 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 Schedule 3.

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 Milk Marketing Board but with their functions confined to—

- (a) managing or otherwise dealing with the assets which are for the time being vested in them,
- (b) discharging such other functions as are specified in Part V of these Regulations in relation to the assets and liabilities which are for the time being vested in them,
- (c) carrying on other activities which they are obliged or empowered by these Regulations or other requirements of law to carry on, and
- (d) undertaking any functions ancillary or incidental to the functions mentioned above,

in such a manner and with such expedition as, as well as having regard to the interests of registered producers and the desirability referred to in paragraph (2) below, they consider is best calculated to secure that the winding up purpose is achieved.

(2) In determining how to dispose of the national milk records undertaking the Board shall have regard to the desirability of such undertaking being maintained as a recording service available to all producers.

(3) 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.

(4) In this regulation—

“the national milk records undertaking” means such assets and liabilities as the Board have retained for the purposes of their commercial activities relating to collecting milk samples and data relating to milch cows, testing milk samples and providing a service in the supply of resulting data and collecting, processing and publishing dairy management information, and for the purpose of paragraph (2) above disposal of the national milk records undertaking shall be taken to include discharging any liability falling within it as well as realising the value or otherwise disposing of any asset falling within it;

“the winding up purpose” means the purpose that—

- (a) the Board’s assets shall be got in and their value shall be realised so far as is required by the approved scheme;
- (b) where realisation of the value of any asset of the Board is not so required, it shall be—
 - (i) realised for value,
 - (ii) disposed of by means other than realisation for value, or
 - (iii) applied towards discharging the Board’s liabilities and other functions under these Regulations;
- (c) the proceeds of assets the value of which is realised shall be applied in or towards discharging the Board’s liabilities and other functions under these Regulations;
- (d) while any particular asset of the Board remains unrealised, it shall be held and managed in a manner which is consistent with sub-paragraphs (a) and (b) above; and
- (e) the liabilities of the Board so far as not discharged in pursuance of sub- paragraphs (b) and (c) above shall be otherwise discharged.

Members of the Board

5.—(1) The Board shall consist of not more than seven members whom the Minister shall appoint.

(2) The Minister shall designate one of the members appointed under this regulation as 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) not more than three 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, which shall include a condition that the member shall comply with the provisions of these Regulations binding on him and ensure in combination with the other members that the Board complies with the provisions of these Regulations binding on them.

(5) Any appointment of a person as a Board member 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 by notice to the Minister resign his office with effect from such time as is specified in the notice.

(7) If the Minister is satisfied in relation to a member of the Board—

- (a) that that member has been absent without the written permission of the chairman of the Board from two consecutive meetings of the Board, or
- (b) that that member has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors, or
- (c) that that member is unable or unfit to discharge the functions of a member, or
- (d) that that member has not complied with the terms of his appointment,

the Minister may by notice to him remove him from office with effect from such time as is specified in the notice.

(8) The chairman of the Board may by notice delivered to the secretary of the Board appoint another person as his deputy (in this regulation referred to as “vice-chairman”) and paragraphs (9) to (13) below, as well as regulation 10(2) and those preserved provisions of the old marketing scheme which relate to the powers of a vice-chairman, shall apply to such appointment, to the revocation of such appointment and to the powers and responsibility of a vice-chairman.

(9) A person may not be appointed as a vice-chairman unless he is a member of the Board.

(10) The appointment of a vice-chairman ceases to have effect in either of the following circumstances—

- (a) where the chairman of the Board by notice delivered to the secretary of the Board revokes the appointment of the vice-chairman, or
- (b) where the person who appointed him has ceased to be a member under the provisions of this regulation or has ceased to be appointed to the office of chairman of the Board.

(11) A vice-chairman shall be entitled (in so far as he would not otherwise be so entitled) to receive notice of all meetings of any committees of the Board of which the chairman of the Board is a member and in the absence of the chairman of the Board to attend such meetings.

(12) When a vice-chairman attends any meeting of a committee of the Board pursuant to paragraph (11) above or any meeting of the Board from which the chairman of the Board is absent, the vice-chairman shall be entitled—

- (a) to exercise all the powers, rights, duties and authorities of the chairman of the Board, and
- (b) to have a separate vote for the chairman of the Board,

although he shall count as only one for the purpose of determining whether a quorum is present.

(13) A person acting as vice-chairman shall—

- (a) alone be responsible to the Board for his own acts and defaults, and
- (b) not be deemed to be the agent of the chairman of the Board.

Official address of the Board

6. Paragraph 6(2) of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

General powers and staff

7.—(1) Paragraph 7 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(2) The Board may by power of attorney or otherwise—

- (a) appoint a person to be the agent of the Board, and
- (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 so 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 so 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 8 below.

Remuneration, allowances etc of members of the Board

8.—(1) Paragraph 8 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(2) The Board shall pay to the members of the Board such remuneration as may be determined—

- (a) as respects the period commencing on Vesting Day and ending on a relevant date, by the Minister, and
- (b) as respects any period thereafter (which shall also end on a relevant date), in accordance with the procedure specified in paragraph 78A of the old marketing scheme as inserted by these Regulations.

(3) Subject to paragraph (2) above, the Board may—

- (a) pay such allowances or gratuities as they may determine to or in respect of any persons who have been or are their members;
- (b) make such payments as they may determine towards provision for payment of remuneration, allowances or gratuities to or in respect of any such persons; and

(c) provide and maintain, or participate in, such schemes as they may so determine (whether contributory or not) for the payment of remuneration, allowances or gratuities to or in respect of such persons.

(4) If, when a person ceases to be a member of the Board, the Board determine that there are special circumstances which make it appropriate that any member should receive compensation, the Board shall pay to him as compensation such amount, not exceeding a sum equal to the annual remuneration which that member last received, as they may determine.

(5) Any compensation determined under paragraph (4) above shall be treated (as to disclosure) in the Board's annual accounts in the same manner as the Board members' remuneration is so treated.

(6) In this regulation "relevant date" means any day after 31st December 1995 on which a different remuneration for the members of the Board is determined in accordance with the procedure specified in paragraph 78A of the old marketing scheme as inserted by these Regulations.

Committees

9. Paragraph 20 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Proceedings of the Board

10.—(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 or of any committee appointed by them the person who is the chairman of that meeting (who shall be the chairman of the Board if present, or, in his absence, the vice-chairman unless absent) shall have a second or casting vote.

(3) In the absence of the chairman and vice-chairman of the Board, the chairman of any meeting of any committee appointed by the Board shall be a member of that committee so designated by the chairman of the Board.

(4) Paragraph 25 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Minutes

11. Paragraphs 26 and 27 of the old marketing scheme are preserved and shall have effect as set out in Schedule 3.

The seal

12. Paragraph 28 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Contracts

13.—(1) Paragraph 29 of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

(2) Paragraph 30 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

PART III

REGISTER OF PRODUCERS

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 have his entry placed on Part I or Part II (as the case may be) of 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 purpose of paragraph (2) or (3) above is correct.

(5) Subject to paragraph (6) below, the entries of end year producers to whom the Board have made the final payments (as that expression is used in Schedule 4) may be removed from Part II of the register at any time after the Board have become satisfied that no further sums are or may become due to them from the Board.

(6) No entry of any end year producer shall be removed from Part II of the register while moneys remain standing to the credit of the B Reserve Fund.

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

(8) In these Regulations “entry” means name and address.

Inspection of register

15. Paragraph 39 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Partnerships

16. Paragraph 41(1) of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Death etc of producers

17.—(1) Paragraph 41(2) of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(2) After paragraph 41(2) of the old marketing scheme there shall be inserted new sub-paragraphs (3) and (4), which shall have effect as set out in Schedule 3.

PART IV

FINANCIAL PROVISIONS

Reserve funds

18.—(1) The Board shall maintain a special reserve fund (in these Regulations referred to as “the B Reserve Fund”) in accordance with the provisions of the approved scheme to which effect is given in Schedule 4.

(2) The Board shall maintain a general reserve fund (in these Regulations referred to as “the general fund”), which shall include, for as long as it subsists, the Residuary Body Reserve. Unless otherwise required in accordance with paragraph (1) above, 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.

(3) Any moneys for the time being standing to the credit of the general fund may be left in any bank or building society account 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 see fit.

(4) If prior to finalisation of the special accounts mentioned in paragraph 53(1B) of the old marketing scheme (as preserved) the condition specified in paragraph (5) below applies, the Board shall withdraw the surplus funding from the Residuary Body Reserve and in determining the price which shall be payable under regulation 21(1)(e) shall include the surplus funding as an additional payment due to the end year producers.

(5) The condition mentioned in paragraph (4) above is that the Board is satisfied that the withdrawal is called for by the approved scheme.

(6) In this regulation—

“the Residuary Body Reserve” means the retained reserve established by the Board prior to Vesting Day for the purposes set out in the approved scheme;

“the surplus funding” means the amount which the Board consider falls to be withdrawn from the Residuary Body Reserve in accordance with the approved scheme.

Borrowing

19. Paragraph 52 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Administration, accounts and separation of commercial activities

20.—(1) Paragraphs 8A and 52A of the old marketing scheme are preserved and shall have effect as set out in Schedule 3.

(2) Paragraph 53 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(3) Paragraph 59A of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(4) After paragraph 59A of the old marketing scheme there shall be inserted paragraph 59B, which shall have effect as set out in Schedule 3.

PART V

FUNCTIONS OF THE BOARD

Functions

- 21.—(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 as are due, or shall fall due, to the Board;
 - (b) collecting—
 - (i) contributions which in respect of milk sold before Vesting Day became payable pursuant to paragraph 71(1) or (4A) of the old marketing scheme;
 - (ii) contributions which in respect of milk sold before Vesting Day became payable pursuant to any agreement entered into under paragraph 56A(1)(i) of the old marketing scheme;
 - (iii) penalties which before Vesting Day became recoverable by the Board pursuant to paragraph 77(6) of the old marketing scheme;
 - (iv) contributions which become recoverable pursuant to the preserved provisions of the old marketing scheme to which reference is made in regulation 25;
 - (v) any sum which before Vesting Day became recoverable under section 10 of the 1958 Act;
 - (vi) any other sums which are recoverable by the Board;
 - (c) realising or otherwise disposing of their assets (other than the Dairy Crest shares and the whole or any part of the business of Dairy Crest Limited);
 - (d) holding and disposing of the Dairy Crest shares or the whole or any part of the business of Dairy Crest Limited as permitted in Schedule 5;
 - (e) in accordance with regulation 18(4), paragraphs (2) to (5) below and Schedule 4, making payments to end year producers and other relevant producers for milk supplied by them to the Board;
 - (f) discharging the Board’s other liabilities as they fall due;
 - (g) making or procuring to be made interim distributions (in these Regulations referred to as “interim distributions”) of relevant assets to registered eligible producers, in accordance with their distribution entitlements, in the circumstances specified in paragraph (7) below;
 - (h) collecting contributions from eligible producers in the exercise of any power conferred on the Board by order made under section 17(2) of the Act.
- (2)** The Board shall have the power—
- (a) to determine a price payable by the Board as the price of milk supplied by end year producers to them in the month immediately before Vesting Day (in this regulation referred to as “an October price”);
 - (b) to determine any supplemental price payable by the Board by way of additional payment for milk supplied by end year producers to them in the final trading period (in this regulation referred to as “a supplemental price”); and
 - (c) to determine the level of any contribution to which paragraph (1)(b)(i) refers and, to the extent consistent with any agreement to which paragraph (1)(b)(ii) above refers, of any contribution under that agreement;

and the board shall take such action as they consider expedient for the purpose of bringing an October price or any supplemental price or any payment they have determined under regulation 18(4) or any such contribution level to the notice of registered end year producers.

(3) In determining an October price or any supplemental price or any payment under regulation 18(4) the Board—

- (a) shall have regard to the provisions of Schedule 4, and
- (b) may determine different prices for different classes of producers or classes of sale or description of milk,

and in determining the level of contribution payable pursuant to paragraph 71(1) of the old marketing scheme the Board may determine different contribution levels for different descriptions of milk.

(4) The Board shall have the power to determine that the date on which any amount falling to be paid by the Board to relevant producers shall become due for payment shall be such date as is specified in the determination, but this power does not extend to determination of a date earlier than has before Vesting Day been determined by the Board as the date on which that amount shall become due for payment, and where a date has been determined under this paragraph the Board shall take such action as they consider expedient for the purpose of bringing it to the notice of those producers.

(5) Any determination by the Board of an October price, a supplemental price, the level of any contribution to which paragraph (1)(b)(i) above refers or any payment under regulation 18(4) or of any date under paragraph (4) above shall have effect as if it were a prescriptive resolution of the Board under paragraph 60, 64 or 71 of the old marketing scheme and as if those paragraphs, prescriptive resolution no. 1595 of the Board and prescriptive resolutions of the Board prescribing prices under that resolution (to the extent such resolutions were in effect immediately before Vesting Day) had been preserved, and for this purpose and for the purposes of paragraphs (2) to (4) above “determination” includes an amendment of a previous determination (including one made before Vesting Day).

(6) In connection with the discharging of the Board’s liabilities as they fall due—

- (a) 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;
- (b) all expenses properly incurred in discharging their liabilities and functions (including any fees payable to any person whom the Board may appoint as their agent) shall be payable out of the Board’s assets in priority to all other claims;
- (c) subject to sub-paragraph (b) above and the provisions of the 1986 Act as to preferential payments the Board’s assets shall be applied in satisfaction of their liabilities.

(7) The circumstances mentioned in paragraph (1)(g) above are that, subject to regulation 18(4) and paragraph 2(3) of Schedule 4, the Board may make interim distributions if in their judgement it is financially prudent to do so.

(8) In these Regulations—

- (a) “collecting” includes recovery in any proceedings or arbitration to which the Board is or becomes a party;
- (b) “relevant assets” means any assets forming part of the relevant asset total.

Prohibition on buying and selling milk etc

22. Nothing in these Regulations shall be construed as authorising the Board to carry out functions prohibited by paragraph 16 of Schedule 1 to the Act from inclusion within a qualifying scheme (as that expression is used in paragraph 1 of that Schedule).

Assessment of sales

23.—(1) Paragraph 71(2) of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(2) Paragraph 71(5) of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Information

24. Paragraph 75 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Contraventions of the old marketing scheme

25. Paragraph 77 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

PART VI

MEETINGS OF REGISTERED PRODUCERS

Meetings

26.—(1) Paragraph 78 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(2) After paragraph 78 of the old marketing scheme there shall be inserted a new paragraph 78A, which shall have effect as set out in Schedule 3.

(3) Paragraph 79 of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

(4) Paragraph 80 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(5) After paragraph 80 of the old marketing scheme there shall be inserted a new paragraph 80A, which shall have effect as set out in Schedule 3.

(6) Paragraph 81 of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

(7) After paragraph 81 of the old marketing scheme there shall be inserted a new paragraph 81A, which shall have effect as set out in Schedule 3.

(8) Paragraph 82 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(9) Paragraph 83 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(10) Paragraph 84 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

(11) Paragraphs 85, 87 and 88 of the old marketing scheme are preserved and shall have effect as set out in Schedule 3.

PART VII

FINAL LIQUIDATION OF THE BOARD

Completion of winding up and distribution of surplus

27.—(1) The completion of the winding up of the affairs of the Board (in these Regulations referred to as “the final liquidation of the Board”) shall be conducted in accordance with either of the two methods specified in paragraph (2) below.

(2) The methods mentioned in paragraph (1) above are—

- (a) a voluntary solvent liquidation under regulation 28;
- (b) a liquidation on application to the court under the 1986 Act in accordance with the amended provisions of the old marketing scheme to which reference is made in regulation 29.

(3) Any surplus assets of the Board remaining on the final liquidation shall be distributed by way of distributions (in these Regulations referred to as “final distributions”) among registered eligible producers, *pari passu* and in accordance with their distribution entitlements.

Voluntary solvent liquidation

28.—(1) This regulation applies where—

- (a) all moneys standing to the credit of the B Reserve Fund have been withdrawn from it and the Board have made the final payments (as that expression is used in Schedule 4) to the end year producers,
- (b) the Board are satisfied that—
 - (i) their assets have been got in and realised or otherwise disposed of, and
 - (ii) their liabilities and other 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 the circumstances mentioned in paragraph (1) above apply the Board may make the final distributions.

(3) As soon as the Board have made the final distributions under paragraph (2) above, they shall make up an account showing—

- (a) how their assets have been got in and realised, and
- (b) how the Board’s assets have been disposed of,

and shall thereupon call a general meeting of registered eligible producers for the purpose of laying before it the account and giving an explanation of it.

(4) The provisions of Part VII of the old marketing scheme as set out in Schedule 3 shall apply to the advertisement and conduct of such meeting, subject to the further requirement that in addition to publishing notice of the meeting under paragraph 80 of the old marketing scheme as so set out the Board shall give notice of it in the London Gazette.

(5) Within one week after the meeting, the Board shall send to the Minister a copy of the account and shall make a return to him of the holding of the meeting and of its date.

(6) The voluntary solvent liquidation 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) to have the Board wound up by the court under the 1986 Act in accordance with the amended provisions of the old marketing scheme to which reference is made in regulation 29;

but in the case of an application by a registered eligible producer the court must be satisfied that the rights of registered eligible producers will be prejudiced by a voluntary liquidation by the Board under this regulation.

Liquidation on application to court under the 1986 Act

29.—(1) Paragraphs 91 and 92 of the old marketing scheme (which by virtue of section 13 of the Act but subject to these Regulations continue in force notwithstanding the revocation of the marketing scheme on Vesting Day) shall be amended and shall have effect as set out in Schedule 3.

(2) After paragraph 91 of the old marketing scheme, there shall be inserted new paragraphs 91A and 91B, which shall have effect as set out in Schedule 3.

PART VIII

MISCELLANEOUS

Arbitration

30. Paragraph 93 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Service of documents

31. Paragraph 94 of the old marketing scheme is preserved, subject to modifications, and shall have effect as set out in Schedule 3.

Cows which are in the possession of a producer

32. Paragraph 95 of the old marketing scheme is preserved.

Prescriptive resolutions

33. The Board shall continue to maintain the record of prescriptive resolutions which they were required to keep under paragraph 96 of the old marketing scheme and any person shall be entitled, on payment of the cost of postage and such fee not exceeding one pound as the Board may determine, to be supplied with a copy of any item in such record.

Indemnity

34.—(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 from 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, concurred 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 any such action, cost, charge, loss, damage, expense or liability has arisen from or been contributed to by any dishonest act or omission, wilful default or wilful neglect on the part of such member, officer or auditor.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 26th October 1994.

L.S.

William Waldegrave
Minister of Agriculture, Fisheries and Food

Signed by authority of the Secretary of State for Wales

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

27th October 1994