
STATUTORY INSTRUMENTS

1994 No. 2759

AGRICULTURE

**The Milk Marketing Board (Residuary
Functions) Regulations 1994**

<i>Made</i>	- - - -	<i>27th October 1994</i>
<i>Laid before Parliament</i>		<i>28th October 1994</i>
<i>Coming into force</i>	- -	<i>1st November 1994</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly in exercise of the powers conferred on them by sections 14(2), (3) and (6) and 62(1) and (2) of the Agriculture Act 1993(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

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(2);

“the 1986 Act” means the Insolvency Act 1986(3);

“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;

(1) 1993 c. 37; section 24(2) contains a definition of “the appropriate authority”.

(2) 1958 c. 47.

(3) 1986 c. 45.

“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(4) 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);

“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(5);

“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;

(4) 1985 c. 6.

(5) 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.

“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”;
- (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

SCHEDULE 1

Regulation 2(1)

DISTRIBUTION ENTITLEMENT

Normal entitlement

1. Each registered eligible producer shall be entitled to receive his personal allocation from the relevant asset total.

Personal value

2. The personal value, in respect of each standard eligible producer shall be the value of any qualifying milk sold by him to the Board in the relevant period, calculated in accordance with paragraph 3 below, added to the value of any qualifying milk sold by him in that period otherwise than to the Board for ultimate consumption by the public as milk or in the form of a product which is wholly or partly derived from milk or includes milk as an ingredient, calculated in accordance with paragraph 4 below.

Milk sold to the Board

3.—(1) The value of qualifying milk sold to the Board by any registered eligible producer shall be the total of the values of qualifying milk sold by him in each calendar month during the relevant period to the Board.

(2) The value of qualifying milk sold by any registered eligible producer in any calendar month as mentioned in sub-paragraph (1) above shall be the number of litres of qualifying milk sold to the Board during that month, calculated (in the case of any standard eligible producer) from information held on the Board's records on 11th March 1994, multiplied by his standard entitlement for that month.

(3) In this paragraph—

“milk fund” means the fund formerly provided for in paragraph 50 of the old marketing scheme;

“standard entitlement”, for any producer in respect of any month, means the amount payable to him per litre of milk in accordance with the Board's basis of calculation of entitlement to payments from the milk fund for that month for milk sold to them under a wholesale contract—

- (a) including all supplements finally declared for that month;
- (b) excluding all payments described by provisions of the approved scheme relating to the distribution entitlement as payments of the rolling fund;
- (c) calculated by reference only to the following elements, namely butterfat, protein, lactose, seasonality adjustment, hygiene quality band (TBC and cell count) and failed antibiotic production.

Milk sold otherwise than to the Board

4.—(1) The value of any qualifying milk sold by a producer otherwise than to the Board for the purposes mentioned in paragraph 2 above shall be the total number of litres of qualifying milk sold by him during the relevant period, calculated (in the case of any standard eligible producer) from information supplied on behalf of the Minister to the Board on 11th March 1994, multiplied by the average annual wholesale value.

(2) In this paragraph “average annual wholesale value” means the total value of litres of qualifying milk sold by registered eligible producers to the Board in the relevant period as calculated in accordance with paragraph 3 above divided by the total number of litres so sold.

Rounding

5. The personal allocation shall be rounded down—
- (a) where the allocation is of a quantity of shares, to the nearest whole number of that quantity;
 - (b) where the allocation is of cash being the proceeds of realised assets of the Board, upon an interim payment or on the winding up of the Board, to the nearest whole penny.

Exceptional hardship

6.—(1) The personal value for any accepted hardship producer shall be calculated by reference to the volume of milk produced by him in the alternative period and—

- (a) paragraphs 3(1) and 4(1) above, and
- (b) the definition of qualifying milk in paragraph 7 below,

shall have effect in relation to him as if for the words “relevant period” there were substituted the words “alternative period” and as if, in paragraph 3(2) above, for the words “his standard entitlement for that month” there were substituted the words “his standard entitlement for the equivalent month of the relevant period”.

(2) The personal value for any assessed hardship producer shall be calculated by reference to the determination of the assessor in accordance with the approved scheme.

(3) In this paragraph—

“accepted hardship producer” means a registered eligible producer whose hardship application has been accepted by the Board;

“assessed hardship producer” means a registered eligible producer whose hardship application has been accepted by the assessor;

“assessor” means the person or persons whom the Board has appointed under the approved scheme to review hardship applications which have not been accepted by the Board;

“hardship application” means an application under the approved scheme by an eligible producer pleading that calculation of his personal value by reference to milk produced by him in the relevant period, in comparison with milk produced in the alternative period, would cause him exceptional hardship.

Interpretation

7. In this Schedule—

“allocation ratio” means, in relation to any registered eligible producer, the fraction represented by the personal value divided by the collective value;

“alternative period” means the period commencing on 1st April 1993 and ending on 31st March 1994;

“collective value” means the total of the personal values for all registered eligible producers;

“personal allocation” means the allocation ratio multiplied by the relevant asset total;

“personal value” means the total value of qualifying milk calculated in accordance with paragraph 2 above;

“qualifying milk” means milk produced during the relevant period by a registered eligible producer while he was a relevant producer; and

“standard eligible producer” means a registered eligible producer who is neither an accepted hardship producer nor an assessed hardship producer for the purposes of paragraph 6 above.

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SCHEDULE 2

Regulation 2(1)

ELIGIBLE AND END YEAR PRODUCER CRITERIA

PART I

ELIGIBLE PRODUCER CRITERIA

1. An eligible producer is any person (other than an excluded producer) who—
 - (a) at any time during the relevant period was registered as a producer under the old marketing scheme,
 - (b) both—
 - (i) is a transferee of a person who satisfied the condition specified in sub-paragraph (a) above, and
 - (ii) notified the Board of such transfer in writing using the Board's form CR 160, or
 - (c) subject to paragraph 4 of Part III of this Schedule—
 - (i) is a transferee of a person who satisfied the condition specified in sub-paragraph (a) or (b) above, and
 - (ii) notified the Board of such transfer in writing in accordance with the conditions specified in paragraph 2 of Part III of this Schedule.
2. Evidence that a person sold milk to the Board at any given time shall be deemed to be evidence of his having been registered as a relevant producer at that time.
3. Part III of this Schedule shall have effect to supplement this Part, as well as Part II, of this Schedule.

PART II

END YEAR PRODUCER CRITERIA

1. An end year producer is any person who—
 - (a) sold milk to the Board during the final trading period,
 - (b) both—
 - (i) is a transferee of a person who satisfied the condition specified in sub-paragraph (a) above, and
 - (ii) notified the Board of such transfer in writing using the Board's form CR 160, or
 - (c) subject to paragraph 4 of Part III of this Schedule—
 - (i) is a transferee of a person who satisfied the condition specified in sub-paragraph (a) or (b) above, and
 - (ii) notified the Board of such transfer in writing in accordance with the conditions specified in paragraph 2 of Part III of this Schedule.
2. Part III of this Schedule shall have effect to supplement this Part, as well as Part I, of this Schedule.

PART III SUPPLEMENTAL

1. In this Schedule a person is the transferee of another person if—
 - (a) by reason of that other person dying or becoming subject to some legal disability or entering into a composition or scheme of arrangement with his creditors, he has (in the capacity of a personal representative, trustee, committee or in another like capacity) acquired any of the milk producing business of that other person;
 - (b) if in a transaction for value or otherwise he has acquired any of the milk producing business of that other person, whether he is connected with that other person or not.
2. The conditions mentioned respectively in paragraph 1(c)(ii) of Part I, and paragraph 1(c)(ii) of Part II, of this Schedule are that the transferee shall notify the Board of the transfer in writing—
 - (a) as regards transfers before Vesting Day, within three months, or such longer period as the Board may determine, following Vesting Day, or
 - (b) as regards transfers on or after Vesting Day, within three months, or such longer period as the Board may determine, following the transfer,

using any form of notification approved by the Board which meets the requirement specified in paragraph 3 below.

3. The requirement mentioned in paragraph 2 above is—
 - (a) in relation to a transferee to whom the circumstances described in paragraph 1(a) above apply, that the form of notification shall be signed by or on behalf of the transferee and shall have annexed to it documentary evidence of the acquisition;
 - (b) in relation to a transferee to whom the circumstances described in paragraph 1(b) above apply, that the form of notification shall be signed by or on behalf of the transferor and by or on behalf of the transferee and shall specify the date of the transfer.
4. Regardless of the date of the transfer, the entry of the transferor shall remain on the register until the transferee is entered in the register in his place.
5. In this Schedule “excluded producer” means any producer who during the relevant period was a division or subsidiary of, or was otherwise beneficially owned or controlled by, the Board.

SCHEDULE 3

Regulation 3

PROVISIONS OF THE OLD MARKETING SCHEME PRESERVED, INSERTED OR CONTINUING IN FORCE THE MILK MARKETING SCHEME 1933

PART I. PRELIMINARY

- 3.—(1) Except where the context otherwise requires, a reference in this Scheme to a paragraph—
 - (a) shall be construed as a reference to a paragraph in this Scheme where that paragraph is preserved or continues in force in, or has been inserted into, this Scheme;

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(b) shall be construed as a reference to a paragraph formerly in this Scheme where that paragraph is not one to which paragraph (a) of this sub-paragraph applies.

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

“commercial activities”–

(a) in relation to the final trading period, means the following activities–

- (i) processing milk or producing commodities from milk or commodities of which milk is a substantial ingredient;
- (ii) selling, grading, packing, storing, adapting for sale, insuring and advertising milk so processed or such commodities;
- (iii) transporting milk or such commodities;
- (iv) other activities reasonably incidental to those specified above, and

(b) in relation to the period beginning on Vesting Day, means the following activities–

- (i) buying and selling milk carried out by Dairy Crest Limited;
- (ii) processing milk and producing from milk, or from products derived from milk, commodities or products of which milk, or a product derived from milk, is an ingredient;
- (iii) selling milk so processed or such commodities or such products;
- (iv) grading, packing, storing, adapting for sale, insuring and advertising milk or milk so processed or such commodities or such products;
- (v) transporting milk or milk so processed or such commodities or such products;
- (vi) other activities falling within the objects of Dairy Crest Limited as set out in provisions of the approved scheme relating to the proposed constitution of Dairy Crest Limited, as may be varied from time to time by Dairy Crest Limited with the prior approval of the Board;
- (vii) 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;
- (viii) other activities reasonably incidental to those specified above;

“company” has the same meaning as in section 735(1)(a) of the Companies Act 1985;

“Minister” means the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly;

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

“milk” means cows' milk produced in England and Wales;

“prescription” means a determination by the Board made by means of a prescriptive resolution, and “prescribe” shall be construed accordingly;

“prescriptive resolution” means a resolution of the Board made prior to Vesting Day, embodying a determination of the Board, which was recorded in the record then provided for by paragraph 96;

“producer” means a producer of milk;

“retail” and “semi-retail” in relation to sales of milk mean respectively such class or classes of milk as may from time to time have been prescribed and defined by the Board as such;

“secretary” includes any person for the time being authorised by the Board to act as secretary;

“subsidiary” has the same meaning as it has for the purposes of section 736 of the Companies Act 1985.

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

PART II.

THE BOARD AND COMMITTEES

THE BOARD AND THEIR GENERAL POWERS

6.—(2) The Board shall have an office at which communications and notices will at all times be received and shall notify the Minister of the address and of any change in the address thereof.

7. The Board may employ a secretary and such other officers and employees and engage the services of such persons as they think fit and 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 and, without prejudice to the generality of this provision, may—

- (a) acquire any interest in a body corporate;
- (b) form or take part in forming a body corporate;
- (c) transfer to any such body corporate any of their assets and arrange for it to discharge any of their liabilities.

8. The Board may pay to any member of the Board any such travelling and out-of-pocket expenses as have, in the opinion of the Board, been reasonably incurred by him in connection with the business of the Board.

8A. The Board, to the intent that so far as practicable their commercial activities may be put on an equal footing with the activities of independent commercial undertakings, shall place their commercial activities under a system of financial management and administration which is separately accountable from the system of financial management and administration for the Board’s other activities.

OTHER COMMITTEES

20. The Board may appoint committees consisting of such members of the Board and such other persons as they may determine and, subject to the provisions of this Scheme with respect to the application of the common seal of the Board, may delegate to any committee appointed by them any of the powers of the Board, except a power in connection with the borrowing of money.

PROCEEDINGS OF THE BOARD

25. All acts done at any meeting of the Board or of any committee appointed by them shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of a person purporting to be a member of the Board or of 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 or such member had been entitled to vote.

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MINUTES

26. Minutes shall be kept of the proceedings of the Board and of every committee thereof, and any such minutes shall, if signed by a person purporting to have acted as chairman of the meeting to which the minutes relate or of a meeting at which they were read, be evidence of the proceedings at the first-mentioned meeting, and the meeting to which any such minutes related shall be presumed, until the contrary is proved, to have been regularly convened and constituted.

27. For the purpose of any proceedings a copy, purporting to be certified in writing by the chairman or vice-chairman or secretary of the Board to be a true copy, of the minutes or any parts of the minutes of any meeting of the Board or any committee of the Board shall be evidence of such of the proceedings at the said meeting as such minutes or parts of the minutes purport to relate to and, until the contrary be proved, the meeting shall be presumed to have been regularly convened and constituted.

THE SEAL

28. The common seal of the Board shall not be applied to any document except by the authority of the Board, and the application of the seal shall be attested by the chairman, or vice-chairman, and at least one other member of the Board and by the Secretary.

CONTRACTS

29. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed on behalf of the Board by any person authorised by them in that behalf, either generally or specially.

30. No contract to which the Board is a party shall be avoided by reason only that a member of the Board is also a party thereto or is interested therein, and a member of the Board who is a party to, or interested in, such a contract shall not, by reason only that he is a member of the Board, be liable to account to the Board for any profit realised by him by reason of the contract; but a member of the Board must forthwith disclose to the Board any interest which he has or acquires in any contract whatsoever, if such interest in any way conflicts with his duty as a member of the Board, and shall not vote upon any question relating to the contract, and if he does vote, his vote shall not be counted; but he shall, nevertheless, be taken into account for the purpose of constituting a quorum of the Board or of any committee appointed by them:

Provided that a member of the Board shall not be precluded from voting on a question relating to—

- (a) the general policy of the Board with respect to any matter by reason only that the determination of that question will or may affect contracts which have been, or may thereafter be, entered into by him with the Board;
- (b) any contract for the provision of remuneration, allowances or gratuities which the Board are empowered to effect by virtue of regulation 8(3).

PART III.

REGISTER OF PRODUCERS

39.—(1) Any person shall be entitled, on payment of the cost of postage and such fee not exceeding one pound per entry as the Board may determine, to be supplied with a copy of any entry in the register.

(2) Notwithstanding sub-paragraph (1) above, a registered producer on written application to the Board shall be entitled to be supplied with a copy of the entry which relates to him free of charge.

41.—(1) Registration of the name or style under which two or more persons carry on business in partnership as producers shall operate as the registration of all partners for the time being so however that (a) for the purposes of the provisions of this Scheme which relate to voting at meetings and assessment of contributions from relevant producers all the partners shall be regarded as constituting together a single registered producer or a single relevant producer (as the case may be) and (b) a person registered as a partner as aforesaid shall not be deemed to be registered as a producer except in respect of transactions which form part of the partnership business.

(2) Subject to sub-paragraphs (3) and (4) below, 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, the 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.

(3) On the day of the transfer and for three months, or such longer period as the Board may determine, thereafter only, the personal representative, trustee, committee, or other person may do, without being registered under sub-paragraph (4) below, anything for the purposes of this Scheme in relation to the business so transferred which the registered producer might have done.

(4) Registration under this sub-paragraph shall be effected by notification to the Board in accordance with Schedule 2 to the Milk Marketing Board (Residuary Functions) Regulations 1994.

PART V.

FINANCIAL PROVISIONS

52. The Board may, for the purpose of exercising any of their functions, borrow money in such manner, on such terms, and on such security, as may be arranged by them with the person from whom the money is borrowed.

52A. The Board shall not make money or other financial benefits available for use in their commercial activities except on the market terms then prevailing.

53.—(1) The Board shall keep proper and separate accounts and records in respect of:

- (a) their commercial activities; and
- (b) their non-commercial activities,

and in particular shall annually make out for their commercial activities and for their non-commercial activities (other than their non-commercial activities in relation to the final trading period) separate cash flow accounts, balance sheets and income and expenditure accounts, and if the Board trade for profit, separate profit and loss accounts. Such accounts shall be in a form which shall be in accordance with accounting principles which are generally accepted in the United Kingdom. Consolidated accounts comprising all of the Board's activities or in respect of their commercial activities as a whole need not be prepared. The accounts in respect of their non-commercial activities shall in particular include a statement of accounting policy and such schedules and notes as the Board consider appropriate but shall in any case include schedules specifying—

- (i) the movement and amount of moneys in the B Reserve Fund;
- (ii) payments made to end year producers and other relevant producers under regulation 21(1)(e);
- (iii) interim distributions;
- (iv) collections of contributions from eligible producers under regulation 21(1)(h);
- (v) final distributions.

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(1A) In sub-paragraph (1) above the expression “annually” means in any twelve month period and in making out their annual accounts under that sub-paragraph the Board may—

- (a) determine in respect of their accounts for their commercial activities an accounting period which differs from such period in respect of their accounts for their non-commercial activities, and
- (b) determine accounting periods of any duration, commencing immediately after the end of the previous one.

(1B) The Board shall make out for their non-commercial activities in the final trading period special cash flow accounts, balance sheets and income and expenditure accounts, and if the Board trade for profit, separate profit and loss accounts. Such accounts shall be in a form which shall be in accordance with accounting principles which are generally accepted in the United Kingdom. Consolidated accounts comprising all of the Board’s non-commercial activities need not be prepared. The accounts shall in particular include a statement of accounting policy and such schedules and notes as the Board consider appropriate.

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

(3) The Board shall cause all their accounts and balance sheets prepared pursuant to sub-paragraph (1) or (1B) above to be audited by a member of, or a firm of accountants containing a member of, the Institute of Chartered Accountants in England and Wales or of the Association of Certified Accountants appointed (in the case of accounts and balance sheets which do not fall to be noted at their first annual general meeting after Vesting Day) by the registered producers in general meeting or (in the case of other accounts and balance sheets) either by the registered producers in general meeting or by relevant producers at the last general meeting before Vesting Day on which such an appointment was made. As soon as may be after the auditor has reported thereon, and in any case within nine months from the close of the period covered by any profit and loss account or income and expenditure account, the Board shall send to the Minister and to every registered producer a copy of the account and balance sheet and of the report of the auditor thereon, and also a report by the Board as to the discharge of their functions in the period covered by the profit and loss or income and expenditure account, which shall include a statement of the manner in which any moneys are invested.

The report of the Board mentioned in the preceding paragraph of this sub-paragraph which relates to the Board’s accounts and balance sheets for their non-commercial activities in the final trading period (prepared pursuant to sub-paragraph (1B) above) shall include such information relating to the Board’s commercial activities during that period as the Board think appropriate.

The Board shall on the demand of any person and on payment by him of such fee, not exceeding one pound, as may be fixed by the Board furnish to him a copy of any of their balance sheets.

(4) The Board shall furnish the Minister with such information as he may from time to time require concerning any of the Board’s activities. The Board shall also 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 paragraph 8A, of this Part of this Scheme, of Council Regulation (EEC) No. 1422/78⁽⁶⁾ and of Commission Regulation (EEC) No. 1565/79⁽⁷⁾.

(5) In this paragraph “non-commercial activities” means activities of the Board which are not commercial activities.

⁽⁶⁾ OJ No. L171, 28.6.78, p.14.

⁽⁷⁾ OJ No. L188, 26.7.79, p.29.

PART VI.

PRINCIPAL POWERS OF THE BOARD

MISCELLANEOUS POWERS

59A.—(1) For the purpose of complying with paragraph 8A, the Board may if it thinks fit and with the approval of the Minister—

- (a) set up a company to carry out commercial activities or to form a subsidiary to carry out commercial activities;
- (b) transfer to that company such assets or liabilities as are necessary;
- (c) make available to or for that company or that subsidiary on prevailing market terms loans, guarantees or other financial benefits;
- (d) on prevailing market terms grant security over their assets in support of borrowings undertaken by that company or that subsidiary.

(2) For so long as and to the extent that any commercial activities of the Board are, under paragraph 59A, carried out by a company or subsidiary of the company—

- (a) they shall be the activities of that company or that subsidiary;
- (b) reference to their commercial activities in paragraphs 52A and 53 shall be construed accordingly; and
- (c) reference to the Board's accounts and records in paragraph 53(4) of this Scheme shall be construed as including a reference to that company's accounts and records and, if applicable, that subsidiary's accounts and records.

59B. The Board shall ensure that moneys received in payment for milk supplied by them are not used in their commercial activities, except as permitted in paragraph 59A(1)(c) and (d).

ASSESSMENTS OF SALES

- (a) **71.** (2) (a) If the Board are unable to obtain from any relevant producer a sufficient return showing the number of litres of milk sold by him during any accounting period he shall if the Board think fit be treated as having sold on each day during that period such number of litres of milk as the Board may think proper in respect of every cow which he had in his possession the first day of that period.
- (b) If the Board are unable to obtain from any relevant producer a sufficient return showing the number of cows in his possession on the said date, he shall if the Board think fit be treated as having in his possession on that date such number of milch cows as was shown in any return or written statement previously made by him to the Board as having been in his possession on any previous date.

(5) In this paragraph the expression “accounting period” means such periods as the Board may from time to time determine.

INFORMATION AND INSPECTION

75. The Board may, whenever they consider it necessary for the discharge of their functions so to do, serve on any relevant producer a demand in writing requiring him to furnish to them such returns and other information relating to milk produced by him at any time prior to Vesting Day as may be specified in the demand.

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CONTRAVENTIONS

- (a) 77. (1) (a) If any relevant producer—
- (i) has before Vesting Day contravened any prescription of the Board under paragraph 60 or 61, or
 - (ii) has before Vesting Day sold milk in contravention of a direction of the Board given under paragraph 63,

the Board may recover from him such financial contribution (not exceeding £1,000 plus half the price for which the milk to which the contravention relates was sold) as they may determine.

- (b) If any relevant producer has before Vesting Day sold milk by retail or by semi-retail in contravention of any prescription of the Board under paragraph 69, the Board may recover from him such financial contribution (not exceeding £1,000) as they may determine.
- (c) If any relevant producer fails without reasonable excuse to comply with any demand made by the Board under paragraph 75, or knowingly makes any false statement in reply thereto, then the Board may recover from him such financial contribution (not exceeding £200) as they may determine.
- (ca) If any relevant producer who has before Vesting Day withheld milk for the purposes of paragraph 56A(1)(iv) (for sale to an exempt producer⁽⁸⁾) has before Vesting Day failed without reasonable excuse to comply with any requirement of paragraph 56A(4)(b) or in purported compliance with any such requirement has before Vesting Day knowingly made any false return or has before Vesting Day knowingly given any false information, then the Board may recover from him such financial contribution (not exceeding £200) as they may determine.
- (d) No such contribution may be recovered in respect of such a contravention as aforesaid which would constitute an offence under any Act other than the 1958 Act.

(3) As soon as may be after the Board have made any determination under sub-paragraph (1) above, written notice of their decision shall be sent to the relevant producer in question and he may, on or before the fourteenth day after the date on which the notice was sent to him, give notice to the Board requiring the Board to refer the matter to arbitration under the provisions of this Scheme, and if that notice is given to the Board and is not withdrawn, no proceedings shall be taken by the Board otherwise than for the purposes of arbitration or to enforce the award of the arbitrator; and the arbitrator may award payment by the producer of such contribution or other sums as he thinks just but not exceeding the maximum contribution which could have been required by the Board.

(4) The Board shall have the power to reconsider any determination under sub-paragraph (1) above in relation to the case of any producer if, upon considering any written application in that behalf by the relevant producer in question made within three months after the date of the determination, the Board is satisfied that—

- (a) there may be facts relevant to the case other than the facts which were before the Board at the time of the determination,
- (b) if such other facts had been previously known to the Board, their decision would have been influenced thereby, and
- (c) the matter has not been referred to arbitration pursuant to sub-paragraph (3) above.

- (a) (5) (a) If the Board determine pursuant to sub-paragraph (4) above to reconsider any case, and if, as a result, that it is proper to vary their first determination in that case, they shall vary that determination.

⁽⁸⁾ Paragraph 56 of the old marketing scheme made provision for the exemption of producers from the operation of certain provisions of Part VI of that scheme.

(b) The provisions of sub-paragraph (3) above shall apply to every such varied determination in like manner as it applies to an initial determination of the Board.

(6) Subject as aforesaid, every contribution required to be paid by a decision of the Board shall be a debt due to the Board and recoverable accordingly.

(7) A person whose name appeared upon the register of relevant producers at the date when he contravened any provision of this Scheme or of the old marketing scheme shall, notwithstanding that his name has since been removed from the Board's register, be deemed to remain a relevant producer for the purpose of this paragraph.

PART VII.

MEETINGS OF REGISTERED PRODUCERS

78.—(1) Subject to paragraph (3) below, the Board shall at such time as they think fit in each calendar year starting with 1995 hold a general meeting of registered producers as their annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting and the next.

(1A) At any annual general meeting of the Board after 31st December 1995 the questions to be put before the meeting for a decision shall be limited to the noting of the Board's accounts, determination of the remuneration of members of the Board and appointment of the Board's auditors and at any such general meeting of the Board before 1st January 1996 the questions to be put before the meeting for a decision shall be limited to the noting of the Board's accounts and appointment of the Board's auditors.

(1B) At every annual general meeting of registered producers after 31st December 1995, the procedure specified in paragraph 78A shall apply in respect of the remuneration of the members of the Board.

(2) The Board may hold other general meetings of registered producers at such times as the Board think fit, but the remuneration of the members of the Board shall not be a matter for determination at any such other general meeting.

78A.—(1) The procedure referred to in paragraph 78(1B) shall operate in accordance with the remainder of this paragraph, and the remuneration of the members of the Board shall be regarded as determined in accordance with that procedure when specified in a proposal approved under this paragraph.

(2) The Board shall prepare a proposal for such remuneration as they shall have determined is appropriate and shall bring it to the attention of registered producers as provided for in paragraph 80.

(3) Any registered producer may make an alternative proposal for the remuneration of the members of the Board (in this paragraph referred to as a "qualifying alternative proposal") provided that it is—

(a) supported by the signatures of persons representing no less than one per cent of all registered producers, and

(b) lodged in writing with the Board not later than the seventh day before the day fixed for the holding of the annual general meeting.

(4) The Board shall bring all qualifying alternative proposals to the attention of registered producers by publishing notice of them as soon as is reasonably practicable before the day fixed for the holding of the annual general meeting in the London Gazette and in one or more newspapers or journals circulating in England and Wales.

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(5) The chairman of the meeting shall submit the Board's proposal for the remuneration to the meeting for a vote and if (in accordance with the voting rules contained in this Part of the Scheme) it is not approved, he shall, subject to sub-paragraph (7) below, submit any qualifying alternative proposal to the meeting for a vote.

(6) If (in accordance with the voting rules contained in this Part of the Scheme) any qualifying alternative proposal submitted to the meeting is not approved, the chairman of the meeting shall, subject to sub-paragraph (7) below, submit another qualifying alternative proposal (if any) to the meeting for a vote.

(7) In determining in which order to submit the qualifying alternative proposals (if there are more than one) to a vote, the chairman's discretion shall be absolute.

(8) Without prejudice to the provisions set out in this Part of the Scheme for the adjournment of any general meeting or the demanding of a formal vote, the procedure described in sub-paragraph (6) above shall continue until—

- (a) a qualifying alternative proposal has been approved, or
- (b) all the qualifying alternative proposals have been rejected.

(9) Where a qualifying alternative proposal has been approved, the Board may no later than the twenty-eighth day after the date of that approval apply to the Minister for the Minister to substitute in place of the remuneration for the members of the Board specified in the approved proposal such remuneration as the Minister considers to be at a level below which it would not be reasonable to expect the functions exercisable by the members of the Board to be discharged efficiently, and on receipt of such an application by the Minister—

- (a) the Minister shall proceed, taking such steps in doing so as he thinks fit, to determine that level of remuneration (whether higher than, lower than or equal to the remuneration specified in the approved proposal), and
- (b) the level of that remuneration so determined shall be treated for the purposes of this Scheme to be the remuneration specified in the approved proposal at the time the proposal was approved.

79.—(1) Subject to sub-paragraph (2) below, the chairman of every meeting of registered producers shall be the chairman of the Board if present or, in his absence, the vice-chairman unless absent.

(2) In the absence of the chairman and vice-chairman of the Board, the chairman of any meeting of registered producers shall be appointed by the meeting.

80. Not later than the twenty-first day before the day fixed for the holding of an annual general meeting, and not later than the fourteenth day before the day fixed for the holding of any other meeting of registered producers, the Board shall send to every registered producer who is entitled to vote at the meeting a proxy form and a notice stating:—

- (a) the time and place appointed for the holding of the meeting;
- (b) the business to be transacted (which, at every annual general meeting after 31st December 1995 shall include a statement of the Board's proposal for the remuneration of the members of the Board).

80A.—(1) Notwithstanding having published notice of a general meeting under paragraph 80 and notwithstanding any such meeting having commenced, the Board shall have the power to adjourn that meeting if they think fit and shall publish notice of the adjourned meeting in the London Gazette and in one or more newspapers or journals circulating in England and Wales.

(2) The notice mentioned in sub-paragraph (1) above shall be published not later than the times, and shall contain the information, as are specified in paragraph 80 of this Scheme together with the address from which proxy forms may be obtained.

81. At a meeting of registered producers no business shall be transacted other than the business of which notice has been given as aforesaid by the Board.

81A. Paragraph 81 shall not restrict any registered producer at any general meeting of registered producers from raising any matter relating to the activities of the Board but, except to the extent that it is a matter specified in paragraph 78(1A), any matter so raised may not be put before the meeting for a decision.

82. At a general meeting every registered producer shall be entitled to vote.

83. At any meeting of registered producers the producers entitled to vote thereat may vote either personally or by proxy. The instrument appointing a proxy shall be in writing in such form as the Board may require, under the hand of the registered producer or his agent whose signature the Board have been authorised and requested by the registered producer in writing to accept, or, if the registered producer is a corporation aggregate, either under its seal or under the hand of a member of the board of directors or other governing body of the corporation or of its secretary or other permanent officer. The said instrument and the authority (if any) under which it is signed (or a notarially certified copy thereof) shall be deposited with the Board at such place as may be indicated in the form not later than 6 pm on the third day before the day fixed for the meeting, and in default the instrument shall be treated as invalid. A proxy shall be entitled to participate in the meeting only to the extent necessary to enable him to exercise his right to vote and to demand a formal vote.

A proxy need not be a registered producer, but shall not be a person employed on the staff of the Board.

84. Every question put before a meeting of registered producers shall be decided on a show of hands (a proxy may show his hand) unless, either before or immediately after the declaration of the result of the show of hands, a formal vote is demanded by the Board or by or on behalf of at least one third of those registered producers present in person or by proxy entitled to vote. On a formal vote the Board shall determine the form of the voting paper and shall cause to be sent to every registered producer along with the voting paper such directions for the guidance of registered producers in voting as they may determine. The voting paper shall be sent by post to the registered producers concerned as soon as practicable after the meeting at which the formal vote is demanded. The Board shall determine the last date for the receipt of completed voting papers, how the votes shall be counted, and the manner in which registered producers shall be informed of the result of the vote.

85. On a show of hands and also on a formal vote every registered producer entitled to vote shall have one vote.

87. Without prejudice to the provisions of this Part of this Scheme relating to proxies, a registered producer being a corporation aggregate may exercise any of its rights at a meeting of registered producers by a member of the board of directors or other governing body of the corporation, or by its secretary or other permanent officer, and a registered producer who is a partnership may exercise any of their rights at such a meeting by any of their partners.

88. At any meeting of registered producers the declaration of the chairman as to the result of any show of hands shall be final. In the event of an equality of votes, whether on a show of hands or on a formal vote, the chairman of the meeting at which the show of hands took place or at which a formal vote was demanded (as the case may require) shall be entitled to an additional or casting vote.

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PART VIII.

AMENDMENT AND REVOCATION OF SCHEME AND WINDING UP OF THE BOARD

91. 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 paragraphs 91A and 91B.

91A.—(1) 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 222(1) of that Act) to present a petition for winding up of the Board.

(2) Sections 202, 203 and 205 of the 1986 Act shall not apply in relation to the Board.

(3) 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 paragraph 6(2).

(4) 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.

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

(6) 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.

91B. In the event of the final liquidation of the Board under the 1986 Act and for the purposes of section 226 of the 1986 Act, and whether or not the powers conferred on the Board and the Minister by section 17 of the Act have been exercised, every eligible producer shall be liable to contribute to the payment of the debts and liabilities of the Board and to the payment of the costs and expenses of the winding up and his liability shall be an amount assessed in the manner and subject to the limitations which are provided for in paragraph 92 but save as aforesaid 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 producer registered with the Board or a member of the Board.

92. Contributions under paragraph 91B shall be assessed, in relation to each contributor, proportionately to the maximum number of milch cows which were in his possession in England and Wales at any one time during the year immediately before the presentation of the petition for winding up, and shall not in any case exceed one pound sterling per cow.

PART IX.

MISCELLANEOUS

93.—(1) Any relevant producer who is aggrieved by an act or omission of the Board arising in the period prior to Vesting Day or by any assessment made by the Board under paragraph 71(2) may refer the matter to the arbitration of a single arbitrator to be agreed upon between the producer and the Board or, in default of agreement, to be nominated by the Minister on the application of either party, and the arbitrator may make such order in the matter as he thinks just.

(2) Where any relevant producer gives notice to the Board under paragraph 77(3), that notice shall be treated for the purposes of this paragraph as requiring the Board to make the reference to which sub-paragraph (1) above refers.

(3) The Arbitration Act 1950⁽⁹⁾ shall apply to every arbitration consequent on a reference under this paragraph.

(9) 1950 c. 27.

94. Any requirement of this Scheme that a document shall be sent to, or served on, a person by the Board shall be deemed to have been complied with if, within the period (if any) limited for the sending or service of the document, the document is despatched to him by post, to his address as the same appears in the register and with the postage pre-paid.

95. For the purposes of this Scheme except paragraph 69A every cow which is for the time being upon premises occupied by a producer shall, unless the contrary be proved, be deemed to be in the possession of that producer.

SCHEDULE 4

Regulations 18(1) and 21

B RESERVE FUND

1.—(1) The Board shall maintain the B Reserve Fund in a separate account which shall be a deposit account opened in their name at a clearing bank and designated “B Reserve Fund Account”.

(2) The Board shall keep and maintain records of—

- (a) payments into,
- (b) withdrawals from, and
- (c) interest accrued to,

the account mentioned in paragraph (1) above.

2.—(1) The milk receipt retentions shall be payable to end year producers in accordance with, and to the extent provided for in, this Schedule.

(2) Any amount which in accordance with this Schedule the Board determine shall be paid as an interim payment for the purpose of repayment of the milk receipt retentions (in this Schedule referred to as “interim payment”) or as a final payment for that purpose (in this Schedule referred to as “final payment”) shall be divided among the producers in respect of whose milk the milk receipt retentions have been made proportionately to the amounts of such retentions.

(3) Subject to sub-paragraph (4) below, the Board shall complete the payments referred to in sub-paragraph (2) above before they make any interim or final distributions.

(4) Sub-paragraph (3) above shall not prohibit the earlier transfer or, as the case may be, issue and allotment referred to in sub-paragraph (a) of the definition of “relevant asset total” in regulation 2(1).

3. No sum may be withdrawn from the B Reserve Fund unless—

- (a) such withdrawal is in accordance with paragraphs 4, 6, or 7 below, and
- (b) the authority or consent of the Minister has first been obtained.

4.—(1) Subject to paragraph 3(b) above, and provided that the condition specified in paragraph 5 below is complied with, the Board may withdraw moneys standing to the credit of the B Reserve Fund in order to—

- (a) discharge any actual liabilities—
 - (i) as they fall due for payment;
 - (ii) upon the winding up of the Board;
- (b) make interim and final payments.

(2) The Board shall hold any moneys not so withdrawn as a reserve in order to meet the Board’s contingent liabilities or make further interim payments or apply them in accordance with paragraph 6 below.

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5. The condition mentioned in paragraph 4 above is that the Board shall withdraw moneys under that paragraph only if they would otherwise be unable to discharge such liabilities or make such payments.

6. Subject to paragraph 3(b) above, the Board shall withdraw all moneys standing to the credit of the B Reserve Fund (to the extent that such money is not withdrawn upon the winding up of the Board for the purpose of discharging actual liabilities) and apply them as a final payment at the final liquidation of the Board.

7.—(1) Subject to the provisions of this paragraph, where—

- (a) the Board have withdrawn funds from the B Reserve Fund to meet, and have met, their liabilities, and
- (b) there are moneys standing to the credit of the general fund,

the Board shall apply such moneys to make a final payment in accordance with sub-paragraph (2) below.

(2) The amount to be paid in the circumstances mentioned in sub-paragraph (1) above shall be an amount which is equal to all the withdrawals which have been made from the B Reserve Fund for the purpose of meeting liabilities of the Board (other than liabilities in respect of repayment of the milk receipt retentions), increased or decreased correspondingly with any adjustment made to the total of the B Reserve Fund under paragraph 8 below.

(3) This paragraph is subject to paragraph 3(b) above.

8. Any net surplus or deficit in funds arising from the Board's normal trading activities at Vesting Day shall be added to or subtracted from the B Reserve Fund prior to determining the total amount to be paid by way of final payments.

9. As long as moneys remain in the B Reserve Fund it shall be reviewed by the Minister at the expiry of the sixth calendar month after Vesting Day and thereafter at intervals of six months.

10. The Minister shall notify the Board of any amount by which the B Reserve Fund appears to the Minister on a review under paragraph 9 above to exceed the reasonable requirements of the Board and on such notification the Board shall arrange for that amount to be withdrawn from it by way of interim or final payments.

11. In this Schedule "milk receipt retentions" means the sum which in accordance with provisions of the approved scheme relating to the B Reserve Fund—

- (a) is retained by the Board from their receipts for milk supplied to them by end year producers in the final trading period (being not less than 0.2 pence per litre of milk supplied by every such producer in that period), and
- (b) is paid by the Board into the B Reserve Fund.

SCHEDULE 5

Regulation 21(1)(d)

DISPOSAL OF DAIRY CREST SHARES

1. This Schedule shall apply to the extent that the Dairy Crest shares are retained.

2. As soon as practicable after Vesting Day the Board shall proceed to determine the feasibility of achieving a flotation of the company.

3.—(1) In determining the feasibility of achieving a flotation of the company and in assessing the timetable for such flotation the Board shall have regard to all relevant considerations.

(2) Subject to sub-paragraph (1) above, the considerations to which the Board may have regard shall include—

- (a) the circumstances which prevented the achievement of a flotation prior to Vesting Day,
- (b) the continuing suitability of the company for the admission of its ordinary share capital to the Official List of the London Stock Exchange,
- (c) their views and the views of their financial advisers, the company and the company's financial advisers as to the company's suitability for a flotation and the stock market conditions for such flotation,
- (d) the amount of funding which the Board require to achieve from the disposal of their interest in the company, and
- (e) such other factors as they, the company and their own and the company's advisers consider to be relevant.

4. If the Board determine that it is feasible, and that it is in the interests of registered eligible producers, to proceed with a flotation of the company, the Board shall take such steps as they consider necessary or appropriate to undertake the objective specified in paragraph 5 below.

5. The objective mentioned in paragraph 4 above is to implement the flotation in the shortest time scale that (having regard to all relevant considerations) the Board consider appropriate unless any material change in circumstances arises which has the effect that the flotation is no longer considered by the Board and their advisers and other persons mentioned in paragraph 3(2)(c) above to be feasible or consistent with the interests of registered eligible producers.

6. In implementing the flotation of the company the Board may give such undertakings, warranties and indemnities and bear such costs as they consider necessary or appropriate having regard to the advice of their advisers.

7. Nothing in paragraphs 2 to 6 above shall be construed as restricting the Board from disposing of their interest in the company by such other method as they consider appropriate if, having regard to the interests of registered eligible producers, they consider the advantages of proceeding with that method to outweigh the advantages of proceeding with a flotation.

8. Until such time as their entire interest in the share capital or business of the company has been disposed of the Board shall, subject only to taking any steps they consider necessary to protect the interests of registered eligible producers—

- (a) consult with the management of the company as to the Board's plans for the disposal of their interest;
- (b) not seek to use their rights as a shareholder to intervene in commercial decisions made by the company in the day to day management of its business;
- (c) to the extent that any goods or services are required to be supplied by the Board to the company or by the company to the Board, ensure that such supplies are made on reasonable arm's length terms;
- (d) to the extent that any arrangements are required to be entered between the Board and the company with regard to the financing of the Board, ensure that such arrangements are entered into on reasonable arm's length terms.

9. In this Schedule "company" means Dairy Crest Limited, Dairy Crest plc, or any other company formed to acquire the shares or business of Dairy Crest Limited.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

In accordance with the Agriculture Act 1993 (“the Act”) the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales have granted an application by the 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 certain of the Board’s property, rights and liabilities on 1st November 1994 and for its other assets to remain with the Board for distribution to milk producers who were registered with the Board during the period 1st April 1992 to 31st March 1993.

As a result of the transfer, section 1 of the Act provides that the Milk Marketing Scheme 1933 (“the old 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 residuary form and so much of the old marketing scheme as relates to the winding up of the Board shall continue in force, subject to Regulations which may be made under section 14 of the Act.

These Regulations, which 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 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 old 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 Ministry of Agriculture, Fisheries and Food, Whitehall Place, London SW1A 2HH. A copy has been placed in the library of each House of Parliament.