
STATUTORY INSTRUMENTS

1993 No. 2665

The Agriculture (Northern Ireland) Order 1993

PART II

MILK MARKETING

Introductory

Interpretation of Part II

3. In this Part—

“approved scheme” means a scheme of reorganisation in relation to which an application under Article 5, but no application under Article 9, has been granted (with any variations approved under Article 8);

“the Board” has the meaning given by Article 5(1);

“notice” means notice in writing;

“registered producers” means persons registered as producers under the 1989 Scheme;

“scheme of reorganisation” has the meaning given by Article 5(1);

“subsidiary” has the same meaning as in the Companies (Northern Ireland) Order 1986(1); and

“the 1989 Scheme” has the meaning given by Article 4(1).

Ending of the Milk Marketing Scheme

Revocation of the Milk Marketing Scheme

4.—(1) The Milk Marketing Scheme (Northern Ireland) 1989 (“the 1989 Scheme”), having effect under the Agricultural Marketing (Northern Ireland) Order 1982(2), is hereby revoked.

(2) Subject to paragraphs (3) and (4), paragraph (1) shall come into operation on 1st April 1994.

(3) The Department may by order provide that paragraph (2) shall have effect with the substitution for 1st April 1994 of such later date before 1st January 1996 as may be specified in the order.

(4) Where property, rights or liabilities of the Board are transferred under Article 14 (statutory transfer on vesting day under approved scheme of reorganisation)—

(a) paragraph (2) shall not apply; and

(b) paragraph (1) shall come into operation on the day of the transfer.

(5) Where paragraph (4) applies, the Department shall by order certify the fact and date of its application.

(1) 1986 NI 6

(2) 1982 NI 12

*Scheme of reorganisation***Applications for approval**

5.—(1) The Milk Marketing Board for Northern Ireland (“the Board”) may, at any time before 1st January 1994, apply to the Department for approval of a scheme for the reorganisation of the arrangements relating to the marketing of milk in Northern Ireland (“scheme of reorganisation”).

(2) An application under this Article shall include—

- (a) a copy of the scheme to which the application relates;
- (b) a statement of the Board’s reasons for believing that the scheme is one which ought to be approved;
- (c) a statement, in relation to each successor body proposed to be engaged in milk trading, of the practices proposed to be adopted by it with respect to such trading; and
- (d) a statement of the Board’s reasons for believing that those practices satisfy Article 6(2)(a)(iii).

(3) Subject to paragraph (4), an application under this Article may be amended or withdrawn at any time before the Department has finally determined it.

(4) An application under this Article may not be amended at any time after the Department has given the Board notice under Article 7(2) or (3).

(5) Where the Board has made an application under this Article, it may not make a further such application until the previous application has been finally determined or withdrawn.

(6) No application under this Article may be made by the Board if it has obtained approval of a scheme of reorganisation under this Part.

(7) The Department may by order extend the period for making applications under this Article.

(8) In paragraph (2)(c), “successor body” means a body to which property, rights or liabilities of the Board are, under a scheme of reorganisation, proposed to be transferred under Article 14.

Determination of applications

6.—(1) This Article applies where the Board makes an application under Article 5 for approval of a scheme of reorganisation.

(2) The Department shall not grant the application unless—

- (a) it is satisfied—
 - (i) that the Board has taken reasonable steps to bring the principles of the scheme to the attention of persons who are registered producers;
 - (ii) that the scheme is a qualifying scheme under Schedule 1; and
 - (iii) that the practices contained in the statement mentioned in Article 5(2)(c) take account of the interests of purchasers of milk; and
- (b) it has consulted about the principles of the scheme such persons appearing to it to be representative of the interests of producers, purchasers, retailers and consumers of milk as it considers appropriate.

(3) Subject to that—

- (a) if the Department is satisfied that the scheme is one which ought to be approved, it shall grant the application; and
- (b) if it is not so satisfied, Article 7 shall apply.

(4) In determining for the purposes of paragraph (3) whether the scheme ought to be approved, the Department shall have regard to all the circumstances and, in particular, to—

- (a) whether the scheme takes account of the interests of consumers of milk and producers of milk;
- (b) whether the scheme makes reasonable provision for the distribution of assets to persons by reference to their being, or having been, registered producers;
- (c) whether it is unlikely that any person to whom a liability is transferred under the scheme will be unable to meet it;
- (d) whether it is unlikely that the Board will be unable to meet retained liabilities out of retained assets; and
- (e) whether the structure of the new arrangements contemplated by the scheme is such as to allow for the development of competition in milk marketing.

(5) The scheme shall not be taken to be unreasonable in its treatment of the distribution of assets to persons by reference to their being, or having been, registered producers by virtue only of the fact that it—

- (a) specifies a date by reference to which any such distribution is to be made; or
- (b) provides for any such distribution to be made by reference to the occurrence in a specified period (being a period of at least a year) of any relevant matter,

provided the specified date or, as the case may be, the end of the specified period, is not earlier than 31st March 1993 and not later than the vesting day under the scheme.

(6) For the purposes of paragraph (5), the following are relevant matters—

- (a) the production of milk; and
- (b) the sale of milk by the person responsible for producing it.

(7) For the purposes of paragraph (6)(b), milk shall be treated as sold if it is sold in the form of milk or in the form of a product which is wholly or partly derived from milk or which includes milk as an ingredient.

Procedure where scheme not one which ought to be approved

7.—(1) This Article applies where, on an application by the Board under Article 5 for approval of a scheme of reorganisation, the Department is satisfied as mentioned in paragraph (2)(a) of Article 6, but is not satisfied as mentioned in paragraph (3)(a) of that Article.

(2) Where the Department is satisfied that the scheme is not capable of being modified so as to bring it within Article 6(3)(a), it shall refuse the application, but, before finally concluding that the application should be refused under this paragraph, it shall—

- (a) give the Board notice of the conclusions it proposes to reach about the scheme and of the reasons for them;
- (b) specify in the notice under sub-paragraph (a) a day, at least 28 days after the date of the notice, on or before which the Board may make written representations to the Department about those conclusions; and
- (c) take into consideration any representations made to it under sub-paragraph (b) or in response to an invitation by it to the Board to make oral representations about those conclusions.

(3) Where the Department is satisfied that the scheme is capable of being modified so as to bring it within Article 6(3)(a), it shall give the Board notice of—

- (a) the modifications which it considers would bring it within that provision;

- (b) the reasons for them; and
 - (c) a day, at least 28 days after the date of the notice, on or before which the Board may respond to the proposed modifications.
- (4) If, before the end of the period for responding to the proposed modifications, the Board gives the Department notice of its agreement to them, the application shall be treated as relating to the scheme with those modifications.
- (5) If, at the end of the period for responding to the proposed modifications, the Board has not—
- (a) persuaded the Department that no modifications are required;
 - (b) given the Department notice of its agreement to the proposed modifications; or
 - (c) given the Department notice of proposed alternative modifications,
- the Department shall refuse the application.
- (6) Paragraphs (7) and (8) apply where, before the end of the period for responding to the proposed modifications, the Board gives the Department notice of proposed alternative modifications.
- (7) If the Department is satisfied that the proposed alternative modifications would bring the scheme within Article 6(3)(a), it shall treat the application as relating to the scheme with those modifications.
- (8) If the Department is not so satisfied, it shall refuse the application, but, before finally concluding that the application should be refused under this paragraph, it shall—
- (a) give the Board notice of the conclusion it proposes to reach about the proposed alternative modifications and of the reasons for it;
 - (b) specify in the notice under sub-paragraph (a), a day, at least 28 days after the date of the notice, on or before which the Board may make written representations to the Department about that conclusion; and
 - (c) take into consideration any representations made to it under sub-paragraph (b) or in response to an invitation by it to the Board to make oral representations about that conclusion.
- (9) The Department may by notice to the Board extend (or further extend) as it thinks fit—
- (a) the period under paragraph (2)(b) for making representations;
 - (b) the period under paragraph (3)(c) for responding to proposed modifications; or
 - (c) the period under paragraph (8)(b) for making representations.

Variation of approved scheme

- 8.—**(1) Subject to paragraph (2), the Department may approve a variation of an approved scheme on the application of the Board made before the vesting day under the scheme.
- (2) The Department shall not approve a variation of an approved scheme unless—
- (a) it is satisfied—
 - (i) that the Board has taken reasonable steps to bring the principle of the proposed variation to the attention of persons who are registered producers; or
 - (ii) that the proposed variation is not sufficiently important to require the principle of it to be brought to their attention; and
 - (b) it is satisfied that its decisions under Article 6(2)(a)(ii) and (3)(a) would not have been different had the scheme included the proposed variation.

Withdrawal of approval

9.—(1) The Department may, on the application of the Board before the vesting day under an approved scheme, withdraw the scheme's approval if it is satisfied that there has been a material change of circumstances since the scheme was approved.

(2) The Department shall give the Board notice of its decision under paragraph (1) in relation to the application.

(3) Where approval in relation to a scheme is withdrawn under paragraph (1), it shall cease to be an approved scheme with effect from the date of the notice under paragraph (2).

(4) Where a scheme ceases under this Article to be an approved scheme, it shall be disregarded for the purposes of Article 5(6).

(5) Where the period within which an application under Article 5 may be made has expired before the date on which a scheme ceases under this Article to be an approved scheme, the Board may, subject to paragraph (6), make an application under that Article at any time before the end of the period of 3 months beginning with that date.

(6) The Board may not make an application by virtue of paragraph (5) within the period of 3 months immediately preceding the day on which the 1989 Scheme will, under paragraph (2) of Article 4, be revoked by paragraph (1) of that Article.

Information

10.—(1) Where the Board makes an application to the Department under Article 5, 8 or 9, the Department may by notice require any person to supply to it such information as may be specified in the notice, being information the supply of which the Department considers necessary or desirable for the purpose of enabling it to carry out its functions in relation to the application.

(2) A notice under paragraph (1) shall require the information to be supplied within such period as may be specified in the notice, being not less than 21 days from the date of the notice.

(3) Where the Department gives a notice under paragraph (1) to the Board, the Board shall be treated as having withdrawn the application unless—

- (a) it complies with the notice; or
- (b) before the end of the period allowed for compliance, it shows to the satisfaction of the Department that it has reasonable grounds for not complying with it.

(4) Where—

- (a) the Department gives a notice under paragraph (1) to the Board;
- (b) the Board purports to comply with the notice; and
- (c) it becomes apparent to the Department after the time allowed for compliance with the notice and before the application has been finally determined that the Board has not in fact complied with it,

the Department shall give the Board notice of that fact.

(5) Where, within 14 days of the date of a notice under paragraph (4), the person to whom the notice is given shows to the satisfaction of the Department that the failure to comply with the notice under paragraph (1) was accidental and not attributable to a failure to take reasonable care, paragraph (3) shall be treated as never having had any application in relation to it.

(6) If any person other than the Board fails without reasonable excuse to comply with a notice under paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) If any person, in purported compliance with a notice under paragraph (1), knowingly or recklessly supplies information which is false or misleading in a material respect, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Publicity for determinations

11.—(1) As soon as reasonably practicable after granting an application under Article 5 or 8, the Department shall make public in such manner as it thinks fit—

- (a) the fact that it has granted the application; and
- (b) the principles of the approved scheme or, as the case may be, of the approved variation.

(2) As soon as reasonably practicable after deciding under Article 9 to withdraw an approved scheme's approval, the Department shall make its decision public in such manner as it thinks fit.

Carrying out of approved scheme

Functions of the Board

12. The Board may do whatever is necessary for, or conducive to, the carrying out of an approved scheme in the period up to and including the vesting day under the scheme.

Functions of the Department

13.—(1) The Department shall satisfy itself, in relation to an approved scheme—

- (a) that so much of the scheme as relates to the period prior to the vesting day under the scheme is duly carried out; and
- (b) that it does not, during that period, become expedient, by virtue of a change of circumstances, that there should be an increase in the provision made by the scheme for meeting liabilities retained by the Board after the transfer under Article 14.

(2) The Department may by notice require the Board to supply to it such information as may be specified in the notice, being information which the Department considers necessary or desirable for the purpose of enabling it to discharge its functions under paragraph (1).

(3) A notice under paragraph (2) shall require the information to be supplied within such period as may be specified in the notice, being not less than 7 days from the date of the notice.

(4) If, at any time before the vesting day under an approved scheme, it appears to the Department—

- (a) that the Board has—
 - (i) failed to supply information required by a notice under paragraph (2); or
 - (ii) failed in a material respect to carry out the scheme; or
- (b) that, by virtue of a change of circumstances, it is expedient that there should be such an increase as is mentioned in paragraph (1)(b),

it may give the Board notice of that fact and of the reasons for it.

(5) No notice under paragraph (4) may be given by virtue of sub-paragraph (a)(i) of that paragraph more than 28 days after the Board has purported to comply with the notice under paragraph (2).

(6) The Department shall by notice to the Board withdraw a notice under paragraph (4) if it is satisfied—

- (a) that there is no longer any ground for it; and
- (b) that it continues to be practicable for the scheme to be carried out.

(7) If the Board, in purported compliance with a notice under paragraph (2), knowingly or recklessly supplies information which is false or misleading in a material respect, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Statutory transfer on vesting day

14.—(1) On the vesting day under an approved scheme, any transfer under the scheme which—
(a) is a qualifying transfer; and
(b) is a transfer which the scheme provides is to have effect under this Article,
shall have effect by virtue of this Order.

(2) Paragraph (1) shall not apply if—

- (a) a notice under paragraph (4) of Article 13 has been given in respect of the scheme; and
- (b) the notice has not been withdrawn under paragraph (6) of that Article.

(3) For the purposes of paragraph (1)(a), a transfer is a qualifying transfer if it is—

- (a) a transfer of property, rights or liabilities of—
 - (i) the Board; or
 - (ii) a subsidiary of the Board,

to a body which is a qualifying body; or

- (b) a transfer of property, rights or liabilities of a subsidiary of the Board to the Board.

(4) For the purposes of paragraph (3), a body is a qualifying body if it is—

- (a) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969⁽³⁾ which has not previously traded;
- (b) a company registered under the Companies (Northern Ireland) Order 1986⁽⁴⁾ which has not previously traded; or
- (c) a company registered under that Order which was a subsidiary of the Board immediately before the day on which this Order is made.

Other provisions

15. Schedule 2 (which makes provision in relation to or in connection with the carrying out of an approved scheme) shall have effect.

Position of the Board post-revocation

General

16. The Board shall not be deemed to be dissolved by reason of the revocation of the 1989 Scheme by Article 4(1) and so much of that scheme as relates to the winding up of the Board shall (subject to any provision of regulations under Article 17(2)) continue in force notwithstanding the revocation.

Position following reorganisation

17.—(1) Paragraphs (2) to (5) apply where property, rights or liabilities of the Board are transferred under Article 14 under an approved scheme.

(2) The Department—

⁽³⁾ 1969 c. 24 (N.I.)

⁽⁴⁾ 1986 NI 6

- (a) shall by regulations make such provision as it thinks fit for the purpose of giving effect to so much of the approved scheme as relates to the Board in the period after the transfer under that Article; and
- (b) may by regulations make such provision as it thinks fit—
 - (i) in relation to the constitution of the Board; or
 - (ii) for the purpose of enabling the Board to wind up its affairs.
- (3) Regulations under paragraph (2) may—
 - (a) provide that, notwithstanding Article 4(1), such provisions of the 1989 Scheme as are specified in the regulations shall continue to have effect, subject to such modifications as may be so specified; or
 - (b) make such new provision as appears to the Department to be necessary or expedient.
- (4) Regulations under paragraph (2) may not confer a power to raise compulsory levies.
- (5) As soon as the Department is satisfied that the Board has carried out any remaining functions, and on being given notice by the Board that it has wound up its affairs, the Department shall, after consultation with the Board, make an order dissolving the Board on such date as is specified in the order.
- (6) Regulations under paragraph (2) may be made in anticipation of the application of that paragraph.

Position in the absence of reorganisation

18.—(1) This Article applies where the revocation of the 1989 Scheme by Article 4(1) takes place without property, rights or liabilities of the Board having been transferred under Article 14.

(2) The Department shall present a petition for the winding up of the Board in accordance with the 1989 Scheme and Schedule 2 to the Agricultural Marketing (Northern Ireland) Order 1982(5).

(3) If, in the event of the Board being so wound up, any assets of the Board remain after the discharge of its debts and liabilities and the payment of the costs and expenses incurred in the winding up, those assets shall be distributed to the producers who would have been by virtue of paragraph 6(5) of Schedule 2 to the Agricultural Marketing (Northern Ireland) Order 1982 liable to contribute in the winding up, and shall be so distributed in proportion to their respective liabilities in that behalf.

Miscellaneous

Membership of the Board

19.—(1) No election of members of the Board, or of a committee under the 1989 Scheme (other than an election for the purpose of filling a casual vacancy) shall be held after 31st December 1993 or such later day as the Department may by order specify.

(2) The term of office of any member of the Board, or of a committee under the 1989 Scheme shall, instead of expiring at any other time, expire—

- (a) where property, rights or liabilities of the Board are transferred under Article 14, on the day of the transfer; and
- (b) where the 1989 Scheme is revoked by Article 4(1) without property, rights or liabilities of the Board having been transferred under Article 14, at such time as the Board is dissolved in consequence of being wound up under Article 18(2).

Levies

20.—(1) This Article applies where—

- (a) property, rights or liabilities of the Board are transferred under Article 14 in accordance with an approved scheme; and
- (b) under the scheme, any liabilities of the Board are excepted from transfer under that Article.

(2) The Department may, on the application of the Board, by order give effect to a scheme enabling the Board to require eligible producers to make contributions for the purpose of enabling it to meet its liabilities.

(3) The Department shall not make an order under paragraph (2) unless it is satisfied—

- (a) that the Board's assets are insufficient to meet its liabilities;
- (b) that the Board has taken all reasonable steps to minimise the amount required to meet its liabilities;
- (c) that there is no other reasonably practicable way of discharging its liabilities;
- (d) that the amount proposed to be raised under the scheme is reasonable; and
- (e) that the basis on which contributions are to be assessed under the scheme is reasonable.

(4) In paragraph (2), the reference to eligible producers is to the persons who, under the approved scheme, are entitled to participate in the distribution of assets of the Board by virtue of their being, or having been, registered producers.

Overriding nature of functions under Part II

21. Nothing done in pursuance of this Part by the Board, or by any member or officer of the Board, shall be taken to constitute a breach of any duty owed, apart from the provisions of this Part, to persons who are registered producers.

Functions of certain bodies in relation to agricultural marketing schemes

22. The functions—

- (a) of a committee appointed under Article 21 of the Agricultural Marketing (Northern Ireland) Order 1982⁽⁶⁾ (committees of investigation); and
- (b) of the General Consumer Council for Northern Ireland under Article 7 of the General Consumer Council (Northern Ireland) Order 1984⁽⁷⁾,

shall not include the consideration of anything done by the Board—

- (i) by way of preparing for the coming into operation of this Part; or
- (ii) in connection with an application under this Part or the carrying out of an approved scheme.

Restriction of the Agricultural Marketing (Northern Ireland) Order 1982

23.—(1) Part II, except Article 26, of the Agricultural Marketing (Northern Ireland) Order 1982 shall cease to have effect in relation to milk.

(2) Paragraph (1) shall come into operation on the day on which Article 4(1) comes into operation.

(3) The Department shall by order certify the date of coming into operation of paragraph (1).

⁽⁶⁾ 1982 NI 12

⁽⁷⁾ 1984 NI 12

Supplementary

Service of documents

24.—(1) Section 24 of the Interpretation Act (Northern Ireland) 1954⁽⁸⁾ shall, in its application to the service of documents under this Part, be subject to the following modification.

(2) If a person to be served with any document under this Part by another has specified to that other an address in Northern Ireland other than his proper address (as determined under section 24 of the Interpretation Act (Northern Ireland) 1954) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of that section.

Consequential amendments

25. The Department may by order make such modifications of any statutory provision passed or made before the day on which Article 4(1) comes into operation, as appears to it necessary or expedient in consequence of the coming into operation of that Article.

⁽⁸⁾ 1954 c. 33 (N.I.)