

## 1989 No. 48

## AGRICULTURE

**The Milk Marketing Scheme (Approval) Order  
(Northern Ireland) 1989**

*Made* . . . . . 24th February 1989

*Coming into operation* . . . . . 1st April 1989

Whereas the Milk Marketing Board for Northern Ireland (hereinafter called "the Board") has in accordance with Article 27(1) of the Agricultural Marketing (Northern Ireland) Order 1982(a) (hereinafter called "the Order of 1982") prepared and submitted to the Department of Agriculture (hereinafter called "the Department") a Milk Marketing Scheme;

And whereas the Department has, after consultation with the Board and with representatives of such other interests as appears to it to be directly affected by that Scheme, made such modifications in that Scheme as it thinks proper;

Now therefore the Department in exercise of the powers conferred on it by Article 27(2), (3) and (5) of the Order of 1982 and of every other power enabling it in that behalf, hereby makes the following Order:—

*Citation and commencement*

1. This Order may be cited as the Milk Marketing Scheme (Approval) Order (Northern Ireland) 1989 and shall come into operation on 1st April 1989.

*Marketing Scheme in respect of milk*

2. The Department of Agriculture hereby approves the Milk Marketing Scheme set out in the Schedule.

Sealed with the Official Seal of the Department of Agriculture on 24th February 1989.

(L.S.)

*S. R. Armstrong*

Assistant Secretary

## MILK MARKETING SCHEME

## ARRANGEMENT OF SCHEME

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## PART I

### PRELIMINARY

1. This Scheme may be cited as the Milk Marketing Scheme (Northern Ireland) 1989.

2. The Agricultural Product, the marketing of which is regulated by this Scheme, is milk.

3. In this Scheme:

“accounting period” means a year beginning on 1st April and ending on 31st March following;

“Board” means the Milk Marketing Board for Northern Ireland;

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

“commercial activities” in relation to the Board means the following activities of the Board:

- (i) processing milk or producing from milk any of the commodities listed in Article 49(c),
  - (ii) selling, grading, packing, storing, adapting for sale, insuring, advertising and promoting the sale of milk processed by the Board or any of the commodities bought or produced by the Board,
  - (iii) transporting in vehicles owned, leased to or hired by the Board, milk processed or commodities bought or produced therefrom by the Board,
  - (iv) buying milk or goods wholly or partly manufactured or derived from milk, or
  - (v) other activities reasonably incidental to those specified above;
- “the Council Regulation” means Council Regulation (EEC) No. 1422/78(a);
- “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 Northern Ireland;
- “the Order” means the Agricultural Marketing (Northern Ireland) Order 1982(b);
- “prescriptive resolution” means a resolution of the Board embodying a determination of or prescription by the Board which is recorded in the record provided for by Article 75(1);
- “producer” means a producer of milk;
- “registered” means registered under this Scheme;
- “secretary” includes any person for the time being authorised by the Board to act as its secretary; and
- “statutory poll” means a poll concerning the amendment or revocation of this Scheme, as the case may be, pursuant to Article 4(12) of the Order.

## PART II

### THE BOARD

#### *Constitution*

4. This Scheme shall be administered by the Board which shall continue in existence as a body corporate with common seal under this Scheme.

#### *Composition*

5.—(1) The Board shall, as from the coming into operation of this Scheme consist of—

- (a) the six existing County members;
  - (b) the four existing Regional members; and
  - (c) three members appointed by the Department.
- (2) Subject to the provisions of Article 8—
- (a) the County members elected in 1986 for the administrative Counties of Antrim, Down and Londonderry shall hold office until 31st March 1990;
  - (b) the County members elected in 1988 for the administrative Counties of Armagh, Fermanagh and Tyrone and any County member subsequently elected shall hold office for four years;

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

(b) S.I. 1982/1080 (N.I. 12)

(c) the two Regional members elected in 1986 shall hold office until 31st March 1990; and

(d) the two Regional members elected in 1988 and any Regional member subsequently elected shall hold office for four years.

(3) Subject to the provisions of this Scheme, every elected member shall take office on 1st April following his election and shall hold office until 31st March in the year in which his term of office expires.

(4) As an elected member's term of office expires he shall be replaced by a member elected in accordance with this Scheme.

6. An elected member of the Board whose term of office expires or who resigns office shall be eligible for election or re-election in accordance with this Scheme.

7.—(1) Each County member shall be elected by the registered producers residing in the County for which the election is being held and entitled to vote under this Scheme.

(2) Regional members shall be elected by the general body of registered producers in Northern Ireland entitled to vote under this Scheme.

(3) Members elected in respect of Counties shall be known as County members and for the purposes of the election of County members of the Board—

(a) the portion of the City of Belfast which is to the west of the River Lagan shall be deemed to be part of the administrative County of Antrim; and

(b) that portion of the City of Belfast which is to the east of the River Lagan shall be deemed to be part of the administrative County of Down.

#### *Resignation and removal from office*

8.—(1) A member of the Board shall cease to hold office if he delivers to the Board, or being an appointed member to the Department, a written resignation of his office and the resignation is accepted or, if not accepted, is not withdrawn within seven days.

(2) Any member of the Board who—

(a) if he is detained for more than seven days in any place under any enactment in force in any part of the United Kingdom relating to persons of unsound mind;

(b) if he is adjudged bankrupt or enters into a composition with his creditors; or

(c) if he is convicted of any offence under Article 29 of the Order,

shall thereby be disqualified from holding the office of member of the Board.

(3) Any elected member who—

(a) if the Board by resolution, declares that he has been absent from six consecutive meetings of the Board without reasonable excuse; or

(b) if the Board by resolution declares that he has failed without reasonable excuse to disclose information which the member is required by the provisions of Article 19(3) of this Scheme to disclose,

shall thereby be disqualified from holding office of member of the Board.

(4) A member of the Board shall not be eligible for employment by the Board.

#### *Co-option*

9.—(1) If an elected member of the Board dies or ceases to hold office under Article 8, or if no candidate has been nominated for a vacancy to be filled at an election under Article 29, the Board shall either co-opt a registered producer in his place or hold within a period of six months an election as provided in Article 29,

subject to any alterations in the procedure laid down in that Article necessary for the purpose of holding an election to fill the vacancy, provided that no action shall be required to fill any such vacancy which would not exceed six months.

(2) Any person so co-opted or elected shall hold office for so long as his predecessor would have held office.

#### *Chairman and Vice-Chairman*

10.—(1) The Board shall elect from among its members a chairman and vice-chairman who shall (provided that they remain members of the Board) hold office for one year from 1st April. If the office of chairman or vice-chairman becomes vacant during that year, the Board shall elect from among its members a chairman or vice-chairman as the case may be, to hold office for the remainder of such year. An outgoing chairman or vice-chairman shall be eligible for re-election.

(2) If at any meeting of the Board, neither the chairman nor the vice-chairman is present, those members of the Board who are present shall elect one of their number to be chairman of that meeting.

#### *Committees*

11.—(1) The Board may appoint committees out of its own number and regulate the duties of such committees.

(2) Without prejudice to the generality of paragraph (1) the Board may appoint an executive committee consisting of not more than seven of its members, including the chairman and vice-chairman of the Board (who shall be ex-officio the chairman and vice-chairman respectively of the committee) and at least one of the members appointed by the Department.

(3) A Committee shall not hold office beyond 31st March in the year in which the next election (other than an election to fill a casual vacancy) takes place and shall report their proceedings to, and obey the directions of, the Board.

(4) The Board and every committee thereof shall, at all times, have the power to act notwithstanding any vacancy among its members.

#### *Proceedings*

12.—(1) Subject to paragraph (2) the quorum of the Board or of any committee thereof shall be such number as the Board may determine.

(2) The quorum of the Board shall not be less than five and the quorum of any committee thereof shall not be less than three.

(3) Questions arising at any meeting of the Board or a committee thereof shall be decided by a majority of the votes of the members present, and in the case of an equality of votes at such a meeting the member acting as chairman shall have a second or casting vote.

(4) The secretary, on the request of any three members of the Board or of the chairman, shall convene a meeting of the Board. A meeting shall be convened by notice in writing to all the members.

13. All acts done at any meeting of the Board or of any committee thereof shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of a person purporting to be a member of the Board or the committee, or that a member of the Board has voted upon any question upon which that member was not entitled to vote, be as valid as if that defect had not existed or such member had been entitled to vote.

14. Minutes shall be kept of the proceedings of the Board and of any committee thereof, and any such minutes shall, if signed by a person purporting to have acted as

chairman of the meeting to which they relate or of a meeting at which they were read, be evidence of those proceedings and the meeting to which any such minutes relate shall be presumed, until the contrary is proved, to have been regularly convened and constituted.

15. The common seal of the Board shall not be applied to any document except by the authority expressed by the resolution of the Board or of the executive committee of the Board, and the application of the seal shall be attested by at least two members of the Board authorised in that behalf and by the secretary.

16. Contracts and instruments which would not in the case of a private person require to be under seal may be entered into or executed on behalf of the Board by any person authorised in that behalf by the Board.

*Staffing, accommodation and remuneration*

17. The Board—

- (a) may employ a secretary and such other persons on such terms and on such conditions as it thinks fit;
- (b) shall have an office at which communications and notices will at all times be received and shall notify the Department of the address thereof, and of any change in that address.

18. The Board shall pay to any member such remuneration and allowances as may be determined by the registered producers in annual general meeting.

*Contracts (position regarding Board Members)*

19.—(1) A contract entered into by the Board shall not be avoided by reason only that a member of the Board is also a party thereto or is interested therein.

(2) A member of the Board shall not be liable to account to the Board for any profits realised by that member out of any contract by reason only of the fact that the Board is also a party to such contract or is interested therein.

(3) A member of the Board shall forthwith disclose to the Board—

- (a) any interest which that member has or acquires in any contract to which the Board is a party or in which the Board has or acquires any interest; and
- (b) any interest which that member has or acquires in any other contract whatsoever, if such interest in any way conflicts with that member's duty as a member of the Board.

(4) A member of the Board shall not vote upon any question relating to any contract to which that member is a party or in which that member has any interest; and if that member does vote the vote shall not be counted. Provided that nothing in this provision shall preclude a member of the Board from voting on any question relating to the general policy of the Board.

PART III

REGISTRATION OF PRODUCERS

*The Register*

20.—(1) The Board shall keep a register of producers (in this Scheme called "the Register"), and every producer shall, on application to the Board, be entitled to be registered therein subject as provided in this Part of the Scheme. Every such applicant shall provide the Board with such evidence as the Board considers is reasonable to support his application.

(2) Any person who immediately before the date on which this Scheme comes into force is registered as a producer under the Milk Marketing Scheme (Northern Ireland) 1955(a) shall on that date be registered as a producer under this Scheme.

21. The Register shall be open for inspection at the office of the Board from 10.00 hours to 16.00 hours on such days as that office is open for business. Any person shall be entitled to be supplied with a copy of that Register on payment of a fee which reasonably compensates the Board for the cost of furnishing the information.

22. The Board on being satisfied that a person has ceased to be a producer or is exempt from registration under Article 23 shall remove that person's name from the Register.

#### *Exemptions*

23. The Board may exempt from registration such producers as it may from time to time determine.

#### *Prohibitions*

24. A producer who is neither a registered producer nor a person exempted from registration shall not sell any milk.

25. All registered producers shall (except as otherwise provided in this Scheme) sell milk only to or through the agency of the Board; provided that this condition shall not apply to sales of milk by a registered producer to any farm or domestic servant in his employ or worker employed by him on his agricultural holding for consumption in the household of such servant or employee.

#### *Death or disability of registered producer*

26. Where, by reason of a registered producer's dying or becoming subject to some legal disability or entering into a composition or scheme of arrangement with his creditors, the property in, or the control of, any business of producing milk is transferred from him to a personal representative, trustee, committee or other person, such personal representative, trustee, committee or other person shall, until he has disposed of the property in or control of such business of producing milk, be deemed to be a registered producer for all the purposes of this Scheme provided he applies for registration in his own name within one month of the date of the transfer.

#### *Corporate bodies and partnerships*

27. For the purposes of this Scheme a Company or Society registered under the Industrial and Provident Societies Acts (Northern Ireland) 1969 and 1976(b) or other corporate body or an institute, firm or partnership producing milk shall be deemed to be a single producer.

### PART IV

#### BOARD'S OBLIGATION TO PURCHASE MILK

28.—(1) If any registered producer shall, by a notice in writing in such form and containing such information as the Board may reasonably require, request the Board to purchase any milk to be produced from cows in his possession from time to time at a

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(a) S.R. & O. (N.I.) 1955 No. 43

(b) 1969 c. 24 (N.I.) and S.I. 1976/425 (N.I. 7)



farm specified in the notice, then it shall be the duty of the Board, subject to the following provisions of this Article, to purchase such milk on the terms hereinafter mentioned, so far as it is produced on and after the eighth day after delivery of the said notice to the Board.

- (2) (a) The Board may refuse to purchase the said milk, or, as the case may be, cease to purchase it, if, within two years before the Board refuses to purchase the said milk or, as the case may be, ceases to purchase it, the registered producer has on more than three occasions in any period of ninety days, sold milk which did not comply with any warranty or conditions subject to which it was sold, or has committed any other serious breach of the terms on which he sold milk.
- (b) The Board may cease to purchase the said milk:
- (i) if the registered producer sells any milk produced at the specified farm otherwise than to any farm or domestic servant in his employ or worker employed by him on his agricultural holding for the consumption in the household of such servant or employee; or
- (ii) if the registered producer purchases any milk.
- (3) (a) If the Board refuses to purchase the said milk or, as the case may be, ceases to purchase it, it shall as soon as practicable and in any case not later than seven days after its decision, give to the producer written notice of its decision and of the reasons for it.
- (b) If the decision of the Board is made on the grounds set out in sub-paragraph (2)(a) the Board shall in addition within the said period of seven days give to the Department written notice of its decision and of the reasons for it and send to the Department all material documents. The Department shall thereupon invite the registered producer and the Board to make written representations to the Department concerning the Board's decision and shall review the Board's decision having regard to any such representations received by the Department within the time specified by the Department. The Department shall give to the registered producer and the Board written notice of the decision which it has reached following its review and such decision shall be binding on the registered producer and the Board.
- (c) The provisions of Article 71 shall not apply to any such decision of the Board as is referred to in sub-paragraph (b).

(4) If the Board shall notify the registered producer that it will purchase the milk, it shall purchase it upon such terms and at such price as may from time to time be prescribed by the Board.

(5) Notwithstanding paragraph (1), the Board shall not be required to accept milk where this cannot reasonably be done on account of industrial dispute, adverse weather or other contingency beyond its control. Any registered producer whose milk has not been accepted under the provisions of this paragraph shall, during such a period of non-acceptance, be free to sell milk otherwise than to or through the agency of the Board, but in the event of such producer being unable to sell his milk or any part thereof otherwise than to or through the agency of the Board, the Board may at its discretion, make payment for such milk at such reduced price as may be determined by the Board.

## PART V

### ELECTIONS

29.—(1) The Board shall arrange elections in accordance with this Article and Article 30.

(2) The Board shall publish notice of the election, the address at which the Board shall receive nominations, the form of such nominations, and the time and date (hereinafter referred to as "the closing date for nominations") up to which the Board shall accept nominations.

(3) The period between the publication as aforesaid and the closing date for nominations shall be not less than 56 days.

(4) Nominations must reach the Board not later than 16.00 hours on the closing date for nominations.

(5) No person shall be eligible for election as a member of the Board unless he has been duly nominated in accordance with the provisions of paragraph (6).

(6) (a) A candidate for election shall be nominated in writing by at least two registered producers, as proposer and seconder, and by at least twelve other registered producers (whose names appeared at 30th September in the previous year on the Register of producers) as assenting to the nomination. The nomination shall be sent by registered post to the secretary of the Board at the address specified in the notice referred to in paragraph (2) and shall be accompanied by an assent signed by the candidate that he is willing to act if elected; and

(b) the registered producers who nominate or assent to the nomination of a candidate for election shall—

(i) in the case of a candidate for election as a County member, reside in the administrative county for which the candidate is nominated, and

(ii) in the case of a candidate for election as a Regional member, reside in Northern Ireland.

(7) A registered producer being a corporation aggregate or a partnership shall be deemed a single registered producer for the purpose of nominating candidates. Where a registered producer being a corporation aggregate is the proposer or seconder or assenter to the nomination of a candidate, the said nomination may be signed by a member of the board or director of the corporation, or by its secretary or other permanent officer. Where a registered producer being a partnership is the proposer or seconder or assenter to the nomination of a candidate, the said nomination may be signed by one of the partners.

(8) A person may not at any one election be a candidate for election as both a County member and a Regional member or as a member for more than one county. A member of the Board whose term of office does not expire before the 1st day of April in the year in which the election is held may not be a candidate for any vacancy in that election unless before the closing date for nominations he delivers to the Board his written resignation in accordance with Article 8(1) to take effect before the said 1st day of April and does not withdraw such resignation.

(9) As soon as practicable after the last day for the receipt of nominations the Board shall publish the names and addresses of the candidates who have been duly nominated.

(10) A candidate may withdraw from candidature by giving written notice thereof to the Board, by registered post, provided it is delivered at the address to which nominations are required to be delivered not later than 16.00 hours on the eleventh day after the closing date for nominations.

(11) A candidate shall be debarred from election to the Board and his candidature shall be declared void—

(a) if he is or has been adjudged bankrupt or enters into or has entered into any composition with his creditors;

- (b) if he has been detained for more than seven days in any place under any enactment in force in any part of the United Kingdom relating to persons of unsound mind;
- (c) if he has been disqualified from holding office as a member of the Board under Article 8(3); or
- (d) if he is or would at the date of election be aged 70 years or more.

30.—(1) The Board shall not less than 10 days before the date of election send a voting paper to every producer who is entitled to vote in accordance with Article 7 and whose name appears on the Register of producers on 30th September in the previous year, provided that any person who is registered as a producer on that date who is found, before the votes are counted, not to have been eligible for registration, shall be deemed not to have been so registered.

(2) For the purposes of an election for Regional members, registered producers entitled to vote in accordance with Article 7 may vote for two candidates.

(3) Where a registered producer is a corporation aggregate or a partnership one voting paper shall be issued to each such corporation aggregate or partnership.

(4) The voting paper shall specify the time and date by which it must be received by the Board (in this Scheme referred to as “the date of the election”).

(5) Each voting paper shall be signed—

(a) by the registered producer to which it is sent;

(b) in the case of a corporation aggregate, by a member of the board of directors or other governing body of the corporation, or by its secretary or other permanent officer; or

(c) in the case of a partnership, by one of the partners.

(6) A voting paper shall not be taken into account if—

(a) it is not properly completed and posted or delivered so as to reach the Board not later than the time and date specified under paragraph (4);

(b) the voter purports to vote for more than one candidate in the case of the election of a County member or two candidates in the case of the election of a Regional member; or

(c) it is not signed in accordance with paragraph (5).

(7) Any question arising out of the eligibility of any voting paper shall be determined by the secretary of the Board.

(8) The Board shall cause the votes to be counted and shall, within two weeks of the date of the election declare elected the candidate or those candidates who receive the most votes.

(9) Each candidate or his representative may be present at the counting of the votes.

(10) If, at the end of the third day after the closing date for nominations, there is no duly nominated candidate for the vacancy, the Board shall nominate a candidate for that vacancy.

(11) Where only one candidate has been nominated as a County member or where the number of candidates nominated as Regional members is equal to or less than the number of vacancies, the Board shall declare the candidate or candidates duly elected.

(12) The result of an election shall be published by the Board in such manner as it thinks fit as soon as possible after the result of the election has been declared.

## POLLS TAKEN UNDER ARTICLE 26 OF THE ORDER

31. Any poll held under Article 26 of the Order shall be taken in accordance with the following provisions of this Part as read with paragraphs (4), (5) and (6) of Article 2 of the Council Regulation.

32.—(1) The Department shall, on the application of the Board, appoint a returning officer for the purposes of the poll.

(2) The Board shall pay the returning officer such remuneration and expenses as it shall determine.

(3) The returning officer may appoint in writing any fit person or persons to be his deputy or deputies for all or any of the purposes of the poll and a deputy returning officer shall have the same powers and duties in relation to those matters as the returning officer.

(4) No member or employee of the Board and no producer shall be appointed as a returning officer or deputy returning officer.

33.—(1) Subject to paragraph (2) any producer who, on the qualifying date (as determined by the Department) is registered under this Scheme is entitled to vote in the poll.

(2) Any producer who, before the qualifying date, has sent to the Board the declaration referred to in Article 57 shall not be eligible to vote in the poll.

34. The Board shall obtain and furnish to the returning officer a list of the names and addresses of the producers who are entitled under Article 33 to vote in the poll and all such other information as he may require to perform the functions conferred on him by this Scheme.

35.—(1) The returning officer shall, not later than the fourteenth day after the qualifying date, send to all producers entitled under Article 33 to vote in the poll a voting paper in the form set out in Appendix 1. In the event of the loss of a voting paper so sent, the returning officer may supply a duplicate voting paper.

(2) Where the registered producer is a corporation aggregate or a partnership, one voting paper shall be issued to each such corporation or partnership.

36.—(1) A voting paper shall not be taken into account unless it is properly completed and posted or delivered so as to reach the office of the returning officer within the time set out on the voting paper.

(2) Any question arising with respect to a vote shall be determined by the returning officer.

37.—(1) The returning officer shall count the votes in the poll and shall draw up and deliver to the Board a certificate showing the result of the poll and including particulars of:—

- (a) the number of voting papers sent out by the returning officer and the number of producer votes and production votes represented by them;
- (b) the number of voting papers received by the returning officer and declared not valid and the number of producer votes and production votes represented by them;
- (c) the number of valid voting papers received by the returning officer and the number of producer votes and production votes represented by them;

- (d) the number of voting papers not returned and the number of producer votes and production votes represented by them; and
- (e) the number of producer votes and production votes cast validly in favour of the question and against it respectively.

(2) The result of the poll as shown in the certificate given by the returning officer shall be declared at the next meeting of the Board after receipt of that certificate by the member acting as chairman of that meeting, and that certificate shall be published by the Board in such newspapers as the Board may determine or, at the option of the Board, by sending a notice of the result to every producer who was invited to take part in the poll.

(3) In this Article "producer vote" and "production vote" have the meanings assigned to them by the Council Regulation.

## PART VII

### STATUTORY POLLS

38.—(1) Subject to the modifications set out in paragraph (2), Articles 32 to 37 shall apply to a statutory poll as they apply to a poll held under Article 26 of the Order.

(2) For the purposes of a statutory poll—

- (a) the qualifying date referred to in Article 33(1) shall be determined by the Board;
- (b) the voting paper referred to in Article 35(1) shall be in the form set out in Appendix 2; and
- (c) the certificate drawn up and delivered to the Board under Article 37(1) shall include the following particulars—
  - (i) the number of voting papers sent out by the returning officer,
  - (ii) the number of voting papers received by him within the time specified thereon,
  - (iii) the number of voting papers not taken into account because they were not properly completed, and
  - (iv) the number of registered producers who voted respectively in favour of an amendment or revocation of this Scheme (as the case may be) or against it and the quantity of milk capable of being produced by the aggregate of voters for or against.

(3) For the purposes of a statutory poll, the basis of determining the capacity of a registered producer to produce milk shall be the number of cows in his possession at noon on the qualifying date.

(4) For the purposes of a statutory poll "corrupt and illegal practices" has the meaning assigned to it in the Representation of the People Act 1983(a) and any person committing such practices shall be guilty of an offence and liable to the appropriate penalties set out in that Act.

(5) Any person who knowingly makes a false statement on a voting paper shall be liable on summary conviction to imprisonment for a period not exceeding three months or a fine not exceeding £1,000 or both.

## FINANCIAL PROVISIONS

*The fund*

39. There shall be established a fund (in this Scheme referred to as "the fund") which shall be administered and controlled by the Board. All moneys received by the Board shall be paid into the fund and any moneys required by the Board for the operation of this Scheme, or otherwise for the purposes of Part II of the Order, shall be paid out of the fund. Any moneys for the time being standing to the credit of the fund may be left on current or deposit account in any bank or, if not for the time being required for the purposes of the functions of the Board, may be invested, but, except with the approval of the Department, shall not be invested otherwise than in securities in which a trustee is authorised, under section 1 of the Trustee Act (Northern Ireland) 1958(a), as extended by any subsequent enactment, to invest trust funds.

40.—(1) As soon as may be in relation to any accounting period the Board shall estimate the amount it expects to receive during that accounting period from the sale of milk or from any other source, and shall deduct from that amount the amount it estimates will be required to pay all its expenses, losses and outgoings of whatever nature attributable to that period and the amount (if any) to be set aside to reserve. The resultant amount, or such greater or lesser amount as (having regard to the extent that the Board has overestimated or underestimated the amounts as aforesaid) may be available shall, subject to paragraph (2), be distributed among registered producers, the proceeds of the sale of whose milk during that period are required to be paid into the fund, in such proportion, in such manner and on such occasions as the Board shall from time to time determine.

(2) From the money distributable to any registered producer under paragraph (1) the Board shall deduct the "Transport Charge" in accordance with the provisions of Article 55 and may offset against any money distributable to any registered producer the amount of any contribution or levy due by him to the Board under Article 47(1) and (2), or under any other statutory obligation.

(3) The Board may from time to time set aside to reserve such sums as it may determine and may utilise such reserves for the operation of this Scheme.

(4) If the Board is at any time of the opinion that the amounts set aside to reserve are more than are required for the operation of this Scheme such sum as the Board may determine shall be distributed among registered producers in such manner and on such occasions as the Board shall from time to time determine.

(5) The Board may if it so determines pay on account or lend to any registered producer a portion of the amount which the Board estimates that he will receive for the sale of milk to the Board.

*Powers of the Board*

41.—(1) The Board may invest money either by way of loan or mortgage, purchase of shares or otherwise, in any body corporate engaged in the production or marketing of any of the commodities specified in Article 49(c).

(2) The Board may, for the purpose of exercising any of its functions under this Scheme, borrow money in such manner on such terms and on such security as may be arranged.

(3) The Board may accept from any other person any grant to be applied for any of the purposes for which the Board is empowered to spend money. The Board may agree with the person proposing to make a loan or grant as the case may be and, in the case of a loan, with any person proposing to guarantee the repayment thereof, that if the loan or grant is duly made and the guarantee duly given, the Board will apply the money obtained by it by means of the loan or grant subject to such conditions (including conditions as to the persons on whose advice the Board is to act in applying the said money) as may be specified in the agreement. It shall be the duty of the Board to carry into effect any such agreement entered into by it.

42. The Board may lend or grant money to any other Board or to a Board administering an Agricultural Marketing Services Scheme under Part III of the Order and guarantee payment by such Board of any sums which any of those Boards may be liable to pay on account of principal or interest in respect of any loan made to it.

#### *Duties of the Board*

43. The Board, to the intent that so far as practicable its commercial activities may be put on an equal footing with the activities of independent commercial undertakings, shall place its 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.

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

- (a) its commercial activities; and
- (b) its other activities,

and in particular shall annually make out for each of those two groups of activities separate balance sheets and income and expenditure accounts, and if the Board trades for profit, separate profit and loss accounts. Such accounts shall be in such form as the Department may from time to time direct, being a form which shall conform to the best commercial standards.

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

(3) The Board shall not make money or other financial benefits available for use in its commercial activities except on the market terms then prevailing.

(4) The Board shall furnish the Department with such information as the Department may from time to time require concerning the Board's commercial activities and shall permit any person duly authorised in writing by the Department 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 is complying with the requirements of Article 43, the Council Regulation and of Commission Regulation (EEC) No. 1565/79(a).

#### *Accounts*

45.—(1) The Board shall cause all its accounts and balance sheets prepared pursuant to Article 44(1) to be audited by a member of a body of accountants for the time being recognised by the Department of Economic Development for the purposes of Article 397 of The Companies (Northern Ireland) Order 1986(b). As soon as may be after the auditor has reported thereon, and in any case within six months from the

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

(b) S.I. 1986/1032 (N.I. 6)

close of the period covered for any profit and loss account or income and expenditure account the Board shall send to the Department and to every registered producer a copy of the accounts and balance sheet and of the report of the auditor thereon, a report by the Board as to the working of this Scheme in the period covered by the profit and loss or income and expenditure accounts, which shall include a statement of the manner in which, in accordance with the provisions of Article 39, any moneys are invested and a statement as to the annual emoluments of members and employees of the Board in accordance with Schedule 3 of the Order.

(2) The Board shall, on the demand of any person and on payment of such reasonable fee as the Board may determine, furnish to him a copy of the balance sheet of the Board.

46.—(1) The auditor or auditors referred to in Article 45 shall be appointed each year by the annual general meeting.

(2) A person or a firm other than a retiring auditor or auditors shall not be capable of being appointed auditor or auditors by the registered producers in general meeting unless notice of intention to nominate that person or firm to the office has been given by a registered producer to the secretary of the Board not later than the fourteenth day before the meeting.

(3) In case of a vacancy the Board may appoint a person or firm qualified as aforesaid to act as temporary auditor or auditors but a person or firm so appointed shall not be deemed to be a retiring auditor or firm of auditors for the purposes of this paragraph.

#### *Contributions from Producers*

47.—(1) For the operation of this Scheme or otherwise for the purposes of the Order contributions shall be payable by each registered producer to the fund on all milk sold by him to or through the agency of the Board, or sold by him by retail, semi-retail or wholesale under a producer sales authorisation issued by the Board in accordance with the provisions of Article 56, or an agreement issued by the Board in accordance with the provisions of Article 51(1)(a).

(2) Such contributions shall be assessed over such period, not exceeding twelve months, as the Board may determine and at such an amount per litre of milk sold by each registered producer during that period as the Board may determine.

48.—(1) Where the Board is unable to obtain from any registered producer a sufficient return showing the number of litres of milk sold by him during any accounting period he shall, if the Board so determines, be treated as having sold by retail, semi-retail or wholesale 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 on the first day of that period.

(2) Where the Board is unable to obtain from any registered producer a sufficient return showing the number of cows in his possession on the said date, he shall, if the Board so determines, be treated as having in his possession on that date, such number of 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.

### PART IX

#### GENERAL POWER TO REGULATE MARKETING

49. The Board may—

- (a) determine from time to time the manner in which milk may be sold, packed and delivered by any registered producer; the price at, below or above which,



- the terms on which and the persons to, or through the agency of whom, milk or any description or quantity thereof may be sold by a registered producer;
- (b) buy milk or goods wholly or partly manufactured or derived from milk;
  - (c) process milk or produce from milk any of the following commodities — cream, butter, buttermilk, cultured milk, condensed whole or separated milk, cheese, whey preparations, milk powder, ice-cream and any other commodities of which milk is a main ingredient;
  - (d) sell, grade, pack, store, adapt for sale, insure, advertise, promote the sale of and transport milk and any of the commodities so bought or produced by the Board and referred to in sub-paragraph (c);
  - (e) sell by retail delivery to domestic consumers in addition to milk such other products as may, in the opinion of the Board, conveniently be sold with milk;
  - (f)
    - (i) buy from a Board administering any corresponding scheme, within the meaning of Article 9(3) of the Order, any milk, the marketing of which is regulated by that scheme, and produce from milk so bought any of the commodities referred to in sub-paragraph (c), and sell, grade, pack, store, adapt for sale, insure, advertise and transport milk so bought and any commodities produced therefrom by the Board, or
    - (ii) exercise as agents for a Board administering any corresponding scheme any power of that Board to deal in any manner mentioned in head (i) with any milk, the marketing of which is regulated by that scheme;
  - (g) manufacture or acquire, and sell or let for hire to registered producers and other persons, anything required for the production, grading, packing, storing, adaptation for sale, transport or sale of milk;
  - (h) render to registered producers and other persons, on payment or otherwise, any service which is calculated to promote the more efficient production, grading, packing, storing, adaptation for sale, transport or sale of milk;
  - (i) co-operate with any other person in doing anything which the Board is empowered to do by virtue of sub-paragraphs (b), (c), (d), (e), (f), (g) and (h);
  - (j) do anything calculated to procure, promote or facilitate the doing by any other person of anything in the doing of which the Board is, or might be empowered to co-operate by virtue of sub-paragraph (i);
  - (k) within the meaning of Article 9(1) of the Order, regulate the manner in which the regulated product or any description or quantity thereof is to be graded by or on behalf of registered producers, or the manner in which the regulated product or any description or quantity thereof is to be marked, packed, stored, adapted for sale, insured, advertised or transported by or on behalf of registered producers;
  - (l) without prejudice to any functions of the Department under section 5 of the Agriculture Act (Northern Ireland) 1949(a) encourage, promote or conduct agricultural co-operation among producers of milk or research and education;
  - (m) acquire, hold and dispose of securities in, and arrange for the formation of, a body corporate whose principal object is to do anything which the Board is or might be empowered to do by virtue of paragraphs (b), (c), (d), (g) and (h), and for the appointment of directors of any such body corporate;
  - (n) exempt from all or any of the provisions of this Scheme all classes of milk sold by registered producers by retail or semi-retail to such persons as the Board shall be satisfied are unable because of the isolation of their dwellings otherwise to obtain it;

- (o) make payment to any persons in respect of the performance by them of such functions in relation to milk as, in the opinion of the Board are calculated to assist in the efficient distribution or use of milk or any commodity produced from milk and enter into agreements with any such persons as to the terms and conditions on which such payments shall be made; and
- (p) do all such other things as are incidental to or consequential on the powers conferred on the Board by the provisions of this Scheme or the Order.

50. The Board shall not recall for sale for liquid consumption milk which has been allocated to buyers if such milk is intended by the buyers for export, whether in processed or unprocessed form, outside the United Kingdom.

## PART X

### EXEMPTIONS

51.—(1) There shall be exempt from the operation of all the provisions of Articles 25, 28, 49, 52, 53, 55, 56 and 59 milk which a registered producer:

- (a) withholds from the Board by agreement with the Board; or
- (b) withholds from the Board for export, whether the milk be in unprocessed or processed form, outside the United Kingdom; or
- (c) withholds from the Board for conversion into butter or skimmed milk powder to be sold to the intervention agency; or
- (d) withholds from the Board and sells to an exempt producer within the meaning of Article 57; or
- (e) withholds from the Board for sale by the registered producer in his capacity as an exempt producer as aforesaid.

(2) A registered producer may act jointly with other registered producers or through intermediaries or with and through both for the purposes of paragraph (1)(b) but a registered producer who withholds milk for those purposes shall give to the Department and to the Board not less than two months prior notice in writing of:—

- (a) the precise or minimum period during which he intends to withhold milk;
- (b) the quantity of milk which he intends to withhold where this is or may be less than the total production of the cows in his possession; and
- (c) the form (that is, whether unprocessed or processed) in which the milk is to be marketed outside the United Kingdom.

Where the registered producer specifies in the notice referred to above the precise period during which he intends to withhold milk, the Board shall not be obliged to buy milk from him until the expiration of that period.

Where the registered producer specifies in the notice referred to above the minimum period during which he intends to withhold milk, the Board shall not be obliged to buy milk from him until the expiration of two months after the Board shall have received from him notice in writing of his intention to sell milk to the Board; but in any case the Board shall not be obliged to buy milk from him until the expiration of that minimum period.

(3) A registered producer may act jointly with other registered producers or through intermediaries or with and through both for the purposes of paragraph (1)(c) but a registered producer who withholds milk for those purposes shall give to the Department and to the Board not less than one month's prior notice in writing of:

- (a) the precise or likely period during which he intends to withhold milk; and

- (b) the quantity of milk which he intends to withhold where this is or may be less than the total production of the cows in his possession.

Where the registered producer specifies in the notice referred to above the precise period during which he intends to withhold milk, the Board shall not be obliged to buy milk from him until the expiration of that period.

Where the registered producer specifies in the notice referred to above the likely period during which he intends to withhold milk, the Board shall not be obliged to buy milk from him until the expiration of two months after the Board shall have received from him notice in writing of his intention to sell milk to the Board.

- (4) A registered producer shall not be entitled to withhold milk under paragraph (1)(c) unless:

- (a) for a period of five consecutive months in the period of twelve consecutive months immediately preceding the date from which he intends to withhold milk the price paid by the Board to him each month shall have been less than either:—

(i) the intervention price equivalent of milk for that month calculated pursuant to Regulation 5 of the Milk Marketing Boards (Special Conditions) Regulations 1981(a); or

(ii) an intervention price equivalent of milk for that month calculated as aforesaid but by the registered producer using the margins and conversion factors applicable to the milk produced by him that month, provided that he is able to satisfy the qualified person specified in the said Regulation 5 as to the validity of his calculation; or

- (b) during the period of twelve consecutive months immediately preceding the date from which he intends to withhold milk the average price paid by the Board to registered producers shall have been less than the average intervention price equivalent of milk over the same period calculated as aforesaid.

A registered producer may give notice under this paragraph of his intention to withhold milk under paragraph (1)(c) upon receipt of payment for one month's supply of milk when the price paid by the Board shall have been less than the intervention price equivalent of milk for that month calculated as aforesaid.

A registered producer shall not be entitled to withhold milk under paragraph (1)(c) for more than a period of six consecutive months beyond the period of three consecutive months during which the average price paid by the Board to registered producers shall have exceeded the intervention price equivalent of milk calculated as aforesaid.

- (5) A registered producer who withholds milk for the purposes of paragraph (1)(d) shall give to the Department and to the Board not less than sixty days prior notice in writing of his intention to withhold milk.

Every such registered producer shall keep such books and records relating to the milk as the Board shall reasonably require and shall make such returns and give such information to the Board as the Board shall reasonably require to enable the Board and, if it so desires, the Department to be satisfied that the milk has been sold to an exempt producer within the meaning of Article 57 and shall produce such books and records to any person authorised in writing by the Department or the Board to inspect them.

## PART XI

## PRESCRIBED CONTRACTS

52. Without prejudice to the generality of the powers conferred on the Board by the provisions of this Scheme, and subject to the provisions of this Part, the Board may, from time to time, prescribe all the terms on which contracts for the sale of milk by registered producers to or through the agency of the Board and for the sale of milk by the Board to buyers shall be made, and without prejudice to the power of the Board to prescribe any other terms, the Board may prescribe all or any of the matters following as terms of any such contracts:—

- (a) where any contract for the sale of the regulated product by a registered producer otherwise than to, or through the agency of the Board purports to confer on the Board any right to receive from the purchaser the whole or any part of the purchase price payable under the contract, or of any damages for which the purchaser may be liable in respect of a wrongful rejection of articles tendered in accordance with the contract, the Board may enforce that right against the purchaser, notwithstanding that the Board is not a party to the contract and notwithstanding that, as between the Board and the purchaser, there is no consideration;
- (b) such terms as the Board may deem necessary for securing that the buyer shall not use or re-sell the milk for any purposes other than those specified in the contract, except upon the terms that the buyer shall pay such price as may be determined as the price for milk to be used for such other purposes;
- (c) the prices at, below or above which, or the method of arriving at the prices at which milk may be sold, and such prices—
  - (i) may vary in accordance with the purposes for which the buyer agrees to use or re-sell milk,
  - (ii) may vary in accordance with the description, quality, or condition of the milk;
- (d) in the case of a contract between the Board and a registered producer—
  - (i) that the registered producer shall give to the Board a warranty as to the quality and condition of the milk,
  - (ii) that the registered producer shall indemnify the Board against all loss arising through delivery by the registered producer of milk not in accordance with that warranty,
  - (iii) that the Board or the person to whom the Board may have sold the milk shall have the right to reject the milk if it is unsuitable for sale for human consumption as liquid milk,
  - (iv) that the Board shall not lose its right to reject milk by reason of its having purported to sell the same;
- (e) in the case of a contract between the Board and the buyer that there shall be provision for the cancellation of such contract if the Board is satisfied that the buyer has acted unreasonably in the rejection of milk.

## PART XII

## NEGOTIATIONS WITH BUYERS REPRESENTATIVES

53.—(1) A Committee shall be established (hereinafter called the Joint Committee) which shall consist of members appointed by the Board and members appointed by the body established by buyers of milk and known as the Northern Ireland Dairy Trade Federation (hereinafter called the Dairy Trade Federation), but

if, in the opinion of the Department, that body has ceased to exist or has ceased to represent the views of buyers of milk, such last mentioned members shall be appointed by such other body or other bodies as appear to the Department to represent for the time being the views of the buyers of milk otherwise than by retail.

(2) The Joint Committee may appoint sub-committees consisting of one or more of their members and such other persons as the Joint Committee may appoint. Any such sub-committee may be empowered by the Joint Committee to consider any matters referred to it by the Joint Committee.

(3) The Joint Committee may appoint a chairman who need not be one of their members.

(4) All questions to be decided by the Joint Committee shall be decided by resolution upon which the members appointed by the Board and the members appointed by the Dairy Trade Federation or other bodies aforesaid shall each collectively have one vote. The Committee shall not be taken to have agreed unless both such votes have been cast in the same direction.

(5) (a) The Joint Committee shall negotiate and endeavour to agree upon the following matters:

- (i) the description of milk to be sold by the Board;
- (ii) the delivery of milk to be sold by the Board;
- (iii) the terms on which milk is to be sold by the Board;
- (iv) subject to paragraphs (7), (8), (9), (11) and (12), the prices of milk to be sold by the Board;
- (v) the amounts of any allowances to be made to buyers;
- (vi) the classes of persons and premises to whom or in respect of which such allowances are to be made;
- (vii) the conditions on which such allowances are to be made; and
- (viii) the arrangements for making milk available to buyers including the Board's processing and manufacturing enterprises, proposals for which shall be submitted to the Joint Committee by a sub-committee set up under the terms of paragraph (2); and

(b) if the Joint Committee reach agreement and make a decision on any of the above matters, such decision shall be final.

(6) The Joint Committee may also discuss any other matters agreed by both parties to the Joint Committee to be of mutual interest to the Board and the Dairy Trade Federation, or any other bodies aforesaid, and arising out of the Community obligations of the United Kingdom.

(7) Subject to the provisions of paragraphs (8) and (9), the price of milk sold by the Board shall be set at the same level as the standard price negotiated by the Joint Committee for milk sold for human consumption as liquid wholemilk, except that the Joint Committee may negotiate different prices for milk sold by the Board for use in production of the following commodities:—

- (a) cheese, with prices differentiated according to the variety of the cheese;
- (b) butter, with prices differentiated according to the type and fat content of the butter;
- (c) cream, with prices differentiated according to the type and fat content of the cream;
- (d) evaporated milk;
- (e) condensed milk;
- (f) milk powder;

- (g) milk chocolate crumb;
- (h) milk puddings;
- (i) custard;
- (j) ice-cream;
- (k) cultured milk products;
- (l) sauces, desserts, soups, catering products and bakery products, with prices differentiated according to the product; and
- (m) subject to the approval of the Department, other commodities of which milk is an ingredient.

If wholemilk is fractionated and only part of the solid constituents is utilised in the production of any of the commodities specified above, the Joint Committee may negotiate different prices according to the uses of each constituent, except that prices in respect of any constituent shall be set at the same level for all uses which qualify that constituent, or any milk product derived therefrom, for sale to the Intervention Board for Agricultural Produce or for the benefit of any Community aid scheme.

(8) The price of milk to be sold by the Board shall be set at the same level for all buyers who intend to use the milk for the same purpose and, without prejudice to the generality of this sub-paragraph, no price shall be differentiated by reason only that the milk or any milk product derived therefrom is intended for export outside the United Kingdom or for sale to the Intervention Board for Agricultural Produce.

- (9) The Joint Committee may negotiate different prices to take account of:
- (a) the region or district in which the milk is to be produced, processed or consumed;
  - (b) the description, quality or condition of the milk;
  - (c) the period during which, and the dates when, deliveries of milk are to be made;
  - (d) the place of delivery;
  - (e) the quantity of milk to be delivered;
  - (f) any special services to be rendered by or to the buyer, including the delivery of milk in specified quantities at specified times; and
  - (g) subject to the approval of the Department, any other criteria of an objective nature.

(10) If the Joint Committee are unable to agree upon any matter which is referred to in paragraphs (5), (7) or (9) either party may make a reference to an Arbitration Panel thereon. Such Panel shall consist of four persons (only three of whom shall sit on any particular reference) appointed by the Joint Committee and shall include:—

- (a) a person who in the opinion of the Joint Committee, or failing agreement by the Joint Committee in the opinion of the Department, is qualified for appointment as having had experience and shown capacity in commerce;
- (b) a person who in the opinion of the Joint Committee, or failing agreement by the Joint Committee in the opinion of the Department, is qualified for appointment as having had experience and shown capacity in law; and
- (c) a person who in the opinion of the Joint Committee, or failing agreement by the Joint Committee in the opinion of the Department, is qualified for appointment as having had experience and shown capacity in accountancy or economics.

If the Joint Committee fail to agree upon all or any of these persons they shall be appointed by the Department. One of these persons shall similarly be appointed as Chairman of the Arbitration Panel. This procedure may be varied by agreement within the Joint Committee so that any matter of disagreement may be referred to a single arbitrator to be appointed from time to time by the Joint Committee. A decision of such Panel or of such single arbitrator shall be binding on the Joint Committee unless the Joint Committee agree not to accept it. This procedure may also be adopted subject to the agreement of both parties to the Joint Committee in relation to any matter raised under paragraph (6).

(11) After the end of the calendar month following the month of delivery the Joint Committee shall not agree to any reduction in the prices they have negotiated in accordance with paragraphs (5), (7) and (9). If the Joint Committee fail to agree the final minimum price for any use of milk for manufacture, they shall, as soon as is practicable, and in any case not later than the twenty-second day of the month following the month of delivery, refer their disagreement to the Arbitration Panel referred to in paragraph (10) or, if both parties in the Joint Committee so agree, to a single arbitrator. The Arbitration Panel, or the single arbitrator, as the case may be, shall decide the final minimum price before the end of the month following the month of delivery of the milk.

(12) Notwithstanding the foregoing provisions of this paragraph, the price of milk sold by the Board shall not be set at such a level that the sale of milk by the Board at that price would contravene Article 9 of the Council Regulation(a) or Article 6(2) of Commission Regulation (EEC) No. 1565/79(b). In the event of any such contravention or any other failure by the Board to comply with the Community principles, rules or special conditions referred to in Article 10 of the Council Regulation, the Board shall make such adjustment in their arrangements for milk sold or to be sold as shall satisfy the Department that the effect of such contravention or failure has been counteracted.

(13) The Joint Committee or, failing agreement, either of the parties represented in the Joint Committee may invite the Chairman or any other member of the Arbitration Panel to attend all or any of their meetings. If the two parties represented in the Joint Committee can not agree on which member of the Arbitration Panel should be invited then the Chairman of the Arbitration Panel shall decide which member shall attend. The Committee may consult the member of the Arbitration Panel who attends the meeting or seek his advice in relation to any matter which is referred to in paragraphs (5), (7) or (9) or raised under paragraph (6); but if the Chairman or any other member of the Arbitration Panel attends any meeting of the Joint Committee during discussion of a particular issue or is consulted by the Joint Committee thereon he shall not sit on the Arbitration Panel if that issue is referred to the Arbitration Panel.

### PART XIII

#### CONSULTATION WITH FEDERATION OF PRODUCER CO-OPERATIVE CREAMERIES

54.—(1) The Board shall set up a committee to provide for consultation between the Board and the Federation of Producer Co-operative Creameries on matters of mutual interest. Such committee shall not consider any matters that are within the competence of the Joint Committee established under Article 53.

(2) The committee shall be known as the Consultative Committee on Producer Co-operative Creameries and shall be composed of members representing the Board and members representing the Federation of Producer Co-operative Creameries.

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

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

## PART XIV

## HAULAGE OF MILK

55.—(1) Where milk is not delivered by a registered producer to the Board or to such person as may be authorised by the Board to receive it, it shall be collected only by or through the agency of the Board and the Board shall from time to time determine the charges to be made to each registered producer for such collection.

(2) The rate charged by the Board to each registered producer for collection of milk shall be known as the “Transport Charge”.

(3) The Board may acquire and operate road transport vehicles for the collection of milk from registered producers and for the delivery of milk by the Board or of products made by the Board from milk and for the carriage of anything that the Board may legally carry.

(4) The Board may enter into contracts with other parties for the collection of milk from registered producers or for the carriage of milk owned by it.

(5) A Committee shall be established (hereinafter called the Joint Haulage Committee) which shall consist of members appointed by the Board and members appointed by the Dairy Trade Federation.

(6) The Board shall consult the Joint Haulage Committee on any matter concerning conditions to be incorporated in contracts for the collection of milk from registered producers or for the carriage of milk owned by it.

## PART XV

## PRODUCER SALES BY RETAIL, SEMI-RETAIL OR WHOLESALE

56.—(1) The Board may from time to time prescribe that pending a further resolution of the Board no registered producer shall sell milk by retail, semi-retail or wholesale except under and in accordance with the terms of an authorisation (hereinafter referred to as a “producer sales authorisation”) issued by the Board authorising him to sell milk by retail, semi-retail or wholesale and if the Board shall so prescribe the provisions of paragraph (2) shall have effect.

(2) Every such authorisation—

(a) shall state the period of validity thereof;

(b) may be revoked by the Board upon breach of any of its conditions on the part of the holder thereof; and

(c) may contain such conditions (applicable to such classes of sales as may be stated in relation to each condition) as the Board may determine in respect of:—

(i) the price at, below or above which, and the terms upon which, milk may be sold,

(ii) the description of milk which may be sold,

(iii) the manner in which milk of any description or quantity thereof to be sold is graded by or on behalf of the holder,

(iv) the class or classes of persons to whom milk may be sold by wholesale or semi-retail, and

(v) the nature of the books and records relating to milk to be kept by the holder of the producer sales authorisation and the production of such books and records to any person duly authorised under Article 73 to inspect his premises.



(3) If any registered producer sells milk in contravention of the conditions of his producer sales authorisation the Board, without prejudice to any other penalty it is empowered to impose by virtue of Article 58, may revoke or suspend the said producer sales authorisation.

(4) The Board may refuse to issue a producer sales authorisation to any registered producer applying therefor if the authorisation previously held by the registered producer had previously been revoked or if the applicant has committed a breach of the conditions of any producer sales authorisation previously held by him or if he owes a debt to the Board.

(5) The Board may, by notice in writing to any holder of a producer sales authorisation, exempt him from the operation of Article 25 and when the Board shall have so notified a holder of a producer sales authorisation the following provision shall thereafter have effect:—

- (a) where the current wholesale price of milk (that is the price determined by the Joint Committee from time to time as the price payable for milk sold to buyers for the purposes of sale by them for human consumption as liquid milk) exceeds the current producers' price (that is the price determined by the Board from time to time as the price payable to producers for milk sold by them to the Board and includes any price varied by virtue of Article 60) the holder of a producer sales authorisation shall pay to the Board, and where the said current producers' price exceeds the said current wholesale price, the Board shall pay to the holder of a producer sales authorisation, the difference between the said prices in respect of each litre of milk produced by the holder of a producer sales authorisation and sold by him by retail, semi-retail or wholesale;
- (b) without prejudice to the generality of the powers conferred on the Board by the provisions of this Scheme, for the purpose of determining the amount due to or by the Board at any time, the holder of a producer sales authorisation shall furnish to the Board such returns relating to his transactions in milk as the Board may determine.

57.—(1) Notwithstanding the provisions of Article 56(1), any registered producer who holds a current certificate of exemption issued under the following provisions of this paragraph may sell milk by retail. In this paragraph such a producer is referred to as an exempt producer.

(2) Any registered producer may send to the Board a declaration signed by him that from the date specified therein, being a date not less than two months later than the month in which the Board shall receive his declaration, and for a period specified therein, being a period of not less than five years, he wishes to be exempted from his obligation to sell milk to the Board and to forgo his right to require the Board to buy milk from him. The registered producer shall at the same time as he sends his declaration to the Board send a copy of it to the Department. The declaration shall incorporate a request for a certificate of exemption.

(3) Subject to the provisions of paragraph (4) the Board shall not be entitled to refuse to issue a certificate of exemption to any such registered producer as aforesaid who satisfies the Board:—

- (a) that during the three calendar years immediately preceding his declaration the average annual production of milk from all the cows in his possession has not exceeded 100,000 kilograms; and
- (b) that he intends to sell not less than 75 per cent of the annual production of milk from all the cows in his possession directly to the final consumer in the form of liquid milk.

(4) The Board shall be entitled to refuse to issue a certificate of exemption to any registered producer who during the period of six months immediately preceding his

request for a certificate of exemption has committed a breach of any of the conditions specified in paragraph (7)(c)(i), (ii) or (iii), subject to which any previous certificate of exemption was issued to him save in a case where the Board is satisfied that the breach was due to accident or any cause beyond his reasonable control.

(5) If the Board refuses to issue a certificate of exemption it shall as soon as practicable and in any case not later than twenty-one days after receipt of the declaration send the declaration with all material documents to the Department and shall give to the registered producer written notice of its decision, of the reasons for its decision and of having sent his declaration to the Department.

(6) The Department shall thereupon invite the registered producer and the Board to make written representations to the Department concerning the request for a certificate of exemption and shall consider the request having regard to any such representations received by the Department within the time specified by the Department. The provisions of paragraphs (3) and (4) shall apply to the Department's consideration of the request as if the references in those paragraphs to the Board were references to the Department. Unless the Department within sixty days of the receipt of the declaration by the Board shall send to the registered producer written notice of its refusal of a certificate of exemption with reasons for its decision, the Department shall be deemed to have acceded to the request for a certificate of exemption and shall forthwith issue a certificate of exemption to the registered producer in the terms of his request.

(7) Every certificate of exemption:—

(a) shall state the period of its validity;

(b) shall record the average annual production from cows in the possession of the exempt producer during the three years immediately preceding the lodgement of his declaration with the Board; and

(c) shall be issued subject to the following conditions:

(i) that the exempt producer shall sell not less than 75 per cent of the annual production of milk from the cows in his possession directly to the final consumer in the form of liquid milk,

(ii) that the exempt producer may buy from other registered producers a quantity of milk not exceeding, in the aggregate in any year, 25 per cent of the production of milk in that year from the cows in his possession and shall sell the milk so bought by him directly to the final consumer in the form of liquid milk,

(iii) that the amount of milk in liquid form sold by the exempt producer directly to the final consumer in any calendar year (including milk bought by him pursuant to the last foregoing condition) shall not exceed double the average annual production recorded in the certificate of exemption, and

(iv) that the exempt producer shall keep such books and records relating to milk as the Board shall reasonably require and shall make such returns and give such information to the Board as the Board shall reasonably require to enable the Board and if it so desires, the Department to be satisfied that the conditions of the certificate of exemption are being complied with and shall produce such books and records to any person authorised in writing by the Department or the Board to inspect them.

(8) Every certificate of exemption may be revoked by the Department whether or not it was issued by the Department, upon breach of any of its conditions on the part of the exempt producer unless the Department is satisfied that such breach was due to accident or other cause beyond the reasonable control of the exempt producer.

(9) For the purposes of this Article a registered producer shall be deemed to have cows in his possession if, but only if, they and the buildings in which they are tended or milked are in his exclusive possession. If a registered producer satisfies the Department that it is necessary for the time being for his cows to be tended or milked in buildings which are not in his exclusive possession he shall for such period as the Department may determine be deemed for the purposes of this Article to have the cows in his possession.

(10) Every exempt producer shall, in respect of each accounting period, on such accounting days as may be prescribed, contribute to the fund in respect of milk which he has sold by retail during that accounting period such sum per litre as the Board, with the approval of the Department, may from time to time prescribe, being a sum which will produce a contribution proportional to the services rendered by the Board to exempt producers during that accounting period.

#### PART XVI

##### PENALTIES FOR CONTRAVENTION OF THE PROVISIONS OF THE SCHEME OR OF DETERMINATIONS OF THE BOARD. THE DISCIPLINARY COMMITTEE

58.—(1) If any registered producer:

- (a) contravenes any prescription of the Board under Articles 49 or 52;
- (b) sells milk in contravention of a direction of the Board given under Article 25;
- (c) sells milk by retail, semi-retail or wholesale in contravention of any prescription of the Board under Article 56;
- (d) obstructs or interferes with any person duly authorised by the Board under Article 73 in the performance of his duties thereunder;
- (e) fails without reasonable excuse to comply with any demand made by the Board under Article 74, or knowingly makes any false statement in reply thereto; or
- (f) withholds milk for the purposes of Article 51(1)(d) (for sale to an exempt producer) and fails without reasonable excuse to comply with any of the requirements of Article 51(5),

the Disciplinary Committee hereinafter described shall impose upon such producer and the Board shall recover from him such monetary penalty not exceeding £1,000 as that Committee think just.

No such penalty shall be imposed in respect of such a contravention as aforesaid which constitutes an offence under Part II of the Order or any other statutory provision.

- (2) (a) There shall be a Committee of the Board to be known as the Disciplinary Committee, constituted, at each sitting thereof, of not less than four nor more than six members of the Board and a chairman who is not a member of the Board but is an independent person who is a barrister of not less than seven years standing, or a solicitor of not less than seven years standing, and is approved by the Department.
- (b) No penalty shall be imposed on a registered producer pursuant to this paragraph except after a hearing by the Disciplinary Committee and by the decision thereof, taken in accordance with the opinion of all the majority of the members thereof, provided that if there is an equal division of opinion, the opinion of the chairman shall prevail.
- (c) Notice of the time and place of every such hearing and a written statement of the charge against the producer in question shall be served personally or by registered post or recorded delivery service on that producer at least fourteen days before the hearing.

- (d) No penalty shall be imposed for any such contravention which occurred more than six years before the service of the said written statement of the charge.
- (e) Where such a written statement of a charge against a producer has been sent to or served on him as aforesaid and the charge is withdrawn or is not substantiated before the said Committee, the Board shall have the power, and, to such extent as the said Committee may decide, the duty, to make payments to the producer in respect of his costs in connection with the charge.
- (f) The said Committee, if it finds that a contravention has occurred, may postpone the imposition of a penalty for a period not exceeding twelve months.

(3) As soon as may be after the Disciplinary Committee has concluded the hearing of a case written notice of its decision shall be sent to the registered producer in question and he may, on or before the fourteenth day after the date on which the notice was so sent to him, give notice to the Board referring the matter to arbitration under the provisions of this Scheme, and, if the matter is so referred, no proceedings shall be taken by the Board otherwise than for the purposes of the arbitration or to enforce the award of the arbitrator; and the arbitrator may award payment by the producer of such penalty or other sums as he thinks just but not exceeding the maximum penalty or other sums respectively which could have been imposed or required by the Disciplinary Committee.

(4) The said Committee shall have the power and the duty to reconsider its decision in relation to the case of any such producer if, upon considering any written application in that behalf by the registered producer in question made within three months after the date of the original hearing by the said Committee, it is satisfied that:—

- (a) there may be facts relevant to the case other than the facts which were before the Committee at the original hearing;
  - (b) if such other facts had been previously known to the Committee, its decision would have been influenced thereby, and
  - (c) the matter has not been referred to arbitration pursuant to paragraph (3).
- (5) (a) If under paragraph (4) the said Committee decide to reconsider any case it shall be its duty to rehear the case, and, if as a result it is of the opinion that a substantial miscarriage of justice has occurred, it shall vary the previous decision of the Committee, and the Board shall thereupon give effect to such variation.
- (b) The provisions of paragraphs (2)(b) and (3) shall apply to every such rehearing.

(6) Subject as aforesaid every penalty imposed and every sum required to be paid by a decision of the Disciplinary Committee shall be a civil debt due to the Board and recoverable accordingly.

(7) A person whose name appeared upon the Register at the date when he contravened any provision of this Scheme shall, notwithstanding that his name has since been removed from the Register, be deemed to remain a registered producer for the purpose only of this Article.

## PART XVII

### QUALITY SCHEMES

59.—(1) The Board may operate such schemes as are necessary to grade the milk produced and sold by any registered producer.

(2) The schemes referred to in paragraph (1) shall provide for standards of quality of milk.

60. The price paid to each registered producer for his milk shall be varied in accordance with the quality of that milk as determined under the schemes referred to in Article 59.

## PART XVIII

### MEETINGS OF REGISTERED PRODUCERS

#### *General Meetings*

61.—(1) The Board shall, in each year, hold an annual general meeting to which all registered producers shall be invited. Such meeting shall be held at such place, date and hour as the Board shall determine. The business of the annual general meeting shall include—

- (a) receiving the annual report and accounts and the auditors report;
- (b) fixing the remuneration and allowances of members of the Board; and
- (c) appointing auditors.

(2) In addition to the meeting referred to in paragraph (1), the Board may hold in any year one or more than one extraordinary general meeting to which all registered producers shall be invited.

#### *Calling a General Meeting*

62.—(1) Not later than 21 days before the day fixed for the holding of any meeting referred to in Article 61, the Board shall send to every registered producer who is entitled to vote at the meeting the proxy form set out in Appendix 3 and a notice stating—

- (a) the time and place appointed for the holding of the meeting;
- (b) the business to be transacted; and
- (c) the name of the chairman.

(2) The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice shall not invalidate the holding of that meeting.

(3) No business shall be transacted at any meeting referred to in Article 61 other than that of which notice has been given as provided in paragraph (1).

#### *Proceedings at General Meetings*

63. The quorum required for any general meeting shall be 50 registered producers personally present. If within one hour from the time appointed for the meeting a quorum is not present and therefore business has not commenced then the meeting shall stand adjourned to the office of the Board at the same time at a date one week following the date for which the meeting was convened or if the date to which the meeting would be so adjourned is not a working day then the first working day after the last mentioned date. At the adjourned meeting the registered producers present shall constitute a quorum. If when a meeting proceeds to business a quorum is present the meeting may continue regardless of whether a quorum later ceases to be present.

64. The chairman of the Board or in his absence the vice-chairman of the Board shall preside at every general meeting at which he is present. If neither the chairman nor the vice-chairman is present at that meeting then the members of the Board so

present shall elect one of their number to preside at the meeting. If no person can be found in accordance with the foregoing procedure to preside at the meeting then the registered producers present at that meeting shall be qualified to vote to elect one of their number to preside.

#### *Entitlement to Vote*

65.—(1) At any general meeting the producers entitled to vote may vote either personally or by proxy. The instrument appointing a proxy shall be deposited with the Board at the place indicated in the form set out in Appendix 3 not later than 16.00 hours on the third day before the day fixed for the meeting and in default the instrument shall be treated as invalid.

(2) No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting, or has been appointed as the proxy by a corporation aggregate which is a registered producer. A person employed on the staff of the Board shall not act as a proxy.

#### *Votes*

66.—(1) Every question put to the vote of a general meeting shall be decided on a show of hands, unless either before or immediately after the show of hands a formal vote is demanded by or on behalf of at least 20 registered producers present in person or by proxy, in which case a formal vote shall forthwith be taken. The declaration of the chairman as to the result of any show of hands shall be final.

(2) Every registered producer shall have one vote. A registered producer being a corporation aggregate or partnership shall be treated as a single producer and accordingly shall have one vote only.

(3) Where there is an equality of votes at a general meeting the chairman of the meeting shall have a second or casting vote.

### PART XIX

#### AMENDMENT AND REVOCATION OF SCHEME AND WINDING UP OF THE BOARD

67. A copy of any proposed amendment of this Scheme shall be published by serving notice thereof on every registered producer. A poll on the question of whether or not an amendment shall be submitted to the Department may, within twenty-eight days of the publication thereof, be demanded in writing by not less than 500 registered producers.

68. A poll on the question of whether or not this Scheme is to be revoked may be demanded in writing by 500 registered producers but no poll shall, without the consent of the Board, be taken on that question within two years from the date of the declaration of the result of a previous poll on that question.

69. Part XXI of the Companies (Northern Ireland) Order 1986(a) (which relates to the winding-up of unregistered companies) shall apply in relation to the Board subject to the modifications set out in paragraphs 6 and 7 of Schedule 2 to the Order.

70. Contributions under paragraph 6(5) of Schedule 2 to the Order shall be assessed, in relation to each contributor, proportionately to the maximum number of cows which were in his possession in the area of the Scheme at any one time during the relevant period, and shall not in any case exceed one pound sterling per cow. Save as aforesaid, however, no person shall be liable to contribute to the assets of the Board in the winding-up by reason only of his being, or having been, a registered producer or a member of the Board.

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(a) S.I. 1986/1032 (N.I. 6)

## MISCELLANEOUS

71. Any registered producer who satisfies the Board that the Board has in any respect given an undue preference to any other registered producer, shall be entitled to receive from the Board such sums by way of compensation as may be necessary to make good any damage suffered by him by reason of the undue preference.

72.—(1) Any producer who is aggrieved by any act or omission of the Board may refer the matter to the arbitration of a single arbitrator to be agreed upon between such producer and the Board, or, in default of agreement, to be nominated by the Department on the application of either party, and the arbitrator may make such order in the matter as he thinks just.

(2) The Arbitration Act (Northern Ireland) 1937(a) shall apply to any arbitration consequent upon the reference under this Article.

(3) An arbitrator agreed upon or nominated as aforesaid shall have power to award costs and the expenses of the arbitration shall be defrayed as the arbitrator may direct. The award of the arbitrator may be entered as a judgement under and subject to the provisions of the Arbitration Act (Northern Ireland) 1937.

73. Any person authorised in writing by the Board may, for the purpose of securing compliance with this Scheme, enter and inspect at any reasonable time, and on production of his authority, any part of the land or premises occupied by a registered producer (being a producer specified in the authority) which the person so authorised has reason to believe is used for producing, processing, grading, marking, packing or storing milk or adapting it for sale, and, subject to the provisions of this Article, any person so authorised may do such other things as are reasonably incidental hereto.

74. The Board may, whenever it considers it necessary for the operation of this Scheme so to do, serve on any registered producer a demand in writing requiring him to furnish to the Board such estimates, returns, accounts, records, and other information relating to the milk produced by him as the Board consider necessary for the operation of this Scheme.

75.—(1) Where any provision of this Scheme authorises the Board to determine or to prescribe any matter the Board may do so by means of a prescriptive resolution and such resolution shall be recorded by the Board in a separate record of prescriptive resolutions.

(2) Such record shall be open for inspection at the head office of the Board from 10.00 hours to 16.00 hours on such days as the office of the Board is open for the transaction of business, and any person shall be entitled to be supplied with a copy of any entry therein on payment to the Board of a fee to be determined by the Board in respect of each prescriptive resolution copied, or to take extracts therefrom for his own use free of charge.

(3) The Board shall send to each registered producer a copy of every prescriptive resolution as soon as practicable after it is made and shall also send to every registered producer once in every year a list of the prescriptive resolutions then in force. Such list shall state in respect of each resolution:

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(a) 1937 c. 8 (N.I.) (1 Edw 8 and Geo. 6)

- (a) the date on which it was made;
  - (b) the subject matter to which it relates; and
  - (c) if any copy of it has been sent in the manner provided in the next following paragraph, the date or other identifying mark appearing in the journal which contains such copy.
- (4) Any such copy or list as aforesaid may be sent to a registered producer by sending to him, free of charge to him, any journal containing it, which is published by the Board or by the Board jointly with some other person.

76. Without prejudice to Section 24 of the Interpretation Act (Northern Ireland) 1954(a) any requirement of this Scheme (other than that contained in paragraph (2)(c) of Article 58) that a notice or document shall be sent to a person by the Board shall be deemed to have been complied with if, within the period (if any) limited for the sending of the notice or document, the notice or document is despatched to the person by post, properly addressed and with the postage prepaid.



**Form of Voting Paper for EEC Polls under Part VI**

[Identification No.]

(1) The returning officer must fill in the name and address of the registered producer.

To (1) .....  
.....  
.....

A poll is being held under Article 26 of the Agricultural Marketing (Northern Ireland) Order 1982 on the following question, based on Article 2.2 of Council Regulation (EEC) No. 1422/78, to which voters must answer "Yes" or "No":—

Are you in agreement with maintaining the Milk Marketing Board for Northern Ireland carrying on the activities and exercising the rights resulting from Council Regulation (EEC) No. 1422/78?

(2) To record your vote mark X in the box of your choice.

(2) Yes  No.

NOTES:

- (i) The ballot is confidential as between the voter and the returning officer. You are not required to sign the ballot paper.
- (ii) Your vote will only be valid if it is entered on this voting paper and reaches the returning officer at (3) .....  
.....  
on or before (4) .....
- (iii) Your vote counts as a single producer vote and as a multiple production vote. If you fail to return a vote, or if your voting paper is declared not valid by the returning officer for any reason, under Council Regulation (EEC) No. 1422/78 your producer vote will be disregarded and your production votes will be counted as negative votes.

(3) The returning officer must fill in the address to which the form is to be returned.

(4) The returning officer must fill in the twenty-eighth day after the qualifying date.

.....  
Returning Officer

(5) The returning officer must ensure that this date is on or before the fourteenth day after the qualifying date

.....  
Date (5)

APPENDIX 2

Form of Voting Paper for Statutory Polls under Part VII

MILK MARKETING BOARD FOR NORTHERN IRELAND

(1) The returning officer must fill in the name and address of the registered producer.

To (1) .....  
.....  
.....

A poll is being held under the Milk Marketing Scheme (Northern Ireland) 1989, on the following question, to which voters must answer "Yes" or "No", viz:

(2) The returning officer must fill in the question on which the poll is being taken.

(2) .....  
.....

(3) The returning officer must fill in the qualifying date.

How many cows being kept for dairy purposes were in your possession in the area of the Scheme at noon on (3) ..... excluding heifers which had never calved before noon on that date.

..... COWS

Signature of registered producer .....

(4) The returning officer must fill in the address of the office to which the form is to be returned.

NB:— Your vote will not count unless this paper is properly filled in and signed, reaches (4) .....  
.....  
on or before (5) .....

(5) The returning officer must fill in the twenty-eighth day after the qualifying date:

If you wilfully mis-state the number of cows which you are asked to state above, you will render yourself liable to imprisonment or a heavy fine or both.

.....  
Returning Officer

MILK MARKETING BOARD FOR NORTHERN IRELAND

**Form of Proxy**

Full name of registered  
producer(s) in block  
letters.

I/We .....  
of .....  
..... Lic No.: .....

being registered producer(s) under the  
Northern Ireland Milk Marketing Scheme  
1989, hereby appoint

.....  
of .....  
..... Lic No.: .....

as my/our proxy, to vote for me/us and on my/  
our behalf at the annual general meeting of  
registered producers to be held on .....  
the ..... day of ..... 19 , and at  
any adjournment thereof.

In witness whereof I/We hereto have set my/  
our hand to this ..... day of ..... 19 .

Signature: .....

(This instrument must be signed by the  
registered producer or his agent whose  
signature the Board has previously been  
authorised and requested by the registered  
producer in writing to accept. Where the  
registered producer is a corporation aggregate  
this proxy must be 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.)

## EXPLANATORY NOTE

*(This note is not part of the Order.)*

The Scheme approved under this Order replaces with amendments the Milk Marketing Scheme (Northern Ireland) 1955 and provides for the continued existence of the Milk Marketing Board for Northern Ireland ("the Board"). Where appropriate the Scheme takes account of the requirements of Council Regulation (EEC) No. 1422/78 and of Commission Regulation (EEC) No. 1565/79 which contain the conditions to be fulfilled in order that the United Kingdom Milk Marketing Boards may be granted the rights contained in Article 25(1) of Council Regulation (EEC) No. 804/68 (OJ No. L148, p. 13).

The Scheme provides that the Milk Marketing Board shall consist of elected and appointed members and sets out the method of election for the former.

It also requires that the Board keep a register of producers who, unless exempted under the terms of the Scheme, must sell their milk only to or through the agency of the Board. Provision is also made for the holding of general meetings of registered producers and for the business to be conducted at them. The Scheme sets up a Disciplinary Committee which has the power to impose on registered producers a monetary penalty not exceeding £1,000 for the contravention of certain provisions of the Scheme.

The Scheme sets out the Board's general power to regulate the marketing of milk, including its obligation to purchase milk offered to it by registered producers and the arrangements for negotiations with buyers' representatives and for consultation with the Federation of Producer Co-Operative Creameries are also set out.

Changes in substance are as follows:—

- (a) responsibility for the election of Board members passes from the Department to the Board (paragraph 29);
- (b) there are new provisions for polls on the question of whether registered producers agree to the Board carrying on its activities and exercising the rights resulting from Council Regulation (EEC) No. 1422/78 (paragraphs 31-37);
- (c) there are new arrangements concerning the amendment or revocation of the Scheme (paragraphs 38 and 67-70);
- (d) there is provision for a Disciplinary Committee with the power to impose penalties on registered producers (paragraph 58);
- (e) the Department's involvement in certain matters including staffing, Board members' remuneration and producer contributions to the Fund is terminated; and
- (f) there is provision for annual general meetings of producers (paragraphs 61-66).