

SCHEDULE 2

Regulations 8, 9, 10 and 32

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS  
BY ARBITRATION—ENGLAND AND WALES

**Appointment and remuneration of arbitrator**

1.—(1) In any case where an apportionment is to be carried out by arbitration an arbitrator shall be appointed by agreement between the transferor and transferee within the period of 28 days referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall give notice of the appointment of the arbitrator to the Intervention Board within fourteen days of the date of the appointment.

(2) Notwithstanding sub-paragraph (1), the transferor or the transferee may at any time within the relevant period make an application to the President of the Royal Institution of Chartered Surveyors (referred to in this Schedule as “the President”) for the appointment of an arbitrator from amongst the members of the panel referred to in paragraph 8 and the person who makes such an application to the President shall give notice of that fact to the Intervention Board within fourteen days of the date of the application.

(3) If at the expiry of the relevant period an arbitrator has not been appointed by agreement between the transferor and the transferee and no application has been made to the President under sub-paragraph (2), the Intervention Board shall make an application to the President for the appointment of an arbitrator.

(4) Where the Intervention Board gives a notice in accordance with regulation 10 it shall make an application to the President for the appointment of an arbitrator and the Intervention Board shall be a party to the arbitration.

(5) Where an apportionment under regulation 32(5) is to be carried out by arbitration, the producer shall either appoint by agreement with all persons with an interest in the holding or make an application to the President for the appointment of an arbitrator from amongst the members of the panel referred to in paragraph 8.

2.—(1) In any case where a prospective apportionment is to be made by arbitration an arbitrator shall be appointed—

- (a) where regulation 10 applies, by the President,
- (b) in any other case, by agreement between the occupier of the relevant holding and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where sub-paragraph (1)(b) applies, the occupier shall give notice to the Intervention Board of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator, within fourteen days of the date of the appointment of the arbitrator or the date of the application to the President, as the case may be.

3.—(1) An arbitrator appointed in accordance with paragraphs 1(1) to (4) and 2 shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to areas used for milk production in the last five year period during which production took place before the change of occupation, or in the case of a prospective apportionment in the last five year period during which production took place before the appointment of the arbitrator.

(2) An arbitrator appointed in accordance with paragraph 1(5) shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to the areas used for milk production in the last five-year period during which production took place.

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(3) An arbitrator appointed under any paragraph of this Schedule shall base his award on findings made by him in accordance with the law in force at the time the event giving rise to an application for arbitration took place.

4.—(1) No application may be made to the President for an arbitrator to be appointed by him under this Schedule unless the application is accompanied by the prescribed fee for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the President to exercise any function exercisable by him in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him in an appropriate case of a new arbitrator).

(2) The prescribed fee for the purposes of this paragraph shall be that which from time to time is prescribed as the fee payable to the President under paragraph 1(2) of Schedule 11 to the Agricultural Holdings Act 1986<sup>(1)</sup>.

5. Where the Intervention Board makes an application to the President under paragraphs 1(3) or (4), the fee payable to the President in respect of that application referred to in paragraph 4 shall be recoverable by the Intervention Board as a debt due from the other parties to the arbitration jointly or severally.

6. Any appointment of an arbitrator by the President shall be made by him as soon as possible after receiving the application.

7. A person appointed by the President as arbitrator shall, where the arbitration relates to a holding in Wales, and any party to the arbitration so requires, be a person who possesses a knowledge of the Welsh language.

8. For the purposes of paragraph 1(2) the panel of arbitrators shall be the panel appointed by the Lord Chancellor under paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986.

9. If the arbitrator dies, or is incapable of acting, or for seven days after notice from any party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

10. No party to the arbitration shall have power to revoke the appointment of the arbitrator without the consent of any other party, and his appointment shall not be revoked by the death of any party.

11. Every appointment, application, notice, revocation and consent under paragraphs 1 to 10 must be in writing.

12. The remuneration of the arbitrator shall be—

(a) where he is appointed by agreement between the parties, such amount as may be agreed upon by him and the parties or, in default of agreement, fixed by the registrar of the county court (subject to an appeal to the judge of the court) on an application made by the arbitrator or any party;

(b) where he is appointed by the President, such amount as may be agreed upon by the arbitrator and the parties or, in default of agreement, fixed by the President,

and shall be recoverable by the arbitrator as a debt due from the parties to the arbitration, jointly or severally.

### **Conduct of proceedings and witnesses**

13.—(1) In any arbitration to which this Schedule applies, the arbitrator may, in his absolute discretion, subject to sub-paragraph (2), join as a party to the arbitration any person having an interest

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(1) 1986 c. 5.

in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

(2) Where an apportionment under regulation 32(5) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign the statement referred to in regulation 32(5) (b)(ii) shall be a party to the arbitration.

**14.** The parties to the arbitration shall, within thirty-five days of the appointment of the arbitrator, or within such further period as the arbitrator may determine, deliver to him a statement of their respective cases with all necessary particulars and—

- (a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said thirty-five days except with the consent of the arbitrator; and
- (b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

**15.** The parties to the arbitration and all persons claiming through them shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute and shall, subject to any such objection, produce before the arbitrator all samples and documents within their possession or power which may be required or called for, and do such other things as the arbitrator reasonably may require for the purposes of the arbitration.

**16.** Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbitrator.

**17.** Witnesses appearing at the arbitration shall, if the arbitrator thinks fit, be examined on oath or affirmation, and the arbitrator shall have power to administer oaths to, or to take the affirmation of, the parties and witnesses appearing.

**18.** The provisions of county court rules as to the issuing of witness summonses shall, subject to such modifications as may be prescribed by such rules, apply for the purposes of the arbitration as if it were an action or matter in the county court.

**19.—(1)** Subject to sub-paragraphs (2) and (3), any person who—

- (a) having been summoned in pursuance of county court rules as a witness in the arbitration refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or
- (b) having been so summoned or being present at the arbitration and being required to give evidence, refuses to be sworn or give evidence,

shall forfeit such fine as the judge of the county court may direct.

(2) A judge shall not have power under sub-paragraph (1) above to direct that a person shall forfeit a fine of an amount exceeding £400.

(3) No person summoned in pursuance of county court rules as a witness in the arbitration shall forfeit a fine under this paragraph unless there has been paid or tendered to him at the time of the service of the summons such sum in respect of his expenses (including, in such cases as may be prescribed by county court rules, compensation for loss of time) as may be so prescribed for the purposes of section 55 of the County Courts Act 1984(2).

(4) The judge of the county court may at his discretion direct that the whole or any part of any such fine, after deducting costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

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(2) 1984 c. 28.

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**20.**—(1) Subject to sub-paragraph (2), the judge of the county court may, if he thinks fit, upon application on affidavit by any party to the arbitration, issue an order under his hand for bringing up before the arbitrator any person (in this paragraph referred to as a “prisoner”) confined in any place under any sentence or under committal for trial or otherwise, to be examined as a witness in the arbitration.

(2) No such order shall be made with respect to a person confined under process in any civil action or matter.

(3) Subject to sub-paragraph (4), the prisoner mentioned in any such order shall be brought before the arbitrator under the same custody, and shall be dealt with in the same manner in all respects, as a prisoner required by a writ of habeas corpus to be brought before the High Court and examined there as a witness.

(4) The person having the custody of the prisoner shall not be bound to obey the order unless there is tendered to him a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner in going to, remaining at, and returning from, the place where the arbitration is held.

**21.** The High Court may order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before the arbitrator, if the prisoner is confined in any prison under process in any civil action or matter.

#### **Award**

**22.**—(1) Subject to sub-paragraph (2), the arbitrator shall make and sign his award within fifty-six days of his appointment.

(2) The President may from time to time enlarge the time limited for making the award, whether that time has expired or not.

(3) The arbitrator shall notify the terms of his award to the Intervention Board within eight days of delivery of that award.

(4) The award shall fix a date not later than one month after the delivery of the award for the payment of any costs awarded under paragraph 26.

**23.** The award shall be final and binding on the parties and any persons claiming under them.

**24.** The arbitrator shall have power to correct in the award any clerical mistake or error arising from any accidental slip or omission.

#### **Reasons for award**

**25.** Where the arbitrator is requested by any party to the arbitration, on or before the making of the award, to make a statement, either written or oral, of the reasons for the award, the arbitrator shall furnish such a statement.

#### **Costs**

**26.** The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator who may direct to and by whom and in what manner the costs, or any part of the costs, are to be paid. The costs for the purposes of this paragraph shall include any fee paid to the President in respect of the appointment of an arbitrator and any sum paid to the Intervention Board pursuant to paragraph 5.

**27.** On the application of any party, any such costs shall be taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may

be directed by the arbitrator under paragraph 26, or, in the absence of any such direction, by the county court.

**28.**—(1) The arbitrator shall, in awarding costs, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of the amount or otherwise,
- (b) any unreasonable demand for particulars or refusal to supply particulars, and
- (c) generally all the circumstances of the case.

(2) The arbitrator may disallow any costs which he considers to have been unnecessarily incurred, including the costs of any witness whom he considers to have been called unnecessarily.

### **Special case, setting aside award and remission**

**29.** The arbitrator may at any stage of the proceedings and shall, upon a direction in that behalf given by the judge of the county court upon an application made by any party, state in the form of a special case for the opinion of the county court any question of law arising in the course of the arbitration and any question as to the jurisdiction of the arbitrator.

**30.**—(1) Where the arbitrator has misconducted himself, the county court may remove him.

(2) Where the arbitrator has misconducted himself, or an arbitration or award has been improperly procured, or there is an error of law on the face of the award, the county court may set the award aside.

**31.**—(1) The county court may from time to time remit the award, or any part of the award, to the reconsideration of the arbitrator.

(2) In any case where it appears to the county court that there is an error of law on the face of the award, the court may, instead of exercising its power of remission under sub-paragraph (1), vary the award by substituting for so much of it as is affected by the error such award as the court considers that it would have been proper for the arbitrator to make in the circumstances; and the award shall thereupon have effect as so varied.

(3) Where remission is ordered under that sub-paragraph, the arbitrator shall, unless the order otherwise directs, make and sign his award within thirty days of the date of the order.

(4) If the county court is satisfied that the time limited for making the said award is for any good reason insufficient, the court may extend or further extend that time for such period as it thinks proper.

### **Miscellaneous**

**32.** Any amount paid, in respect of the remuneration of the arbitrator by any party to the arbitration in excess of the amount, if any, directed by the award to be paid by him in respect of the costs of the award, shall be recoverable from the other party or jointly from the other parties.

**33.** For the purposes of this Schedule, an arbitrator appointed by the President shall be taken to have been so appointed at the time when the President executed the instrument of appointment, in accordance with the law in force at the time of such execution and in the case of any such arbitrator the periods mentioned in paragraphs 14 and 22 shall accordingly run from that time.

**34.** Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraph 1, 2, 6, 7, 12 or 22 and to be signed by or on behalf of the President shall be taken to be such an instrument or document unless the contrary is shown.

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**35.** The Arbitration Act 1996<sup>(3)</sup> shall not apply to an arbitration determined in accordance with this Schedule.

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<sup>(3)</sup> 1996 c. 23.