1995 No. 25

AGRICULTURE

Milk Marketing Board (Residuary Functions) Regulations (Northern Ireland) 1995

Made . . . . . *31st January 1995*

Coming into operation . . *1st March 1995*

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The Department of Agriculture, in exercise of the powers conferred on it by Article 17(2), (3) and (6) of the Agriculture (Northern Ireland) Order 1993(**a**) and of every other power enabling it in that behalf, hereby makes the following Regulations:—

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Milk Marketing Board (Residuary Functions) Regulations (Northern Ireland) 1995 and shall come into operation on 1st March 1995.

Interpretation and preservation of preliminary provisions of the old marketing scheme

2.—(1) In these Regulations—

"assets" includes interests, property and rights;

"collecting" includes recovery in any proceedings or arbitration to which the Board is or becomes a party;

"distribution entitlement" means the entitlement specified in Schedule 1;

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

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

"entry" in relation to any producer means the name and address of that producer;

"final distribution" has the meaning assigned to it in regulation 25(3);

"the final liquidation of the Board" has the meaning assigned to it in regulation 25(1);

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

"the general fund" has the meaning assigned to it in regulation 17(1);

"interim distribution" has the meaning assigned to it in regulation 20(1)(*e*);

(a) S.I. 1993/2665 (N.I. 10)

"the old marketing scheme" means the Milk Marketing Scheme (Northern Ireland) 1989(**a**);

"the Order" means the Agriculture (Northern Ireland) Order 1993;

"the 1982 Order" means the Agricultural Marketing (Northern Ireland) Order 1982(**b**);

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989(**c**);

"preserved", in relation to a given provision of the old marketing scheme, means that in accordance with Article 17(3)(*a*) of the Order that provision shall continue to have effect by virtue of these Regulations, subject to such modifications as may be specified in relation to that provision by these Regulations;

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

"registered producer" means a producer who has had his entry registered;

"relevant assets" means any assets forming part of the relevant asset total;

"relevant asset total" means on any occasion where, in accordance with these Regulations, the Board intends by means of an interim distribution or a final distribution to distribute, or procure the distribution of, assets of the Board, to eligible producers, the total amount of such assets to be so distributed on that occasion;

"relevant period" means the period commencing on 1st April 1992 and ending on 31st March 1993 (both dates inclusive);

"relevant producer" means any producer who before Vesting Day was registered with the Board under the old marketing scheme;

"retained" means retained by the Board following the transfer referred to in the definition of Vesting Day;

"rights" includes contingent rights;

"Vesting Day" means 1st March 1995 being the day on which in accordance with the approved scheme, certain property, rights and liabilities of the Board are, as a result of Article 14 of the Order, transferred by virtue of the Order.

(2) Article 3 of the old marketing scheme insofar as it relates to the following expressions and the definitions assigned to them is preserved—

(*a*) "cow";

(*b*) "milk";

(*c*) "producer" and;

(*d*) "secretary",

(**a**) S.R. 1989 No. 48
(**b**) S.I. 1982/1080 (N.I. 12)
(**c**) S.I. 1989/2405 (N.I. 19)

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

(3) Article 3 of the old marketing scheme insofar as it relates to the expressions "commercial activities" and "prescriptive resolution" is preserved, subject to modification, and shall have effect as set out in Schedule 3.

(4) After Article 3 of the old marketing scheme there shall be inserted a new Article 3A and this shall have effect as set out in Schedule 3.

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

3. The old marketing scheme—

(*a*) as preserved whether or not subject to modification;

(*b*) with provisions inserted by virtue of these Regulations; or

(*c*) insofar as, subject to the provisions of Part VII of these Regulations, it continues in operation by virtue of Article 16 of the Order,

shall have effect as set out in Schedule 3.

PART II

CONSTITUTION AND MEMBERSHIP OF THE BOARD

Restructuring of the Board's functions

4.—(1) The Board shall continue to exist as a body corporate, with a common seal, called the Milk Marketing Board for Northern Ireland until dissolved by order made under Article 17(5) of the Order but with its functions confined to—

(*a*) managing or otherwise dealing with the assets which are for the time being vested in it;

(*b*) discharging such other functions as are specified in Part V in relation to the assets and liabilities which are for the time being vested in it;

(*c*) carrying on the other activities which it is obliged or empowered by these Regulations or other requirements of law to carry on;

(*d*) preserving and maintaining the minute books and accounting and other records transferred to it under Article 14 of the Order; and

(*e*) undertaking any functions ancillary or incidental to the functions mentioned in sub-paragraphs (*a*) to (*d*),

such functions to be carried out in such a manner and with such expedition as, as well as having regard to the interests of registered producers, it considers is best calculated to secure that the winding-up purpose is achieved.

(2) The Board shall not be regarded as acting on behalf of, and its assets shall not be regarded as assets of, or held on behalf of, the Crown and neither

the Board nor its members nor members of its staff shall be regarded as Crown servants.

(3) In this regulation "the winding-up purpose" means the purpose that—

(*a*) the Board's assets shall be got in and the proceeds shall be applied in or towards discharging the Board's liabilities and other functions under these Regulations; and

(*b*) the liabilities of the Board so far as not discharged in pursuance of sub-paragraph (*a*) shall be otherwise discharged.

Members of the Board

5.—(1) The Board shall consist of not more than five members whom the Department shall appoint by an instrument in writing.

(2) The Department shall designate one of the members appointed under this regulation as the Chairman of the Board.

(3) In appointing a person to be a member of the Board under this regulation, the Department shall have regard to the desirability of appointing—

(*a*) persons who have experience of, and have shown capacity in, some matter relevant to the Board's functions; and

(*b*) (without prejudice to sub-paragraph (*a*)) one person who is a registered producer.

(4) Subject to paragraphs (5) to (13) a member of the Board shall hold and vacate office in accordance with such terms of appointment (including the conditions that he shall comply with the provisions of these Regulations which are binding on him and ensure in combination with the other members that the Board complies with the provisions of these Regulations which are binding on them) as the Department shall specify in the instrument by which it appoints him.

(5) Any appointment of a person as a member of the Board shall be for a term not exceeding three years, but a person who ceases to be such a member at the end of the term shall be eligible for reappointment.

(6) A member of the Board may by notice to the Department resign his office with effect from such time as is specified in the notice.

(7) The Board and every committee thereof shall, at all times, have power to act notwithstanding any vacancy in its membership.

(8) If the Department is satisfied in relation to a member of the Board that—

(*a*) he has been absent without the written permission of the Board from two consecutive meetings of the Board;

(*b*) he has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors;

(*c*) he is unable or unfit to discharge the functions of a member of the Board; or

(*d*) he has not complied with the terms of his appointment,

the Department may by notice in writing remove that member from office with effect from such time as is specified in the notice.

(9) The Chairman of the Board may by notice in writing delivered to the secretary of the Board appoint another member of the Board as his deputy (in these Regulations referred to as "Vice-Chairman") and paragraphs (10) to (13) as well as regulation 7(2) and those preserved provisions of the old marketing scheme which relate to the powers of a Vice-Chairman, shall apply to such appointment, to the revocation of such appointment and to the powers and responsibilities of a Vice-Chairman.

(10) The appointment of a Vice-Chairman shall cease to have effect in any of the following circumstances, that is to say—

(*a*) where he ceases to be a member of the Board under the provisions of this regulation;

(*b*) where the Chairman of the Board by notice in writing delivered to the secretary of the Board revokes the appointment of the Vice-Chairman; or

(*c*) where the person who appointed him has ceased to be a member of the Board under the provisions of this regulation or has ceased to be appointed to the office of Chairman of the Board.

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

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

(*a*) to exercise all the powers, rights, duties and authorities of the Chairman of the Board; and

(*b*) to have a second and casting vote for the Chairman of the Board,

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

(13) A person acting as a Vice-Chairman shall—

(*a*) alone be responsible to the Board for his own acts and defaults; and

(*b*) not be deemed to be the agent of the Chairman of the Board.

Committees

6. Article 11(1) of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Proceedings of the Board

7.—(1) Subject to the provisions of these Regulations the Board may determine its own quorum and procedures and the quorum and procedures of any committee appointed by it.

(2) In the case of an equality of votes at any meeting of the Board or of any committee appointed by it the person who is the chairman of that meeting (who shall be the Chairman of the Board if present or, in his absence, the Vice-Chairman unless absent) shall have a second or casting vote.

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

(4) Article 13 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Minutes

8. Article 14 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

The seal

9.—(1) Article 15 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

(2) Article 16 of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

General powers and staff

10.—(1) Article 17(*a*) of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

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

(*a*) appoint a person to be the agent of the Board; and

(*b*) delegate to that person any of its functions,

for such purposes, for such time and on such terms and conditions (including as to remuneration) as it thinks fit and may at any time revoke or alter such terms and conditions.

(3) The Board may—

(*a*) pay such remuneration, pensions, allowances or gratuities to or in respect of any persons who have been or are its officers or employees as it may determine;

(*b*) make such payments as it may so determine towards provision for the payment of remuneration, pensions, allowances or gratuities to or in respect of such persons;

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

(*d*) pay such travelling and out-of-pocket expenses as have, in the opinion of the Board, been reasonably incurred by its officers or employees in connection with the functions of the Board under these Regulations.

(4) Any reference in paragraph (3) to remuneration, pensions, allowances or gratuities to or in respect of such persons as are mentioned in

that paragraph includes a reference to remuneration, pensions, allowances or gratuities by way of compensation to or in respect of any of the Board's officers or employees who suffer loss of office or employment or loss or diminution of emoluments.

Official address of the Board

11. Article 17(*b*) of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

Remuneration, expenses etc. of members of the Board

12.—(1) The Board shall pay to the members of the Board such remuneration as may be determined from time to time by the Department.

(2) Any remuneration determinable under paragraph (1) shall be fixed by reference to the offices to which the members are appointed.

(3) The Board may pay to any member of the Board any such travelling and out-of-pocket expenses as have, in the opinion of the Board, been reasonably incurred by him in connection with the functions of the Board under these Regulations.

Contracts

13. Article 19 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

PART III

REGISTER OF PRODUCERS

Maintenance of register

14.—(1) The Board shall compile and thereafter maintain a register (in these Regulations referred to as "the register") of the entry of every person who it has reasonable grounds to believe is an eligible producer or an end year producer.

(2) Part I of the register shall consist of entries of eligible producers and Part II of the register shall consist of entries of end year producers.

(3) Any person whose entry does not appear in the register shall be entitled—

(*a*) on application in writing to the Board, within two months of the Board publishing the existence of the register under Article 21(1); and

(*b*) on demonstrating to the reasonable satisfaction of the Board that he is an eligible producer or an end year producer (as the case may be),

to have his entry placed in Part I or Part II (as the case may be) of the register.

(4) It shall be the duty of every registered producer to notify the Board of any changes to his entry in the register.

(5) The Board shall be entitled to assume that information provided to it for the purpose of paragraph (3) or (4) is correct.

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

Inspection of register

15. Article 21 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Partnerships and corporate bodies

16. Article 27 of the old marketing scheme is preserved and shall have effect as set out in Schedule 3.

PART IV

FINANCIAL PROVISIONS

Reserve fund

17.—(1) The Board shall maintain a general reserve fund (in these Regulations referred to as "the general fund"). All moneys received by the Board shall be paid into the general fund and any moneys required by the Board for the discharge of its functions shall be paid out of that fund.

(2) Any moneys for the time being standing to the credit of the general fund may be left on current or deposit account in any bank or building society account or, if not for the time being required for the purposes of the functions of the Board, may be invested 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**) to invest trust funds.

Borrowing

18. Article 41(2) of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Administration and accounts

19.—(1) Article 44 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

(2) Article 45 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

(3) Article 46(3) of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

PART V

FUNCTIONS OF THE BOARD

Functions

20.—(1) The functions mentioned in regulation 4(1)(*b*) are—

(*a*) collecting sums owed in payment for milk supplied by the Board in the final trading period and sums owed in respect of such other debts as are due, or shall fall due to the Board;

(**a**) 1958 c. 23 (N.I.)

(*b*) collecting—

(i) contributions which in respect of milk sold before Vesting Day became payable pursuant to Article 47 of the old marketing scheme;

(ii) penalties which before Vesting Day became recoverable by the Board pursuant to Article 58(6) of the old marketing scheme;

(iii) contributions which become recoverable pursuant to the preserved provisions of the old marketing scheme to which reference is made in regulation 23;

(iv) any other sums which are recoverable by the Board;

(*c*) in accordance with paragraphs (2) and (3) making payments to end year producers for milk sold by them to the Board in the final trading period;

(*d*) discharging the Board's other liabilities as they fall due;

(*e*) making or procuring to be made interim distributions (in these Regulations referred to as "interim distributions") of relevant assets to eligible producers, in accordance with their distribution entitlement, if the Board considers it financially prudent to do so;

(*f*) collecting contributions from eligible producers in the exercise of any power conferred on the Board by order made under Article 20(2) of the Order; and

(*g*) making such other payments to relevant producers or registered producers as may be required by the Department for the purposes of the approved scheme.

(2) The Board shall have the power—

(*a*) to determine a price payable by the Board as the price of milk supplied by end year producers to it in the month immediately before Vesting Day (in this regulation referred to as "the February price");

(*b*) to determine the level of any contribution to which paragraph (1)(*b*)(i) refers,

and the Board shall take such action as it considers expedient for the purpose of bringing the February price or the level of contribution determined under sub-paragraph (*b*) to the notice of end year producers.

(3) In determining the February price the Board may determine different prices for different descriptions of milk and in determining the level of contributions under paragraph (2)(*b*) the Board may determine different contribution levels for different descriptions of milk.

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

(5) In connection with the discharging of its liabilities as they fall due—

(*a*) the Board shall have the power if it deems it necessary or expedient to remit the whole or any part of its liabilities by way of composition or arrangement with its creditors;

(*b*) all expenses properly incurred in discharging its liabilities and functions (including any fees payable to any person whom the Board may appoint as its agent) shall be payable out of the Board's assets in priority to all other claims; and

(*c*) subject to the provisions of the 1989 Order as to preferential payments the Board's assets shall be applied in satisfaction of their liabilities.

Prohibition on buying and selling milk etc.

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

Assessment of sales

22. Article 48 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Contraventions of the old marketing scheme

23. Article 58 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

PART VI

MEETINGS OF REGISTERED PRODUCERS

Meetings

24.—(1) Article 61 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

(2) Article 62(1) of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

(3) Articles 63 to 66 of the old marketing scheme are preserved, subject to modification and shall have effect as set out in Schedule 3.

PART VII

FINAL LIQUIDATION OF THE BOARD

Completion of winding-up and distribution of surplus

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

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

(*a*) a voluntary solvent liquidation under regulation 26; or

(*b*) a liquidation on application to the court under the 1989 Order in accordance with the amended provisions of the old marketing scheme to which reference is made in regulation 27.

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

Voluntary solvent liquidation

26.—(1) This regulation applies if—

(*a*) the Board is satisfied that where possible—

(i) its assets have been got in, and

(ii) its liabilities and other functions under these Regulations (other than those specified in this Part) have been discharged, and

(*b*) there is a surplus in the general fund.

(2) Where the circumstances mentioned in paragraph (1) apply the Board may make the final distributions.

(3) As soon as the Board has made the final distributions under paragraph (2) it shall make up an account showing—

(*a*) how its assets have been got in, and

(*b*) how its assets have been disposed of,

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

(4) The provisions of Part XVIII of the old marketing scheme as set out in Schedule 3 shall apply to the advertisement and conduct of the meeting referred to in paragraph (3).

(5) Within 14 days after the meeting referred to in paragraph (3), the Board shall send to the Department a copy of the account and shall make a return to it of the holding of the meeting and of its date.

(6) The voluntary solvent liquidation of the Board under this regulation does not bar the right of any creditor or eligible producer (being a contributory for the purposes of Article 104 of the 1989 Order) to have the Board wound up by the court under the 1989 Order in accordance with the amended provisions of the old marketing scheme to which reference is made in regulation 27; but in the case of an application by an eligible producer the court must be satisfied that the rights of eligible producers will be prejudiced by a voluntary liquidation by the Board under this regulation.

Liquidation on application to court under the 1989 Order

27.—(1) Articles 69 and 70 of the old marketing scheme (which by virtue of Article 16 of the Order but subject to these Regulations continue in operation notwithstanding the revocation of the 1989 scheme on Vesting Day) shall be amended and shall have effect as set out in Schedule 3.

(2) After Article 69 of the old marketing scheme there shall be inserted new Articles 69A and 69B, which shall have effect as set out in Schedule 3.

PART VIII

MISCELLANEOUS

Arbitration

28. Article 72 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Information

29. Article 74 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Prescriptive resolutions

30. The Board shall continue to maintain the record of prescriptive resolutions which it was required to keep under Article 75 of the old marketing scheme and any person shall be entitled, on payment of the cost of postage and such fee, not exceeding one pound, as the Board may determine, to be supplied with a copy of any item in such record.

Service of documents

31. Article 76 of the old marketing scheme is preserved, subject to modification, and shall have effect as set out in Schedule 3.

Indemnity

32.—(1) Subject to paragraph (2), every member or officer or auditor of the Board shall be indemnified out of the assets of the Board from and against—

(*a*) any action, cost, charge, loss, damage and expense which he may incur; and

(*b*) any liability which by virtue of any rule of law or equity would otherwise attach to him,

by reason of, or in connection with, any act done, concurred in or omitted in or about the execution of his duty in relation to the affairs of the Board.

(2) Paragraph (1) shall not apply where any such action, cost, charge, loss, damage, expense or liability as is referred to in that paragraph has arisen from or been contributed to by any dishonest act or omission, wilful default or wilful neglect on the part of the member or (as the case may be), officer or auditor concerned.

Sealed with the Official Seal of the Department of Agriculture on 31st January 1995.

(L.S.) *P. T. Toal*

Assistant Secretary

SCHEDULE 1 Regulation 2(1)

Distribution Entitlement

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

2. The personal allocation, in respect of each eligible producer shall be determined by multiplying his base milk production by the relevant asset total and dividing the resulting sum by the total qualifying milk production.

3. The personal allocation for any eligible producer shall be rounded to the nearest whole penny.

4. For the purposes of this Schedule—

"accepted hardship producer" means any eligible producer whose hardship application has been accepted by the Board;

"base milk production" in relation to any eligible producer means the total number of volume units produced and sold by him (whether to the Board or otherwise) during the qualifying period;

"hardship application" means an application under the approved scheme by an eligible producer pleading that calculation of his personal allocation by reference to the milk produced and sold by him during the relevant period in comparison with milk produced and sold by him during the alternative period would cause him exceptional hardship;

"milk" means milk intended for ultimate human consumption by the public whether as milk or in the form of a product which is wholly or partly derived from milk or includes milk as an ingredient;

"qualifying period" means, in the case of an accepted hardship producer, the alternative period and in any other case, the relevant period;

"the alternative period" means, in the case of a producer adversely affected by a disease eradication programme, the twelve months immediately preceding the commencement of that programme and in any other case the period from 1st April 1993 to 31st March 1994 (both dates inclusive); and

"total qualifying milk production" means the aggregate of the base milk production of all eligible producers.

Eligible and End Year Producer Criteria

PART I

ELIGIBLE PRODUCER CRITERIA

1. An eligible producer is any person who—

(*a*) at any time during the relevant period was registered as a producer under the old marketing scheme; or.

(*b*) is—

(i) a transferee of a person who satisfied the condition specified in sub-paragraph (*a*); and

(ii) notified the Board of such transfer in writing, using any form of transfer approved by the Board; or

(*c*) is, subject to paragraph 4 of Part III—

(i) a transferee of a person who satisfied the condition specified in sub-paragraph (*a*) or (*b*), and

(ii) notified the Board of such transfer in writing in accordance with the conditions specified in paragraph 2 of Part III.

2. Evidence that a person sold milk to the Board at any given time shall be deemed to be evidence of his having been registered as a producer under the 1989 scheme at that time.

PART II

END YEAR PRODUCER CRITERIA

An end year producer is any person who—

(*a*) sold milk to the Board during the final trading period; or

(*b*) is—

(i) a transferee of a person who satisfied the condition specified in sub-paragraph (*a*); and

(ii) notified the Board of such transfer in writing using any form of transfer approved by the Board; or

(*c*) is, subject to paragraph 4 of Part III—

(i) a transferee of a person who satisfied the condition specified in sub-paragraph (*a*) or (*b*), and

(ii) notified the Board of such transfer in writing in accordance with the conditions specified in paragraph 2 of Part III.

PART III

SUPPLEMENTAL

1. In this Schedule a person is the transferee of another person if—

(*a*) where by reason of that person dying or becoming subject to some legal disability or entering into a composition or scheme of arrangement with his creditors, he has acquired any of the milk producing business of that person as a personal representative, trustee, committee or other person; or

(*b*) where in a transaction for value or otherwise he has acquired any of the milk producing business of that person, whether he is connected with the transferor or not.

2. The conditions mentioned respectively in paragraph 1(*c*)(ii) of Part I and sub-paragraph (*c*)(ii) of Part II are that the transferee shall notify the Board of the transfer in writing—

(*a*) as regards transfers before Vesting Day, within one month, or such longer period as the Board may determine, following Vesting Day, or

(*b*) as regards transfers on or after Vesting Day, within one month, or such longer period as the Board may determine, following the transfer,

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

3. The requirement mentioned in paragraph 2 is—

(*a*) in relation to a transferee to whom the circumstances described in paragraph 1(*a*) apply, that the form of notification shall be signed by or on behalf of the transferee and shall have annexed to it documentary evidence of the acquisition;

(*b*) in relation to a transferee to whom the circumstances described in paragraph 1(*b*) apply, that the form of notification shall be signed by or on behalf of the transferor and by or on behalf of the transferee and shall specify the date of the transfer.

4. Regardless of the date of the transfer, the entry of the transferor shall remain on the register until the transferee is entered in the register in his place.

Provisions of the Old Marketing Scheme Preserved, Inserted or Continuing in Operation

PART I

PRELIMINARY

3. In this Scheme:

"commercial activities" in relation to the final trading period of the Board means the following activities of the Board:

(i) processing milk or producing from milk any commodities of which milk is a main ingredient;

(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 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.

"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;

"prescriptive resolution" means a resolution of the Board made prior to Vesting Day, embodying a determination of or prescription by the Board which was recorded in the record then provided for by Article 75(1);

"producer" means a producer of milk; and

"secretary" includes any person for the time being authorised by the Board to act as its secretary.

3A. This Scheme shall be read with the Milk Marketing Board (Residuary Functions) Regulations (Northern Ireland) 1995 as if those Regulations and this Scheme constituted a single instrument and, accordingly, in this Scheme—

(*a*) any expressions used shall have the same meaning as in those Regulations;

(*b*) any references to numbered regulations shall be construed as a reference to the regulation bearing that number in those Regulations; and

(*c*) any reference to "this scheme" shall be construed as including those Regulations.

PART II

THE BOARD

Committees

11.—(1) The Board may appoint committees consisting of such members of the Board and such other persons as the Board may determine and regulate the duties of such committees.

Proceedings

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

14. Minutes shall be kept of the proceedings of the Board and of any committee appointed by the Board, 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 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 and may engage the services of such 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.

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 but he shall, nevertheless, be taken into account for the purpose of constituting a quorum of the Board or any committee appointed by the Board. 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

21.—(1) Within one month of Vesting Day, the Board shall publish, in such manner as it thinks fit the existence of the register, the place at, and the hours during and days on which, it may be inspected.

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

(3) Notwithstanding paragraphs (1) and (2), the Board shall, within two months of Vesting Day, supply each registered producer with a copy of the entry which relates to him free of charge.

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(a) or other corporate body or an institute, firm or partnership producing milk prior to Vesting Day shall be deemed to be a single producer.

PART VIII

FINANCIAL PROVISIONS

Powers of the Board

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

Duties of the Board

44.—(1) In relation to its final trading period, 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 make out for each of those two groups of activities separate cash flow, balance sheets and income and expenditure accounts, and if the Board trades for profit, separate profit and loss accounts. Such accounts shall be in a form which shall be in accordance with accounting principles which are generally accepted in the United Kingdom. Consolidated accounts comprising all of the Board's activities need not be prepared. The accounts in respect of its other activities shall in particular include a statement of accounting policy and such schedules and notes as the Board considers appropriate.

(2) In relation to any trading period on or after Vesting Day, the Board shall keep proper accounts and records in respect of its activities and, in particular, shall make out annually cash flow, balance sheets and income and expenditure accounts, and if the Board trades for profit, separate profit and loss accounts. Such accounts shall, in particular, include a statement of accounting policy and such schedules and notes as the Board considers appropriate but shall in any case include schedules specifying—

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

(*a*) payments made to end year producers under regulation 20(1)(*c*);

(*b*) interim distributions;

(*c*) collection of contributions from eligible producers under regulation 20(1)(*f*);

(*d*) payments made to relevant producers or other registered producers under regulation 20(1)(*g*); and

(*e*) final distributions.

(3) In paragraph (2) "annually" means in any twelve month period and in making out its annual accounts under that paragraph the Board may determine accounting periods of any duration commencing immediately after the end of the previous one.

(4) The Board shall furnish the Department with such information (including minutes of any meeting of the Board or any of its committees) as the Department may from time to time require concerning any of the Board's activities. The Board shall also permit any person duly authorised in writing by the Department on production of his authority, to inspect such of the Board's accounts and records as he may reasonably require.

Accounts

45.—(1) The Board shall cause all its accounts and balance sheets prepared pursuant to Article 44(1) or (2) to be audited by a member of a body of accountants which was recognised by the Department of Economic Development for the purposes of Article 397 of the Companies (Northern Ireland) Order 1986(**a**). As soon as may be after the auditor has reported thereon, and in any case within nine months from the close of the period covered 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 discharge of its functions in the period covered by the profit and loss or income and expenditure accounts, which shall include a statement of the manner in which any moneys are invested and a statement as to the annual emoluments of members and employees of the Board.

(1A) The report of the Board mentioned in paragraph (1) which relates to the Board's accounts and balance sheets for its other activities in the final trading period (prepared pursuant to Article 44(1)) shall include such information relating to the Board's commercial activities during that period as the Board thinks appropriate.

(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.—(3) In case of a vacancy the Board may appoint a person or firm qualified as specified in Article 45(1) to act as temporary auditor or auditors.

Assessment of sales

48.—(1) Where the Board is unable to obtain from any relevant producer a sufficient return showing the number of litres of milk sold by him during any accounting period he shall, if the Board 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.

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

(2) Where the Board is unable to obtain from any relevant producer a sufficient return showing the number of cows in his possession on the said date, he shall, if the Board 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 XVI

CONTRAVENTIONS OF THE MILK MARKETING SCHEME

58.—(1) If any relevant producer—

(*a*) has before Vesting Day contravened any prescription of the Board under Articles 49 or 52;

(*b*) has before Vesting Day sold milk in contravention of a direction of the Board given under Article 25;

(*c*) has before Vesting Day sold milk by retail, semi-retail or wholesale in contravention of any prescription of the Board under Article 56;

(*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*) has before Vesting Day withheld milk for the purposes of Article 51(1)(*d*) (for sale to an exempt producer) and has failed without reasonable excuse to comply with any of the requirements of Article 51(5),

the Board may recover from him such financial contribution not exceeding £1,000 as it may determine.

No such contribution may be recovered in respect of such a contravention as aforesaid which would constitute an offence under Part II of the 1982 Order or any other statutory provision.

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

(4) The Board 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 relevant producer in question made within three months after the date of the original determination, it is satisfied that—

(*a*) there may be facts relevant to the case other than the facts which were before the Board at the time of the determination;

(*b*) if such other facts had been previously known to the Board, 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 Board decides 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 determination, and the Board shall thereupon give effect to such variation.

(*b*) The provisions of paragraph (3) shall apply to every such varied determination in like manner as it applies to an original determination.

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

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

PART XVIII

MEETINGS OF REGISTERED PRODUCERS

General meetings

61.—(1) Subject to paragraph (3) the Board shall, at such time as it thinks fit in each calendar year starting with 1995, hold an annual general meeting at which all registered producers shall be eligible to attend. Such meeting shall be held at such place, date and hour as the Board shall determine.

(1A) At any annual general meeting of the Board the matters to be put before the meeting shall be limited to noting of the Board's accounts and deciding on the appointment of the Board's 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 at which all registered producers shall be eligible to attend.

(3) Not more than fifteen months shall elapse between annual general meetings of registered producers held under paragraph (1).

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 publish in two or more newspapers circulating throughout Northern Ireland details of the time and place appointed for the holding of the meeting and the business to be transacted.

(1A) Notwithstanding having published notice of a general meeting under paragraph (1) and notwithstanding any such meeting having commenced, the Board shall have the power to adjourn that meeting if it thinks fit and shall publish notice of the adjourned meeting in two or more newspapers circulating throughout Northern Ireland.

(1B) The notice mentioned in paragraph (1A) shall be published not later than 21 days before the date fixed for the holding of the adjourned meeting.

Proceedings at general meetings

63.—(1) The quorum required for any general meeting shall be 20 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 present shall be entitled to vote.

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 5 registered producers present in person, 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

69. Part VI of the 1989 Order (which relates to the winding-up of unregistered companies) shall apply in relation to the Board subject to the modifications set out in Articles 69A and 69B.

69A.—(1) For the purposes of Articles 185, 186 and 188 of the 1989 Order, the principal place of business of the Board is deemed to be the office of the Board the address of which has been notified to the Department under Article 17(*b*).

(2) Article 185 of the 1989 Order shall apply in relation to the Board as if paragraph (4)(*a*) of that Article were omitted.

(3) Article 187 of the 1989 Order shall not apply in relation to the Board.

(4) Article 188 of the 1989 Order shall apply in relation to the Board as if the words "or any member of it as such" were omitted.

(5) A petition for winding-up of the Board may be presented by the Department as well as any person authorised by Article 104(1) of the 1989 Order (as applied in relation to the Board by Article 185(1) of the 1989 Order) to present a petition for winding-up of the Board.

(6) Articles 167, 168 and 169 of the 1989 Order shall not apply in relation to the Board.

69B. In the event of the final liquidation of the Board under the 1989 Order and for the purposes of Article 190 of the 1989 Order and whether or not the powers conferred on the Board and the Department by Article 20 of the Order have been exercised, every eligible producer shall be liable to contribute to the payment of the debts and liabilities of the Board and to the payment of the costs and expenses of the winding-up and his liability shall be an amount assessed in the manner and subject to the limitations which are provided for in Article 70 but save as aforesaid no person shall be liable to contribute to the assets of the Board in the winding-up by reason only of his being or having been a producer registered with the Board or a member of the Board.

70. Contributions under Article 69B 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 year immediately before the presentation of the petition for winding-up, 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.

PART XX

MISCELLANEOUS

72.—(1) Any relevant producer who is aggrieved by any act or omission of the Board arising in the period prior to Vesting Day or by any assessment made by the Board under Article 48(1) 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) Where any relevant producer gives notice to the Board under Article 58(3), that notice shall be treated for the purposes of this paragraph as requiring the Board to make the reference to which paragraph (1) refers.

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

(4) An arbitrator agreed upon or nominated as aforesaid shall have the 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 judgment under and subject to the provisions of the Arbitration Act (Northern Ireland) 1937.

74. The Board may, whenever it considers it necessary for the discharge of its functions so to do, serve on any relevant producer who is an end year producer a demand in writing requiring him to furnish to the Board such returns, accounts, records and other information relating to the milk produced by him at any time prior to Vesting Day as the Board considers necessary for the discharge of its functions.

76. Without prejudice to Section 24 of the Interpretation Act (Northern Ireland) 1954(**b**) any requirement of this Scheme 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.

(**a**) 1937 c. 8 (N.I.) (1 Edw. 8 and 1 Geo. 6)
(**b**) 1954 c. 33 (N.I.)

EXPLANATORY NOTE

(This note is not part of the Regulations.)

In accordance with the Agriculture (Northern Ireland) Order 1993 (''the Order'') the Department of Agriculture has granted an application by the Milk Marketing Board for Northern Ireland (''the Board'') for the approval of a scheme of reorganisation (''the approved scheme'') which provides for the transfer under Article 14 of the Order (''the transfer'') of certain of the Board's property, rights and liabilities on 1st March 1995 and for its other assets to remain with the Board for distribution to milk producers who were registered with the Board during the period 1st April 1992 to 31st March 1993.

As a result of the transfer, Article 4 of the Order provides that the Milk Marketing Scheme (Northern Ireland) 1989 (''the old marketing scheme''), which constitutes the Board, is also revoked with effect from 1st March 1995 although, under Article 16 of the Order, the Board shall not be deemed to be dissolved by reason of the revocation but shall continue to exist in residuary form and so much of the old marketing scheme as relates to the winding-up of the Board, shall continue in operation, subject to Regulations which may be made under Article 17 of the Order.

These Regulations, which are made under Article 17 of the Order and come into operation on 1st March 1995, make provision for the purpose of giving effect to so much of the approved scheme as relates to the Board in the period after the transfer and make provision in relation to the constitution of the Board and for the purposes of enabling the Board to wind-up its affairs. In accordance with that Article the Regulations provide for certain provisions of the old marketing scheme to continue to have effect, subject to certain modifications, and contain new provisions.