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STATUTORY INSTRUMENTS

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**1993 No. 923**

**FOOD**

**The Dairy Produce Quotas Regulations 1993**

<i>Made</i>	- - - -	<i>29th March 1993</i>
<i>Laid before Parliament</i>		<i>31st March 1993</i>
<i>Coming into force</i>	- -	<i>1st April 1993</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Economic Community, acting jointly, in exercise of the powers conferred on them by that section and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Title and commencement**

1. These Regulations may be cited as the Dairy Produce Quotas Regulations 1993 and shall come into force on 1st April 1993.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“agricultural area” includes areas used for horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, areas of land used as grazing land, meadow land, osier land, market gardens and nursery grounds and areas of land used for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

“Commission Regulation” means Commission Regulation (EEC) No. 536/93<sup>(3)</sup> laying down detailed rules on the application of the levy on milk and milk products;

“Community legislation” means the Council Regulation and the Commission Regulation;

“consent or sole interest notice” means a notice, in relation to a holding or part of a holding, signed by the person required under these Regulations to provide the notice, that either—

- (a) he is the occupier of that holding or part of a holding and no other person has an interest in that holding or part of the holding, or

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(1) S.I.1972/1811.

(2) 1972 c. 68.

(3) OJ No. L57, 10.3.93, p. 12.

(b) all persons having an interest in the holding or part of the holding the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates agree to that apportionment or proposed prospective apportionment;

“Council Regulation” means Council Regulation (EEC) No. 3950/92(4) establishing an additional levy in the milk and milk products sector;

“cow” includes a heifer that has calved;

“dairy enterprise” means an area stated by the occupier of that area to be run as a self-contained dairy produce business;

“dairy produce” means the produce, expressed in kilograms or litres (one kilogram being 0.97116 litres) of milk, in respect of which levy is payable under the Community legislation;

“Dairy Produce Quota Tribunal” has the meaning assigned to it by regulation 33; “delivery” has the meaning assigned to it by Article 9(g) of the Council Regulation (which sets out definitions) and “deliver” shall be construed accordingly;

“direct sale” means a sale referred to in Article 9(h) of the Council Regulation;

“direct sales quota” means the quantity of dairy produce which may be sold by direct sale from a holding in a quota year without the direct seller in occupation of that holding being liable to pay levy;

“direct seller” means a producer selling dairy produce by direct sale;

“eligible heifer” means any heifer which, at the date of service of the notice referred to in regulation 15(2)(a), was on land subject to the notice and calves for the first time on a day when the notice has effect or which at the date of making the order referred to in regulation 15(2)(b) was on land designated by the order and calves for the first time on a day when the order is in force;

“farming press” means any newspaper, journal or similar publication considered by the Minister to be likely to be read by producers and purchasers;

“Gazette” means, as regards anything in these Regulations relating to—

- (a) England and Wales, the London Gazette,
- (b) Scotland, the Edinburgh Gazette,
- (c) Northern Ireland, the Belfast Gazette, and
- (d) the United Kingdom, the London, Edinburgh and Belfast Gazettes;

“holding” has the meaning assigned to it by Article 9(d) of the Council Regulation;

“identification” means a description of a holding specifying—

- (a) the address of the producer farming the holding;
- (b) such other particulars, if any, as the Minister may require, and “identify” and “identified” shall be construed accordingly;

“interest” includes the interest of a mortgagee or heritable creditor and a trustee, but does not include the interest of a beneficiary under a trust or settlement or, in Scotland, the estate of a superior;

“Intervention Board” means the Intervention Board for Agricultural Produce established under section 6(1) of the European Communities Act 1972;

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(4) OJ No. L405, 31.12.92, p. 1; Article 3 was amended by the Regulation adopted by the Council of the European Communities on 17th March 1993.

“levy” means the levy, payable under the Community legislation to the competent authority referred to therein, described in Article 1 of the Council Regulation (which deals with the fixing of the levy);

“milk marketing board” means a milk marketing board constituted under the Agricultural Marketing Act 1958<sup>(5)</sup> or the Agricultural Marketing (Northern Ireland) Order 1982<sup>(6)</sup>;

“Minister”, as regards anything in these Regulations relating to—

- (a) England and Wales, means the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly;
- (b) Scotland, means the Secretary of State for Scotland,
- (c) Northern Ireland, shall be construed in accordance with paragraph (3), and
- (d) the United Kingdom, means the Ministers;

“Ministers” means all those to whom the definition of “the Minister” relates, acting jointly;

“national reserve” means the reserve described in regulation 13, constituted pursuant to Article 5 of the Council Regulation (which deals with confiscation and distribution of quota);

“occupier” includes, in relation to land in respect of which there is no occupier, the person entitled to grant occupation of that land to another person;

“producer” has the meaning assigned to it by Article 9(c) of the Council Regulation; “prospective apportionment” in relation to quota on a holding means apportionment of quota ascertained under regulation 11 which will take place if there is a change of occupation of a part of the holding to which the prospective apportionment relates within six months of that prospective apportionment;

“purchaser” has the meaning assigned to it by Article 9(e) of the Council Regulation;

“purchaser details” means in relation to a producer, the name and address of any purchaser to whom that producer delivers, or intends to deliver, dairy produce by wholesale delivery and the proportions of that dairy produce which he delivers or intends to deliver to each;

“purchaser quota” means, the quantity of dairy produce which may be delivered by wholesale delivery to a purchaser during a quota year without that purchaser being liable to pay levy;

“purchaser special quota” means the quantity of dairy produce which may be delivered by wholesale deliveries against producers' special quotas to a purchaser during a quota year without that purchaser being liable to pay levy;

“qualifying cow” means any eligible heifer which calves at a time when the number of eligible heifers exceeds the replacement number;

“qualifying day” means, in respect of any qualifying cow, the day it calves and each day or part of a day thereafter during which the notice referred to in regulation 15(2)(a) has effect or during which the order referred to in regulation 15(2)(b) is in force;

“quota” means direct sales quota or wholesale quota, as the case may be;

“quota year” means any of the periods of 12 months described in Article 1 of the Council Regulation (which deals with the fixing of the levy);

“registered wholesale quota” means quota registered in accordance with regulation 25(2)(a);

“replacment number” means the nearest integer to 22 per cent of the total number of dairy cows on the land subject to the notice referred to in regulation 15(2)(a), or designated by the order referred to in regulation 15(2)(b), as at the date of service of the notice or (as the case

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(5) 1958 c. 47, to which there are amendments not relevant to these Regulations.

(6) S.I. 1982/1080 (N.I. 12), amended by S.I. 1984/1822 (N.I. 12).

may be) the coming into force of the order, and where 22 per cent of the total number is half way between two integers the nearest even integer shall be deemed to be the nearest integer;

“Scottish Islands area” means one of—

- (a) the islands of Shetland,
- (b) the islands of Orkney,
- (c) the islands of Islay, Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae and the Kintyre peninsula south of Tarbert; or
- (d) the islands in the Outer Hebrides and the Inner Hebrides other than those listed in (c);

“special quota” means the quota referred to in Article 4(3) of the Council Regulation which is subject to the restrictions set out in Articles 6(1) and 7(1)(a) of the Council Regulation and in Article 3a(4) of Council Regulation 857/84(7) (which together deal with special quota);

“the 1984 Regulations” means the Dairy Produce Quotas Regulations 1984(8);

“total direct sales quota” means the total quantity of dairy produce which may be sold by direct sale from a holding in a quota year without the direct seller in occupation of that holding being liable to pay levy;

“total purchaser quota” means the quantity of dairy produce which may be delivered by wholesale delivery to a purchaser during a quota year without that purchaser being liable to pay levy;

“total wholesale quota” means the total quantity of dairy produce which may be delivered by wholesale delivery from a holding in a quota year without the producer in occupation of that holding being liable to pay levy;

“transferee” means a person who replaces another person as occupier of a holding or part of a holding;

“transferor” means a person who is replaced by another person as occupier of a holding or part of a holding;

“unused quota” means quota remaining unused after any direct sales or wholesale deliveries have been taken into account, adjusted in accordance with Article 2(2) of the Commission Regulation (which deals with the fat content of milk);

“wholesale delivery” means delivery from a producer to a purchaser;

“wholesale quota” means the quantity of dairy produce which may be delivered by wholesale delivery to a purchaser (to the extent specified in relation to that purchaser under these Regulations), from a holding in a quota year without the producer in occupation of that holding being liable to pay levy.

(2) In these Regulations, unless the context otherwise requires—

- (a) any reference to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations,
- (b) any reference in a regulation or Schedule to a numbered paragraph shall be construed as a reference to the paragraph so numbered in that regulation or Schedule, and
- (c) any reference in a paragraph to a numbered or lettered subparagraph shall be construed as a reference to the subparagraph so numbered or lettered in that paragraph.

(3) In their application to Northern Ireland these Regulations shall have effect with the substitution, for references to the Minister, of references to the Department of Agriculture for Northern Ireland.

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(7) OJ No. L90, 1.4.84, p. 13.

(8) S.I. 1984/1047; amended by S.I. 1984/1538, 1787 and S.I. 1985/509.

### **Establishment of quota**

3. Total direct sales quota and total wholesale quota for any person and purchaser quota for any purchaser in respect of any quota year shall be established in accordance with these Regulations and the Community legislation.

### **Determination of levy**

4. For the purposes of Article 2(1) of the Council Regulation (which deals with the calculation of the levy), the contribution of producers who make wholesale deliveries towards the levy shall be established, in accordance with the provisions of that Article, at the level of the purchaser.

### **Milk equivalence of dairy produce**

5.—(1) For the purposes of Article 1(2) of the Commission Regulation (which deals with milk equivalence of dairy produce) the milk equivalence of dairy produce shall be calculated on the basis that each kilogram of dairy produce shall equal such quantity of milk referred to in paragraph (2) as is required to make that kilogram of dairy produce.

(2) The milk to which paragraph (1) relates is milk the fat content of which has not been altered since milking.

### **Adjustment of purchaser quota**

6.—(1) Where any wholesale quota is increased or reduced in accordance with the Community legislation or these Regulations, the purchaser quota of any purchaser to whom that quota is applicable shall be correspondingly increased or reduced.

(2) On any transaction to which the second subparagraph of Article 2(2) of the Council Regulation (which deals with replacements of purchasers and changes of purchasers by producers) applies, any purchaser whose purchaser quota has been increased by virtue of that transaction shall, no later than a date 21 days after the date of the transaction, submit to the Minister—

- (a) a statement of the transaction, that is to say a statement setting out (in accordance with the second subparagraph of Article 2(2) of the Council Regulation, where applicable) the following particulars—
  - (i) the nature of the transaction;
  - (ii) the parties to the transaction;
  - (iii) the changes of purchaser quota of any purchaser to whom the transaction relates;
  - (iv) the changes in respect of matters referred to in regulation 25(2)(a)(vi) and (vii) which form part of the wholesale register entry of each producer to whom the transaction relates; and
- (b) a declaration signed by the producer and the purchaser whose purchaser quota is to increase that the purchaser whose purchaser quota is to decrease has been notified of the changes the particulars of which are set out in the statement of the transaction referred to in subparagraph (a).

(3) Subject to paragraph (4), where during a quota year a producer changes from being registered with a purchaser to being registered with any other purchaser, for the purposes of calculation of levy liability under regulation 19 in that quota year, any purchaser with whom he is newly registered shall have its purchaser quota increased by an amount equivalent to such part of that producer's registered wholesale quota as the producer shall determine.

(4) The amount of the increase of purchaser quota determined in accordance with paragraph (3) shall not include the amount of quota necessary to cover the deliveries made by the producer

before the date of the change of purchaser, adjusted if necessary in accordance with the second sub-paragraph of Article 2(2) of the Council Regulation, which shall remain available to the original purchaser.

(5) At the end of the quota year referred to in paragraph (3), the purchaser with whom the producer is newly registered shall have its purchaser quota increased by such part of the producer's remaining quota as he shall determine.

(6) Notwithstanding paragraphs (2), (3) and (4) above, the Minister may determine the date before which, in any quota year, any transaction to which the second sub-paragraph of Article 2(2) of the Council Regulation applies shall be notified to him, and the Minister shall announce any such date by such means of publication as the Minister considers likely to come to the attention of purchasers and producers.

(7) The Minister may provide such forms as he reasonably considers to be necessary for the purposes of this regulation.

### **Transfer of quota**

7.—(1) For the purposes of Article 7 of the Council Regulation (which deals with transfer of quota when any holding is sold, leased or transferred by inheritance), on a transfer of any holding or part of a holding, other than a transfer of a kind to which paragraph (7) below refers, the transferee shall submit to the Minister—

- (a) within two months of the change of occupation of the holding or part of a holding, a duly completed form prescribed for this purpose from time to time by the Minister signed by the transferor and the transferee, and
- (b) such other evidence relating to the transfer, and within such time, as the Minister may reasonably require.

(2) Notwithstanding paragraph (1) above, the Minister may decide, in respect of transfers of any holding or part of a holding in a quota year which have not been notified to him in writing by the transferee before a date to be determined by him in the following quota year, that for the purposes of any levy calculation—

- (a) the unused quota transferred with such transfers shall not be treated as a part of the transferee's quota entitlement for the quota year in which the transfer took effect but shall be treated as if it remained unused quota available for re-allocation by the Minister in the year in which the transfer took place, and
- (b) a transferee shall not be entitled to demand that, by reason of such a transfer, an amendment be made to the amount of quota, if any, which has been reallocated to him under Schedule 4 for the quota year in which the transfer took effect.

(3) A decision by the Minister, together with the date determined by him under paragraph (2) above, shall be announced by advertisement published in the Gazette and the farming press at least two months before that date or, in the event that such publication is not possible for any reason, by such other means of publication as the Minister considers likely to come to the attention of producers.

(4) Where there is a transfer of the entirety of a holding it shall be presumed that the transferee intends to deliver dairy produce from the holding by wholesale delivery to the purchasers named, and in the proportions listed, in the transferor's entry in the wholesale register.

(5) Where there is a transfer of part of a holding—

- (a) an apportionment of the quota relating to the holding shall be carried out in accordance with regulation 10, and
- (b) dairy produce previously sold by direct sale or delivered by wholesale delivery from the holding in the quota year in which the change of occupation takes place shall be deemed,

for the purposes of any levy, to have been sold or delivered from each part of the holding proportionally in accordance with that apportionment.

(6) A prospective apportionment of quota in respect of a part of a holding may be made in accordance with regulation 11.

(7) This regulation shall not apply to the following—

- (a) a licence to occupy land;
- (b) the tenancy of any land under which a holding, or part of a holding, in England and Wales is occupied for a period of less than ten months;
- (c) the lease of any land under which a holding, or part of a holding, in Scotland is occupied for a period of less than eight months;
- (d) the tenancy of any land under which a holding, or part of a holding, in Northern Ireland is occupied for a period of less than twelve months;
- (e) the termination of a tenancy or lease to which subparagraph (b), (c) or (d) applies;
- (f) any transfer of a holding or part of a holding where the transfer would result in an increase or reduction in the total direct sales quota or total wholesale quota available for use by dairy enterprises located within a Scottish Islands area.

(8) Paragraphs (1), (5)(a), (6) and (7)(a) to (e) and the words “Notwithstanding paragraph (1) above” in paragraph (2) shall not apply in relation to special quota.

#### **Effect of land transfers on special quota**

**8.—(1)** Subject to paragraphs (3) and (4) below where a producer has special quota registered in his name—

- (a) that special quota shall be returned to the national reserve if the holding is sold or leased by the producer; and
- (b) a proportion of that special quota shall be returned to the national reserve if only part of the holding is sold or leased by the producer.

(2) The proportion of the special quota which is to be returned to the national reserve in accordance with paragraph (1)(b) shall be the same proportion which the agricultural area of the holding sold or leased bears to the total agricultural area farmed by the producer.

(3) This regulation shall not apply where the transfer of the holding or any part of it is effected by means of the following—

- (a) a licence to occupy land;
- (b) the tenancy of any land under which a holding, or part of a holding, in England and Wales is occupied for a period of less than 10 months;
- (c) the lease of any land under which a holding, or part of a holding, in Scotland is occupied for a period of less than 8 months;
- (d) the tenancy of any land under which a holding, or part of a holding, in Northern Ireland is occupied for a period of less than 12 months.

(4) No part of the special quota shall be returned to the national reserve where the holding or any part of it is transferred—

- (a) on inheritance,
- (b) by gift for which no consideration is given,

- (c) by the granting of a tenancy following a direction under section 39 or section 53 of the Agricultural Holdings Act 1986(9) (direction for grant of tenancy to successor on death or retirement of previous tenant),
- (d) by the granting of a tenancy (following a direction under section 39 of that Act) in circumstances within section 45(6) of that Act (new tenancy granted by agreement to persons entitled to tenancy under direction),
- (e) by the granting of such a tenancy as is referred to in section 37(1)(b) or (2) of that Act (tenancy granted by agreement to close relatives),
- (f) by the granting of a tenancy other than under paragraphs (c), (d) or (e) of this regulation by the landlord to a successor of a tenant who has died or retired,

and the person to whom the holding or any part of it is transferred undertakes to comply with the undertakings of his predecessor made consequent upon the provisions of Article 4(3) of the Council Regulation and Article 3a of Council Regulation (EEC) No. 857/84 (which together deal with special quota).

#### **Notification of transfer of holding in relation to special quota**

9.—(1) Subject to paragraph (2), where a producer has special quota registered in his name and intends to transfer the whole or a part of his holding he shall submit to the Minister—

- (a) before making such transfer, a duly completed form prescribed for this purpose from time to time by the Minister, and
- (b) such other evidence relating to the proposed transfer, and within such time, as the Minister may reasonably require.

(2) Where a transfer takes place of a holding or part of a holding as is referred to in regulation 8(4), the transferee shall submit to the Minister—

- (a) within two months of the change of occupation of a holding or part of a holding, a duly completed form prescribed for this purpose from time to time by the Minister signed by the transferor and the transferee, and
- (b) such other evidence relating to the proposed transfer, and within such time, as the Minister may reasonably require.

#### **Apportionment of quota**

10. Subject to regulations 8, 11(4) and 12, where there is a transfer of part of a holding, including part of a holding to which regulation 8(4) applies, the apportionment of the quota or special quota relating to that holding shall be carried out—

- (a) where within two months of the change of occupation the transferee submits to the Minister —
  - (i) a duly completed form in accordance with regulation 7(1)(a) or 9(2)(a) as appropriate,
  - (ii) a statement, signed by the transferor and the transferee, that they have agreed that the quota shall be apportioned taking account of areas used for milk production as specified in the statement, and
  - (iii) a consent or sole interest notice provided by the transferor or his personal representative in respect of the entirety of the holding,
 in accordance with the agreement specified in subparagraph (ii),



- (b) in all other cases—
  - (i) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 1 and 3 respectively,
  - (ii) in Scotland in accordance with Schedule 2.

### **Prospective apportionment of quota**

**11.**—(1) The occupier of the holding in respect of which the prospective apportionment of quota is to be applied shall submit to the Minister a statement—

- (a) identifying the parts of the holding to which the prospective apportionment is to relate,
- (b) containing such information relating to the holding as may reasonably be required by the Minister, and
- (c) requesting either—
  - (i) that a prospective apportionment of quota relating to the holding be made taking account of areas used for milk production as at the date of the statement as specified in the statement, or
  - (ii) that a prospective apportionment of quota be ascertained by arbitration in accordance with Schedule 1 in England and Wales and Schedule 3 in Northern Ireland, and in Scotland in accordance with Schedule 2.

(2) The prospective apportionment of quota shall be made in accordance with Schedule 1, 2 or 3, as the case may be, unless a prospective apportionment has been specified in accordance with paragraph 1(c)(i) and the occupier sends to the Minister a consent or sole interest notice in respect of the entirety of the holding, in the case of which, subject to regulation 12, the prospective apportionment shall be as so specified.

(3) A prospective apportionment of quota may be revoked by a notice in writing to the Minister, signed by the occupier of the holding to which the prospective apportionment relates and accompanied by a consent or sole interest notice in respect of that holding, that the occupier no longer wishes that prospective apportionment to have effect.

(4) Where there is a change of occupation of part of a holding and within six months preceding that change of occupation—

- (a) the occupier of that holding has submitted a statement referred to in paragraph (1) in respect of that part of that holding, or
- (b) a prospective apportionment of quota relating to that part of that holding has been made by an arbitrator under Schedule 1 or 3, or under Schedule 2,

the apportionment of quota shall be carried out in accordance with—

- (i) any prospective apportionment of quota relating to that part of that holding made under paragraph (2) and not revoked under paragraph (3),
- (ii) if there is no such prospective apportionment, any prospective apportionment which is in the process of being made under paragraph (2) by virtue of a statement relating to that part of that holding under paragraph (1),
- (iii) in any other case, regulation 10.

(5) The Minister shall maintain a record of each prospective apportionment made under this regulation.

### **Notification by the Minister of apportionment of quota by arbitration**

**12.** Where the Minister has reasonable grounds for believing—

- (a) that the areas used for milk production on a holding are not as specified in a statement made for the purpose of regulation 9, 10 or 11(1), or
- (b) that the areas used for milk production on a holding were not as agreed between the parties at the time of apportionment notwithstanding that no statement was made for the purposes of the aforementioned regulations,

he shall give notice of this fact in writing to the person who made the statement, or in a case where no statement was made, to the transferee and the apportionment or prospective apportionment of that quota shall then be made—

- (a) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 1 and 3 respectively,
- (b) in Scotland in accordance with Schedule 2.

### **National reserve**

**13.**—(1) The national reserve shall comprise such wholesale and direct sales quota as is not for the time being allocated to any person, including any quota withdrawn pursuant to the provisions of regulation 32.

(2) The Minister may make allocations from the national reserve in accordance with the Community legislation and these Regulations.

### **Temporary transfer of quota**

**14.**—(1) For the purposes of Article 6 of the Council Regulation (which deals with the temporary transfer of quota) and subject to paragraph (2) below, a producer who has wholesale quota registered as his which constitutes part of the purchaser quota of a purchaser may, before a date to be determined by the Minister in each quota year, make a temporary transfer of all or part of that wholesale quota for a period of one quota year to any other producer whose wholesale quota constitutes part of the purchaser quota of that same purchaser.

(2) Where there is an agreement to make a temporary transfer of quota pursuant to paragraph (1), the transferee shall notify the Minister in writing of the agreement and of such particulars at such time as the Minister may reasonably require.

(3) The Minister shall announce the date determined under paragraph (1) by such means of publication as the Minister considers likely to come to the attention of purchasers and producers.

### **Temporary reallocation of quota**

**15.**—(1) For the purposes of Article 2(4) of the Council Regulation and Article 5 of the Commission Regulation (which together deal with the reallocation of excess levy), the Minister may, for any quota year, award to a producer referred to in paragraph (2) below a temporary reallocation of an amount of quota corresponding to a proportion of any levy collected in excess of the levy actually due in that year, in accordance with the provisions of this regulation.

(2) This regulation shall apply to—

- (a) a producer who has quota registered as his in relation to a holding which is in whole or in part subject to a notice prohibiting or regulating the movement of dairy cows pursuant to an Order made under the Animal Health Act 1981(10) or the Diseases of Animals (Northern Ireland) Order 1981(11),

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(10) 1981 c. 22.

(11) S.I. 1981/1115 (N.I. 22).

- (b) a producer who has quota registered as his in relation to a holding which is situated wholly or partly within an area which at any time during that quota year has been designated by an emergency order under section 1 and section 24(1) and (3) of the Food and Environment Protection Act 1985(12), or
- (c) a producer who is affected by a formal acknowledgement of an error in the levy calculation, made pursuant to Article 5(1)(a) of the Commission Regulation.

(3) Subject to paragraph (5) below, a producer referred to in paragraph (2)(a) or (b) above may be awarded a temporary reallocation of quota for any quota year in which the notice or, as the case may be, the order referred to in paragraph 2(a) or the order referred to in paragraph 2(b) has effect. The amount of any such award shall be calculated either—

- (a) as the amount equal to 15 litres per qualifying cow per qualifying day in any quota year, or
- (b) as the amount by which in the quota year in question the producer's production exceeds his quota entitlement,

whichever amount is less.

(4) Where the notice referred to in paragraph (2)(a) or the order referred to in paragraph (2)(b) above continues beyond the quota year in respect of which a producer has received an award under paragraph (3), any award under that paragraph for the following quota year shall be calculated as if the number of the producer's qualifying cows were equal to that of his eligible heifers which calved during the period of the notice in that following quota year, notwithstanding that when any such heifers calved the number of eligible heifers did not exceed the replacement number.

(5) An award under paragraph (3) above—

- (a) shall be made, where a producer makes wholesale deliveries, as far as possible from the purchaser quota of any purchasers to whom deliveries are made in accordance with Schedule 4 paragraph 4, and thereafter from any excess quota determined in accordance with Schedule 4 paragraph 6 and distributed in accordance with Schedule 4 paragraph 7(a), provided that the amount of the award met from that excess quota does not exceed 15 per cent of the total amount of the excess; and
- (b) shall not be available in the same quota year to a producer who transfers quota under regulation 7, makes a temporary transfer of quota under regulation 14(1), or purchases cows or in-calf heifers for dairy purposes, unless the Minister is satisfied that the agreement to transfer, temporarily transfer or purchase, was entered into before service of the notice to which paragraph (2)(a) above refers, or (as the case may be) before the coming into force of the order to which paragraph (2)(b) above refers.

(6) A producer referred to in paragraph (2)(c) above may be awarded a temporary reallocation of quota, for any quota year in respect of which the formal acknowledgement referred to in the Commission Regulation applies, which wholly or partially offsets the error in levy calculation to which the acknowledgement relates, and any such temporary reallocation of quota shall be made, where a producer makes wholesale deliveries, as far as possible from the purchaser quota of the purchaser to whom deliveries are made.

### **Special allocation of quota**

**16.** Where, by reason of a mistake made by the Minister or any person acting on his behalf, a person has not been allocated any quota or has been allocated a smaller quantity of any such quota than he would have been allocated if the mistake had not been made, the Minister may allocate to that person such quota as will compensate, in whole or in part, for that mistake from the national reserve.

### **Conversion of quota**

17.—(1) Subject to the provisions of Article 4(2) of the Council Regulation (which deals with changes from direct sales to wholesale delivery and vice versa), the second subparagraph of Article 2(2) of the Council Regulation (which deals with replacements of purchasers) and this regulation, any producer may apply to convert, temporarily or permanently, direct sales quota for wholesale quota or wholesale quota for direct sales quota.

(2) Where the producer wishes to convert quota temporarily in any quota year, or permanently, he shall make an application to do so on a form prescribed for that purpose by the Minister, and such application shall—

- (a) state the amount (if any) of the producer's direct sales quota, wholesale quota, direct sales and wholesale deliveries for the quota year in which the application is made, and the amount of unused quota which he holds at the time of the application which he wishes the Minister to convert; and
- (b) include such other information as the Minister may reasonably require in order to assess whether the provisions of Article 4(2) of the Council Regulation are fulfilled.

(3) The application referred to in paragraph (2) above shall be made by the producer to the Minister by—

- (a) 31st December in any year in the case of permanent conversion of quota, or
- (b) a date determined by the Minister in respect of each quota year and published in the Gazette in the case of temporary conversion of quota,

except that, in the case of an application which includes a request to convert wholesale quota to direct sales quota, the application shall be submitted by the appropriate date on behalf of the producer by the purchaser to whom deliveries have been made.

(4) Where a producer has temporarily converted direct sales quota to wholesale quota, he may not make a temporary transfer of that quota.

### **Representative fat content of milk**

18. For the purposes of Article 2(1)(d) of the Commission Regulation (which deals with the representative fat content of milk from certain new producers)—

- (a) the breeds of cow which may be considered to produce milk with a higher representative fat content shall be Channel Island, South Devon and breeds with similar characteristics;
- (b) the producer's herd shall, at any time, include one or more such breeds; and
- (c) if, by 1st March in any year the producer fails to provide proof that the composition of his herd is in accordance with paragraph (b), and that the milk produced by that herd justifies the allocation to him of a higher representative fat content, he shall lose the right to have such a representative content for that quota year and subsequent quota years.

### **Reallocation of quota and calculation of levy liability**

19. Schedule 4 shall apply in respect of the reallocation of quota and the calculation of levy liability for the purposes of Article 2(1) of the Council Regulation (which deals with the calculation of the levy).

### **Prevention of avoidance of levy**

20.—(1) Subject to paragraph (2) below, where in any quota year a producer makes sales or deliveries of milk or milk products from milk produced by any cows and subsequently another producer makes sales or deliveries of milk or milk products from milk produced by any or all of

the same cows, the second producer shall be deemed to have made those sales or deliveries in the capacity of agent for the first producer.

- (2) Paragraph (1) above shall not apply where—
- (a) an agreement has been entered into by the first producer for the sale or lease of the cows in question or the second producer has inherited them from the first producer; and
  - (b) the cows are kept on the second producer's holding.

### **Payment of levy**

**21.—**(1) For the purposes of Article 2(3) of the Council Regulation and Article 4 of the Commission Regulation (both of which deal with payment of levy by direct sellers), or Article 2(2) of the Council Regulation and Article 3 of the Commission Regulation (both of which deal with payment of levy by purchasers in respect of wholesale deliveries), levy shall be paid to the Intervention Board.

- (2) Where any part of the levy remains unpaid—
- (a) in the case of a direct seller, after the date specified in Article 4 of the Commission Regulation; or
  - (b) in the case of a purchaser, after the date specified in Article 3 of the Commission Regulation,

the Intervention Board may recover from the direct seller or (as the case may be) the purchaser the amount of the levy outstanding at the expiry of the period applicable in his case, together with interest in respect of each day thereafter until the said amount is recovered at the rate of one percentage point above the sterling three-month London interbank offered rate.

(3) For the purposes of the third subparagraph of Article 2(2) of the Council Regulation (which deals with set-off of levy liability), where a producer making wholesale deliveries to a purchaser exceeds his wholesale quota, that purchaser may immediately deduct an amount corresponding to the amount of levy potentially payable by him in respect of the excess from the sums owed to the producer in respect of the deliveries.

### **Functions of the Intervention Board for Agricultural Produce**

**22.—**(1) The Intervention Board shall be the competent authority for the purposes of Article 2(3) of the Council Regulation (which deals with payment of levy by direct sellers), and for the purposes of Articles 1, 3, 4 and 7 of the Commission Regulation (which together deal with matters relating to the assessment of levy and the payment of levy by direct sellers and purchasers).

(2) The Intervention Board and any milk marketing board may enter into an agreement providing for the discharge by the milk marketing board, on behalf of the Intervention Board, of any functions of the Intervention Board under these Regulations or the Community legislation specified in the agreement, on such terms as may be specified in the agreement.

(3) In respect of any area which is not within the area of a milk marketing board, paragraph (2) above shall have effect as if “person or milk marketing board” were substituted for “milk marketing board” wherever those words appear.

(4) The Intervention Board may, in respect of any person in whose name any direct sales quota is registered and who fails to submit to the Intervention Board before 15th May in any year the statement required to be made by Article 4(2) of the Commission Regulation, make and recover a reasonable charge in respect of any visit to any premises reasonably required to be made by the Intervention Board to obtain that statement.

### Functions under these Regulations

**23.**—(1) The Minister and any milk marketing board may enter into an agreement providing for the discharge by that milk marketing board, on behalf of the Minister, of any functions of the Minister under these Regulations or the Community legislation specified in the agreement, on such terms as may be specified in the agreement.

(2) In respect of any area which is not within the area of a milk marketing board, paragraph (1) above shall have effect as if “person or milk marketing board” were substituted for “milk marketing board” wherever those words appear.

### Disapplication of enactments

**24.** Nothing in section 47(2) of the Agricultural Marketing Act 1958(**13**) or Article 29 of the Agricultural Marketing (Northern Ireland) Order 1982(**14**) (which restrict the disclosure of certain information obtained under those enactments) shall restrict or apply to the disclosure of any information if, and in so far as, the disclosure is required or authorised by these Regulations, the Community legislation or an agreement under regulation 22(2) or 23(1).

### Registers to be prepared and maintained by the Minister

**25.**—(1) The Minister shall—

- (a) prepare a direct sales register entry in respect of each direct seller setting out in particular—
  - (i) his name;
  - (ii) his address;
  - (iii) his direct sales quota; and
  - (iv) quota issued as special quota,and shall send each direct seller a copy of the entry relating to him, and
- (b) maintain—
  - (i) a direct sales register (being a register of entries referred to in paragraph (1)(a)), and
  - (ii) a register of particulars of direct sales by each direct seller.

(2) The Minister shall—

- (a) prepare a wholesale register entry in respect of each producer setting out in particular—
  - (i) his name;
  - (ii) his address;
  - (iii) any reference number which serves to identify the producer in the purchaser’s records;
  - (iv) wholesale quota available to him for the quota year excluding the quota referred to in subparagraph (v);
  - (v) quota issued as special quota;
  - (vi) a list—
    - of the names and addresses of each purchaser whose purchaser quota will be calculated to take into account all or part of that producer’s total wholesale quota, and

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(13) 1958 c. 47, to which there are amendments not relevant to these Regulations.

(14) S.I. 1982/1080 (N.I. 12). Article 29 was amended by S.I. 1984/1822 (N.I. 12), Article 7(b) and Schedule 2 Part III.

- of the wholesale quota to be taken into account based on purchaser details to be provided by the producer;
  - (vii) in respect of each purchaser supplied, his wholesale quota registered with that purchaser, and its butterfat base calculated in accordance with Article 2 of the Commission Regulation,
- and shall send to each producer a copy of the entry relating to him and to each purchaser named on the list referred to in subparagraph (vi) a copy of that part of the entry relating to his purchaser quota, and
- (b) maintain a wholesale register (being a register of entries referred to in paragraph (2)(a)).
- (3) In respect of each purchaser the Minister shall—
- (a) prepare a purchaser notice setting out—
    - (i) his name;
    - (ii) his purchaser quota;
    - (iii) his purchaser special quota;and shall send each purchaser a copy of the notice relating to him, and
  - (b) maintain—
    - (i) a register of purchaser notices; and
    - (ii) a register of particulars of wholesale deliveries to each purchaser.
- (4) For the purposes of paragraphs (1) and (2) above, where a holding comprises more than one dairy enterprise a direct seller or a producer may, on presenting to the Minister a consent or sole interest notice in respect of that holding, agree with the Minister the partition of that holding among separate direct sales register entries or wholesale register entries as specified in the agreement.
- (5) The Minister shall amend the registers which he is required by this regulation to maintain to record any allocations or adjustments made under or by virtue of these Regulations, or to make any correction which he considers to be necessary, and shall inform any person to whom an amendment relates and any purchaser affected by an amendment of that amendment, and any person or purchaser affected by a correction of that correction.
- (6) In this regulation “direct seller” and “producer” include a person who has moved into occupation of land with quota, whether or not that person is engaged in the sale or delivery of dairy produce.

### **Inspection of entries in the Minister’s registers**

26. The Minister shall permit, during reasonable working hours, inspection of any entry relating to—
- (a) a specific holding in the registers referred to in regulation 25(1)(b)(i) and 25(2)(b) by any person who is the direct seller or producer in relation to, or gives the Minister a statement in writing that he has an interest in, that holding, and
  - (b) a specific purchaser in either register referred to in regulation 25(3)(b) by the purchaser,
- and shall, on payment of a reasonable charge, forward a copy of that entry to any such person who requests it.

### **Registration obligations of producers and purchasers**

- 27.—(1) Each producer who holds registered wholesale quota (including any producer who has temporarily ceased, or who intends temporarily to cease, making wholesale deliveries) shall register his quota with a purchaser.

(2) Each purchaser shall maintain, in respect of all producers whose register entries include that purchaser's name on the list referred to in regulation 25(2)(a)(vi)—

- (a) a register as indicated in regulation 25(2)(b) in respect of that part of its purchaser quota attributable to each of those producers;
- (b) a register of particulars of wholesale deliveries from each of those producers to that purchaser;
- (c) the information required by Article 7 of the Commission Regulation (which deals with the records required in connection with levy assessment); and
- (d) a system approved by the Intervention Board for sampling the milk of each producer and determining its fat content.

(3) Each purchaser shall amend its registers referred to in paragraph (2) above on each occasion when, under these Regulations, the Minister's equivalent register is required to be amended in relation to producers registered in that purchaser's register.

(4) Each purchaser shall register with the Intervention Board and shall—

- (a) comply with an undertaking given to the Intervention Board to abide by the provisions of these Regulations and the Community legislation;
- (b) inform the Intervention Board of any factor or change in circumstances which affect that purchaser's registration or the ability to comply with the undertaking referred to in subparagraph (a); and
- (c) confirm to each producer supplying that purchaser that the purchaser is registered and supply on request details of that registration.

### **Registers as evidence**

**28.** Any entry in a register or notice required by these Regulations to be maintained by the Minister shall in any proceedings be evidence of matters stated therein.

### **Information**

**29.**—(1) The Minister and the Intervention Board shall provide each other with such information and assistance as shall be required for the proper performance of their respective functions under these Regulations and the Community legislation.

(2) Each purchaser shall provide such information to the Minister as the Minister may reasonably require in order to carry out his obligations under these Regulations and the Community legislation.

(3) The Minister shall copy such records to each purchaser as that purchaser may reasonably require for the purposes of his registration obligations under these Regulations and Article 3 of the Commission Regulation (which deals with the assessment and payment of levy).

### **Service of documents**

**30.** Any document required by these Regulations to be served on any person may be served by post.

### **Penalties**

**31.**—(1) Subject to paragraph (2), any person who—

- (a) fails without reasonable excuse to comply with a requirement imposed on him by or under these Regulations or the Community legislation, or



- (b) in connection with these Regulations or the Community legislation, makes a statement or uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or, on conviction on indictment, to a fine.

(2) Paragraph (1)(a) shall not apply to any failure by any person to comply with a requirement in an agreement referred to in regulation 22 or 23.

(3) The Minister may, following any conviction under paragraph (1)(b) against which there is no successful appeal, by notice served (within the period of 12 months following the date specified in paragraph (4), on the person to whose quota that conviction relates, reduce his quota to such extent as may reasonably be regarded by the Minister as being attributable to the falsehood on which the conviction was founded.

(4) The date referred to in paragraph (3) above is—

- (a) in the case of a conviction against which there is no appeal, the date on which the right to appeal against that conviction expires, and
- (b) in the case of a conviction against which there is an unsuccessful appeal—
  - (i) if there is no right of appeal against the result of that unsuccessful appeal, the date of that result, and
  - (ii) if there is a right of appeal against that result but no appeal is made, the date on which that right of appeal expires.

### **Confiscation of quota**

**32.**—(1) Within forty-five days after the end of each quota year to which these Regulations relate, a purchaser shall supply to the Minister a list of those producers registered with that purchaser (whether for the whole or part of the quota year) who have not made deliveries to him and have not made a temporary transfer of quota (under regulation 14) during that year.

(2) Pursuant to Article 5 of the Council Regulation (which deals with the confiscation and distribution of quota), the Minister may send notification to—

- (a) the producers referred to in paragraph (1) above,
- (b) producers who are direct sellers who have submitted a declaration under Article 4(1) of the Commission Regulation (which deals with declarations of direct sales) indicating that in any quota year no direct sales have been made, and
- (c) producers who are direct sellers who have not submitted a declaration and to whom Article 4(2) of the Commission Regulation applies (which deals with the late submission of declarations),

stating that the quota previously registered to them in respect of a holding has been withdrawn and placed in the national reserve with effect from the quota year following that for which the list referred to in paragraph (1) was supplied, that for which the declaration indicating no direct sales was made, or that for which no declaration was submitted, as the case may be.

(3) Any quota withdrawn under paragraph (2) above may be restored to the producer in respect of the holding from which it was withdrawn within a period of six years from the beginning of the quota year in which it was withdrawn, in accordance with the provisions of Article 5 of the Council Regulation.

### **Dairy Produce Quota Tribunals**

**33.**—(1) The Dairy Produce Quota Tribunal for England and Wales, the Dairy Produce Quota Tribunal for Scotland, and the Dairy Produce Quota Tribunal for Northern Ireland constituted under regulation 6 of the 1984 Regulations shall continue in existence and, in respect of a holding situated in more than one area of a Dairy Produce Quota Tribunal, the Dairy Produce Quota Tribunal the functions of which shall relate to that holding shall continue to be the Dairy Produce Quota Tribunal chosen for the purpose by the Ministers.

(2) Any reference in these Regulations to “The Tribunal” shall be treated as a reference to the appropriate Dairy Produce Quota Tribunal under paragraph (1).

(3) Schedule 5 shall apply in respect of the constitution, appointment of members, remuneration of members, staffing and procedure of Dairy Produce Quota Tribunals.

### **Revocation**

**34.** The Dairy Produce Quotas Regulations 1991(15) are hereby revoked.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 29th March 1993.

L.S.

*John Selwyn Gummer*  
Minister of Agriculture, Fisheries and Food

*Hector Monro*  
Parliamentary Under Secretary of State, Scottish  
Office

29th March 1993

## SCHEDULE 1

Regulations 10, 11 and 12

### 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 two months referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbitrator within fourteen days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, 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 among the members of the panel referred to in paragraph 8 and the person who makes such an application to the President shall notify the Minister in writing of that fact within fourteen days from 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 nor an application made to the President under subparagraph (2) above, the Minister shall make an application to the President for the appointment of an arbitrator.

(4) Where the Minister gives a notice in accordance with regulation 12 he shall make an application to the President for the appointment of an arbitrator and the Minister shall be a party to the arbitration.

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

- (a) where regulation 12 applies, by the President,
- (b) in any other case, by agreement between the occupier and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where subparagraph (1)(b) above applies, the occupier shall notify the Minister in writing 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 from the date of the appointment of the arbitrator or the date of the application to the President, as appropriate.

3. An arbitrator appointed in accordance with paragraphs 1 and 2 above 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.

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).

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(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(16).

5. Where the Minister makes an application to the President under paragraphs 1(3) or (4) above, the fee payable to the President in respect of that application referred to in paragraph 4 above shall be recoverable by the Minister 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 the other party; and his appointment shall not be revoked by the death of any party.

11. Every appointment, application, notice, revocation and consent under the foregoing paragraphs 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 one of the parties,
- (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 any one of the parties to the arbitration.

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

13. The parties to the arbitration shall, within thirty-five days from the appointment of the arbitrator, or within such further period as the arbitrator may permit, 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,
- (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.

14. The parties to the arbitration and all persons claiming through them respectively 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 respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

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(16) 1986 c. 5.

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

16. 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.

17. 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.

18.—(1) Subject to subparagraphs (2) and (3) below, 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 subparagraph (1) above to direct that a person shall forfeit a fine of an amount exceeding £10.

(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(17).

(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.

19.—(1) Subject to subparagraph (2) below, 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 subparagraph (4) below, 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.

20. 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.

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(17) 1984 c. 28.

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## **Award**

**21.**—(1) Subject to subparagraph (2) below, 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 Minister within 8 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 25 below.

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

**23.** 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**

**24.** If 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**

**25.** 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 Minister pursuant to paragraph 5.

**26.** 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 25 above, or, in the absence of any such direction, by the county court.

**27.**—(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 the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been unnecessarily incurred.

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

**28.** 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.

**29.**—(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.

**30.—**(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 subparagraph (1) above, 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 subparagraph, the arbitrator shall, unless the order otherwise directs, make and sign his award within thirty days after 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**

**31.** 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.

**32.** 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; and in the case of any such arbitrator the periods mentioned in paragraphs 13 and 21 above shall accordingly run from that time.

**33.** Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraphs 1, 2, 6, 7, 12 or 21 above 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.

**34.** The Arbitration Act 1950(**18**) shall not apply to an arbitration determined in accordance with this Schedule.

## SCHEDULE 2

Regulations 10, 11 and 12

### APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR SCOTTISH LAND COURT—SCOTLAND

#### PART I

#### GENERAL

**1.—**(1) Subject to subparagraphs (2) and (3) below, all apportionments and prospective apportionments in respect of holdings in Scotland shall be carried out by arbitration and the provisions of Part II of this Schedule shall apply.

(2) The Scottish Land Court shall carry out the apportionment or prospective apportionment where the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted—

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(18) 1950 c. 27, to which there are amendments not relevant to these Regulations.

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- (a) a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1955<sup>(19)</sup>;
- (b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911<sup>(20)</sup>; or
- (c) the holding of a statutory small tenant under section 32 of the Small Landholders (Scotland) Act 1911.

(3) Where subparagraph (2) above does not apply and the holding or any part of the holding constitutes or, immediately prior to the transfer giving rise to the apportionment, constituted an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991<sup>(21)</sup>, the Scottish Land Court shall carry out the apportionment or prospective apportionment if requested to do so by a joint application of all parties interested in the apportionment made within the period of two months referred to in regulation 7(1)(a).

(4) Where the Scottish Land Court carries out any apportionment or prospective apportionment, Part III of this Schedule shall apply.

2. An arbiter or the Scottish Land Court, as the case may be, shall decide the apportionment on the basis of findings made 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 arbiter or the application to the Scottish Land Court.

## PART II

### APPORTIONMENTS CARRIED OUT BY ARBITRATION

#### Appointment and remuneration of arbiter

3.—(1) In any case where the apportionment is to be carried out by arbitration, an arbiter shall be appointed by agreement between the transferor and transferee within the period of two months referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbiter within fourteen days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the Minister for the appointment of an arbiter.

(3) If at the expiry of the relevant period an arbiter has not been appointed by agreement between the transferor and the transferee nor an application made to the Minister under subparagraph (2) above, the Minister shall at his own instance proceed to appoint an arbiter.

4.—(1) In any case where a prospective apportionment is to be made by arbitration, an arbiter shall be appointed by agreement between the occupier and any other interested party or, in default, by the Minister on an application by the occupier.

(2) Where an arbiter is appointed by agreement in terms of subparagraph (1) above, the occupier shall notify the Minister in writing of the appointment of the arbiter within fourteen days from the date of the appointment.

5.—(1) Where, in terms of a notice given by the Minister under regulation 12, an apportionment or prospective apportionment is to be carried out by arbitration, the Minister shall apply to the Scottish Land Court for the appointment of an arbiter.

<sup>(19)</sup> 1955 c. 21; section 3(1) was amended by The Crofters (Scotland) Act 1961 (c. 58), Schedule 1, Part II, paragraph 9.

<sup>(20)</sup> 1911 c. 49.

<sup>(21)</sup> 1991 c. 55.



(2) Any fee payable by the Minister on an application to the Scottish Land Court under subparagraph (1) above shall be recoverable by him as a debt due from the other parties to the arbitration jointly or severally.

(3) Where the Minister is to be a party to an arbitration (otherwise than in terms of a notice given under regulation 12), the arbiter shall, in lieu of being appointed by the Minister, be appointed by the Scottish Land Court.

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

7. No party to the arbitration shall have power to revoke the appointment of the arbiter without the consent of all other parties.

8. Every appointment, application, notice, revocation and consent under the foregoing paragraphs must be in writing.

9. The remuneration of the arbiter 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 auditor of the sheriff court (subject to an appeal to the sheriff) on an application made by the arbiter or one of the parties;

(b) where he is appointed by the Minister, such amount as may be fixed by the Minister;

(c) where he is appointed by the Scottish Land Court, such amount as may be fixed by that Court;

and shall be recoverable by the arbiter as a debt due from any one of the parties to the arbitration.

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

10. The parties to the arbitration shall within twenty-eight days from the appointment of the arbiter 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 twenty-eight days except with the consent of the arbiter;

(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.

11. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbiter may require.

12. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter. The Minister may make such representations where the arbitration follows on a notice given by him under regulation 12.

13. The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbiter thinks fit, be examined on oath or affirmation.

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## **Award**

**14.**—(1) The arbiter shall make and sign his award within three months of his appointment or within such longer period as may, either before or after the expiry of the aforesaid period, be agreed to in writing by the parties or fixed by the Minister.

(2) The arbiter shall notify the terms of his award to the Minister within 8 days of the delivery of that award.

(3) The award shall fix a date not later than one month after the delivery of the award for the payment of any expenses awarded under paragraph 17 below.

**15.** The award to be made by the arbiter shall be final and binding on the parties and the persons claiming under them respectively.

**16.** The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

## **Expenses**

**17.** The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the sheriff court on the application of any party, but that taxation shall be subject to review by the sheriff.

**18.**—(1) The arbiter shall, in awarding expenses, take into consideration—

- (a) the reasonableness or unreasonableness of the claim of any party, whether in respect of 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 arbiter may disallow the expenses of any witness whom he considers to have been called unnecessarily and any other expenses which he considers to have been incurred unnecessarily.

**19.** It shall not be lawful to include in the expenses of and incidental to the arbitration and award, or to charge against any of the parties, any sum payable in respect of remuneration or expenses to any person appointed by the arbiter to act as clerk or otherwise to assist him in the arbitration unless such appointment was made after submission of the claim and answers to the arbiter and with either the consent of the parties to the arbitration or the sanction of the sheriff.

## **Statement of case**

**20.** The arbiter may at any stage of the proceedings, and shall, if so directed by the sheriff (which direction may be given on the application of any party), state a case for the opinion of the sheriff on any questions of law arising in the course of the arbitration. The opinion of the sheriff on any case shall be final.

## **Removal of arbiter and setting aside of award**

**21.** Where an arbiter has misconducted himself the sheriff may remove him.

**22.** When an arbiter has misconducted himself, or an arbitration or award has been improperly procured, the sheriff may set the award aside.

## Miscellaneous

**23.** Any amount paid in respect of the remuneration of the arbiter 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 expenses of the award shall be recoverable from the other party or jointly from the other parties.

**24.** The Arbitration (Scotland) Act 1894(22) shall not apply to any arbitration carried out under this Schedule.

## PART III

### APPORTIONMENTS CARRIED OUT BY THE SCOTTISH LAND COURT

**25.** The provisions of the Small Landholders (Scotland) Acts 1886 to 1931 with regard to the Scottish Land Court shall, with any necessary modifications, apply for the purpose of the determination of any matter which they are required, in terms of paragraph 1 of this Schedule, to determine, in like manner as those provisions apply for the purpose of the determination by the Land Court of matters referred to them under those Acts.

**26.** Where an apportionment or prospective apportionment is to be dealt with by the Scottish Land Court, the party making the application to that Court shall notify the Minister in writing of the application within fourteen days of it being lodged with the Court.

**27.** Where, in terms of a notice given by the Minister under regulation 12, an apportionment or prospective apportionment is to be carried out by the Scottish Land Court, any fee payable by the Minister to the Court shall be recoverable by him as a debt due from the other parties to the case jointly or severally.

**28.** Any person having an interest in the holding to which the apportionment or prospective apportionment relates shall be entitled to be a party to the proceedings before the Scottish Land Court. The Minister shall be entitled to be a party where the apportionment follows on a notice given by him under regulation 12.

## SCHEDULE 3

Regulations 10, 11 and 12

### APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION—NORTHERN IRELAND

**1.** Paragraphs 3 to 18 below shall apply to every arbitration in Northern Ireland.

**2.—(1)** The Arbitration Act (Northern Ireland) 1937(23) shall, except insofar as it is inconsistent with paragraphs 3 to 18 below, apply to every arbitration in Northern Ireland as if that arbitration were pursuant to an arbitration agreement and as if paragraphs 3 to 17 below were contained in an arbitration agreement.

(2) In this paragraph “arbitration agreement” has the same meaning as in section 30 of the Arbitration Act (Northern Ireland) 1937.

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(22) 1894 c. 13 (57 and 58 Vict.).

(23) 1937 c. 8 (N.I.).

### **Appointment of arbitrator**

**3.—(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 two months referred to in regulation 7(1)(a) (referred to in this paragraph as “the relevant period”) and the transferee shall notify the Minister in writing of the appointment of the arbitrator within 14 days from the date of the appointment.

(2) Notwithstanding subparagraph (1) above, the transferor or the transferee may at any time within the relevant period make an application to the President of the Law Society of Northern Ireland (referred to in this Schedule as “the President”) for the appointment of an arbitrator and the person who makes such an application to the President shall notify the Minister in writing of that fact within fourteen days from 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 nor an application made to the President under subparagraph (2) above, the Minister shall make application to the President for the appointment of an arbitrator.

(4) Where the Minister gives a notice in accordance with regulation 12 he shall make an application to the President for the appointment of an arbitrator and the Minister shall be a party to the arbitration.

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

- (a) where regulation 12 applies, by the President;
- (b) in any other case, by agreement between the occupier and any other interested party, or, in default, by the President on an application by the occupier.

(2) Where subparagraph (1)(b) above applies, the occupier shall notify the Minister in writing of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of the arbitrator, within 14 days from the date of the appointment of the arbitrator or the date of the application to the President, as appropriate.

**5.** An arbitrator appointed in accordance with paragraphs 1, 3, and 4 above 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 period of five years during which production took place before the change of occupation, or in the case of a prospective apportionment in the last five years during which production took place before the arbitration.

**6.** 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 fee which shall be £50 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).

**7.** Where the Minister makes an application to the President under paragraphs 3(3) or (4) above, the fee payable to the President in respect of that application referred to in paragraph 6 above shall be recoverable by the Minister as a debt due from the parties to the arbitration jointly or severally.

**8.** Any appointment of an arbitrator by the President shall be made by him within 14 days after receiving the application.

**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. A party to the arbitration shall have power to revoke the appointment of the arbitrator with the consent of all other parties.

11. Every appointment, application, notice, revocation and consent under the foregoing paragraphs shall be in writing.

#### **Statement of case**

12. The parties to the arbitration shall, within 35 days from the appointment of the arbitrator, 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 35 days except with the consent of the arbitrator;
- (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.

#### **Award**

13. The arbitrator shall make and sign his award within 56 days of his appointment.

14. The arbitrator shall notify the terms of his award to the Minister within eight days of the delivery of that award.

15. 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**

16. If 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.

17. 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; and in the case of any such arbitrator the periods mentioned in paragraphs 12 and 13 above shall run from that time.

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

### SCHEDULE 4

Regulation 19

#### REALLOCATION OF QUOTA AND CALCULATION OF LEVY LIABILITY

##### **Wholesale quota**

1. The Minister shall determine the amount, if any, by which the wholesale deliveries of dairy produce to each purchaser exceeds its total purchaser quota, after having completed in sequence the steps required by paragraphs 3 to 7.

2. The Minister shall determine the amount of levy to be paid by each purchaser by multiplying the amount, if any, referred to in paragraph 1, by the rate of levy established in accordance with Article 1 of the Council Regulation.

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3. The Minister shall determine the amount, if any, by which the quantity of wholesale deliveries of dairy produce to each purchaser must be adjusted to take account of its fat content, calculated in accordance with Article 2(2) of the Commission Regulation.

4. The Minister shall adjust (to the extent possible from within the quota available to the purchaser to whom the producer makes deliveries) the quota of any producer making wholesale deliveries to whom a temporary reallocation of quota has been made to take account of that reallocation, and any purchaser whose unused quota is insufficient to meet a temporary reallocation shall notify the Minister of the amount of the shortfall.

5. The Minister shall determine for each purchaser the amount, if any, taking into account the amount of quota converted in accordance with regulation 17, and taking into account any temporary reallocation made in accordance with paragraph 4, by which the purchaser quota of each purchaser exceeds or falls short of the quantity of wholesale deliveries of dairy produce made to it.

6. The Minister shall determine the total amount, if any, of excess quota remaining for those purchasers whose purchaser quota exceeds the quantity of wholesale deliveries of dairy produce made to them, as determined in accordance with paragraph 5, and shall add this to any quantities available in the national reserve.

7. The Minister shall reallocate the amount, if any, referred to in paragraph 6—

- (a) in the first instance, to meet any award of a temporary reallocation of quota (subject, where appropriate, to the restriction on the amount of any award set out in regulation 15(5)(a), and
- (b) thereafter, to offset the amount by which the deliveries made to any purchaser exceed its purchaser quota, such allocation being made proportionately to the amount of the excess of deliveries over quota.

8. Where a purchaser fails to notify the Minister within 45 days of the end of the quota year of the total quantity of milk or milk products delivered to him in that year, the Minister may require that the purchaser shall not benefit from the reallocation of quota referred to in paragraph 7.

9. Where, for any quota year, a purchaser cannot supply such proof as the Minister may reasonably require of the quantities of dairy produce delivered to him in that year, the Minister shall make his own determination of those quantities, based on all the information available to him, for the purposes of calculating any levy payable by that purchaser, and shall inform the purchaser of his determination.

### **Direct sales quota**

10. The Minister shall determine for each direct seller the amount, if any, after taking into account the amount of quota converted in accordance with regulation 17, by which his direct sales quota exceeds the quantity of dairy produce sold by direct sale by him.

11. The Minister shall make any award of a temporary reallocation of direct sales quota, under the terms of regulation 15, from the aggregate of amounts, if any, referred to in paragraph 10.

12. The Minister shall determine the aggregate amount, if any, by which the direct sales quota of all direct sellers, after taking into account the amount of quota converted in accordance with regulation 17, and after taking into account any temporary reallocation in accordance with paragraph 11, falls short of the total quantity of dairy produce sold by direct sales by them.

13. The Minister shall determine for each direct seller the amount, if any, taking into account the amount of quota converted in accordance with regulation 17, and taking into account any temporary reallocation of quota made in accordance with paragraph 11 and regulation 15, by which his direct sales quota falls short of the quantity of dairy produce sold by direct sale by him.

14. The Minister shall determine the aggregate of the amounts, if any, referred to in paragraph 13.

15. The Minister shall determine the total amount of the levy payable by multiplying the amount, if any, referred to in paragraph 12 by the rate of levy calculated in accordance with Article 1 of the Council Regulation.

16. The Minister shall calculate the rate of levy per litre, if any, to be paid by each direct seller on the amount, if any, at paragraph 13 by dividing the amount calculated in accordance with paragraph 15 by the aggregate referred to in paragraph 14.

17. Where a direct seller fails to notify the Minister within 45 days of the end of the quota year of the total quantity of milk or milk products sold by him by direct sales in that year, the Minister may require that the rate of levy per litre to be paid by that direct seller on the quantity not notified shall be the rate calculated in accordance with Article 1 of the Council Regulation.

18. Where, for any quota year, a direct seller cannot supply such proof as the Minister may reasonably require of the quantities of dairy produce sold by him in that year, the Minister shall make his own determination of those quantities, based on all the information available to him, for the purposes of calculating any levy payable by that direct seller, and shall inform the direct seller of his determination.

## SCHEDULE 5

Regulation 33

### DAIRY PRODUCE QUOTA TRIBUNALS

#### PART I

##### DAIRY PRODUCE QUOTA TRIBUNALS (OTHER THAN FOR SCOTLAND)

1. Each Dairy Produce Quota Tribunal shall consist of up to ninety members appointed by the Minister. The Minister shall designate one of the members of each Tribunal as the Chairman of that Tribunal and may, if he thinks fit, designate another member as the Deputy Chairman.

2. The quorum for any determination by a Dairy Produce Quota Tribunal shall be three.

3. Any determination to be made by a Dairy Produce Quota Tribunal shall be made by a majority.

4. Each Dairy Produce Quota Tribunal may be serviced by a Secretary and such other staff as the Minister may appoint.

5. Any document purporting to be signed by the Chairman or Deputy Chairman of, or the Secretary to, a Dairy Produce Quota Tribunal and purporting to state a determination (or guidance) of the Dairy Produce Quota Tribunal shall in any proceedings be evidence of such a determination (or such guidance).

6. The terms of appointment and the remuneration of the members, Secretary and other staff of a Dairy Produce Quota Tribunal shall be determined by the Minister.

7. Except as otherwise provided in these Regulations, the procedure of a Dairy Produce Quota Tribunal shall be such as the Chairman, or, in the absence of the Chairman, the Deputy Chairman, shall in his discretion determine.

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## PART II

### THE DAIRY PRODUCE QUOTA TRIBUNAL FOR SCOTLAND

**8.** The Dairy Produce Quota Tribunal shall consist of up to twenty members appointed by the Minister.

**9.** The Dairy Produce Quota Tribunal shall sit in separate panels, and a determination of any such panel shall be treated as the determination of the Tribunal for the purpose of these Regulations.

**10.** Each panel constituted under paragraph 9 shall choose their own Chairman.

**11.** The quorum for any determination by the Dairy Produce Quota Tribunal shall be three.

**12.** Any determination to be made by the Dairy Produce Quota Tribunal shall be made by a majority.

**13.** Each panel constituted under paragraph 9 shall be serviced by a Secretary and such other staff as the Minister may appoint.

**14.** Any document purporting to be signed by the Chairman of or the Secretary to a panel constituted under paragraph 9 and purporting to state a determination of the Dairy Produce Quota Tribunal shall in any proceedings be evidence of such a determination.

**15.** The terms of appointment and the remuneration of—

- (a) the members of the Dairy Produce Quota Tribunal, and
- (b) the Secretary and other staff of a panel constituted under paragraph 9 shall be determined by the Minister.

**16.** Except as otherwise provided in these Regulations, the procedure of a panel constituted under paragraph 9 shall be such as their Chairman shall in his discretion determine.

**17.** A panel constituted under paragraph 9 may consult with any person whom the panel consider to be capable of assisting them in reaching their determination and, in the event of such consultation, the applicant whose special case claim is being examined by the panel shall be afforded the opportunity to comment, before the panel reach their determination, on any advice given by that person.

## PART III

### GENERAL

**18.** The Dairy Produce Quota Tribunals for England and Wales, Scotland and Northern Ireland shall, if so required by the Ministers, issue a joint written statement of general guidance in respect of the criteria to be used in reaching any determination and each Dairy Produce Quota Tribunal shall make its determinations in accordance with those criteria.



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Dairy Produce Quotas Regulations 1991. They implement in the United Kingdom Council Regulation (EEC) No. 3950/92 (OJ No. L405, 31.12.92, p. 1) establishing an additional levy in the milk and milk products sector and Commission Regulation (EEC) No. 536/93 (OJ No. L57, 20.3.93, p. 12) establishing detailed rules for the levy, which consolidate and amend earlier legislation relating to the levy and which are together referred to in these Regulations as “the Community Legislation” (regulation 2). Under the Community legislation, a levy continues to be payable on dairy produce sold by direct sale by a producer or delivered by him wholesale to a dairy business, unless the sales or deliveries are within a reference quantity described in that legislation. The Community legislation establishes the system of what are commonly called “milk quotas” and in these Regulations the term “quota” is used to refer to the reference quantities described in the Community legislation.

The main changes are as follows:

1. Minor changes have been made to certain of the definitions in order to update them (regulation 2).
2. Where wholesale deliveries are made, the levy is stated to be payable through purchasers of dairy produce (regulation 4 and Schedule 4); the Community legislation permits Member States a choice between collecting levy in this way or calculating it by reference to individual producers.
3. Changes are made to the provisions governing the registration of producers and purchasers in order to ensure that the requirements of the Community legislation are met and that all producers who are in a position to make wholesale deliveries are registered, even where not currently making deliveries (regulations 6 and 27). A requirement for purchasers to register with the Intervention Board for Agricultural Produce is also introduced (the Intervention Board being the authority designated to ensure the collection of levy) (regulation 27).
4. Regional restrictions on the mobility of quota are removed, except in relation to transfers of quota which would affect the overall quantity of quota available in certain Scottish Islands areas (regulation 7).
5. A national reserve is established and provision made for allocations from it (regulation 13).
6. The restriction on the quantity of quota which a producer who makes wholesale deliveries may temporarily transfer is removed (regulation 14).
7. Provisions on the temporary reallocation of quota (which is undertaken in certain exceptional circumstances in order to minimise levy liability) are updated in line with the Community legislation (regulation 15).
8. A provision is introduced in relation to the fat content of the milk supplied by certain producers who are commencing production to allow them to claim a higher representative figure where their herd contains certain breeds (regulation 18).
9. Provision is introduced, pursuant to the Community legislation, to allow for the confiscation of quota where a producer who is registered with a purchaser has not made deliveries (or made a temporary transfer of quota) for a twelve-month period, or where a direct seller of dairy produce has not supplied a declaration of his sales or has supplied a declaration which indicates that he has

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made no sales. The producer from whom quota is withdrawn may, however, have the quota restored to him within a six-year period from the date of withdrawal (regulation 32).

**10.** A change is made to the provisions governing arbitrations which decide the apportionment of quota to allow arbitrators to take into account milk production on a holding during the last five-year period in which production took place (the previous regulations referred to a five-year period preceding a change of occupation) (Schedules 1, 2 and 3).