

Statutory Instrument 1997 No. 733

The Dairy Produce Quotas Regulations 1997

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STATUTORY INSTRUMENTS

1997 No. 733

FOOD

The Dairy Produce Quotas Regulations 1997

<i>Made</i>	<i>11th March 1997</i>
<i>Laid before Parliament</i>	<i>11th March 1997</i>
<i>Coming into force</i>	<i>1st April 1997</i>

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The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers designated[1] for the purposes of section 2(2) of the European Communities Act 1972[2] in relation to the common agricultural policy of the European 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 1997 and shall come into force on 1st April 1997.

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;

"authorised officer" means any person who is authorised by the Intervention Board, in writing, either generally or specifically, to act in matters arising under these Regulations or the Community legislation;

"the Commission Regulation" means Commission Regulation (EEC) No. 536/93[3], laying down detailed rules on the application of the levy on milk and milk products, as last amended by Commission Regulation (EEC) No. 470/94[4] and as corrected by the first corrigendum at OJ No. L273, 16.11.95, p. 54;

"the Community compensation scheme" means the scheme instituted by Council Regulation (EEC) No. 2187/93[5] providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade and Commission Regulation (EEC) No. 2648/93[6] laying down detailed rules for the application of Council Regulation (EEC) No. 2187/93;

"the Community legislation" means the Commission Regulation, the Council Regulation, Council Regulation 2055/93 and the legislation listed in Schedule 1;

"consent or sole interest notice" means a notice, in relation to a holding or part of a holding, provided by the person required under these Regulations to provide the notice, and certifying -

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

(b) that 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;

"the Council Regulation" means Council Regulation (EEC) No. 3950/92[7] establishing an additional levy in the milk and milk products sector, as last amended by Commission Regulations (EC) No. 1109/96[8];

"Council Regulation 2055/93" means Council Regulation (EEC) No. 2055/93[9], allocating a special reference quantity to certain producers of milk and milk products;

"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 of milk (one kilogram being 0.971 litres), in respect of which levy is payable under the Community legislation;

"Dairy Produce Quota Tribunal" has the meaning assigned to it by regulation 34;

"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 which comes within 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 person who produces milk and treats or processes that milk into milk or milk products on his holding and subsequently sells or transfers free of charge that milk or those milk products without their having been treated or processed by an undertaking which treats or processes milk or milk products;

"eligible heifer" means any heifer, which, at the date of service of a notice referred to in regulation 14(2)(b)(i), 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 the coming into force of an order referred to in regulation 14(2)(b)(ii), was on land designated by the order and calves for the first time on a day when the order is in force;

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

"interest" includes the interest of a mortgage 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;

"levy" means the levy, payable under the Community legislation and these Regulations to the Intervention Board and described in Article 1 of the Council Regulation (which deals with the fixing of the levy);

"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 12, constituted so as to comply with 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, and during the currency of an interest referred to in regulation 7(5)(a), the person entitled to grant occupation when that interest terminates, and "occupation" shall be construed accordingly;

"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 under regulation 9 which will take place if there is a change of occupation of a part of the holding to which the prospective apportionment relates (other than a change to which regulation 7(5) applies) within six months of that prospective apportionment;

"purchaser" means a purchaser as defined in Article 9(e) of the Council Regulation and approved by the Intervention Board pursuant to Article 7(1)(a) of the Commission Regulation;

"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 14(2)(b)(i) has effect or during which the order referred to in regulation 14(2)(b)(ii) 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 24(2)(a);

"the 1984 Regulations" means the Dairy Produce Quotas Regulations 1984^[10];

"replacement number" means the nearest integer to 20 per cent of the total number of dairy cows on the land subject to the notice referred to in regulation 14(2)(b)(i), or designated by the order referred to in regulation 14(2)(b)(ii), as at the date of service of the notice or (as the case may be) the coming into force of the order, and where 20 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 any one of -

(a) the islands of Shetland;

(b) the islands of Orkney; or

(c) the islands of Islay, Jura, Gigha, Arran, Bute, Great Cumbrae and Little

Cumbræ and the Kintyre peninsula south of Tarbert;

"special quota" means the quota referred to in Article 4(3) of the Council Regulation and in Article 1(1) of Council Regulation 2055/93;

"submit" means, in relation to a document submitted to the Intervention Board, the act of sending that document as evidenced by proof of posting or delivery to a courier service;

"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 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) where quota is transferred with land, a person who replaces another person as occupier of that holding or part of a holding; and

(b) in any other case, the transferee of quota;

"transferor", means -

(a) where quota is transferred with land, a person who is replaced by another person as occupier of a holding or part of a holding; and

(b) in any other case, the transferor of quota;

"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), and "used quota" shall be construed accordingly;

"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 sub-paragraph shall be construed as a reference to the sub-paragraph 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.

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 sub-paragraph of Article 2(2) of the Council Regulation (which deals with replacements of purchasers and changes of purchasers by producers) applies, or on any permanent conversion of quota under regulation 16, any purchaser whose purchaser quota has been increased by virtue of such a transaction (other than as a result of a temporary transfer of quota under regulation 13) or such a conversion of quota shall submit to the Intervention Board -

(a) no later than 28th April in the quota year following the end of the quota year in which such a transaction or conversion of quota takes place, a statement setting out particulars of the transaction or conversion; and

(b) where appropriate, a declaration made and signed by the producer that the purchaser whose purchaser quota is to decrease has been notified of the particulars set out in the statement referred to in sub-paragraph (a).

(3) The statement referred to in paragraph (2)(a) and the declaration referred to in paragraph (2)(b) shall be made in such form as may reasonably be required by the Intervention Board.

(4) Where during a quota year a producer changes from being registered with a purchaser to being registered with any other purchaser -

(a) for the purposes of calculation of levy liability under regulation 18 in that quota year, any purchaser with whom he is newly registered shall have his

purchaser quota increased by an amount equivalent to such part of that producer's registered wholesale quota as that producer shall determine;

(b) the amount of the increase of purchaser quota determined in accordance with sub-paragraph (a) 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 Commission Regulation, and such amount of quota shall remain available to the original purchaser; and

(c) at the beginning of the quota year following the quota year referred to in sub-paragraph (a), the purchaser with whom the producer is newly registered shall have his purchaser quota increased by such part of the producer's remaining registered wholesale quota as that producer shall determine;

and corresponding reductions of the purchaser quota of the original purchaser shall be made and where there are adjustments of quota of a producer registered with more than one purchaser, similar adjustments of purchaser quota shall be made.

(5) Where the amount of wholesale quota available to a producer changes as a result of a transfer of quota under regulation 7, 11 or 13, or as a result of a conversion of quota under regulation 16, that producer shall notify each purchaser with whom his wholesale quota is registered within seven working days of the change.

Transfer of quota with transfer of land

7 . - (1) For the purposes of Article 7 of the Council Regulation (which deals with transfer of quota with a holding when the holding is sold, leased, transferred by inheritance or subjected to other cases of transfer involving comparable legal effects for producers), on a transfer of any holding or part of a holding, other than a transfer of a kind to which paragraph (5) or (7) refers, the transferee shall submit to the Intervention Board -

(a) no later than 28 days after the change of occupation of the holding or part of the holding, and in any event no later than 7 working days after the end of the quota year in which the transfer takes place, a notice of transfer in such a form as may reasonably be required by the Intervention Board; and

(b) such other information relating to the transfer, and within such time, as the Intervention Board may reasonably require.

(2) The notice referred to in paragraph (1)(a) shall, in the case of a transfer of part of a holding, include -

(a) a statement, signed by the transferor and transferee, that they have agreed that the quota shall be apportioned taking account of the areas used for milk production as specified in the statement or to the effect that no such apportionment has been agreed; and

(b) where such an apportionment has been agreed, a consent or sole interest notice, provided by the transferor in respect of the entirety of the holding.

(3) 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 8; and

(b) any dairy produce which has been sold by direct sale or delivered by wholesale delivery from the holding during the quota year in which the change of occupation takes place and prior to that transfer shall be deemed, for the purposes of any levy calculation, to have been sold or delivered from each part of the holding in proportion to that apportionment, unless the parties agree otherwise and notify the Intervention Board of the agreement in such a form as the Intervention Board may reasonably require, no later than 28 days after the change of occupation, and in any event no later than 7 working days after the end of the quota year in which the transfer takes place.

(4) A prospective apportionment of quota in respect of a part of a holding may be made in accordance with regulation 9.

(5) No person shall transfer quota on a transfer of any holding or part of a holding in the following cases -

(a) the grant of:

(i) a licence to occupy land;

(ii) 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;

(iii) 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;

(iv) 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;

(b) the termination of a licence, tenancy or lease to which sub-paragraph (a) applies.

(6) Where a transferee fails to submit the notice referred to in paragraph (1)(a) no later than seven working days after the end of the quota year in which the transfer takes place, then for the purposes of any levy calculation -

(a) the unused quota transferred with such transfer shall not be treated as a part of the transferee's quota entitlement for the quota year in which the transfer takes effect but shall be treated as if it remained unused quota available where appropriate for reallocation by the Intervention Board in that quota year in accordance with paragraph 7 of Schedule 5;

(b) the notice shall be disregarded by the Intervention Board for the quota year to which it applies and shall not be noted on any register maintained under regulation 24 until the following quota year; and

(c) 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 5 for the quota year in which the transfer takes effect.

(7) No person shall transfer quota on a 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.

Apportionment of quota

8 . Subject to regulations 7(5) and (7), 9(4) and (5) and 10, where there is a transfer of part of a holding, the apportionment of the quota or special quota, relating to that holding, shall be carried out -

(a) in accordance with the agreed apportionment set out in the notice referred to in regulation 7(1)(a); or

(b) where there is no such agreement -

(i) in England and Wales and Northern Ireland, by arbitration in accordance with Schedules 2 and 4 respectively;

(ii) in Scotland, in accordance with Schedule 3.

Prospective apportionment of quota

9 . - (1) The occupier of a holding who intends that a prospective apportionment of quota will be applied to it shall submit to the Intervention Board an application in such a form as may reasonably be required for this purpose by the Intervention Board, requesting either -

(a) that a prospective apportionment of quota relating to the holding be made taking account of areas used for milk production as set out in the application; or

(b) that a prospective apportionment of quota be ascertained by arbitration in accordance with Schedule 2 in England and Wales and with Schedule 4 in Northern Ireland, or in Scotland in accordance with Schedule 3.

(2) A request for a prospective apportionment of quota may be revoked by a notice in writing to the Intervention Board, signed by the occupier of the holding to which the prospective apportionment relates.

(3) Where the occupier of a holding requests that a prospective apportionment be made in accordance with paragraph (1)(a), or gives notice in writing of the revocation of such a request, that request or notice shall be accompanied by a consent or sole interest notice in respect of the entirety of the holding.

(4) Where there is a change of occupation of part of a holding (other than a change to which regulation 7(5) applies) and within the six months preceding that change of occupation -

(a) the occupier of that holding has requested a prospective apportionment of quota in respect of that part of the holding and has submitted a notice in accordance with regulation 7(1), indicating that an apportionment of quota has been agreed; or

(b) a prospective apportionment of quota relating to that part of that holding has

been or is in the process of being made by virtue of Schedule 2, 3 or 4,

the apportionment of quota shall be carried out in accordance with paragraph (5).

(5) Where quota is apportioned in accordance with this paragraph, the apportionment shall be carried out in accordance with -

- (a) any prospective apportionment of quota relating to that part of that holding made under paragraph (1) unless the request for that prospective apportionment was revoked before the change of occupation to which it relates takes place;**
- (b) if no such prospective apportionment has been made, any prospective apportionment which is in the process of being made under paragraph (1); and**
- (c) in any other case, regulation 8.**

Notification by the Intervention Board of apportionment of quota by arbitration
10 . - (1) Where the Intervention Board has reasonable grounds for believing -

- (a) that the areas used for milk production on a holding are not as specified in a notice or application submitted for the purposes of regulation 7 or 9(1) respectively; or**
- (b) that the areas used for milk production on a holding were not as agreed between the parties at the time of apportionment in a case where no notice or application has yet been submitted for the purposes of the aforementioned regulations,**

it may give notice of this fact to the person who submitted the form, or in a case where no such notice or application was made, to the transferee.

(2) In any case to which paragraph (1) applies the apportionment or prospective apportionment of that quota shall be made -

- (a) in England and Wales and Northern Ireland by arbitration in accordance with Schedules 2 and 4 respectively;**
- (b) in Scotland in accordance with Schedule 3.**

Transfer of quota without transfer of land

11 . - (1) For the purposes of the fifth indent of the first paragraph of Article 8 of the Council Regulation (which permits the authorisation of a transfer of quota without transfer of the corresponding land, with the aim of improving the structure of milk production at the level of the holding), an application for transfer of quota without transfer of land, other than an application for transfer of a kind to which paragraph (9) below refers, shall be submitted by the transferee to the Intervention Board for approval no later than ten working days before the end of the quota year in which that transfer takes place and that application shall be in such form as may be reasonably required for that purpose by the Intervention Board.

(2) The application referred to in paragraph (1) shall include -

(a) a statement, signed by the transferor and transferee, that they have agreed to the transfer of quota and explaining how the transfer is necessary to improve the structure of the business of the transferor and transferee;

(b) a consent or sole interest notice signed by the transferor in respect of the entirety of the holding from which the quota is to be transferred;

(c) an undertaking by the transferor that he -

(i) has not transferred quota onto his holding in accordance with the provisions of this regulation other than by a transfer in respect of which, pursuant to paragraph (7), he has been released from the undertaking referred to in sub-paragraph (d)(i) in the course of the quota year in which the application is made, or in the preceding quota year;

(ii) will not transfer quota onto his holding under regulations 7, 11 or 13 in the period between the date of submission of the application and the end of the quota year following the quota year in which the transfer without land takes place; and

(iii) will not, through his connection with or involvement in another business, seek to circumvent the restrictions at paragraphs (i) and (ii) above; and

(d) an undertaking by the transferee that he -

(i) will not transfer quota from his holding under regulation 7, 11 or 13 in the period between the date of submission of the application and the end of the quota year following the quota year in which the transfer without land takes place;

(ii) will not, through his connection with or involvement in another business, seek to circumvent the restriction at paragraph (i) above.

(3) The reference to the transfer of quota in sub-paragraphs (c)(ii) and (d)(i) of paragraph (2) shall include temporary transfer under regulation 13 but exclude transfer on inheritance.

(4) Where it has received an application under paragraph (1), the Intervention Board may require that the transferor or transferee shall produce such other information relating to the application, and within such time, as the Intervention Board reasonably may determine.

(5) Where the Intervention Board approves an application under paragraph (1), the transferee shall, no later than 28 days after the transfer takes place, and in any event no later than seven working days after the end of the quota year in which the transfer takes place, submit to the Intervention Board, in such form as the Intervention Board may reasonably require, a statement of the amounts of used and unused quota available to the transferor and transferee on the date of the transfer.

(6) Where a transferee fails to submit a statement in accordance with the requirements of paragraph (5), the Intervention Board shall revoke its approval.

(7) Where an application to transfer quota without transfer of land has been approved by the Intervention Board, and the statement required by paragraph (5) has

been submitted in accordance with that paragraph, the Intervention Board may release a transferee from the undertaking referred to in paragraph (2)(d)(i), where the Intervention Board is satisfied that exceptional circumstances, resulting in a significant fall in milk production which could not have been avoided or foreseen by the transferee at the time of the submission of the application under paragraph (1), justify that release.

(8) The exceptional circumstances referred to in paragraph (7) are -

- (a) the inability of the transferee to conduct his business over a prolonged period as a result of the onset of ill-health, injury or disability;**
- (b) a natural disaster seriously affecting the holding;**
- (c) the accidental destruction of buildings used for the purposes of milk production;**
- (d) without prejudice to sub-paragraph (e), an outbreak of illness or disease seriously affecting the dairy herd;**
- (e) the serving of a notice or the making of a declaration under an order made under section 17 of the Animal Health Act 1981[11] (in respect of places or areas in Great Britain) or the making of a declaration under an order made under article 12(1) of the Diseases of Animals (Northern Ireland) Order 1981[12] (in respect of places or areas in Northern Ireland) or the adoption of an emergency order under section 1 of the Food and Environment Protection Act 1985[3];**
- (f) the loss of a significant proportion of the forage area as a result of the compulsory purchase of the holding or part of the holding;**
- (g) where the transferee is a tenant, the serving of an incontestable notice to quit under the provisions of section 26 of and Schedule 3 to the Agricultural Holdings Act 1986[14] dealing with the serving of incontestable notices to quit where the tenant is not at fault; and**
- (h) in the quota year commencing 1st April 1997, the slaughter of animals forming part of the dairy herd pursuant to the powers conferred upon the Minister under section 32(1)(b) of the Animal Health Act 1981, as animals having been exposed to the infection of bovine spongiform encephalopathy.**

(9) As provided for in the fourth indent of the first paragraph of Article 8 of the Council Regulation (which provides for the determination of regions within which such transfers may be authorised), no applications for a transfer of quota may be submitted pursuant to paragraph (1) 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.

National reserve

12 . - (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 under these Regulations.

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

Temporary transfer of quota

13 . - (1) For the purposes of Article 6 of the Council Regulation (which deals with the

temporary transfer of quota), and subject to paragraph (5) below, a producer may agree with any other producer to make a temporary transfer, other than a temporary transfer of a kind to which paragraph (4) below refers, of all or part of any unused quota which is registered under regulation 24 as permanently held by him for a period of one quota year to that other producer.

(2) The Intervention Board may require a reasonable charge to be paid for the registration of any temporary transfer of a quota, but only if the transfer takes place within a quota year in respect of which it has announced before the beginning of that quota year that it intends to make such a charge, in such a manner as it considered likely to come to the attention of producers.

(3) Where there is an agreement to make a temporary transfer of quota under paragraph (1), the transferee shall notify the Intervention Board of the agreement in such form as may reasonably be required by the Intervention Board, and shall submit the notice, accompanied by any charge payable under paragraph (2), to the Intervention Board no later than 31st December in the quota year in which the agreement is made.

(4) No producer shall agree with any other producer to make a temporary transfer of quota which would result in a reduction in the total direct sales quota or total wholesale quota available for use by dairy enterprises located within a Scottish Islands area.

(5) Until 31st December 1997, where a producer who holds special quota received under Council Regulation 2055/93, temporarily transfers of any quota held by him, the special quota shall be taken into the national reserve for the duration of the quota year in which such temporary transfer takes place.

Temporary reallocation of quota

14. - (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 Intervention Board may, for any quota year, award to a producer referred to in paragraph (2) a temporary reallocation of an amount of any surplus 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 is affected by a formal acknowledgement of an error in the levy calculation, made pursuant to Article 5(1)(a) of the Commission Regulation; and

(b) a producer who has quota registered as his in relation to a holding which -

(i) 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^[15] or the Diseases of Animals (Northern Ireland) Order 1981^[16], or

(ii) 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 of the Food and Environment Protection Act 1985^[17].

(3) Subject to paragraphs (4) and (5), a producer referred to in paragraph (2)(b) may be awarded a temporary reallocation of surplus quota for any quota year in

which the notice referred to in paragraph (2)(b)(i) or (as the case may be) the order referred to in paragraph (2)(b)(ii) has effect, and the amount of any such award shall be calculated either -

- (a) as the amount equal to 16 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)(b)(i) continues in effect or the order referred to in paragraph (2)(b)(ii) remains in force for a period 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 that period or (if the period extends beyond that following quota year) during that following quota year, notwithstanding the fact that when any such heifers calved the number of eligible heifers did not exceed the replacement number.

(5) An award under paragraph (3) above shall not be available in the same quota year to a producer who transfers unused quota under regulation 7 or 11, makes a temporary transfer of quota under regulation 13, or purchases cows or in-calf heifers for dairy purposes, unless the Intervention Board is satisfied that the agreement to transfer, temporarily transfer or purchase, was entered into before service of the notice to which paragraph (2)(b)(i) refers, or (as the case may be) before the coming into force of the order to which paragraph (2)(b)(ii) refers.

(6) A producer referred to in paragraph (2)(a) above may be awarded a temporary reallocation of surplus 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.

(7) In awarding a temporary reallocation of surplus quota for the purpose of this regulation the Intervention Board shall give priority to the producers referred to in paragraph (2)(a).

Special allocation of quota

15 . 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

16 . - (1) For the purposes of 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 sub-paragraph of Article 2(2) of the Council Regulation (which deals with replacements of purchasers) and this regulation, a producer may apply to convert, temporarily or permanently, direct sales quota for wholesale quota or wholesale quota for direct sales quota.

(2) Where a producer wishes to convert quota permanently or temporarily in any quota year, he shall submit to the Intervention Board an application in such a form as the Intervention Board may reasonably require for that purpose 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 and which he wishes the Intervention Board to convert; and
- (b) include such other information as the Intervention Board may reasonably require in order to assess whether the requirements of Article 4(2) of the Council Regulation and Article 2 of the Commission Regulation are fulfilled.

(3) The application referred to in paragraph (2) above shall be submitted by the producer to the Intervention Board by -

- (a) 31st December in any year in the case of permanent conversion of quota; or
- (b) 14th May in any year following the end of the quota year in which the temporary conversion of quota takes place, in the case of temporary conversion of quota.

(4) Subject to paragraph (5), where a producer has permanently converted quota in any quota year, he shall not subsequently in that quota year transfer out quota, of the type to which he has converted, whether temporarily or otherwise.

(5) In the quota year commencing 1st April 1997, where the Minister in accordance with section 32(1)(b) of the Animal health Act 1981[18] has caused animals forming part of a producer's dairy herd, to be slaughtered as having been exposed to the infection of bovine spongiform encephalopathy, paragraph (4) above shall not apply to that producer.

Representative fat content of milk

17 . A producer who in any quota year comes within the first indent of Article 2(1)(e) of the Commission Regulation (which deals with the representative fat content of milk from certain new producers) may benefit from the negative correction provided for in the second indent of Article 2(2) thereof only if, before 1st March in that quota year, he confirms to the Intervention Board that in that quota year he has maintained in his dairy herd breeds of cow with characteristics similar to those in the herd in the first twelve months of production and undertakes to maintain such breeds in his dairy herd for the remainder of that quota year.

Reallocation of quota and calculation of levy liability

18 . Schedule 5 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

19 . - (1) Subject to paragraph (2), where in any quota year a producer makes sales or deliveries of milk or milk products from milk produced by any cows and subsequently in the same quota year 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 for the purposes of these Regulations to have made those sales or deliveries in the capacity of agent for the first producer.

(2) Paragraph (1) 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

20 . - (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 after 1st September in any year, the Intervention Board may recover from the direct seller or (as the case may be) the purchaser, the amount of the levy outstanding at that date 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 sub-paragraph of Article 2(2) of the Council Regulation (which deals with deduction of levy liability), where a producer making wholesale deliveries to a purchaser exceeds his wholesale quota, following adjustment of that quota where appropriate and in accordance with Article 2(2) of the Commission Regulation, 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

21 . The Intervention Board shall be the competent body for the purposes of Article 2(3) of the Council Regulation (which deals with payment of levy by direct sellers), and the competent authority 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).

Annual statements

22 . - (1) The Intervention Board may, in respect of -

(a) any person in whose name any direct sales quota is registered and who fails to submit to the Intervention Board by 14th May in any year any declaration which he is required to forward by Article 4(2) of the Commission Regulation, or

(b) any purchaser approved by the Intervention Board in accordance with Article 7 of the Commission Regulation and who fails to submit to the Intervention Board by 14th May in any year any summary which he is required to forward by Article 3(2) of the Commission Regulation,

recover a reasonable charge in respect of any visit to any premises which the Intervention Board has reasonably considered that it should make in order to obtain the declaration or summary in question.

Disapplication of enactments

23 . Nothing in section 47(2) of the Agricultural Marketing Act 1958^[19] or Article 29 of the Agricultural Marketing (Northern Ireland) Order 1982^[20] (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 or the Community legislation.

Registers to be prepared and maintained by the Intervention Board

24 . - (1) The Intervention Board shall -

(a) prepare a direct sales register entry in respect of each direct seller setting out in particular -

- (i) his name;**
- (ii) his trading address;**
- (iii) a reference number which serves to identify the direct seller;**
- (iv) the direct sales quota available to him for the quota year excluding the quota referred to in paragraph (v) below; and**
- (v) quota issued to him 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 sub-paragraph (1)(a)), and**
- (ii) a register of particulars of direct sales by each direct seller.**

(2) The Intervention Board shall -

(a) prepare a wholesale register entry in respect of each producer setting out in particular -

- (i) his name;**
- (ii) his trading address;**
- (iii) a reference number which serves to identify the producer;**
- (iv) the wholesale quota available to him for the quota year excluding the quota referred to in sub-paragraph (v);**
- (v) quota issued to him as special quota; and**
- (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 of the wholesale quota registered with each purchaser, showing the representative fat content base of that quota 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 paragraph (vi) above 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 subparagraph (a)).

(3) The Intervention Board shall -

(a) prepare a purchaser notice in respect of each purchaser 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 a register of purchaser notices.

(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 Intervention Board a consent or sole interest notice in respect of that holding, agree with the Intervention Board the partition of that holding between separate direct sales register entries or wholesale register entries as specified in the agreement.

(5) The Intervention Board may make such enquiries as it reasonably considers to be necessary for the purposes of ensuring the accuracy of the registers which it is required to maintain pursuant to this regulation and shall amend such registers -

(a) to record any allocations or adjustments made under or by virtue of these Regulations, or

(b) to make any correction or amendment which it reasonably considers to be necessary,

and where it makes a correction or amendment, it shall notify any person affected by that correction or amendment.

(6) In this regulation "direct seller" and "producer" include a person who occupies land with quota whether or not that person is engaged in the sale or delivery of dairy produce.

Inspection of entries in the Intervention Board's registers

25 . The Intervention Board may, in response to a request in writing regarding a quota register entry referred to in regulation 24(1) or (2) -

(a) by any person who is the direct seller or producer identified in that entry, or who gives the Intervention Board a statement in writing that he has an interest in the holding of the producer or direct seller identified in that entry; or

(b) by a purchaser in relation to a specific purchaser in the register referred to in regulation 24(3)(b),

on payment of a reasonable charge, supply to such a person a copy of that quota register entry.

Obligations of direct sellers and purchasers with respect to registration and deliveries
26 . - (1) Each direct seller shall register his quota with the Intervention Board.

(2) Each producer (as defined in regulation 24(6)) 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 and, if making deliveries, shall deliver to a purchaser.

(3) Each purchaser shall maintain, in respect of all producers whose register entries include that purchaser's name on the list referred to in regulation 24(2)(a)(vi) -

(a) a register as indicated in regulation 24(2)(b) in respect of that part of his 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.

(4) Each purchaser shall amend the register referred to in paragraph (3)(a) on each occasion when, under these Regulations, the equivalent register maintained by the Intervention Board is required to be amended in relation to producers registered in that purchaser's register.

(5) Each purchaser shall register with the Intervention Board and shall -

(a) give an undertaking to the Intervention Board to abide by the provisions of these Regulations and the Community legislation and comply with that undertaking;

(b) inform the Intervention Board of any factor or change in circumstance which affect that purchaser's registration or its ability to comply with the undertaking referred to in sub-paragraph (a);

(c) confirm to each producer supplying that purchaser that the purchaser is registered and supply on request details of that registration; and

(d) notify each producer supplying that purchaser if that registration is rescinded.

Registers as evidence

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

Information

28 . - (1) Each purchaser or producer shall provide such information to the Intervention Board as the Intervention Board may reasonably require in order to

perform its functions under these Regulations and the Community legislation.

(2) Each purchaser shall submit to the Intervention Board on request, in a form from time to time to be determined by the Intervention Board, such statistics and forecasts relating to deliveries made or to be made to him, as reasonably may be required by the Intervention Board for the purpose of monitoring deliveries in relation to the total quantity for the United Kingdom referred to in Article 3(2) of the Council Regulation, and any such statistics shall be submitted within three working days of the end of the period to which the statistics relate, and any such forecast shall be submitted within 28 days of receipt by the purchaser of the request to provide such forecast.

(3) The Intervention Board shall copy such records to each purchaser as that purchaser reasonably may 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).

Withholding or recovery of compensation

29 . Where a producer has submitted an application for compensation in accordance with the Community compensation scheme and it appears to the Minister that the producer has made a false or misleading statement in his application or has failed to comply with any of the requirements of that scheme, the Minister may withhold or recover on demand from that producer the whole or any part of the compensation payable or paid to him.

Powers of authorised officers

30 . - (1) An authorised officer may, at all reasonable hours and on producing some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of ascertaining whether an offence under regulation 31(1)(a), (b) or (c) has been or is being committed.

(2) For the purposes of this regulation, an authorised officer may enter upon a holding.

(3) An authorised officer who has entered upon a holding by virtue of this regulation may -

(a) inspect any land (other than land used only as a dwelling) and any record or document, including any document kept by means of a computer, which relates to the allocation or transfer of quota or the trade in, or production of milk or milk products;

(b) seize and retain any such record or document which he has reason to believe may be required as evidence in proceedings under regulation 31(1)(a), (b) or (c).

(4) A producer shall render all reasonable assistance to the authorised officer in relation to the matters mentioned in paragraph (1) above and in particular shall produce any such record or document and supply such additional information relating to the allocation to him of quota, the transfer to or from him of quota and the trade in or production of milk or milk products, as the authorised officer may reasonably require.

(5) In the case of a record or document kept by means of a computer a producer shall, if so required, provide any such record or document in a form in which it may be taken away.

Penalties

31 . - (1) 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; or**
- (c) disposes of quota which he knows or might reasonably be expected to know is incorrectly registered in his name,**

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) 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 (3)) on the person to whose quota that conviction relates withdraw 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.

(3) The date referred to in paragraph (2) 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.**

(4) If any person -

- (a) intentionally obstructs an authorised officer acting in the exercise of the powers conferred to him by regulation 30(4) or (5); or**
- (b) fails without reasonable excuse to comply with a requirement of an authorised officer pursuant to regulation 30(4) or (5),**

he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In this regulation "requirement" does not include a requirement imposed on an authority or a person acting as arbitrator or arbiter, nor does it include any restriction or obligation in or under regulation 7(5) or (7), 9(1), 11(9), 13(2) or (4) or 16(2).

Confiscation and restoration of quota

32 . - (1) Within forty-five days after the end of each quota year, each purchaser shall supply to the Intervention Board 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 during that year.

(2) Pursuant to Article 5 of the Council Regulation (which deals with the confiscation and restoration of quota), the Intervention Board shall notify -

(a) any producer who from information available to the Intervention Board appears not to have made deliveries or direct sales or a temporary transfer of quota under regulation 13 during the previous quota year, that his quota has been taken into the national reserve;

(b) any producer who is a direct seller and to whom the third sub-paragraph of Article 4(2) of the Commission Regulation (which deals with the late submission of declarations) applies that, unless that producer submits to the Intervention Board a declaration under the first sub-paragraph thereof within 30 days of the notification, his quota will be confiscated to the national reserve.

(3) Any quota withdrawn pursuant to Article 5 of the Council Regulation shall be placed in the national reserve with effect from the beginning of the quota year following the quota year for which the list referred to paragraph (1) was supplied, the quota year for which the declaration indicating no direct sales was made, or the quota year for which no declaration was submitted, as the case may be.

(4) Any quota withdrawn pursuant to Article 5 of the Council Regulation 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 this regulation.

(5) A producer who receives a notification of confiscation under paragraph (2) above shall -

(a) within 28 days of receipt of that notification notify any person with an interest in the holding of the content of that notification; and

(b) within six months of receipt of that notification, submit a notification to the Intervention Board, in such form as may reasonably be required by the Intervention Board for that purpose, whether he wishes to retain the right to request restoration of the quota and such a notification shall include -

(i) a statement that he is the occupier of the entirety of the holding and that no other person has an interest in all or any of it;

(ii) a statement of the agreed apportionment of quota taking account of the areas used for milk production, signed by every person with an interest in the holding; or

(iii) a statement requesting apportionment of the quota in accordance with an arbitration under paragraphs 1(5), 3, 4 and 6 to 35 of Schedule 2 in respect of England and Wales, paragraphs 1, 2, 3(4) and 5 to 28 of Schedule 3 in respect of Scotland, and paragraphs 1, 2, 3(5), 5, 6, and 8 to 19 of Schedule 4 in respect of Northern Ireland.

(6) Where a producer has notified the Intervention Board under paragraph (5)(b) that he wishes to retain the right to restoration of quota, he may request the Intervention Board to restore to him the quota relating to that holding or part holding provided that the request is submitted to the Intervention Board by 15th July in the quota year following the quota year to which the request relates.

(7) Where a producer has notified the Intervention Board that he wishes to retain the right to restoration of quota and there is a change of occupation of all or part of the holding to which the quota relates, the new occupier may request the Intervention Board to restore to him the quota relating to that holding or part holding, provided that the request is received by the Intervention Board at least six months before the end of the six-year period referred to in paragraph (4) or within six months of the change of occupation, whichever is the earlier.

(8) Where quota is restored to part of a holding in respect of which an apportionment of quota has been made in accordance with or under paragraph 5(b) (ii) or (iii), in accordance with a request made under paragraph (6), or following a change of occupation of part of a holding under paragraph (7), the amount of quota to be restored to that part shall be determined in accordance with -

(a) the apportionment referred to in paragraph (5)(b)(ii) or (iii) and within that apportionment in proportion to the agricultural areas concerned; or

(b) where no such apportionment has been carried out, in the same proportion which the agricultural area concerned bears to the total agricultural area of the holding from which quota was withdrawn.

(9) Where a producer -

(a) fails to submit a notification in accordance with paragraph (5)(b);

(b) indicates on the notification submitted under paragraph (5)(b) that he does not wish to retain the right to restoration of quota;

(c) fails to request the restoration of quota in accordance with paragraph (6) or (7);

(d) having had quota restored to him in accordance with paragraph (6), fails to make deliveries or direct sales of dairy produce from the holding to which the quota relates within six months after his application for the restoration of quota or the end of the six year period, whichever is the earlier; or

(e) having had quota restored to him following a change of occupation referred to in paragraph (7), fails to make deliveries or direct sales of dairy produce from the holding within eighteen months of the change of occupation or the end of the six year period, whichever is the earlier,

the relevant quota shall be taken into the national reserve.

Withdrawal of Special Quota

33 . Where a producer has special quota registered in his name and it appears to the Minister that the producer has made a false or misleading statement in his application for special quota or has failed to comply with the requirements in relation to special quota, the Minister may withdraw the whole or any part of the special quota.

Dairy Produce Quota Tribunals

34 . - (1) For the purpose of completing the discharge of any functions exercisable by it under the Regulations revoked by these Regulations, 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) Schedule 6 shall apply in respect of the constitution, appointment of members, remuneration of members, staffing and procedure of Dairy Produce Quota Tribunals.

Revocation

35 . The Dairy Produce Quotas Regulations 1994[21], the Dairy Produce Quotas (Amendment) Regulations 1994[22], the Dairy Produce Quotas (Amendment) (No. 2) Regulations 1994[23], the Dairy Produce Quotas (Amendment) Regulations 1995[24], the Dairy Produce Quotas (Amendment) Regulations 1996[25] and the Dairy Produce Quotas (Amendment) Regulations 1997[26] shall be revoked.

Tony Baldry

Minister of State, Ministry of Agriculture, Fisheries and Food

10th March 1997

Lindsay

Parliamentary Under Secretary of State, Scottish Office

11th March 1997

SCHEDULE 1

Regulation 2(1)

MEANING OF COMMUNITY LEGISLATION

1. Council Regulation (EEC) No. 857/84, adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No. 804/68 in the milk and milk products sector, OJ No. L90, 1.4.84, p. 13.

2. Council Regulation (EEC) No. 764/89, amending Regulation (EEC) No. 857/84, OJ No. L84, 29.3.89, p. 2.

3. Council Regulation (EEC) No. 1639/91, amending Regulation (EEC) No. 857/84, OJ No. L150, 15.6.91, p. 35.

4. Commission Regulation (EEC) No. 1756/93, fixing the operative events for the agricultural conversion rate applicable to milk and milk products, OJ No. L161, 2.7.93, p. 48.

5. Council Regulation (EEC) No. 2187/93, providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade, OJ No. L196, 5.8.93, p. 6.

6. Commission Regulation (EEC) No. 2562/93, laying down detailed rules for the application of Council Regulation 2055/93, OJ No. L235, 18.9.93, p. 18.

7. Commission Regulation (EEC) No. 2648/93, laying down detailed rules for the application of Council Regulation (EEC) No. 2187/93, OJ No. L243, 29.9.93, p. 1.

SCHEDULE 2

Regulations 8, 9, 10 and 32

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION - ENGLAND AND WALES

Appointment and remuneration of arbitrator

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

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

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

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

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

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

(a) where regulation 10 applies, by the President,

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

(2) Where sub-paragraph (1)(b) applies, the occupier shall give notice to the Intervention Board of the appointment of the arbitrator pursuant to the agreement, or

of the application to the President for the appointment of an arbitrator, within fourteen days of the date of the appointment of the arbitrator or the date of the application to the President, as the case may be.

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

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

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

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

(2) The prescribed fee for the purposes of this paragraph shall be that which from time to time is prescribed as the fee payable to the President under paragraph 1(2) of Schedule 11 to the Agricultural Holdings Act 1986^[27].

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

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

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

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

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

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

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

12. The remuneration of the arbitrator shall be -

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

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

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

Conduct of proceedings and witnesses

13. - (1) In any arbitration to which this Schedule applies, the arbitrator may, in his absolute discretion, subject to sub-paragraph (2), join as a party to the arbitration any person having an interest in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

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

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

(a) no amendment or addition to the statement or particulars delivered shall be allowed after the expiry of the said thirty-five days except with the consent of the arbitrator; and

(b) a party to the arbitration shall be confined at the hearing to the matters alleged in the statement and particulars delivered by him and any amendment or addition duly made.

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

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

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

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

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

(a) having been summoned in pursuance of county court rules as a witness in the arbitration refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or

(b) having been so summoned or being present at the arbitration and being required to give evidence, refuses to be sworn or give evidence,

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

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

(3) No person summoned in pursuance of county court rules as a witness in the arbitration shall forfeit a fine under this paragraph unless there has been paid or tendered to him at the time of the service of the summons such sum in respect of his expenses (including, in such cases as may be prescribed by county court rules, compensation for loss of time) as may be so prescribed for the purposes of section 55 of the County Courts Act 1984[28].

(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.

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

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

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

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

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

Award

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

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

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

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

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

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

Reasons for award

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

Costs

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

27. On the application of any party, any such costs shall be taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the arbitrator under paragraph 26, or, in the absence of any such direction, by the county court.

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

(a) the reasonableness or unreasonableness of the claim of any party, whether in respect of the amount or otherwise,

(b) any unreasonable demand for particulars or refusal to supply particulars, and

(c) generally all the circumstances of the case.

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

Special case, setting aside award and remission

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

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

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

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

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

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

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

Miscellaneous

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

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

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

35. The Arbitration Act 1996[29] shall not apply to an arbitration determined in accordance with this Schedule.

SCHEDULE 3

Regulations 8, 9, 10 and 32

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION OR SCOTTISH LAND COURT SCOTLAND

PART I

GENERAL

1. - (1) Subject to sub-paragraphs (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 -

(a) a croft within the meaning of section 3 of the Crofters (Scotland) Act 1993[30]

(b) a holding within the meaning of section 2 of the Small Landholders (Scotland) Act 1911[31]; or

(c) the holding of a statutory small tenant under section 32 of the Small Landholders (Scotland) Act 1911.

(3) Where sub-paragraph (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[32], 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 28 days 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. - (1) 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.

(2) Notwithstanding sub-paragraph (1), an arbiter appointed in accordance with paragraph 3(4) shall conduct the arbitration in accordance with this Schedule and shall base his award on findings made by him as to the areas used for milk production in the last five year period during which production took place.

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 28 days referred to in regulation 7(1)(a) (referred to in this paragraph as "the relevant period") and the transferee shall give notice of the appointment of the arbiter to the Minister within fourteen days from the date of the appointment.

(2) Notwithstanding sub-paragraph (1), the transferor or the transferee may at any time within the relevant period make an application to the 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 sub-paragraph (2), the Minister shall at his own instance proceed to appoint an arbiter.

(4) Where an apportionment under regulation 32(5) is to be carried out by

arbitration, the producer shall either appoint an arbiter with the agreement of all persons with an interest in the holding or make an application to the Minister for the appointment of 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 of agreement, by the Minister on an application by the occupier.

(2) Where an arbiter is appointed by agreement in terms of sub-paragraph (1), the occupier shall give notice of the appointment of the arbiter to the Minister within fourteen days from the date of the appointment.

5. - (1) Where, in terms of a notice given by the Intervention Board under regulation 10, an apportionment or prospective apportionment is to be carried out by arbitration, the Intervention Board shall apply to the Scottish Land Court for the appointment of an arbiter.

(2) Any fee payable by the Intervention Board on an application to the Scottish Land Court under sub-paragraph (1) shall be recoverable by it 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 10), 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 any other party.

8. Every appointment, application, notice, revocation and consent under paragraphs 1 to 7 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 of 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, 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 to any such objection, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power which may be required or called for, and do all other things as the arbiter reasonably may require for the purposes of the arbitration.

12. Any person having an interest in the holding to which the arbitration relates shall be entitled to make representations to the arbiter. The Intervention Board may make such representations where the arbitration follows on a notice given by it under regulation 10.

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.

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 eight 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.

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 any expenses which he considers to have been incurred unnecessarily, including the expenses of any witness whom he considers to have been called 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[33] 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, 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 application to that Court shall notify the Minister in writing of the application within fourteen days of its being lodged with the Court.

27. Where, in terms of a notice given by the Intervention Board under regulation 10, an apportionment or prospective apportionment is to be carried out by the Scottish Land Court, any fee payable by the Intervention Board to the Court shall be recoverable by it 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 Intervention Board shall be entitled to be a party where the apportionment follows on a notice given by it under regulation 10.

SCHEDULE 4

Regulations 8, 9, 10 and 32

APPORTIONMENTS AND PROSPECTIVE APPORTIONMENTS BY ARBITRATION - NORTHERN IRELAND

- 1. Paragraphs 3 to 19 shall apply to every arbitration in Northern Ireland.**
- 2. - (1) Parts I, II and IV of the Arbitration Act 1996[34] shall, except insofar as they are inconsistent with paragraphs 3 to 19, apply to every arbitration in Northern Ireland as if that arbitration were pursuant to an arbitration agreement and as if paragraphs 3 to 11 and 13 to 18 were contained in an arbitration agreement.**
- (2) For the purposes of this paragraph "arbitration agreement" shall be construed in accordance with sections 5(1) and 6 of the Arbitration Act 1996.**

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 28 days referred to in regulation 7(1)(a) (referred to in this paragraph as "the relevant period") and the transferee shall give notice of the appointment of the arbitrator to the Intervention Board within fourteen days of the date of the appointment.**
- (2) Notwithstanding sub-paragraph (1) 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 give notice of that fact to the Intervention Board within fourteen days of the date of the application.**
- (3) If at the expiry of the relevant period an arbitrator has not been appointed by agreement between the transferor and the transferee nor an application made to the President under sub-paragraph (2), the Intervention Board shall make an application to the President for the appointment of an arbitrator.**
- (4) Where the Intervention Board gives a notice in accordance with regulation 10 he shall make an application to the President for the appointment of an arbitrator and the Intervention Board shall be a party to the arbitration.**
- (5) Where an apportionment under regulation 32(5) is to be carried out by arbitration, the producer shall either appoint an arbitrator by agreement with all persons with an interest in the holding or make an application to the President for the appointment of an arbitrator.**
- 4. - (1) In any case where a prospective apportionment is to be made by arbitration an arbitrator shall be appointed -**

(a) where regulation 10 applies, by the President;

(b) in any other case, by agreement between the occupier of the holding to which the prospective apportionment relates and any other interested party, or, in default, by the President on an application by that occupier.

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

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

(2) An arbitrator appointed in accordance with paragraph 3(5) 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.

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

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 Intervention Board makes an application to the President under paragraph 3(3) or (4), the fee payable to the President in respect of that application referred to in paragraph 6 above shall be recoverable by the Intervention Board 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 fourteen 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 paragraphs 1 to 10 shall be in writing.

Persons with an interest in the holding

12. - (1) In an arbitration to which this Schedule applies, the arbitrator may, in his absolute discretion, subject to sub-paragraph (2), join as a party to the arbitration any person having an interest in the holding, whether or not such person has applied to become a party to the arbitration, provided that such person consents to be so joined.

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

Statement of case

13. The parties to the arbitration shall, within thirty-five days of 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 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.**

Award

14. The arbitrator shall make and sign his award within fifty-six days of his appointment.

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

16. 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

17. 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.

18. 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 14 shall run from that time.

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

SCHEDULE 5

Regulation 18

REALLOCATION OF QUOTA AND CALCULATION OF LEVY LIABILITY

Wholesale quota

1. The Intervention Board shall determine the amount, if any, by which the wholesale deliveries of dairy produce to each purchaser exceeds his purchaser quota.

2. In making that determination the Intervention Board shall complete in sequence the steps required by paragraphs 3 to 7.

3. The Intervention Board shall where necessary authorise an adjustment of 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 Intervention Board shall authorise the adjustment by purchasers (to the extent possible from within the quota available to the purchaser to whom the producer makes deliveries) of the quota of any producer making wholesale deliveries to whom a temporary reallocation of quota has been made, to take account of that reallocation, in accordance with the order of priority set out in regulation 14(7) and any purchaser who has insufficient quota unused by producers registered with him to meet that temporary reallocation shall notify the Intervention Board of the amount of the shortfall in such form as may reasonably be required by the Intervention Board.

5. The Intervention Board shall determine for each purchaser the amount, if any, by which the purchaser quota of each purchaser exceeds or falls short of the quantity of wholesale deliveries of dairy produce made to him taking into account the amount of quota converted in accordance with regulation 16, and any temporary reallocation made in accordance with paragraph 4.

6. The Intervention Board shall determine the total amount, if any, of excess quota remaining for any purchaser whose purchaser quota exceeds the quantity of wholesale deliveries of dairy produce made to him, as determined in accordance with paragraph 5, and shall add that amount to the national reserve.

7. The Intervention Board 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 which has not been met by the adjustment referred to in paragraph 4 above in accordance with the order of priority set out in regulation 14(7);

(b) thereafter, to offset the amount by which the deliveries made to any purchaser exceed his purchaser quota, such allocation being made proportionately to the amount of quota; and

(c) where the allocations referred to in sub-paragraph (b) exceed the amount required by the purchaser, the surplus shall be allocated to all purchasers where the deliveries exceed purchaser quota, until all unallocated quota has been exhausted.

8. Where a purchaser fails to notify the Intervention Board within 45 days of the end of the quota year of the actual quantity of milk or milk products delivered to him in that year, the Intervention Board may decide that that purchaser shall not benefit from the reallocation of quota referred to in paragraph 7(b).

9. The Intervention Board shall determine the total amount of the levy payable by a purchaser by multiplying the amount, if any, by which deliveries to him exceed his purchaser quota following the steps specified in paragraphs 3 to 7 by the rate of levy calculated in accordance with Article 1 of the Council Regulation.

10. Where, for any quota year, a purchaser is unable to supply such proof of the quantities of dairy produce delivered to him that year as the Intervention Board may reasonably require, the Intervention Board shall make its own determination of those quantities, based on all the information available to it, for the purposes of calculating any levy payable by that purchaser, and shall inform the purchaser of such

determination.

Direct sales quota

11. The Intervention Board shall determine for each direct seller the amount, if any, after taking into account the amount of quota converted in accordance with regulation 16, by which his direct sales quota exceeds the quantity of dairy produce sold by direct sale by him, and shall add this to any quantities available in the national reserve.

12. The Intervention Board shall make an award of a temporary reallocation of direct sales quota, under the terms of regulation 14, and in accordance with the order of priority set out in regulation 14(7) from the aggregate of amounts, if any, referred to in paragraph 11.

13. The Intervention Board shall determine the aggregate amount, if any, by which the direct sales quota of all direct sellers falls short of the total quantity of dairy produce sold by direct sales by them, after taking into account the amount of quota converted in accordance with regulation 16, and any temporary reallocation made in accordance with paragraph 12.

14. The Intervention Board shall determine for each direct seller the amount, if any, by which his direct sales quota falls short of the quantity of dairy produce sold by direct sale by him, taking into account the amount of quota converted in accordance with regulation 16, and any temporary reallocation of quota made in accordance with paragraph 12.

15. The Intervention Board shall determine the aggregate of the amounts, if any, referred to in paragraph 14.

16. The Intervention Board shall determine the total amount of the levy payable by multiplying the amount, if any, referred to in paragraph 13 by the rate of levy calculated in accordance with Article 1 of the Council Regulation.

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

18. Where a direct seller fails to notify the Intervention Board within 45 days of the end of the quota year of the total quantity of milk products sold by him by direct sales in that year, the Intervention Board 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.

19. Where for any quota year a direct seller is unable to supply such proof as the Intervention Board may reasonably require of the quantities of dairy produce sold by him in that year, the Intervention Board shall make its own determination of those quantities, based on all the information available to it, for the purposes of calculating any levy payable by that direct seller, and shall inform the direct seller of its determination.

SCHEDULE 6

Regulation 34

DAIRY PRODUCE QUOTA TRIBUNALS

PART 1

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 determine.**

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 under the Regulations revoked by these Regulations 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 Minister, 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Dairy Produce Quotas Regulations 1994, as amended. 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, both as amended, which consolidate earlier legislation relating to the levy. Under the Community legislation (including the legislation listed in Schedule 1), 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 quantity described in the Community legislation.

Apart from drafting changes and the revocation of spent provisions, the new provisions included in these Regulations are as follows:

1. A variation in the ring fencing of Scottish Islands areas (as defined in regulation 2(1)) is made by permitting temporary transfers of quota which increase quantities available to dairy enterprises within them (regulation 13(4)).

2. Any special quota within the meaning of Council Regulation (EEC) No. 2055/93 (OJ No. L187, 29.7.93, p.8), held by a producer who, before 31st December 1997, makes a temporary transfer of any quota held by him, is to be taken into the national reserve for the duration of the quota year in which that temporary transfer takes place (regulation 13(5)).

3. A producer who is awarded a temporary reallocation of quota under regulation 14(2)(b)(i) or (2)(b)(ii) of these Regulations is to have his award calculated on the basis of a maximum of 16 litres per qualifying cow per qualifying day in any quota year (regulation 14(3)(a)).

4. The date by which a producer who wishes to convert quota temporarily in any quota year from wholesale to direct sales quota or the other way must submit his application to do so to the Intervention Board has changed from 28th April to 14th May in any quota year following the end of the quota year in which the temporary conversion of quota takes place (regulation 16(3)(b)).

5. A producer who permanently converts quota in any quota year is not permitted in that same quota year to transfer out quota of the same type as that which he has converted whether temporarily or otherwise (regulation 16(4)), but this restriction does not apply, in the quota year commencing 1st April 1997, to producers who have had animals forming part of their dairy herd slaughtered as animals having been exposed to bovine spongiform encephalopathy, in accordance with section 32(1)(b) of the Animal Health Act 1981 (1981 c.22) (regulation 16(5)).

6. A provision is introduced defining and extending the powers of authorised officers of the Intervention Board to include a power to enter upon a holding in order to ascertain whether an offence under regulation 31(1)(a), (b) or (c) of these Regulations has been or is being committed, to inspect any record or document relating to milk production (including a document kept by means of a computer), and to seize and retain such document or record if he has reason to believe that it may be required in evidence in criminal proceedings under these Regulations (regulation 30).

7. Provisions are introduced making it a criminal offence to dispose of quota which a producer has reason to believe is incorrectly registered in his name, to intentionally obstruct an authorised officer in the exercise of his powers under regulation 30(4) and (5) of these Regulations or to fail without reasonable excuse to comply with a requirement of an authorised officer pursuant to regulation 30(4) or (5) of these Regulations (regulation 31).

A compliance cost assessment has been prepared and a copy has been placed in the library of each House of Parliament.

Notes:

[1] S.I. 1972/1811.

[2] 1972 c.68.

[3] OJ No. L57, 10.3.93, p. 12.

[4] OJ No. L59, 3.3.94, p. 5.

[5] OJ No. L196, 5.8.93, p. 6.

[6] OJ No. L243, 29.9.93, p. 1.

[7] OJ No. L405, 31.12.92, p. 1.

[8] OJ No. L148, 21.6.96, p. 13.

[9] OJ No. L187, 29.7.93, p. 8.

[10] S.I. 1984/1047; amended by S.I. 1984/1538, 1787 and 1985/509, and revoked by S.I. 1986/470.

[11] 1981 c.22.

[12] S.I. 1981/1115 (N.I. 22).

[13] 1985 c.48.

[14] 1986 c.5.

[15] 1981 c.22.

[16] S.I. 1981/1115 (N.I. 22).

[17] 1985 c.48.

[18] 1981 c.22.

[19] 1958 c.47, to which there are amendments not relevant to these Regulations.

[20] 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.

[21] S.I. 1994/672.

[22] S.I. 1994/2448.

[23] S.I. 1994/2919.

[24] S.I. 1995/254.

[25] S.I. 1996/2657.

[26] S.I. 1997/250.

[27] 1986 c.5.

[28] 1984 c.28.

[29] 1996 c.23.

[30] 1993 c.44.

[31] 1911 c.49.

[32] 1991 c.55.

[33] 1894 c.13 (57 and 58 Vict.).

[34] 1996 c.23.

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