

Statutory Instrument 1994 No. 2460

The Milk Marketing Board Scheme of Reorganisation (Third Party Rights) Regulations 1994

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STATUTORY INSTRUMENT

1994 No. 2460

AGRICULTURE

The Milk Marketing Board Scheme of Reorganisation (Third Party Rights) Regulations 1994

<i>Made</i>	<i>16th September 1994</i>
<i>Laid before Parliament</i>	<i>19th September 1994</i>
<i>Coming into force</i>	<i>20th September 1994</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly in exercise of the powers conferred on them by paragraphs 42(3)(a), 43(3) and 44(2)(a) of Schedule 2 to, and section 62(1) and (2) of, the Agriculture Act 1993^[1] and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Title, extent and commencement

1. These Regulations may be cited as the Milk Marketing Board Scheme of

Reorganisation (Third Party Rights) Regulations 1994, shall apply in England and Wales and shall come into force on 20th September 1994.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Agriculture Act 1993;

"the appropriate authority" means the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly;

"the approved scheme" means the approved scheme (within the meaning of section 24(1) of the Act) of the Board;

"the Board" means the Milk Marketing Board administering the Milk Marketing Scheme 1933^[2];

"compensation" means compensation payable under paragraph 42(1) or 44(1) of Schedule 2;

"paragraph 42 arbitrator" means an arbitrator to be appointed for the hearing of a dispute to which paragraph 42(3)(a) of Schedule 2 applies;

"paragraph 44 arbitrator" means an arbitrator to be appointed for the hearing of a dispute to which paragraph 44(2)(a) of Schedule 2 applies;

"the paragraph 43 provision" means paragraph 17 of, and Schedule 5 to, the approved scheme, being the provision of that scheme which for the purposes of paragraph 43(2)(a) of Schedule 2 identifies certain qualifying provisions and also identifies certain qualifying contracts and qualifying parties;

"qualifying contract" means any existing contract which contains a qualifying provision and which is identified in the paragraph 43 provision;

"qualifying party" means any party, other than the Board, to a qualifying contract who is identified in the paragraph 43 provision;

"qualifying provision" means any provision in a contract prohibiting absolutely the effecting of any description of transaction, other than a transfer, with respect to the property or rights of the Board, which is identified in the paragraph 43 provision as one to which paragraph 43 of Schedule 2 applies;

"Schedule 2" means Schedule 2 to the Act;

"Vesting Day" means 1st November 1994.

(2) In these Regulations any reference to a numbered regulation shall be construed as a reference to the regulation so numbered in these Regulations.

Appointment of arbitrators under paragraphs 42 and 44 of Schedule 2

3.—(1) Subject to paragraph (2) below—

(a) a paragraph 42 arbitrator who is required for the hearing of a dispute as to the person by whom the compensation should be paid in relation to any transfer or other transaction shall be appointed by agreement between the parties to such transfer or other transaction and the third party;

(b) a paragraph 42 arbitrator who is required for the hearing of a dispute as to whether, and, if so, how much, compensation is payable shall be appointed by agreement between the third party and the party which has accepted that it shall pay any compensation determinable by that arbitrator;

(c) a paragraph 44 arbitrator shall be appointed by agreement between the third party and the Board.

(2) In default of agreement between the relevant parties the paragraph 42 arbitrator or paragraph 44 arbitrator (as the case may be) shall be appointed on the application of any of the relevant parties (after giving to each other relevant party not less than one week's notice of such application) by or on behalf of the President of the Royal Institution of Chartered Surveyors.

(3) Any fee payable to the Royal Institution of Chartered Surveyors in respect of

its costs of making an appointment of an arbitrator under paragraph (2) above shall—

- (a) accompany the application, and
 - (b) be borne equally by all the relevant parties irrespective of the final determination made by the arbitrator,
- and any sum required to achieve the result set out in sub-paragraph (b) above shall be recoverable by the person who has paid the fee from each other relevant party.

(4) In this regulation—

"the relevant parties" means the parties whose agreement to the appointment of the paragraph 42 arbitrator or the paragraph 44 arbitrator (as the case may be) is, subject to paragraph (2) above, required by paragraph (1) above;

"third party"—

- (a) in relation to paragraph 42 of Schedule 2, means any person who has, or believes he has, suffered a diminution in the value of a property or interest in consequence of the operation of paragraph 40 or 41 of Schedule 2 or, where paragraph 42(2) of Schedule 2 applies, paragraph 39 of Schedule 2;
- (b) in relation to paragraph 44 of Schedule 2, means any person who has, or believes he has, suffered a diminution in the value of a property or interest in consequence of the operation of paragraph 43 of Schedule 2.

Giving of notices to qualifying parties

4.—(1) The Board shall in accordance with this regulation give a notice to each qualifying party identified in the paragraph 43 provision.

(2) The notice mentioned in paragraph (1) above shall—

- (a) be given at least twenty-one days before Vesting Day, and
- (b) contain the information specified in paragraph (3) below.

(3) The information mentioned in paragraph (2) is—

- (a) a reference to the Act and these Regulations,
- (b) an identification of any qualifying contract entered into by that qualifying party, together with the corresponding qualifying provision, and
- (c) an explanation of the effect of the carrying out of the approved scheme with respect to any such qualifying contract.

(4) The Board, as soon as they consider that they have given notice to each qualifying party in respect of any qualifying contract in accordance with this regulation, shall apply to the appropriate authority for a certificate of compliance in respect of that qualifying contract under regulation 5 and shall with the application supply to the appropriate authority a copy of every notice which they have given under this regulation in respect of that qualifying contract and evidence of the notice having been duly given.

Giving of certificates of compliance

5.—(1) The appropriate authority, on being satisfied in relation to a qualifying contract that the Board have met the requirements of regulations 4 and 6, shall forthwith give to the Board and each qualifying party to whom the notice was given a certificate of compliance, which shall be in such form as the appropriate authority thinks fit.

(2) Subject to paragraph (4) below, if on receiving an application under regulation 4(4) in respect of a qualifying contract the appropriate authority decides that it is not

satisfied that the Board have met the requirements of regulations 4 and 6 in relation to it, the appropriate authority shall refuse to give a certificate of compliance and shall give to the Board and each person to whom paragraph (3) below applies a notice notifying them of its refusal.

(3) This paragraph applies to any qualifying party to the qualifying contract—

(a) to whom the appropriate authority was not satisfied that any notice was given, or

(b) (where the Board purport to have given a notice to that qualifying party) in respect of whom the appropriate authority was not satisfied that the Board (in giving that notice) have met the requirements of regulations 4 and 6, as the case may be.

(4) If the appropriate authority has given a notice under paragraph (2) above in relation to a qualifying contract but subsequently becomes satisfied as mentioned in paragraph (1) above in relation to that contract it shall forthwith give the certificates of compliance required by paragraph (1) above in relation to it.

(5) Where on Vesting Day—

(a) a transaction which is prohibited by a qualifying provision would be effected under the approved scheme, and

(b) a certificate of compliance has not been given in relation to the qualifying contract in which the qualifying provision is contained (whether or not a refusal to give a certificate has been notified under paragraph (2) above), paragraph 43(2) of Schedule 2 (which provides that the qualifying provision shall be treated as not applying in the case of that transaction) shall be excluded in relation to that qualifying provision.

Form of documents

6. Any document required or authorised to be served under these Regulations shall be in writing.

Service of documents

7. Section 22 of the Act shall apply to the service of documents which fall to be served under these Regulations as if such documents were documents required or authorised to be served under Part I of the Act.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on

William Waldegrave

Minister of Agriculture, Fisheries and Food

14th September 1994.

Signed by authority of the Secretary of State for Wales

Gwilym Jones

Parliamentary Under Secretary of State, Welsh Office

16th September 1994

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales have granted an application by the Milk Marketing Board ("the Board") for the approval of a scheme of reorganisation which provides for transfers, as well as for other transactions, in connection with certain of the Board's property, rights and liabilities. The Agriculture Act 1993 provides in certain circumstances for the overriding of provisions in agreements entered into by the Board which would otherwise prohibit such transfers and transactions and, where such overriding occurs, for arbitration to determine compensation which may be payable to the third parties adversely affected.

These Regulations make provision—

- (a) for the appointment of arbitrators, and
- (b) for the giving of notices and certificates of compliance which, in relation to certain types of contractual provisions, are necessary for overriding to occur.

A compliance cost assessment has been prepared and copies can be obtained from the Ministry of Agriculture, Fisheries and Food, Whitehall Place, London SW1A 2HH. A copy has been placed in the library of each House of Parliament.

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Notes:

[1] [1993 c. 37](#). [back](#)

[2] See S.R. & O. 1933 No. 789, as amended by S.R. & O. 1936/767, 1937/228 and 744, 1939/324 and S.I. 1950/1029, 1955/946, 1969/1812, 1977/900, 1979/249, 1981/323, 1981/864 and 1330, 1986/83, [1987/735](#), [1988/132](#) and [1992/3142](#). [back](#)