STATUTORY INSTRUMENTS

1981 No. 446 (S.42)

AGRICULTURE

The Aberdeen and District Milk Marketing Scheme (Amendment) Regulations 1981

Made - - - -	17*th March* 1981
Laid before Parliament	25*th March* 1981
Coming into Operation	15*th April* 1981

In exercise of the powers conferred upon me by section 2(2) of the European Communities Act 1972**(a)**, being a Minister designated**(b)** for the purposes of the said section 2(2) in relation to the common agricultural policy of the European Economic Community, and of all other powers enabling me in that behalf, I hereby make the following regulations:

Citation and commencement

1. These regulations may be cited as the Aberdeen and District Milk Marketing Scheme (Amendment) Regulations 1981, and shall come into operation on 15th April 1981.

Amendment of the Aberdeen and District Milk Marketing Scheme 1933

2. The Aberdeen and District Milk Marketing Scheme 1933**(c)** shall have effect subject to the amendments specified in the Schedule to these regulations.

George Younger,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
17th March 1981.

(a) 1972 c. 68. **(b)** S.I. 1972/1811.
(c) S.R. & O. 1934/309, amended by S.R. & O. 1939/600, 1940/129; S.I. 1950/2059, 1957/1843, 1964/672, 1967/1346, 1978/583, 1979/319.

SCHEDULE

AMENDMENTS TO THE ABERDEEN AND DISTRICT MILK MARKETING SCHEME 1933

1. In section 2 (Interpretation), add the following definitions:—

"commercial activities" in relation to the Board means any activities carried out by the Board in exercise of their powers under subsection (1) of section 16 of the Scheme to produce commodities from milk, and to sell milk (other than raw milk in bulk) and commodities produced from milk, and such other of their powers under those subsections as are related thereto;

"exempt producer" means a registered producer who is the holder of a certificate of exemption issued under subsections (12) or (15) of section 31 of this Scheme;

"The intervention price equivalent of milk" means the intervention price equivalent of milk calculated pursuant to regulation 5 of the Milk Marketing Boards (Special Conditions) Regulations 1981(a).

2. In section 16 (Provision as to Purchase and Sale of the Regulated Product, Production of Commodities therefrom and for Other Matters):—

(1) in subsection (2) at the beginning insert the words "subject to section 24 of this Scheme";

(2) delete subsection (3).

3. After section 16 insert the following section:—

"16A. Financial management and administration of commercial activities

The Board, to the intent that so far as practicable their commercial activities shall be put on an equal footing with similar commercial activities carried on by independent commercial undertakings, shall place their commercial activities under a system of financial management and administration which is separately accountable from the system of financial management and administration for the Board's other activities.".

4. In section 17 (Prohibition of Sale except through the Board), in paragraph (*a*) of subsection (2) after the word "them" insert the words "with the approval of the Minister".

5. In section 20 (Conditions of Sale of Milk):—

(1) in subsection (1)—

(*a*) in paragraph (*a*), at the beginning insert the words "Subject to section 24 of this Scheme,";

(*b*) delete paragraph (*b*);

(2) in each of subsections (2) and (3), for the words "sections 27, 28 and 30" substitute the words "sections 27, 28, 30 and 31";

(3) in subsection (4), after the words "Registered producers" insert the words "other than exempt producers" and add the following proviso at the end of the subsection:—

"Provided that the Board shall not recall for sale for liquid consumption milk which has been allocated to buyers if such milk, whether in unprocessed or processed form, is intended by the buyers for export outside the United Kingdom.".

6. In section 21 (Notification of Certain Matters to the Minister), delete the words "and (1)(*b*)".

(a) S.I. 1981/322.

7. In section 24 (Negotiation with Buyers' Representatives):—

(1) after subsection (5) insert the following subsections:—

"(5A) Subject to subsection (5B), the price of all milk to be sold by the Board shall be the same for all buyers, except that the Joint Committee may negotiate different prices for milk sold by the Board for use in production of the following commodities:—

(*a*) cheese, with prices differentiated according to the variety of the cheese;

(*b*) butter, with prices differentiated according to the type and fat content of the butter;

(*c*) cream, with prices differentiated according to the type and fat content of the cream;

(*d*) evaporated milk;

(*e*) condensed milk;

(*f*) milk powder;

(*g*) milk chocolate crumb;

(*h*) milk puddings;

(*i*) custard;

(*j*) ice cream;

(*k*) cultured milk products;

(*l*) sauces, desserts, soups, catering products and bakery products, with prices differentiated according to the product; and

(*m*) subject to the approval of the Minister, other commodities of which milk is an ingredient.

Prices may be further differentiated according to the use of each constituent if whole milk is fractionated and only a part of the solid constituents is utilised in the production of any of the commodities specified above.

(5B) The price of milk to be sold by the Board shall be set at the same level for all buyers who intend to use the milk for the same purpose, except that the Joint Committee may negotiate different prices to take account of:—

(*a*) the region or district in which the milk is to be produced, processed or consumed;

(*b*) the description, quality or condition of the milk;

(*c*) the period during which, and the dates when, deliveries of milk are to be made;

(*d*) the place of delivery;

(*e*) the quantity of milk to be delivered;

(*f*) any special services to be rendered to the buyer, including the delivery of milk in specified quantities at specified times;

(*g*) subject to the approval of the Minister, any other criteria of an objective nature.

(5C) After the end of the calendar month following the month of delivery the Joint Committee shall not agree to any reduction in the prices they have negotiated in accordance with subsections (5), (7) and (8) of this section.

(5D) If the Joint Committee fail to agree to a minimum price for any use of milk for manufacture, they shall as soon as is practicable, and in any case not later than the twenty-second day of the month following the month of delivery, refer their disagreement to the Arbitration Panel set up under subsection (7) of this section or, if both parties so agree, to a single arbiter. The Arbitration Panel, or the single arbiter, as the case may be, shall decide the final minimum price before the end of the month following the month of delivery of the milk.

(5E) Notwithstanding the foregoing provisions of this section, the price of milk sold by the Board shall not be set at such a level that the sale of milk by the Board at that price would contravene Article 9(3) of Council Regulation

(EEC) No. 1422/78(a). In the event of any such contravention the Board shall make such adjustment to its prices for milk so sold or to be sold as the Minister shall require to counteract the effect of such contravention.";

(2) in subsections (7) and (8) for the words "subsection (5)" substitute the words "subsections (5), (5A) and (5B)".

8. In section 26 (Financial Powers and Duties of the Board)—

(1) in subsection (1) at the end add the words:—

"The Board shall not make monies held in the fund, or due to be paid into the fund, other than monies arising from their commercial activities, or other financial benefits available for use in their commercial activities except on the market terms then prevailing.";

(2) after subsection (4) insert the following subsection—

"(4A) *Contributions by Exempt Producers.* The Board may in respect of any accounting period require exempt producers to pay into the fund contributions proportional to the services rendered to them, in respect of milk sold under the terms of their exemption, at such amount per litre as the Board may from time to time determine with the approval of the Minister.";

(3) in subsection (6)—

(*a*) in sub-paragraph (*d*), for the words "the Standard Price" substitute the words "the prices determined by the Joint Committee for milk sold for human consumption as whole liquid milk.";

(*b*) in sub-paragraph (*e*), for the words "that determined for the time being by the Board" substitute "that determined by the Joint Committee".

9. In paragraph (*c*) of subsection (2) of section 27 (Producer Retailers), for the words "by the Board" substitute the words "by the Joint Committee", and delete the last sentence.

10. In paragraph (*b*) of subsection (2) of section 28 (Sale of Premium Milk), for the words "by the Board" substitute the words "by the Joint Committee".

11. In section 31 (Power to Board to Grant Exemptions):—

(1) for the heading **"Power to Board to Grant Exemptions"** substitute the heading **"Exemptions"**;

(2) before the existing section insert the figure "(1)";

(3) after subsection (1) add the following subsections:—

"(2) The provisions of subsections (2) and (3) of section 16, section 17, section 20, section 22, subsections (4), (5) and (6)(*c*), (*e*) and (*f*) of section 26, section 27 and section 28 shall not apply—

(*a*) to milk which a registered producer withholds from the Board—

(i) for export, in unprocessed or processed form, outside the United Kingdom; or

(ii) for conversion into butter or skimmed milk powder to be sold to the intervention agency; or

(iii) for sale to an exempt producer;

(*b*) to milk produced by an exempt producer.

(3) A registered producer may act jointly with other registered producers or through intermediaries or with and through both for the purposes of subsection (2)(*a*)(i) of this section, but a registered producer who withholds milk for those purposes shall give at least two months' prior notice in writing to the Minister and to the Board stating—

(*a*) the precise or minimum period during which he intends to withhold milk;

(a) O.J. No. L 171, 28.6.78, p.14.

(*b*) whether all milk to be sold by him will be withheld or the quantity of milk which he intends to withhold where this is less than the total amount which he is to sell; and

(*c*) whether the milk which is to be marketed outside the United Kingdom is to be marketed in unprocessed or processed form.

(4) A registered producer may act jointly with other registered producers or through intermediaries or with and through both for the purposes of subsection 2(*a*)(ii) of this section, but a registered producer who withholds milk for these purposes shall give at least one month's prior notice in writing to the Minister and to the Board stating—

(*a*) the precise or likely period during which he intends to withhold milk; and

(*b*) whether all milk to be sold by him will be withheld or the quantity of milk which he intends to withhold where this is less than the total amount which he is to sell.

(5) Where a registered producer has given the notice referred to in subsection (3)(*a*) or (4)(*a*) above, the Board shall not be bound to buy from him any milk to which the notice relates until the expiry of the period specified therein; and where a registered producer does not specify the precise period during which he intends to withhold milk, the Board shall not be bound to resume the purchase of such milk from him until the expiry of two months after the Board shall have received notice in writing of his intention to resume sales of such milk to the Board.

(6) A registered producer shall not be entitled to withhold milk under subsection (2)(*a*)(ii) unless—

(*a*) for a period of five consecutive months in the period of twelve consecutive months immediately preceding the date from which he intends to withhold milk the price paid by the Board to him each month shall have been less than either;

(i) the intervention price equivalent of milk for that month calculated pursuant to Regulation 5 of the Milk Marketing Boards (Special Conditions) Regulations 1981; or

(ii) an intervention price equivalent of milk for that month calculated as aforesaid but by the registered producer using the margins and conversion factors applicable to the milk produced by him that month, provided that he is able to satisfy the qualified person specified in the said Regulation 5 as to the validity of his calculation;

or

(*b*) during the period of twelve consecutive months immediately preceding the date from which he intends to withhold milk the average price paid by the Board to him under section 26(6)(*f*)(ii) or (iii) shall have been less than the average intervention price equivalent of milk over the same period.

(7) A registered producer may give notice under subsection (4) of his intention to withhold milk under subsection (2)(*a*)(ii) upon receipt of the first payment from one month's supply of milk establishing that the price paid by the Board under section 26(6)(*f*)(ii) or (iii) is less than the intervention price equivalent of milk for that month.

(8) A registered producer shall not be entitled to withhold milk under subsection (2)(*a*)(ii) for more than a period of six consecutive months beyond the period of three consecutive months during which the price paid by the Board under section 26(6)(*f*)(ii) or (iii) to registered producers shall have exceeded the intervention price equivalent of milk.

(9) A registered producer who withholds milk for the purposes of subsection (2)(*a*)(iii) shall give not less than 60 days' prior notice to the Minister and to the Board in writing of his intention to do so.

(10) Every such registered producer as referred to in subsection 9 shall keep such books and records relating to the sale of the said milk as the Board shall

reasonably require and shall make such returns and give such information as the Board shall reasonably require to enable the Board, and if he so desires, the Minister, to be satisfied that the milk has been sold to an exempt producer, and shall produce such books and records to and give such information to any person authorised in writing by the Board or Minister to inspect them.

(11) Any registered producer who intends to sell milk direct to the final consumer may send to the Board a declaration that from the date specified therein, being a date not less than two months later than the month in which the Board has received the declaration, and for a period specified therein, being a period of not less than five years from the date of the commencement of the exemption, he wishes to be exempted from his obligation to sell milk to the Board and to forego his right to require the Board to buy milk from him.

(12) Subject to the following subsection, the Board shall issue a certificate of exemption to any registered producer from whom such a declaration as referred to in subsection (11) has been received and who—

(*a*) produces information showing that during the three consecutive years immediately preceding the date of lodging of his declaration with the Board the average annual production of milk from all the cows in his possession has not exceeded 100,000 kilograms; and

(*b*) intimates that he intends to sell not less than 75% of the annual production of milk from all the cows in his possession directly to the final consumer in the form of liquid milk.

(13) If the Board contests the right of any registered producer to become an exempt producer on the grounds that he is unable to fulfil the requirements of subsections (12) and (16)(*c*) of this section they shall as soon as practicable and in any case not later than 21 days after receipt of the declaration send it with all material documents to the Minister, and shall give to the registered producer written notice of their decision, of the reasons for their decision, and of their having sent his declaration to the Minister.

(14) The Minister shall on receipt of the declaration and documents from the Board invite the registered producer and the Board to make representations to him concerning the exemption and shall consider the exemption having regard to any such representations received by him within the time specified by him. The provisions of subsections (11) and (12) of this section shall apply to the Minister's consideration of the exemption as if the references in those subsections to the Board were references to the Minister.

(15) If the Minister decides the exemption in favour of the registered producer, or if the Minister within 60 days of the receipt of the declaration by the Board has not sent to the registered producer written notice of his refusal of the exemption with reasons for his decision when he shall be deemed to have acceded to the exemption, the Board shall forthwith issue a certificate of exemption to the registered producer.

(16) Every certificate of exemption—

(*a*) shall state the period of its validity;

(*b*) shall record the average annual production from cows in the possession of the exempt producer during the three calendar years immediately preceding the lodging of his declaration with the Board; and

(*c*) shall be issued subject to the following conditions:—

(i) that the exempt producer shall sell not less than 75% of the annual production of milk from the cows in his possession directly to the final consumer in the form of liquid milk;

(ii) that the exempt producer shall not buy from other registered producers a quantity of milk exceeding in any year 25% of the production of milk in that year from the cows in his possession and shall only sell the milk so bought by him directly to the final consumer in the form of liquid milk;

(iii) that the total amount of milk in liquid form sold by the exempt producer directly to the final consumer in any calendar year shall not exceed double the average annual production recorded in the certificate of exemption; and

(iv) that the exempt producer shall keep such books and records relating to his production, purchase and sales of milk as the Board shall reasonably require and shall make such returns and give such information to the Board as the Board shall reasonably require to enable the Board and, if he so desires, the Minister, to be satisfied that the conditions of the certificate of exemption are being complied with, and shall produce such books and records to any person authorised in writing by the Board or the Minister to inspect them.

(17) A certificate of exemption may be revoked by the Minister, whether or not it was issued by him, upon breach of any of its conditions on the part of the exempt producer.

(18) For the purposes of this section a registered producer shall be deemed to have cows in his possession if, but only if, they and the buildings in which they are tended or milked are in his exclusive possession; however, if a registered producer satisfies the Minister that it is necessary for the time being for his cows to be tended or milked in buildings which are not in his exclusive possession, he shall for such period as the Minister may determine be deemed for the purposes of this section to have the cows in his possession.".

12. In subsection (1) of section 33 (Penalties, etc.):—

(1) in paragraph (*a*), after the word "Board" insert the words "or by the Joint Committee as the case may be";

(2) after paragraph (*d*) insert—

"(*e*) withholds milk for the purposes of section 31(2)(*a*)(iii) (for sale to an exempt producer) and fails without reasonable excuse to comply with any of the requirements of section 31(10).".

13. In section 37 (Accounts):—

(1) in subsection (1), at the end add the words:—

"and the books of accounts with respect to the Board's commercial activities shall be in a form approved by the Secretary of State and shall be kept separate from the books of accounts with respect to the Board's other activities.";

(2) after subsection (1) insert the following subsection:—

"(1A) The Board shall charge to its commercial activities such proportion of its general administrative expenses as is fairly attributable to such commercial activities.";

(3) in subsection (3), at the end add the words:—

"The said Profit and Loss Account and Balance Sheet shall make separate provision for the Board's commercial activities and for the Board's other activities.";

(4) after subsection (4) insert the following subsection:—

"(5) The Board shall furnish the Minister with such information as he may from time to time require concerning the Board's commercial activities and shall permit any person duly authorised in writing by the Minister, on production of his authority, to inspect such of the Board's accounts and records as he may reasonably require to satisfy himself that the Board are complying with the requirements of sections 16A and 26(1) of the Scheme, of Council Regulation (EEC) No. 1422/78**(a)** and of Commission Regulation (EEC) No. 1565/79**(b)**.".

(a) O.J. No. L 171, 28.6.78, p.14. **(b)** O.J. No. L 188, 26.7.79, p.29.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations further amend the Aberdeen and District Milk Marketing Scheme 1933 to comply with the requirements of Council Regulation (EEC) No. 1422/78 (O.J. No. L 171, 28.6.1978, p.14) and Commission Regulation (EEC) No. 1565/79 (O.J. No. L 188, 26.7.1979, p.29) concerning the granting of certain special rights to milk producer organisations in the United Kingdom, as provided for in Council Regulation (EEC) No. 804/68 (O.J. No. L 148, 28.6.1968, p.13) as amended by Council Regulation (EEC) No. 1421/78 (O.J. No. L 171, 28.6.1978, p.12). The principal amendments made to the Scheme are summarised below (section references relate to the Scheme).

(1) The Aberdeen and District Milk Marketing Board are required to place their "commercial activities" (a definition of which expression is inserted in the Scheme) under a system of financial management and administration which is separate from the systems used for their other activities: to make money or other financial benefits available for use in their commercial activities only on market terms: and to keep separate accounts in respect of their commercial activities and of their other activities in such form as the Minister (the Secretary of State for Scotland) may direct (sections 2, 16, 26 and 37);

(2) The principal powers of the Board are no longer to apply to milk which registered producers withhold from the Board for certain specified purposes. A procedure and conditions are laid down under which registered producers may withhold milk in this way. A penalty is provided for registered producers who fail to keep the required books and records in relation to milk withheld from the Board under these arrangements (sections 31 and 33);

(3) A procedure and conditions are laid down under which a registered producer may become an exempt producer (a definition of which expression is inserted in the Scheme) for the purposes of selling his milk direct to the final consumer. Exempt producers are required to contribute to the Board's fund each year a sum proportional to the services rendered by the Board to exempt producers (sections 2, 20, 26 and 31);

(4) The Board are prohibited from recalling for sale for liquid consumption milk which has been allocated to buyers for export (section 20); and

(5) New procedures are provided for the setting of prices by the Joint Committee for milk sold by the Board and the criteria according to which these prices may be varied. Provision is made for any disagreement in the Joint Committee over the level of prices for milk to be referred to arbitration. Provision is also made that, in the event of the price of milk sold by the Board contravening Article 9(3) of Council Regulation (EEC) No. 1422/78, the Board shall make such adjustment in their prices as the Minister may require (sections 24, 27 and 28.)

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