

SCHEDULE 1

Regulations 10(2) 11, 12(3) and 39(4)

APPORTIONMENT AND PROSPECTIVE APPORTIONMENT BY ARBITRATION

*Appointment and remuneration of arbitrator*

1.—(1) Subject to paragraph (2), in any case where an apportionment is to be carried out by arbitration, an arbitrator must be appointed by agreement between the transferor and transferee, and the transferee must give notice of the appointment of the arbitrator to the National Assembly.

(2) The transferor or the transferee may at any time 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 7, and the person who makes such an application to the President must give notice of that fact to the National Assembly.

(3) If 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 National Assembly may make an application to the President for the appointment of an arbitrator.

(4) Where the National Assembly gives a notice pursuant to regulation 12(2), it must make an application to the President for the appointment of an arbitrator and the National Assembly must be a party to the arbitration.

(5) Where an apportionment under regulation 39(4)(b) is to be carried out by arbitration, the producer must 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 from amongst the members of the panel referred to in paragraph 7.

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

(a) where regulation 11(1)(b) or (4)(b) applies, 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; and

(b) where regulation 12(3) applies, by the President.

(2) Where sub-paragraph (1)(a) applies, the occupier must give notice to the National Assembly of the appointment of the arbitrator pursuant to the agreement, or of the application to the President for the appointment of an arbitrator.

3.—(1) An arbitrator appointed in accordance with paragraph 1(1) to (4) or 2 must conduct the arbitration in accordance with this Schedule and must base his or her award on findings made by him or her 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) must conduct the arbitration in accordance with this Schedule and must base his or her award on findings made by him or her as to the areas used for milk production in the last five-year period during which production took place before the appointment of the arbitrator.

(3) An arbitrator appointed under any paragraph of this Schedule must base his or her award on findings made by him or her 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 or her under this Schedule unless the application is accompanied by the appropriate fee for such an application; but once the fee has been paid in connection with any such application no further fee is payable in connection with any subsequent application for the President to exercise any function exercisable by him or her in relation to the arbitration by virtue of this Schedule (including an application for the appointment by him or her in an appropriate case of a new arbitrator).

(2) In sub-paragraph (1), the “appropriate fee” means such reasonable fee as the President may direct having regard to, and in no case exceeding, such fee as is for the time being prescribed under paragraph 1(2) of Schedule 11 to the Agricultural Holdings Act 1986<sup>(1)</sup>.

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

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

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

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

9. No party to the arbitration may revoke the appointment of the arbitrator without the consent of any other party, and his or her appointment is not revoked by the death of any party.

10. Every appointment, application, notice, revocation and consent under paragraph 1, 2, 8 or 9 must be in writing.

11.—(1) The remuneration of the arbitrator —

(a) in a case where he or she is appointed by agreement between the parties, is such amount as may be agreed upon by him or her and the parties or, in default of agreement, fixed by the District Judge 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) in a case where he or she is appointed by the President, is such amount as may be agreed upon by the arbitrator and the parties or, in default of agreement, fixed by the President.

(2) The remuneration of the arbitrator is recoverable by the arbitrator as a debt due from the parties to the arbitration, jointly or severally.

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

12.—(1) Subject to sub-paragraph (2), in any arbitration to which this Schedule applies, the arbitrator may 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 pursuant to a request in a statement under regulation 39(4)(b) is to be carried out by arbitration, any person with an interest in the holding who has refused to sign such a statement as is referred to in regulation 39(4)(a) must be a party to the arbitration.

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(1) 1986 c. 5.

**13.** Within 35 days of the appointment of the arbitrator, or within such further period as the arbitrator may determine, the parties to the arbitration must deliver to him or her a statement of their respective cases with all necessary particulars and —

- (a) no amendment or addition to the statement or particulars delivered is allowed after the expiry of the 35 days, or such further period as the arbitrator may determine, except with the consent of the arbitrator; and
- (b) a party to the arbitration is confined at the hearing to the matters alleged in the statement and particulars delivered by him or her and any amendment or addition duly made.

**14.** The parties to the arbitration and all persons claiming through them must, subject to any legal objection, submit to being examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute and must, 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.

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

**16.** Witnesses appearing at the arbitration must, if the arbitrator thinks fit, be examined on oath or affirmation, and the arbitrator may administer oaths to, or to take the affirmation of, the parties and witnesses appearing.

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

**18.—(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,

forfeits such fine as the judge of the county court may direct.

(2) A judge may not direct under sub-paragraph (1) that a person forfeits a fine of an amount exceeding £400.

(3) No person summoned in pursuance of county court rules as a witness in the arbitration forfeits a fine under this paragraph unless there has been paid or tendered to him or her at the time of the service of the summons such reasonable sum in respect of his or her expenses as the arbitrator may direct (including, in appropriate cases, compensation for loss of time), having regard to such sums payable in such cases as may be prescribed for the purposes of section 55 of the County Courts Act 1984(2).

(4) The judge of the county court may at his or her discretion direct that the whole or any part of any such fine, after deducting costs, is applicable towards indemnifying a party injured by the refusal or neglect.

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

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(2) 1984 c. 28.

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(2) No such order may 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 must be brought before the arbitrator under the same custody, and 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 is not bound to obey the order unless there is tendered to him or her a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner in going to, remaining at, and returning from, the place where the arbitration is held.

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

### **Award**

**21.**—(1) Subject to sub-paragraph (2), the arbitrator must make and sign his or her award within 56 days of his or her appointment.

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

(3) The arbitrator must notify the terms of his or her award to the National Assembly within eight days of delivery of that award.

(4) The award must fix a date not later than one month after the delivery of the award for the payment of any costs awarded under paragraph 25.

**22.** The award is final and binding on the parties and any persons claiming under them.

**23.** The arbitrator may correct any clerical mistake or error in the award arising from any accidental slip or omission.

### **Reasons for award**

**24.** 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 must furnish such a statement.

### **Costs**

**25.** The costs of and incidental to the arbitration and award are 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 include any fee paid to the President in respect of the appointment of an arbitrator and any sum paid to the National Assembly pursuant to paragraph 5.

**26.** On the application of any party, any such costs are taxable in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the arbitrator under paragraph 25 or, in the absence of any such direction, by the county court.

**27.**—(1) The arbitrator must, 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 provide particulars; and

(c) generally all the circumstances of the case.

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

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

**28.** The arbitrator —

- (a) may state at any stage of the proceedings; and
- (b) must state, upon a direction in that behalf given by the judge of the county court following an application made by any party,

any question of law arising in the course of the arbitration and any question as to the jurisdiction of the arbitrator in the form of a special case for the opinion of the county court.

**29.—**(1) Where the arbitrator has misconducted himself or herself, the county court may remove him or her.

(2) Where —

- (a) the arbitrator has misconducted himself or herself; or
- (b) an arbitration or award has been improperly procured; or
- (c) there is an error of law on the face of the award,

the county court may set the award aside.

**30.—**(1) The county court may from time to time remit the award, or any part of the award, to the arbitrator for reconsideration.

(2) Paragraph (3) applies in any case where it appears to the county court that there is an error of law on the face of the award.

(3) Instead of exercising its power of remission under sub-paragraph (1), the court may 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.

(4) An award varied pursuant to paragraph (3) has effect as so varied.

(5) Where remission is ordered under sub-paragraph (1), the arbitrator must, unless the order otherwise directs, make and sign his or her award within 30 days of the date of the order.

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

### **Miscellaneous**

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

**32.** For the purposes of this Schedule, an arbitrator appointed by the President must 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 13 and 21 accordingly run from that time.

**33.** Any instrument of appointment or other document purporting to be made in the exercise of any function exercisable by the President under paragraph 1, 2, 6, 11 or 21 and to be signed by or

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on behalf of the President is to be taken to be such an instrument or document unless the contrary is shown.

**34.** The Arbitration Act 1996<sup>(3)</sup> does not apply to an arbitration determined in accordance with this Schedule.

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<sup>(3)</sup> 1996 c. 23.