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Number 25 of 1994

MILK (REGULATION OF SUPPLY) ACT, 1994

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SCHEDULE

National Milk Agency



Number 25 of 1994

MILK (REGULATION OF SUPPLY) ACT, 1994

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A NATIONAL MILK AGENCY TO REGULATE THE SUPPLY OF MILK FOR LIQUID CONSUMPTION THROUGHOUT THE STATE AND TO PROVIDE FOR THE DISSOLUTION OF THE DUBLIN AND CORK DISTRICT MILK BOARDS AND FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. [26th October, 1994]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation. **1.**—(1) In this Act, except where the context otherwise requires—

“the Agency” means the National Milk Agency established under section 2;

“Board” means a Milk Board established under section 6 (1) of the Milk (Regulation of Supply and Price) Act, 1936;

“the Council Directive” means Council Directive 92/46/EEC of 16 June 1992 laying down health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products⁽¹⁾ as modified by Council Directive 92/47/EEC of 16 June 1992⁽²⁾

;

“dissolved Board” means a Board which is dissolved or to be dissolved by virtue of section 3 (1);

“establishment date” means the date appointed under section 2 for the establishment of the Agency;

“inspector” means a person authorised in writing by the Agency to exercise the functions conferred on an inspector under this Act;

“milk” means raw milk or heat-treated milk;

“raw milk” means whole cow's milk which has not been heated beyond 40°C or undergone any treatment that has an equivalent effect;

“heat-treated milk” means cow's milk whether whole, semi-skimmed or skimmed which has been subjected to heat treatment and presented in the forms defined in Annex C, Chapter 1A 4 (a), (b), (c) or (d) of the Council Directive, including milk to which has been added flavouring, vitamins, minerals or other food ingredients, provided that these ingredients are not used to replace in part or in whole any milk constituent;

“the Minister” means the Minister for Agriculture, Food and Forestry;

“prescribed” means prescribed by the Minister by regulations under this Act;

“processor” means a person who is the owner or occupier of a heat treatment establishment;

“producer” means a person who is the owner or occupier of a holding where one or more milk yielding cows are kept;

“register” means a register maintained under this Act and cognate words shall be construed accordingly.

(2) In this Act, unless otherwise stated, a reference to a section or Schedule is to a section or Schedule of this Act and a reference to a subsection or paragraph is to a subsection or a paragraph of the provision in which the reference occurs.

(3) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any other enactment.

National Milk
Agency.

2.—(1) There shall be a body to be known as the National Milk Agency to regulate the supply of milk for liquid consumption in accordance with the provisions of this Act.

(2) The Agency shall comprise a chairman and members appointed or elected as representing the interests of producers, processors, distributors, retailers and consumers of milk.

(3) The Agency shall stand established on such day as the Minister by order appoints.

(4) The Agency shall be a body corporate with perpetual succession and power to sue and be sued and to acquire, hold and dispose of land.

(5) The provisions of the *Schedule* shall apply to the Agency.

Dissolution of Dublin and Cork District Milk Boards. **3.**—(1) The Minister shall, by orders made under section 6 (3) of the Milk (Regulation of Supply and Price) Act, 1936 , revoke the orders made under section 6 (1) of that Act, namely, the Dublin District Milk Board Order, 1936 and the Cork District Milk Board Order, 1937, (in this Act referred to as “the dissolved Boards”), as amended by any subsequent orders.

(2) The orders made in pursuance of *subsection (1)* shall be expressed to have and shall have effect on the date of establishment of the Agency.

(3) The provisions of section 7 of the Milk (Regulation of Supply and Price) Act, 1936 and section 4 of the Milk (Regulation of Supply and Price) (Amendment) Act, 1941 (being provisions consequential on the revocation of orders made under section 6 (1) of the said Act of 1936) shall continue to have effect subject to *subsection (7)* for the purposes of such revocation notwithstanding the repeal of those Acts by this Act.

(4) (a) An order of the Minister under section 6 (3) of the Milk (Regulation of Supply and Price) Act, 1936 , may provide, notwithstanding anything to the contrary in section 4 of the Milk (Regulation of Supply and Price) (Amendment) Act, 1941 , that the assets, liabilities, choses in action, contracts and commitments (expressed or implied) of the dissolved Boards shall stand transferred to the Minister or to an Interim Board subject to the provisions of this subsection.

(b) An order transferring assets and liabilities to the Minister may include provisions authorising him to enter into contracts, to be completed on the date of dissolution of the dissolved Boards, for the sale as a going concern of all or any business carried on by either such Board with such assets and liabilities as may be provided for by any such contract.

(c) At any time after the making of an order to which *subsection (1)* applies but before the dissolution of the Board to which it refers, the Minister may by order transfer the assets, liabilities, choses in action, contracts and commitments (expressed or implied) of that Board to the Interim Board.

(5) The Interim Board shall comprise three persons nominated by the Minister from time to time as occasion requires. It shall be a body corporate with power to sue and be sued and to hold land. It shall stand dissolved on such day as the Minister by order appoints.

(6) The Interim Board may, to such extent as an order under *subsection (4)* may provide, carry on any business activities carried on by a dissolved Board, discharge any and all liabilities of a dissolved Board, and sell as a going concern all and any business of that Board with such assets or liabilities or both as may be provided for in the sale.

(7) All moneys received by the Minister or the Interim Board in pursuance of this section shall, after payment of necessary outgoings, be paid to the Minister for Finance and shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(8) Section 12 of the Finance Act, 1895 shall not apply to the vesting in the Interim Board of any property or right transferred under this Act.

Superannuation for Boards' staff. **4.—**(1) On the dissolution of a Board by virtue of an order under section 3 (1), a superannuation scheme made by that Board under the Milk (Regulation of Supply and Price) (Amendment) Act, 1961 , referred to in this section as a “Board scheme”, shall be administered by the Minister.

(2) The Minister may, subject to the consent of the Minister for Finance, from time to time by a scheme (“an amending scheme”) made by him in accordance with this section amend a Board scheme for the purpose of granting superannuation benefits to or in respect of persons who were employed by a Board at any time prior to its dissolution and may make payments accordingly.

(3) An amending scheme may, in particular, provide that—

(a) where a member of the staff of a dissolved Board, whether or not a member of the Board scheme at the date of the dissolution of the Board, wishes to cease employment with the Board immediately before such dissolution and so informs the Minister before that date, and

(b) the Minister considers that such cesser of employment would facilitate the sale or transfer of any part of the business carried on by the Board,

the Minister may, with the consent of the Minister for Finance, make such payments to or in respect of the person concerned in compensation for such cesser of employment as the Minister considers appropriate.

(4) The manner in which the payments referred to in *subsection (3)* are calculated shall be specified in the relevant amending scheme.

(5) In the case of a person who was a member of a Board scheme, payments made pursuant to *subsection (3)* shall be in substitution for any benefits which would otherwise be payable to or in respect of the person under the Board scheme.

(6) Every scheme made pursuant to *subsection (2)* shall be laid before each House of the Oireachtas as soon as may be thereafter and if either House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) Section 2 (1) (a) of the Milk (Regulation of Supply and Price) (Amendment) Act, 1961, is hereby amended by the substitution for “for its chairman” of “to or in respect of its chairman” and the substitution for “for such classes of its permanent staff” of “to or in respect of persons being members of such classes of its permanent staff”.

(8) All assets held on behalf of a scheme under the Milk (Regulation of Supply and Price) (Amendment) Act, 1961, shall, on the dissolution of the Board to which it relates, stand transferred to and vested in the Minister without any conveyance or assignment and shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(9) All payments made by the Minister by virtue of this section shall be made out of moneys provided by the Oireachtas.

Regulation of Milk Supply **5.**—(1) Heat-treated milk shall not be sold or supplied for liquid consumption in the State unless it is prepared from raw milk which—

Sale and
purchase of
milk.

(a) has been purchased—

- (i) from a producer under a contract registered under this Act (“a registered contract”), or
- (ii) from a registered processor who purchased it from a producer under a registered contract, or

(b) has been produced on a milk production holding and has been heat-treated by the producer, the producer being also a registered processor,

unless the sale is exempt under *subsection (2)*.

(2) *Subsection (1)* does not apply to—

- (a) milk which has been obtained by a processor under an exemption licence granted by the Minister,
- (b) milk the sale of which in a form other than heat-treated milk is authorised by the Minister,
- (c) milk pasteurised in a domestic pasteurising appliance for home consumption,
- (d) milk legally imported into the State.

(3) A registered processor shall be entitled to sell heat-treated milk for liquid consumption in any part of the State provided the requirements of the Council Directive and this Act are complied with.

(4) A person who sells, supplies or purchases milk or offers or exposes milk for sale in contravention of any provision of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(5) A person who continues to contravene any provision of this section after conviction of the original contravention shall be guilty of contravening the provision on every day on which the contravention so continues and for each such offence shall be liable on summary conviction to a fine not exceeding £200 in respect of each day of such contravention.

(6) This section shall come into operation on a date laid down by order of the Minister after the establishment of the Agency.

Registration of contracts.

6.—(1) The Agency shall, on the application of either party, register a contract for the supply of raw milk for heat treatment for liquid consumption made between a producer and a processor provided the requirements of this section are complied with.

(2) The contract shall be a contract for an unbroken period of 12 months or more which—

- (a) specifies that the milk supplied by the producer will at all times be at least of the quality specified by law as being suitable for raw milk intended for processing into heat-treated milk for liquid consumption;
- (b) provides for supply all the year round by the producer of raw milk with a specified minimum percentage of the producer's production being supplied during a prescribed period (the "winter months") or for supply during the winter months only;

(c) in the opinion of the Agency, provides adequate compensation to the producer for raw milk supplied under the contract throughout the year, taking into account, in particular, in relation to the winter months, the economic cost of production of raw milk of suitable quality for heat treatment for liquid consumption all the year round;

(d) in respect of every year of its existence after the first year, is supplemented by an agreement between the parties submitted to the Agency not later than the end of June in that year which, in the opinion of the Agency, provides sufficient guarantee that adequate compensation will be made to the producer for raw milk supplied under the contract during the following winter months taking into account, in particular, in relation to the winter months, the economic cost of production of raw milk of suitable quality for heat treatment for liquid consumption all the year round.

(3) The producer shall satisfy the Agency that the milk production holding meets the requirements in relation to milk production holdings in the Council Directive.

(4) The processor shall satisfy the Agency that the heat treatment establishment is approved under the Council Directive or is the subject of a derogation under that Council Directive and shall undertake to purchase raw milk to be heat-treated and sold as milk for liquid consumption only in accordance with a registered contract unless such sale is exempt under section 5.

Registers.

7.—(1) The Agency shall maintain—

(a) a register of contracts,

(b) a register of producers in which shall be entered particulars of every producer who is a party to a registered contract, and

(c) a register of processors in which shall be entered particulars of—

(i) every processor who is a party to a registered contract, and

(ii) every processor who processes milk produced on the processor's own milk production holding and, on application to the Agency for registration, satisfies the Agency that the holding and the heat treatment establishment meet the requirements of the Council Directive.

(2) Every application for registration in a register shall be made in the prescribed form and contain the prescribed particulars.

Levies payable by processors. **8.**—(1) In this section “accounting period” means the month commencing on the date of establishment of the Agency or any subsequent month.

(2) Every processor who is, during the whole or any part of an accounting period, registered under this Act shall, within a prescribed time after the end of that period—

(a) make in the prescribed form the following return to the Agency—

(i) the quantity of milk which, during the accounting period, was either acquired from any registered producer or any other registered processor or produced on the processor's own milk production holding, and

(ii) the total quantity of milk acquired for the production of milk for liquid consumption, and

(iii) the quantity of heat-treated milk which, during the accounting period, was sold by the processor for liquid consumption, and

(b) pay to the Agency a levy in respect of the accounting period calculated at a rate determined under *subsection (3)* for each litre of milk either acquired from any registered producer in accordance with the terms of a contract registered with the Agency or produced on the processor's own milk production holding.

(3) (a) The rate of levy shall, subject to *paragraph (b)*, be such rate and be paid within such time as is specified by the Minister by order made on the establishment of the Agency.

(b) The Agency may, with the consent of the Minister, alter the rate of levy on giving two months' notice in writing specifying the altered rate and the date on and from which it is to take effect to each registered producer and registered processor of the Agency's decision.

(4) In the event of non-payment of the levy due by any person for an accounting period within the specified time the Agency shall issue a certificate (a “certificate of indebtedness”) under the seal of the Agency certifying the amount of the levy payable by that person for that period.

(5) Every certificate of indebtedness shall be evidence of all matters purporting to be certified therein, and any document purporting to be a certificate of indebtedness shall, on production in any proceedings to recover the amount thereby certified to be payable, be deemed, until the contrary is proved, to be a certificate of indebtedness duly made under this section and shall be admitted in evidence accordingly.

(6) The Agency shall cause a certificate of indebtedness to be served on the person to whom the certificate relates, and thereupon the amount of the levy stated in the certificate shall be recoverable by the Agency from that person as a simple contract debt in any court of competent jurisdiction.

(7) If any person registered in any register kept by the Agency—

(a) fails to make to the Agency any return required by this section, or

(b) makes any such return which is false or misleading in any material respect, or

(c) fails to pay within the time appointed by this section any amount payable to the Agency under this section,

the Agency may cancel the registration of that person in the register of producers or processors as the case may be and the registration of any and all contracts to which that person is a party.

(8) Whenever the registration of any person has been cancelled on account of non-payment of any amount payable by that person to the Agency under this section, the Agency shall, if the amount is paid by or on behalf of that person within three months after the date of cancellation, restore the registration with effect from the date of payment.

(9) Service of a copy of a certificate made under this section may be made by delivering it to the person to whom it relates or by sending it by post to that person at any place where that person resides or carries on business.

(10) Every person who—

(a) fails to make within the time limited by this section any return required by this section, or

(b) who makes any such return which is false or misleading in any material respect,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

Returns by
registered
persons.

9.—(1) The Minister may prescribe the returns to be made by persons registered in any register.

(2) Every person who fails or refuses to make any return in accordance with the regulations or who makes in any such return any statement which is false or misleading in any material respect, shall be guilty of an offence and shall be liable on summary

conviction, in the case of a first offence to a fine not exceeding £250 and, in the case of a second or any subsequent offence, to a fine not exceeding £500.

Records to be kept by registered persons. **10.**—(1) It shall be the duty of every person registered in any register kept by the Agency to keep or cause to be kept at such premises as may be prescribed the prescribed records in the prescribed form and to make or cause to be made in every such record the prescribed entries at or within the prescribed times.

(2) Every record kept at any premises in pursuance of this section may be inspected by an inspector at any time during which business is being carried on and it shall be the duty of the person liable under this section to keep the record—

(a) to produce it for the inspection of the inspector on demand and also all invoices, consignment notes, receipts and other documents (including copies thereof where the originals are not available), and other records including information stored in a non-legible form in a computer reasonably demanded by the inspector for the purpose of verifying any entry in or explaining any omission from the record,

(b) to permit the inspector to take copies of the record or other document or extracts therefrom and in the case of such record or information being held in a non-legible form in a computer, to provide the inspector with a copy or extract from such record or information in a permanent legible form.

(3) If any person liable under this section to keep a record—

(a) fails to keep or cause to be kept such record as is required by this section, or

(b) fails to make or cause to be made in the record within the prescribed time any entry required to be made therein, or

(c) fails to produce or cause to be produced for the inspection of an inspector on demand any record, document or copy of a document which that person is required by this section so to produce, or obstructs an inspector in the making of such inspection, or

(d) prevents the inspector from taking copies of records or documents or extracts therefrom in accordance with *subsection (2) (b)*, or

(e) makes or causes to be made in the record any entry which is false or misleading in any material particular,

that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(4) A demand for an inspection of a record or of any other document reasonably demanded by an inspector under this section shall be deemed to have been duly made to the person liable under this section to keep the record if made verbally at the prescribed premises to any individual in the employment of such person.

(5) A refusal or failure to produce a record required by this section to be kept at any premises, or of any other document reasonably demanded by an inspector under this section for the purpose of verifying any entry in or any omission from the record, if made or committed by an individual in the employment of the person liable under this section to produce the record or document, shall be deemed to have been made or committed by that person.

Publication of contents of registers and other matters.

11.—(1) The Agency may publish, in such manner as it thinks fit, all or any of the matters entered in any register and notice of every cancellation or alteration of an entry.

(2) No individual return or part of a return furnished in pursuance of this Act shall be published or disclosed except for the purpose of a prosecution under this Act.

(3) The Agency may, from time to time, collect and publish such statistical information (including statistics derived from returns made pursuant to this Act) as it thinks fit with respect to the extent of the businesses carried on by registered producers or processors.

(4) So far as is reasonably practicable, no statistical information published under this section shall contain any particulars which would enable any person to identify such particulars as being particulars relating to any individual person, business or concern without the consent in writing of such last-mentioned person or of the proprietor of that business or concern.

Change of registration on death or transfer of business.

12.—(1) Where any registered person dies the Agency shall, on the application of the personal representative of that person made in such manner and form and containing such particulars as the Agency may require, insert in the appropriate register the name of the personal representative in lieu of that of the deceased person.

(2) Where the ownership of any business carried on by a registered person has been transferred to another person, the Agency shall on the application of that person, made in such manner and form and containing such particulars as the Agency may require,

insert in the appropriate register the name of that person in lieu of that of the person previously registered.

Alteration or cancellation of registration. **13.**—(1) The Agency may alter or cancel the registration of any person in any register upon the application of that person or, in the case of an individual, that person's personal representative or, in the case of a body corporate, the liquidator, receiver or examiner.

(2) The Agency may alter any entry in a register which appears to the Agency to be erroneous or misleading.

(3) The Agency may cancel any entry in a register if—

(a) the Agency is satisfied that the entry was procured through fraud or by misrepresentation, or

(b) the registered person has ceased to carry on the registered business, or

(c) the registered person, if an individual, has died, or, if a body corporate, has been dissolved and no other person has within three months after such death or dissolution been registered in the place of the registered person, or

(d) the registered person has been adjudicated a bankrupt, or

(e) the registered person has been convicted of an offence under this Act, or

(f) the premises entered in the register are not or have ceased to be approved under the Council Directive, or

(g) in the case of a registered producer, that producer fails to supply the quantities of milk specified in a registered contract as being due for supply during the winter months.

(4) (a) Before altering or cancelling (otherwise than in accordance with an application under *subsection (1)*) an entry in a register, the Agency shall give at least two weeks' notice in writing to the registered person or personal representative or to the trustee in bankruptcy or the liquidator, receiver or examiner (as the case may be) stating its intention to do so and the reasons therefor.

(b) The Agency shall not alter or cancel the entry before the expiration of the notice.

(c) Where any representations are made within seven days (or such longer period as the Agency may think proper) after the service of the notice by the person to whom the notice is given the Agency shall consider the representations.

(5) Unless the Agency decides not to alter or cancel the entry—

(a) the Agency, in case that person, within seven days (or such longer period as the Agency may think proper) after service of the notice, requests that an inquiry be held in relation to the matter and pays to the Agency the prescribed fee, shall cause an inquiry to be held, and

(b) in any other case, the Agency may do so if it thinks fit.

(6) Where the Agency causes an inquiry to be held, it shall not alter or cancel the entry before the inquiry has concluded.

(7) The following provisions shall have effect in relation to the inquiry—

(a) the Agency shall appoint a fit and proper person to hold the inquiry, and the person so appointed shall have power to take evidence on oath and to administer the oath;

(b) the Agency shall give to the registered person notice of the time and place of the holding of the inquiry, and the registered person shall be entitled to appear at the inquiry by counsel or solicitor and to adduce evidence;

(c) if as the result of the inquiry the Agency decides not to alter or cancel the entry the Agency shall repay any fee which the registered person has paid in respect of the inquiry.

(8) A notice of the Agency's intention to cancel or alter any entry may be served by delivering it to the person to whom it is addressed or by sending it by post to that person at that person's last known place of abode.

(9) A producer whose registration is cancelled in pursuance of *subsection (3) (g)* shall not be eligible for re-registration by the Agency for a period of at least two years from the date of such cancellation.

Provisions in relation to registers and evidence.

14.—(1) Every register shall—

(a) be deemed to be in the proper custody when in the custody of the Agency, and

(b) be admissible in evidence without further proof on production from the proper custody.

(2) *Prima facie* evidence of any entry in a register may be given in a document purporting to be certified under the hand of the chief executive of the Agency to be a true copy of the entry without proof of the signature or that that person is in fact the chief executive of the Agency.

(3) A certificate purporting to be under the hand of the secretary of the Agency that any person or any premises specified in the certificate is, or are, not entered in a specified register shall be *prima facie* evidence of the matters so certified, without proof of the signature or that that person is in fact the secretary of the Agency.

(4) Any person may at all reasonable times inspect a register on payment of the prescribed fee and may obtain a certified copy of an entry or certificate under this section on payment to the Agency of the prescribed fee.

Miscellaneous **15.**—(1) An inspector may—

Powers of
inspection and
examination.

- (a) at all times enter upon and have free access to any premises in which milk is or is believed to be sold, or kept, exposed or stored for sale, or the premises of any person engaged in the business of carrying goods for reward, or any railway wagon, motor lorry, cart or other vehicle used for the conveyance of goods;
- (b) open and examine all milk tankards or other receptacles found in any place or vehicle to which he has access by virtue of this section and in which milk is believed to be;
- (c) ask of any person having the custody or possession of any milk, milk tankards or other receptacles found in the exercise of the inspector's functions under this section such questions in relation to the milk, tankards or other receptacles as the inspector thinks proper, and demand and take the name and address of any such person and also demand and take from any such person the name and address of the owner of the milk, tankards or other receptacles;
- (d) take without payment, from any such milk tankard or other receptacle, containing milk, a sample not exceeding half of one litre.

(2) A producer or processor shall, at the request of an inspector, make full disclosure of information concerning any particular supply, sale, purchase or delivery of milk or concerning any arrangement or other matter relating thereto and give access to and make available all such information to the inspector.

(3) Every person who—

(a) obstructs or impedes an inspector in the exercise of functions under this section, or

(b) fails or refuses to answer to the best of that person's knowledge and ability any question asked by an inspector in the exercise of any such function, or

(c) gives an answer to any such question which is to that person's knowledge false or misleading, or

(d) fails or refuses to give a name or address on request under this section, or gives a name or an address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

Prohibition on disclosure of information by members and officers of the Agency. **16.**—(1) Subject to the provisions of this Act, it shall not be lawful for any member or employee of the Agency to disclose any information in relation to the business of any other person or body obtained by that member or employee as such.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(3) *Subsection (1)* does not apply to the disclosure of any information for the purposes of any legal proceedings (whether civil or criminal) taken or proposed to be taken under this Act or authorised or required under this or any other enactment.

Funds to be kept by the Agency. **17.**—(1) The Agency shall keep a fund (in this section referred to as the fund) and shall maintain and manage the fund in accordance with this Act.

(2) All moneys received by the Agency under this Act shall be paid by the Agency into the fund.

(3) There shall be paid out of the fund the following moneys and no other moneys, that is to say, all moneys required by this Act to be paid by the Agency and all other expenses incurred by the Agency in the execution of its functions.

(4) The Agency may for the purpose of meeting charges required by this Act to be paid out of the fund borrow money on the security of the fund, but shall not do so without the consent of the Minister and the Minister for Finance.

(5) So much of the fund as in the opinion of the Agency is for the time being not required for the making of payments out of the fund shall be invested by the Agency in investments in which trustees are by law authorised to invest trust funds.

(6) The Agency may from time to time at its discretion vary any investment or transfer moneys invested under this section into other investments authorised under this section and may at any time sell and convert into money all or any investments made under this section.

(7) All dividends and interest received by the Agency on investments made under this section or in respect of the sale of any such investments shall be paid into the fund.

Accounts, records and reports of the Agency. **18.**—(1) The Agency shall keep all proper books of account and other books and records and shall within three months after the end of every year prepare and transmit to the Minister a statement of accounts (duly audited and certified by an auditor appointed by the Agency with the consent of the Minister) in respect of that year.

(2) The Agency shall in each year, at such date and in such form as the Minister may direct, make to the Minister a report of its proceedings during the preceding year and the Minister shall lay the report before each House of the Oireachtas.

(3) The Agency shall furnish to the Minister such information, statistics and returns as the Minister may from time to time require.

(4) The Agency shall on payment to it of £5 furnish to any person a copy of any statement of accounts which has been prepared by it in pursuance of this section.

Appeals against decisions of Agency. **19.**—(1) A producer or processor may appeal to the Minister against—

(a) the refusal of the Agency to register a contract under *section 6 (1)*,

(b) the cancellation of registration of a person in any register under *section 8 (7)*,

(c) the alteration of any entry in any register under *section 13 (2)*, or

(d) the cancellation of an entry in any register under section 13 (3),

and the appeal shall be heard and determined by an officer of the Minister appointed by the Minister for that purpose.

(2) (a) A producer or processor who is dissatisfied with a decision under this section may appeal to the Circuit Court against the decision.

(b) The jurisdiction conferred on the Court by this subsection shall be exercised by the judge for the time being assigned to the circuit where the appellant ordinarily resides or where either the producer or the processor carries on business or, at the option of the appellant, by a judge of the Court for the time being assigned to the Dublin circuit.

(c) Subject to *paragraph (d)*, a decision of the Court under *paragraph (a)* shall be final.

(d) An appeal may be brought to the High Court on a point of law against such a decision.

(3) The Agency shall be entitled to be represented and to be heard at any appeal under this section.

(4) Where an appeal is brought to a Court under *subsection (2)* in relation to the alteration or cancellation of an entry in a register, the Court, if it so thinks proper, may by order suspend the operation of the alteration or cancellation until the final determination of the appeal or for such other period as the Court may determine.

Regulations. **20.**—(1) The Minister may make regulations in relation to any matter referred to in this Act as prescribed.

(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Prosecution of offences. **21.**—Offences under sections 5, 8, 9, 10 and 15 shall be brought and prosecuted by the Agency.

Repeals and saver. **22.**—The Milk (Regulation of Supply and Price) Acts, 1936 to 1967, are hereby repealed with effect from the establishment date, without prejudice to sections 3 (3) and 4 (7).

Expenses.

23.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title. **24.**—This Act may be cited as the Milk (Regulation of Supply) Act, 1994.

SCHEDULE

National Milk Agency

Section 2.

Chairman of Agency.

1. (1) The Minister shall before the establishment date and thereafter as occasion requires nominate a person to be Chairman of the Agency.

(2) The office shall be part-time.

(3) The Chairman shall hold office during the pleasure of the Minister and shall be paid by the Agency such remuneration and such allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time appoint.

(4) Whenever it appears to the Minister that the Chairman is, through absence, ill-health or other sufficient cause, temporarily unable to act, the Minister may appoint a person to act as Chairman for such period (not exceeding the duration of the incapacity) as the Minister thinks proper and references to the Chairman in the subsequent provisions of this Schedule shall include the person so acting.

Appropriate number of ordinary members.

2. In this Schedule “the appropriate number” in relation to any description of ordinary members means such number as is prescribed.

Ordinary members representing interests of processors, distributors, retailers and consumers.

3. (1) The appropriate number of first and subsequent ordinary members nominated by processor, distributor, retail and consumer interests shall be appointed to the Agency by the Minister.

(2) Each ordinary member shall be appointed to hold office until the day of entry into office of subsequent ordinary members.

Producer members.

4. (1) The Minister shall appoint to the Agency the appropriate number of first ordinary members nominated on the advice of producer interests to serve until replaced by the first elected members.

(2) Each first ordinary producer member shall be appointed to hold office until the day of entry into office of the first elected members.

Appointment provisions.

5. (1) The Minister shall in the year of establishment of the Agency and in every third year thereafter seek nominations from processor, distributor, retail and consumer interests to fill the appropriate number of ordinary members' posts. A processor nominee must be a registered processor.

(2) The Minister shall in the year of establishment of the Agency and in every third year thereafter prescribe a day (an "election day") to be an election day for producer members.

(3) On every election day an election shall be held for the election by registered producers of the appropriate number of producer members.

(4) The producers entitled to vote at such an election shall be those who stand registered as such on the first day of the month next preceding the month in which the election day falls.

(5) Every election shall be held and conducted in the prescribed manner.

Terms of office of ordinary members.

6. (1) Every ordinary member (other than a person appointed to fill a casual vacancy) of the Agency shall be entitled to hold office—

(a) in the case of an elected member, from the day following election until the day following the next election day,

(b) in the case of a nominated member, from the day of appointment until the day of termination of the appointment.

(2) An ordinary member ceasing to hold office by effluxion of time shall be eligible for re-election or re-nomination.

Resignation and disqualification.

7. (1) An ordinary member may at any time resign office by letter addressed and sent to the secretary of the Agency and the resignation shall take effect at the commencement of the meeting of the Agency held next after the receipt of the letter.

(2) An ordinary member of the Agency who is adjudged bankrupt, or makes a composition or arrangement with creditors, or is convicted of an offence under this Act, or ceases to be ordinarily resident in the State or ceases to be registered, in the case of a producer member, in the register of producers or, in the case of a processor member, in the register of processors shall be disqualified from holding and shall cease to hold the office of ordinary member.

Casual vacancies.

8. (1) Whenever a casual vacancy occurs in the membership of the Agency by reason of the death, resignation or disqualification of an ordinary member, the Chairman shall notify the Minister of the vacancy, and the Minister shall, as soon as may be, after consultation with the Agency, appoint a person to fill the vacancy being, in the case of a producer member, a registered producer or, in the case of the nominee of processor, distribution, retail or consumer interests, a person nominated on the advice of the relevant interests. A processor nominee must be a registered processor.

(2) Every person appointed to fill a casual vacancy shall be appointed to hold office for the residue of the terms of office of the member whose place he fills.

Temporary substitutes.

9. Whenever it appears to the Minister that on account of illness or for other sufficient reason an ordinary member is temporarily unable to act, the Minister may appoint a person, being, in the case of a producer member, a registered producer or, in case he was the nominee of processor interests, a registered processor, to act as such ordinary member for such period (not exceeding the duration of the inability) as the Minister thinks proper.

Remuneration of ordinary members.

10. Every ordinary member shall be paid by the Agency such allowances for expenses as the Minister, with the consent of the Minister for Finance, from time to time appoints.

Provisions relating to members and staff of the Agency taking up Public Office.

11. (1) A member of the Agency who is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or as a representative to the European Parliament, or

(c) regarded pursuant to section 15 (inserted by the European Parliament Elections Act, 1993) of the European Assembly Elections Act, 1977, as having been elected to the European Parliament to fill a vacancy,

shall thereupon cease to be a member of the Agency.

(2) A person who is a member of the staff of the Agency who is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or as a representative to the European Parliament, or

(c) regarded pursuant to section 15 (inserted by the European Parliament Elections Act, 1993) of the European Assembly Elections Act, 1977, as having been elected to the European Parliament to fill a vacancy,

shall thereupon stand seconded from employment by the Agency and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period commencing on such nomination or election or while so regarded as having been elected, as the case may be, and ending when he ceases to be a member of either such House or a representative in such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a representative in the European Parliament shall, while so entitled or such a representative, be disqualified from becoming a member of the Agency or the staff in the Agency.

(4) Without prejudice to the generality of *subparagraph (2)*, that subparagraph shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subparagraph as service with the Agency for the purposes of any superannuation benefits.

Staff of Agency.

12. (1) The Agency shall, with the consent of the Minister and the Minister for Finance, appoint a chief executive, and such and so many other staff as the Agency considers necessary for the due performance of its functions on such terms and conditions as the Agency may determine. They shall be paid such remuneration and allowances as the Minister, with the consent of the Minister for Finance, may from time to time appoint.

- (2) (a) Every person who, on the day immediately before the Agency is established, is a member of the staff of the Cork or of the Dublin District Milk Board and is designated by the Minister for employment by the Agency shall, on that day, be transferred to and become a member of staff of the Agency.
- (b) Until such time as the scales of pay and conditions of service of persons so transferred are varied by the Agency, following consultation with recognised trade unions and staff associations, the scales of pay to which they were entitled and the conditions of service, restrictions, requirements and obligations to which they were subject immediately before their transfer shall continue to apply to them and may be applied or imposed by the Agency while they are in its service.
- (c) (i) The conditions in regard to tenure of office which are granted by the Agency in relation to a person so transferred shall not be less favourable than those which that person enjoyed as an employee of the relevant Board, and any alteration in the conditions in regard to the tenure of office of any such person shall not be less favourable than the conditions which prevailed in the relevant Board at the time of such alteration, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned. If a dispute arises between the Agency and any such person as to conditions to which that person is entitled, the matter shall be determined by the Minister.
- (ii) *Subparagraph (c) (i)* shall not apply to a person so transferred who is promoted, regraded or placed on a scale of pay higher than that applicable to that person's grade immediately before the day of taking up employment with the Agency.

Office of Agency.

13. (1) The Agency shall have an office for the receipt of communications and notices and shall notify the Minister of the address of the office and any change in that address.

(2) The Agency may purchase, lease, build or otherwise acquire, equip and maintain such offices and other premises as it considers necessary for the performance of its functions and may sell, lease or otherwise dispose of part or all of such office or premises.

Superannuation for Staff of Agency.

14. (1) As soon as may be after its establishment the Agency shall prepare and submit to the Minister a scheme or schemes for the granting of pensions, gratuities and other allowances on retirement or death to or in respect of such of its staff (including the chief executive) as the Agency shall think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom pensions, gratuities or allowances are payable under the scheme and different terms and conditions may be fixed in respect of different classes of persons.

(3) The Agency may at any time prepare and submit to the Minister a scheme amending a scheme previously submitted and approved under this paragraph.

(4) A scheme or amending scheme submitted to the Minister under this paragraph shall, if approved of by the Minister with the consent of the Minister for Finance, be carried out by the Agency in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this paragraph, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(6) No pension, gratuity or other allowance shall be granted by the Agency to or in respect of any of its staff (including the chief executive) who are members of a scheme under this paragraph nor shall any other arrangement be entered into for the provision of a pension, gratuity or other allowance to such persons on ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved of under this paragraph.

(7) Superannuation benefits granted under schemes under this paragraph to persons transferred under *paragraph 12 (2)* to the service of the Agency and the terms and conditions relating to those benefits shall not be less favourable to those persons than those to which they were entitled immediately before the establishment date.

(8) Where, in the period beginning on the establishment date and ending immediately before the commencement of a scheme under this paragraph, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Agency under *paragraph 12 (2)*, it shall be calculated and paid by the Agency in accordance with the scheme or such enactments in relation to superannuation as

applied to the person immediately before the establishment day and, for that purpose, his pensionable service with the Agency shall be aggregated with his previous pensionable service.

(9) In this paragraph "superannuation benefits" means pensions, gratuities and other allowances payable on resignation, retirement or death.

(10) Every scheme submitted and approved of under this paragraph shall be laid before each House of the Oireachtas as soon as may be after it is approved of and if either House, within the next 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything done under it.

Procedure of Agency.

15. (1) The Agency may act notwithstanding one or more vacancies amongst the ordinary members.

(2) The Agency may by standing orders or otherwise regulate its own procedure subject to the provisions of this Schedule.

(3) The Agency shall hold its first meeting on such day and at such time and place as the Minister shall appoint.

(4) Subject to the provisions of this Schedule, the Agency shall hold such and so many meetings and at such times as may be necessary for the proper discharge of its functions.

(5) No meeting of the Agency shall be held in the absence of the Chairman.

(6) The quorum for a meeting of the Agency shall be eight.

(7) Every question arising at a meeting shall be determined by a majority of the votes of the ordinary members present and voting on the question. In the case of an equal division of votes the Chairman shall have a casting vote.

Seal of Agency.

16. (1) The Agency shall provide itself with a seal.

(2) The seal of the Agency shall be authenticated by the signature of the Chairman or some other member authorised to act in that behalf and the signature of the Chief Executive or other member of the staff authorised by the Agency to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Agency and every document purporting to be an instrument made by the Agency and to be sealed with the seal of the Agency purporting to be authenticated in accordance with this paragraph shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.

Acts and Orders Referred to

<u>European Assembly Elections Act, 1977</u>	1977, No. 30
<u>European Parliament Elections Act, 1993</u>	1993, No. 30
<u>Finance Act, 1895</u>	58 & 59 Vict. c. 16
<u>Milk (Regulation of Supply and Price) Act, 1936</u>	1936, No. 43
<u>Milk (Regulation of Supply and Price) (Amendment) Act, 1941</u>	1941, No. 11
<u>Milk (Regulation of Supply and Price) (Amendment) Act, 1952</u>	1952, No. 9
<u>Milk (Regulation of Supply and Price) (Amendment) Act, 1961</u>	1961, No. 32
<u>Milk (Regulation of Supply and Price) (Amendment) Act, 1967</u>	1967, No. 22
Dublin District Milk Board Order, 1936	<u>1936, S.R. & O., No. 254</u>
Cork District Milk Board Order, 1937	<u>1937, S.R. & O., No. 91</u>

(¹)OJL.268/1 of 14 September 1992.

(²)OJL.268/33 of 14 September 1992.