

ISLE OF MAN
SCHEME FOR REGULATING THE MARKETING OF MILK UNDER
THE AGRICULTURAL MARKETING ACTS 1934 TO 2006

1. TITLE OF SCHEME

This Scheme may be cited as the Milk Marketing Scheme 2007 and applies to the Isle of Man. The regulated product to which this Scheme applies is milk in the Isle of Man.

2. INTERPRETATION

In this Scheme, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that it is say:-

“the Act” means the Agricultural Marketing Act 1934 (as amended)

“Association” means the Isle of Man Milk Marketing Association designated under Article 4.

“Calendar Year” means a period of twelve consecutive months beginning on the first day of January.

“the Companies Acts” means the Companies Acts 1931 to 2004 (as amended from time to time).

“Department” means the Department of Agriculture Fisheries and Forestry

“Directors” means directors of the Association.

“Milk” means cows’ milk produced in the Isle of Man

“Milk Cow” means a cow kept for milking purposes and includes cows in calf and cows and heifers in milk, but does not include a heifer which has never calved.

“Producer” means a producer of milk from a dairy parlour approved by the Department of Local Government and the Environment.

“Registered” means registered under this Scheme and “Registration” shall be construed accordingly.

“Regulated Product” means milk or milk products.

“Society” means the Isle of Man Agricultural Marketing Society designated under the Act.

3. COMMENCEMENT OF SCHEME

The Scheme shall come into force on the same day as section 1 of the Agricultural Marketing (Amendment) Act 2006 has full effect.

4. ASSOCIATION TO ADMINISTER THE SCHEME

This Scheme shall be administered by the Isle of Man Milk Marketing Association a company formed under the companies Acts 1931 to 2003 and is hereinafter in this Scheme referred to as “the Association”.

5. ELECTION OF FIVE DIRECTORS OF THE ASSOCIATION

In accordance with the Articles of Association of the Association five Registered Producers shall be elected to serve on the Board of the Association.

6. PROHIBITION OF SALE OF MILK BY UNREGISTERED PRODUCERS NOT EXEMPTED

On and after the day of the commencement of the Scheme the sale of the regulated product in the Isle of Man by any producer who is not either a Registered Producer or a person exempted from registration by or under the provisions of the Scheme, is prohibited.

Provided that the provisions of this Article shall not apply to regulated products exported from the Isle of Man.

7. FINANCIAL PROVISIONS

- (1) There shall be established a Fund (in this Scheme referred to as "the Fund") which shall be administered and controlled by the Association. All monies received by the Association shall be paid into the Fund and any monies required by the Association for the operation of the Scheme shall be paid out of the Fund. Any monies for the time being standing to the credit of the Fund may be left on current or deposit account at any Bank or, if not for the time being required for the purposes of the functions of the Association, may be invested in any securities in which a Trustee is authorised to invest under the Trustee Act 2001.
- (2) Every Registered Producer shall be required to contribute to the Fund such sum or sums as the Association with the approval of the Department may from time to time determine.
- (3) The powers conferred by this Article are in addition to and not in substitution for the powers conferred by Article 11.
- (4) The amount of any contribution payable by a Registered Producer to the Fund and the amount of any levy or levies imposed upon a Registered Producer shall be a debt due to the Association from such Registered Producer.
- (5) It shall be competent for the Association to calculate and assess the contribution of every Registered Producer in accordance with such returns made by him, or from such information as the Association may determine.
- (6) If a Registered Producer fails to make within the prescribed time any return required by the Association showing the number of gallons or litres of milk sold by him during any period he shall if the Association think fit be treated as having sold such number of gallons or litres of milk as the Association may think proper.
- (7) If a Registered Producer fails to make within the prescribed time any return required by the Association showing the number of milk cows in his possession on any specified date he shall if the Association think fit be treated as having in his possession on that date such number of milk cows as the Association may think proper.
- (8) The Association may determine that the amount of any contribution shall be reduced by such percentage not exceeding five per cent as the Association may determine if payment is made together with payments of all arrears of contributions (if any) within 14 days after the due date of payment.
- (9) The Association shall be at liberty to deduct the amount of any contributions or levies due by a Registered Producer from any sums payable by the Association to such Registered Producer.

- (10) Producers who have been exempted from registration shall not be required to contribute to the Fund.
- (11) For the purpose of providing working capital, the Association may deduct from the price payable by the Association to producers in respect of milk purchased by the Association such sum per gallon or per litre as the Department may approve.

Any sum deducted under the provisions of this sub-article shall be a loan to the Association and shall bear such interest and be subject to such conditions and be repayable at such date as shall be determined by the Department.

8. REGISTRATION OF PRODUCERS

- (1) The Association shall keep a register of producers (in this Scheme called "the Register") and every producer shall, on application to the Association be entitled to be registered therein. The Register shall record the name and address of every producer who applies for registration and in the case of a producer who ceased to be a Registered Producer, the date on which he ceased to be a Registered Producer. Upon registration a producer shall apply for membership of Society.
- (2) A company producing milk and which is registered under the Companies Acts shall be entitled to be registered.
- (3) The Register shall be open for inspection at the office of the Association at any reasonable time during the days on which the office is open for business and any person shall be entitled to be supplied with a copy, or obtain copies of the Register, or any part thereof on payment in either case of a fee of 5p and in addition a fee not exceeding 2p for each entry copied in excess of 24, or to take extracts therefrom for his own use free of charge.
- (4) A copy of any entry in the Register purporting to be signed by a Director of the Association to be a true copy shall be evidence of such entry in the Register.
- (5) A written statement purporting to be signed by a Director of the Association that the name of a person does not appear upon the Register or did not appear on the Register upon any stated date shall be evidence that such person is not a Registered Producer at the date stated as the case may be.
- (6) A producer applying for registration shall use the form of application issued by or approved by the Association and shall furnish thereon such information as may be required.
- (7) The Association on being satisfied that a person who is registered has ceased to be a producer or is exempt from registration shall remove his name from the Register; provided always that the name of a person shall not be removed from the Register without his consent by reason only that he is exempt from registration by virtue of sub-Article 9(1)(a) and 9(1)(b) hereof.
- (8) The Association may from time to time determine that every application by a Registered Producer that his name shall be removed from the Register shall be in writing in such form as may be prescribed by the Association and thereafter unless the Association with the approval of the Department shall otherwise determine the name of a producer shall not be removed from the Register unless he has made application in the appropriate form.

9. EXEMPTION FROM REGISTRATION AND FROM THE PROVISIONS OF THE SCHEME.

- (1) There shall be exempted from registration and from the operation of this Scheme the following producers:
 - (a) producers who sell milk only in small quantities to persons in their employment;
 - (b) Departments of Tynwald or Municipal Authorities who produce milk solely for use in institutions under their control;
 - (c) producers who export or sell for export and who do not sell the regulated product in the Isle of Man.
- (2) If any question shall arise as to whether a producer is entitled to exemption under this section, that question shall be determined by the Association.
- (3) Notwithstanding the provisions of the foregoing subsections, the Association shall register any producer who makes application for that purpose.
- (4) The Association shall have power to exempt from any or all of the provisions of the Scheme producers and sales of such classes or descriptions as they may determine.

10. POWERS OF THE ASSOCIATION RELATING TO MARKETING.

- (1) The Association may from time to time and for such periods as may be fixed by the Association regulate sales of milk by any Registered Producer or by the Association by determining all or any of the following matters that is to say, the description of milk which may be sold, and the price at, below, or above which, and the persons to, or through the agency of whom and the terms and the form of contract on which milk or any description grade or quantity of milk may be sold for liquid consumption and for other purposes.
- (2) Subject to the right of a Registered Producer to sell milk by retail in accordance with the provisions of Article 11 of this Scheme, the Association may require Registered Producers to sell milk, or any description thereof, or such quantity thereof or of any description thereof, as may from time to time be determined by the Association only to, or through the agency of the Association.
- (3) In determining any description of milk the Association shall not, without the consent of the Department, use any designation other than such designations as may from time to time be authorised under the Food Act 1996 as amended by any subsequent enactment and the Regulations for the time being in force thereunder.
- (4) Without prejudice to the generality of the powers conferred on the Association by the foregoing provisions of the Scheme the Association may from time to time determine all the terms on which and the form in which contracts for the sale of milk by Registered Producers (other than sales by retail) shall be made, and without prejudice to the power of the Association to prescribe any other terms, the Association may prescribe all or any of the matters following as terms of any such contract –
 - (a) that the Association shall be an additional party to the contract and shall be entitled, in addition to enforcing on their own behalf any of the provisions of the contract which they are legally entitled to enforce, to enforce any provisions which the Registered Producer might, on his own behalf, legally enforce;

- (b) that the purchaser shall not use or re-sell the milk for any purpose other than those specified in the contract, except upon the terms that the purchaser shall pay such price as may be determined as the price for milk to be used for such purposes;
 - (c) that the purchaser shall not sell the milk, or permit it to be sold, by retail, except upon such terms as the Association may determine and at a price per gallon or litre (and proportionately for any other quantity) exceeding the purchase price per gallon or litre by not less than such specified amount as may for the time being be prescribed by the Association;
 - (d) the prices at below or above which or the method of arriving at the prices at which milk may be sold and such prices
 - (i) may vary in accordance with the purpose for which the producer agrees to use or re-sell milk;
 - (ii) may vary in accordance with the description, quality or condition of the milk.;
 - (e) that the purchase price shall be paid by the purchaser to the Association;
 - (f) the period during which and the dates when deliveries of milk are to be made; and the place of delivery;
 - (g) the description quality and condition of the milk to be sold;
 - (h) the additional prices to be paid for any special services to be rendered by the Registered Producer, including the delivery of milk in specified quantities at specified times;
 - (i) that the Association shall not be liable for any breach of the said terms on the part of the Registered Producer or of the said purchaser.
- (5) If the Association shall determine that the Registered Producers shall sell any milk only through the agency of the Association no Registered Producer shall sell any such milk or any quantity or description of such milk except to such person or persons as the Association may from time to time direct.
- (6) If the Association shall determine that Registered Producers shall sell any milk only to the Association the Association shall from time to time determine the terms on which and the price at which such milk shall be sold to the Association and may also prescribe the form in which contracts for the sale of such milk to the Association shall be made.

The Association may prescribe different terms prices and forms for different classes of producers or classes of sale or descriptions or quantities of milk, and the Association may determine the description of milk sold by a Registered Producer during any accounting period by reference to any sample or samples taken from that milk and analysed by or on behalf of the Association in such manner as the Association may determine.

- (7) The Association may determine from time to time the quantity of the regulated product or any description thereof which may be sold by any Registered Producer and shall in so determining prescribe the method of determining the quantity aforesaid and without prejudice to the generality of the foregoing provisions the Association may provide for the quantity aforesaid being determined in the case of any Registered Producer wholly or partly by reference to the quantity of that product or description as the case may be which was in some past period produced on particular land or premises or by particular persons.
- (8) Provided that Sub-Articles 10(1) to 10(7) hereof shall not apply to milk exported or sold for export from the Isle of Man.

11. PRODUCER RETAILERS

- (1) No Registered Producer shall sell milk by retail by his own hand or by the hand of a member of his family or by that of a person directly employed by him to domestic consumers except under and in accordance with the terms of a licence (hereinafter in this Scheme called a "retail licence") issued by the Association authorising him to sell milk by retail.
- (2) Every such licence:-
 - (a) shall state the period of its validity;
 - (b) may be revoked by the Association upon breach of any of its conditions on the part of the holder (hereinafter in this Scheme called "the licensed retailer") unless the Association is satisfied that such breach was due to accident or other cause beyond the reasonable control of the licensed retailer;
 - (c) may contain such conditions (applicable to such classes of sales as may be stated in relation to each condition) as the Association thinks fit in respect of –
 - (i) the price at or below or above which and the terms upon which milk may be sold;
 - (ii) the descriptions of milk which may be sold;
 - (iii) the manner in which milk or any description or quantity thereof so sold is to be graded by or on behalf of the licensed retailer
 - (iv) the persons to whom milk may be sold by semi-retail;
 - (v) the nature of books and records relating to milk to be kept by the licensed retailer and the production of such books and records to any person duly authorised under Article 13 of this Scheme to inspect his premises;
 - (vi) the returns to be made to the Association of the gallonage of milk sold retail and semi-retail in any period
- (3) The Association shall not be entitled to refuse to issue a retail licence to any Registered Producer applying therefor, except a Registered Producer who has held a retail licence which has been revoked by the Association.
- (4)
 - (a) If any Registered Producer sells milk in contravention of sub-section (1) hereof the Association shall impose and recover from him such monetary penalty (not exceeding one thousand pounds) as the Association thinks fit.
 - (b) If any licensed retailer sells any milk by retail in contravention of the conditions of his retail licence the Association shall (in addition to or in substitution for the revocation of his retail licence) impose upon and recover from him such monetary penalty (not exceeding one thousand pounds) as the Association thinks fit.
- (5) The Association may subsequent to the issue of any retail licence by resolution add to or vary (within the powers conferred by this Article) or cancel all or any of the conditions therein contained and the retail licence shall have effect accordingly as from the date when a copy of such resolution is sent by pre-paid letter post to the licensed retailer.
- (6) Every licensed retailer shall be required to contribute to the fund in addition to his contribution under Article 8 of this Scheme such amounts (if any) as the Association may determine.
- (7) The contribution of every licensed retailer shall be of such amount and shall be calculated and assessed from time to time as the Association shall determine either
 - (i) in accordance with the number of milk cows in his possession on such date as the Association shall determine and it shall be competent for the Association to calculate and

assess such contribution in accordance with any return made by him to the Department or the Association during the preceding eighteen calendar months and the contribution shall be payable at such time or times as the Association shall determine, or

- (ii) in accordance with the number of gallons of milk which he has produced and sold by retail or semi-retail in each accounting period and shall then be payable on such accounting days as the Association may determine,

and in either case shall be a debt due by the licensed retailer to the Association.

- (8) The Association may also from time to time determine
 - (a) that different contributions be payable by licensed retailers for different descriptions of milk and the Association may determine the description of milk sold by a Registered Producer during any accounting period by reference to any sample or samples taken from that milk and analysed by or on behalf of the Association in such manner as the Association may determine;
 - (b) that certain classes of licensed retailers or licensed retailers retailing milk in specified places or areas coming within a specified description or licensed retailers who sell less than a specified quantity of milk each day by retail or semi-retail shall be exempt from paying any contribution;
 - (c) that if a licensed retailer sells milk only by retail or semi-retail and not to the Association or otherwise he shall be exempt from the payment of contributions or shall be exempt from the payment of any contribution whilst the retail price of milk is at or below a specified amount or that the contributions payable by him shall be reduced by such amounts as shall be specified;
 - (d) that if a licensed retailer sells milk otherwise than by retail or semi-retail then his contribution shall be increased by such sum as may be specified;
 - (e) that the contributions payable by licensed retailers shall increase or decrease by the amounts by which the retail price of milk is increased or decreased;
 - (f) that any sum due under the foregoing provisions shall be reduced by such percentage not exceeding five per cent as the Association may determine if payment is made together with payments of all arrears of contributions (if any) within fourteen days after the due date for payment;
 - (g) that the Association shall be at liberty to deduct the amount of any contributions due by a licensed retailer from any sums payable by the Association to such licensed retailer.
- (9)
 - (a) If the Association is unable to obtain from any Registered Producer a sufficient return showing the number of gallons of milk sold by him by retail during any accounting period he shall if the Association thinks fit be treated as having sold by retail or by semi-retail on each day during that period such number of gallons of milk as the Association may think proper in respect of every cow which he had in his possession on the first day of that period.
 - (b) If the Association is unable to obtain from any Registered Producer a sufficient return showing the number of cows in his possession on any required date he shall if the Association thinks fit be treated as having in his possession on that date such number of milk cows as was shown on any return or written statement previously made by him to the Association or the Department as having been in his possession on any previous date.

- (10) If a licensed retailer shall make default in paying any retailer's contribution due from him the Association may in addition to or in substitution for any other remedy suspend his retail licence until the debt is paid.
- (11) In this Article the expressions "accounting period" and "accounting day" mean respectively such periods and such days as the Association may from time to time determine.

12. **UNSOLD MILK**

Subject to the provisions stated herein, if any Registered Producer shall satisfy the Association that notwithstanding due diligence he has been unable to sell for liquid consumption or in manufactured form under the conditions prescribed by this Scheme all or any part of the milk produced by him being milk which complies with any prescribed standard for the time being in force, then it shall be the duty of the Association to accept such unsold milk in consideration of which the said producer shall be entitled to receive from the Association a sum equal to the actual price realised on the sale of such milk less the cost of all transport, handling, agent's and other expenses incidental to its disposal.

Provided that –

- (a) any producer whose milk is accepted by the Association shall consign it carriage paid to such premises in the Isle of Man as the Association may direct;
- (b) the Association may charge him with a commission not exceeding two pence per litre of milk so accepted by the Association; and
- (c) where a Registered Producer requires the Association to accept any unsold milk over a period of less than three months, the Association shall not be obliged to accept it otherwise than by deliveries, and in such quantities and over such a period as the Association may determine.

13. **INFORMATION AND INSPECTION**

- (1) The Association may whenever it considers it necessary for the operation of this Scheme to do so require any Registered Producer to furnish such estimates, returns and other information relating to his production and sale of milk as the Association with the approval of the Department may prescribe.
- (2) Any persons authorised in writing by the Association may for the purpose of securing compliance with the Scheme, enter and inspect at any reasonable time and on production of his authority any part of the land or premises occupied by any Registered Producer (being a producer specified in the authority) which the person so authorised has reason to believe is used for producing milk or for grading, marking, packing or storing milk or for adapting it for sale and may take samples of milk; and any Registered Producer shall afford reasonable facilities for such entry inspection and sampling.

14. **TRANSFER OF PRODUCERS' INTERESTS**

In the event of a Registered Producer dying or becoming subject to legal disability or entering into a composition or scheme of arrangement with his creditors and any property in or control of the regulated product is transferred from the Registered Producer to a personal representative, trustee, committee or other person, the personal representative, trustee, committee or other person as the case may be shall in such circumstances and in respect of such matters as may be specified in the Scheme, be deemed to be a Registered Producer.

15. PENALTIES FOR CONTRAVENTION OF THE PROVISIONS OF THE SCHEME BY REGISTERED PRODUCERS

If from and after the date of commencement of the Scheme any person being a Registered Producer:-

- (a) sells the regulated product or any kind, variety, grade or quantity thereof at a price less than or in a manner or to a person other than that, or on terms other than those determined for the time being by the Association; or
- (b) fails to furnish such information relating to the regulated product by him as may be required from time to time by the Association; or
- (c) wilfully furnishes to the Association information which is false in any material particular; or
- (d) obstructs or interferes with any person duly authorised by the Association in terms of Article 10 hereof in the performance of his duties thereunder,

the Association shall impose upon and recover from him a penalty not exceeding one hundred pounds for the first offence, and not exceeding one thousand pounds for a second or subsequent offence, and the penalty so imposed shall be recoverable as a debt due by him to the Association.

Provided always that no such penalty shall be imposed in respect of contravention of the Scheme which constitutes an offence under any other Act.

16. ARBITRATION IN CASES WHERE PRODUCERS ARE AGGRIEVED

- (1) In the event of any producer of the regulated product being aggrieved by any act or omission of the Association he may make application to the Association demanding that the matter be referred to an arbitrator appointed by the Department and the Association shall, within fourteen days of the receipt of any such application, apply to the Department for the appointment of an arbitrator.
- (2) If a person appointed as an arbitrator by the Department dies or is incapable of acting, or for seven days after written notice from either party to the dispute requiring him to act, fails to act, a new arbitrator may be appointed by the Department as if no arbitrator had been appointed.
- (3) The arbitrator shall make and sign his award within twenty-eight days of his appointment.
- (4) Evidence
 - (a) The parties to an arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator on oath in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.
 - (b) The arbitrator shall have in relation to witnesses and their examination and the production and inspection of documents, similar powers to the High Court of Justice.

(5) The Award

- (a) If the arbitrator finds that the Association shall be required to rectify any matter the subject of the reference, the award shall state the manner in which and the date as and from which the matter shall be rectified by the Association.
- (b) The award of the arbitrator shall be final and binding on the parties.
- (c) The arbitrator may correct in any award any clerical mistake or error arising from an accidental slip or omission.

(6) Expenses

- (a) The expenses of and incidental to the arbitration and award shall be in the direction of the arbitrator, who may direct to and by whom and in what manner and within what time those expenses or any part thereof are to be paid and those expenses shall be subject to taxation by the First Deemster and Clerk of the Rolls.
- (b) The arbitrator shall in awarding expenses take into account the reasonableness or unreasonableness of the claim of the producer concerned either in respect of amount or otherwise and any unreasonable demand for particulars or refusal to supply particulars by either party and generally all the circumstances of the case, and may disallow the expenses of any witness whom he considers to have been called unnecessarily and any other expense which he considers to have been incurred unnecessarily.

17. **REPORTING**

The Association shall, from time to time, report to the Society on any matter which the Society shall require a report, in such manner and within such time as the Society shall direct.

18. **REVOCATIONS**

The following Orders are hereby revoked:

Milk Marketing Scheme 1934, as amended by
Milk Marketing Scheme Amendment Order 1935
Milk Marketing Scheme Amendment Order 1937
Milk Marketing Scheme Amendment Order 1938
Milk Marketing Scheme Amendment (No. 2) Order 1938
Milk Marketing Scheme Amendment Order 1952
Milk Marketing Scheme Amendment Order 1957
Milk Marketing Scheme Amendment Order 1959
Milk Marketing Scheme Amendment Order 1961
Milk Marketing Scheme Amendment Order 1968
Milk Marketing Scheme Order 1976
Milk Marketing Scheme Amendment Order 1976
Milk Marketing Scheme Order 1980