



Sea Fish Industry Act 1938

1938 CHAPTER 30

PART I

ORGANISATION OF WHITE FISH INDUSTRY

Marketing schemes

5 Submission of marketing schemes to Ministers

The Commission may submit to the Ministers a scheme (hereafter in this Act referred to as " a marketing scheme ") for regulating the marketing of white fish by persons carrying on in Great Britain any designated business other than the business of curing, salting, drying, smoking or canning white fish, being a scheme which has been prepared either by the Commission or by some body appearing to the Commission to be substantially representative of the interests of persons so carrying on that designated business; and, subject to the following provisions of this Part of this Act, the Ministers may confirm the scheme :

Provided that the Commission shall not submit a marketing scheme to the Ministers except after consultation with such bodies as appear to the Commission to be substantially representative of the interests of persons carrying on in Great Britain the business to which the scheme relates.

6 Registration under marketing schemes

- (1) A marketing scheme for regulating any activity on the part of persons carrying on any designated business shall be of no effect unless provision is made by the scheme whereby any person carrying on that business in Great Britain is entitled, on application made by him in that behalf, to be registered under the scheme as carrying on that business, and the scheme may provide that, on and after such date as may be specified in the scheme, no person shall carry on that business unless he is either registered under the scheme or, by virtue of the provisions of the scheme or of this Part of this Act, exempt from registration thereunder.

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- (2) If any person carries on any business in contravention of any provisions of a marketing scheme which have effect by virtue of the preceding subsection, he shall be guilty of an offence, and liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding twenty pounds for every day on which the offence continues after conviction therefor and also, in the case of a second or subsequent conviction, to imprisonment for a term not exceeding three months.
- (3) If and so long as any person is registered under a marketing scheme as carrying on a designated business,—
- (a) he shall be exempt from any obligation to be registered in the Commission's register as carrying on that business, and
 - (b) it shall be the duty of the Commission to secure that he is not so registered.

7 **Constitution of boards to administer marketing schemes**

- (1) A marketing scheme shall be of no effect unless provision is thereby made for the administration of the scheme by a board, which shall be constituted as follows, that is to say:—
- (a) the number of members of the board shall be nine, or such greater number being an exact multiple of three as may be specified in the scheme;
 - (b) the members of the board shall—
 - (i) as to so many of them, not being less than three nor more than one-third of their number, as the scheme may specify, be persons appointed by the Ministers, and
 - (ii) as to the rest, be persons elected in accordance with the scheme by persons registered thereunder;
 - (c) such one of the members so appointed as the Ministers may designate shall be chairman of the board, and such other one of those members as the Ministers may designate shall be vice-chairman of the board :

Provided that during such period, not being longer than twelve months from the day on which the scheme comes into operation as may be specified in the scheme, the members of the board, other than those appointed by the Ministers, shall be persons named in the scheme.

- (2) Every person who, by virtue of an appointment of the Ministers, is a member of the board administering a marketing scheme shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; but any such person may, notwithstanding anything in such an instrument, resign his office by a notice given under his hand to the Ministers, and, upon ceasing to hold office, shall be eligible for reappointment to the board.
- (3) It shall be the duty of the Ministers to satisfy themselves, with respect to any person whom they propose to appoint to be a member of the board to administer a marketing scheme, that that person will have no such financial or commercial interest as is likely to affect him in the discharge of his functions as a member of the board, and also to satisfy themselves from time to time, with respect to any person who, by virtue of an appointment of the Ministers, is a member of the board, that he has no such interest as aforesaid; and any such person shall, whenever requested by the Ministers so to do, furnish to them such information as they consider necessary for the performance of their duty under this subsection.

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8 Marketing provisions of producers' marketing schemes

- (1) A marketing scheme for regulating the marketing of white fish by persons carrying on the business of a home producer of white fish (hereafter in this Act referred to as " a producers' marketing scheme ") may provide—
 - (a) for determining from time to time—
 - (i) the quantity of white fish which may be sold by any person registered under the scheme;
 - (ii) the price, at, below or above which, and the terms on which, white fish or any quantity of white fish may be sold as aforesaid ;
 - (b) for determining the manner in which white fish is to be graded, packed, stored, adapted, offered or exposed for sale, or treated by or on behalf of persons registered under the scheme;and the scheme may provide for determining any of the matters aforesaid either generally or in relation to particular areas or particular descriptions of white fish.
- (2) If and so long determination of any of the matters mentioned in the preceding subsection, being a determination made, with respect to any class of persons, under provisions of a scheme which are authorised by that subsection, has effect in relation to any area or any description of white fish, any regulations of the Commission under this Part of this Act which provide for the determination of that matter in relation to that area or that description of white fish, shall, so far as those regulations apply to the same class of persons, be of no effect.

9 Licensing provisions of producers' marketing schemes

- (1) A producers' marketing scheme may provide for regulating, by means of a system of licences, the landing of white fish in Great Britain, and for that purpose may contain provisions—
 - (a) for securing that a person registered under the scheme shall not cause any white fish to be landed in Great Britain from a fishing-boat registered in the United Kingdom or any other part of his Majesty's dominions, or from a British fishing-boat registered at any port of registry established by Order in Council under the Merchant Shipping Act, 1894, except under the authority of a licence granted by the board in respect of that boat;
 - (b) for determining the period for which any licence granted under the scheme shall remain valid (subject to the renewal, suspension or revocation of the licence), for the renewal and transfer of licences in such circumstances as may be specified in the scheme, and for enabling the board to charge, in respect of the grant, renewal or transfer of a licence, such fee as may be authorised by the scheme;
 - (c) for enabling the board—
 - (i) to give with respect to the equipment of, or the operations conducted on board, any boat in relation to which a licence under the scheme is in force, such directions as the board thinks desirable for the purpose of promoting efficiency or economy in the production, storage or treatment of white fish;
 - (ii) in particular, but without prejudice to the generality of the powers which may be conferred by virtue of the preceding sub-paragraph, to give, with respect to any such boat as aforesaid, directions for limiting the quantity of white fish (taken either in any waters whatever or in any particular waters) which may be landed from the boat in Great

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- Britain or any part thereof on any particular occasion, or the number of landings of white fish so taken which may be effected from the boat in Great Britain or any part thereof during any specified period;
- (iii) to vary from time to time, or revoke, any directions given by virtue of this paragraph, and (without prejudice to any provisions of the scheme requiring the board to impose penalties) to revoke, or suspend the operation of a licence in relation to any boat in the event of a contravention of any such direction given in respect of that boat;
- and for securing that any quantity of white fish landed in contravention of any directions having effect by virtue of sub-paragraph (ii) of this paragraph shall become the property of the board and may be disposed of by the board accordingly; and
- (d) (subject to the provisions of the next following subsection with respect to compensation) for enabling the board to suspend the operation of a licence granted under the scheme in respect of any boat, if and so far as it appears to the board to be desirable so to do for the purpose of promoting economy in the production of white fish.
- (2) No provisions contained in a producers' marketing scheme by virtue of the preceding subsection shall be of any effect unless provision is also made by such a scheme—
- (a) for securing that the grant of a licence under the scheme shall not be refused, except—
- (i) on the ground that, in the opinion of the board, a sufficient number of licences are already in force, regard being had to the demand for white fish, or
- (ii) on such other ground (if any) as may be specified in the scheme;
- (b) directing, that until such date after the coming into operation of the scheme as may be specified therein, the grant of a licence under the scheme shall not, except on the ground mentioned in sub-paragraph (i) of the preceding paragraph, be refused in relation to any boat as to which the board is satisfied either—
- (i) that, at the time of the coming into operation of the scheme, the boat was in the possession of a home producer of white fish and was being used, or was fit to be used, for the production of white fish, and had been continuously in the possession of one or more home producers of white fish since the beginning of the fourth day of November nineteen hundred and thirty-seven, or
- (ii) that, before the fourth day of November nineteen hundred and thirty-seven a contract had been entered into for the construction of the boat being a contract under which delivery of the boat was to be taken by a home producer of white fish;
- (c) for securing—
- (i) that where an application for a licence under the scheme is refused on the ground mentioned in sub-paragraph (i) of paragraph (a) of this subsection, or the operation of such a licence is suspended by the board in the exercise of any power conferred on it by virtue of paragraph (d) of subsection (1) of this section, the board shall, in accordance with such principles as may be determined by the scheme, pay to the applicant or the holder of the licence, as the case may be, compensation for any direct loss which he may suffer by reason of the refusal or suspension, and

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- (ii) that where such an application is refused on any other ground, the board is enabled to pay such compensation to the applicant;
and for determining the manner in which compensation under the scheme is to be claimed and assessed;
- (d) enabling any person aggrieved by any refusal of the board to grant, renew or transfer a licence under the scheme, or by any decision of the board to revoke or suspend the operation of such a licence, to appeal to the Commission, and determining the powers exercisable by the Commission on any such appeal; and
- (e) for the reference to arbitration of any dispute on the question whether or not any compensation is recoverable under the scheme, or as to the amount of any compensation so recoverable:

Provided that the scheme shall not (except in such circumstances as may be specified therein) require or authorise the board to pay compensation to any person in consequence of any decision of the board to refuse to grant a licence in respect of a boat the construction of which, or a contract for the construction of which, had not been begun or entered into, as the case may be, before the fourth day of November nineteen hundred and thirty-seven.

- (3) Any reference in the preceding subsection to the construction of a boat shall be construed as including a reference to the adaptation of the boat for use for the purpose of, or in connection with, the taking of white fish.

10 Special provisions of distributors' marketing schemes

A marketing scheme for regulating the marketing of white fish by persons carrying on any designated business, not being either the business of a home producer of white fish or the business of curing, salting, smoking, drying or canning white fish, may provide for determining, subject to any regulations of the Commission,—

- (a) the manner and condition in which any premises or vehicles used by any person registered under the scheme, for the purpose of carrying on the business in respect of which he is so registered, are to be equipped and maintained for that purpose;
- (b) the manner in which white fish may be stored, or adapted, offered or exposed for sale, by any such person;

and the scheme may provide for determining any of the matters aforesaid either generally or in relation to particular areas or particular descriptions of white fish.

11 Performance of services by boards administering marketing schemes

A marketing scheme may provide for enabling the board—

- (a) to conduct, and to promote or encourage by financial assistance or otherwise, research and experiments in matters relating to the production, treatment or distribution of white fish;
- (b) to take measures for increasing the consumption of white fish, whether by means of advertising or the giving of demonstrations and instruction with respect to the use thereof, or otherwise;
- (c) to collect, and to communicate to persons registered under the scheme, statistics and other information the knowledge of which appears to the board

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- to be likely to promote efficiency in the carrying on of the business in respect of which such persons are so registered;
- (d) to purchase on behalf of, or to make arrangements for supplying to, persons registered under the scheme any such commodities (other than white fish) as are required for the carrying on by such persons of the business in respect of which they are so registered;
 - (e) in the case of a producers' marketing scheme—
 - (i) to take measures for increasing or conserving the stocks of white fish, or any description of white fish, on any fishing ground, whether by transplantation or otherwise; and
 - (ii) (so far as appears to the board to be desirable with a view to the progressive renewal of the fleet of boats in relation to which licences under the scheme may be necessary) to purchase by agreement any boats in relation to which such licences are in force; and
 - (f) to co-operate with any other persons in the exercise of any powers conferred on the board by virtue of the preceding provisions of this section.

12 Miscellaneous provisions which may be contained in marketing schemes

- (1) Any marketing scheme may provide for the following matters, that is to say,—
- (a) for requiring persons registered under the scheme to furnish to the board such estimates, returns, accounts and other information as the board considers necessary for the operation of the scheme;
 - (b) for empowering any person authorised in writing in that behalf by the board, on production of his authority, to enter or go on board, and to inspect, any premises, boat or vehicle which the board has reason to believe to be used for the purpose of any business the carrying on of which is controlled by the scheme;
 - (c) for making exemptions from all or any of the provisions of the scheme in respect of such classes of persons, and such activities, as may be specified in the scheme or determined by the board;
 - (d) for requiring the board to impose on, and to recover from, any person registered under the scheme who contravenes or fails to comply with any provision of the scheme, such monetary penalties as may be specified in the scheme;
 - (e) for securing that the expenses incurred by the board under the scheme shall be defrayed by means of contributions to be made to the board by persons registered under the scheme, and for the assessment and recovery of such contributions; and
 - (f) for the reference to arbitration—
 - (i) of any dispute on the question whether or not any sum is payable by any person by way of contribution under the scheme, or as to the amount of any sum so payable, and
 - (ii) of disputes as to any such other matters as may be specified in the scheme;

and may further contain such provisions with respect to registration and finance as are authorised by Part I of the Fourth Schedule to this Act:

Provided that a marketing scheme shall not authorise the imposition or recovery of any penalty in respect of any act or omission which constitutes an offence apart from the provisions of such a scheme.

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- (2) Any agreement made with a person engaged to serve on board a fishing-boat shall be void if and so far as it purports to oblige him to make any payment or allowance, or suffer any charge, in respect of a contribution paid or payable by another person under provisions of a marketing scheme having effect by virtue of paragraph (e) of the preceding subsection.
- (3) The provisions of Part II of the Fourth Schedule to this Act (which relate to the incorporation, registration and winding-up of boards), and the provisions of Part III of that Schedule (which relate to the effect of schemes on contracts), shall have effect in relation to any marketing scheme.

13 Provisions as to the submission, confirmation, amendment and revocation of marketing schemes

- (1) Before submitting a marketing scheme to the Ministers, the Commission shall cause to be published, in the Gazettes and in such other manner as the Ministers may direct with a view to informing persons affected, a notice stating that the scheme has been made, and specifying the place where the scheme may be inspected and copies thereof obtained, and the price (being a price approved by the Ministers) at which such copies will be supplied, and the time (not being less than twenty-eight days after publication of the said notice in the Gazettes) within which written objections and representations with respect to the scheme may be sent to the Ministers.
- (2) Where a marketing scheme has been submitted to the Ministers, they shall consider any objections and representations duly made with respect to the scheme, and may, after holding such inquiries (if any) as they think fit, make such modifications in the scheme as they may, after consulting the Commission, think proper:

Provided that—

- (a) where an objection to the scheme has been duly made to the Ministers by any person appearing to them to be affected thereby, and has not been withdrawn, the Ministers, unless they consider the objection to be frivolous or irrelevant or unless the scheme has been modified as required by the objection, shall, before taking any further action in the matter of the scheme, direct the holding of an inquiry with respect to the objection and consider the report of the person who held the inquiry; and
 - (b) if the Ministers decide to make any modifications in the scheme, they shall cause notice of the proposed modifications to be published in such manner as they think best adapted for informing persons affected.
- (3) If, after the preceding provisions of this section have been complied with in relation to a marketing scheme, the Ministers decide to proceed in the matter of the scheme, they shall forthwith direct the Commission to cause a poll of the appropriate registered persons to be taken in the prescribed manner, and shall take no further action in the matter of the scheme unless the result of the poll shows that at least half the total number of appropriate registered persons have voted, and that at least two-thirds of all the votes polled have been cast in favour of the scheme.
 - (4) Subject to the provisions of the last preceding subsection, the Ministers, if satisfied with respect to any marketing scheme that the scheme is desirable in the public interest and would be likely to promote efficiency in the carrying on of the class of business to which the scheme relates, may lay a draft of the scheme before Parliament, and if

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each House of Parliament resolves that the scheme be approved, the Ministers shall make an order confirming the scheme in terms of the draft.

The Ministers shall, at the same time as they lay any draft of a marketing scheme before either House of Parliament for approval, lay before that House a statement of the result of the poll which, in pursuance of the last preceding subsection, has been taken in relation to that scheme.

- (5) Any power conferred by this Part of this Act to prepare, submit or confirm a marketing scheme shall be construed as including a power, exercisable in the like manner and subject to the like conditions, to prepare, submit or confirm a scheme amending or revoking a marketing scheme which is already in operation:

Provided that it shall not be necessary to take any poll under subsection (3) of this section in relation to such an amending scheme if, within one month after a copy of the draft scheme in the terms in which the Ministers propose to lay the draft before Parliament has been delivered by the Ministers to the board administering the scheme to be amended, that board gives written notice to the Ministers that, in the opinion of the board, such a poll in relation to the amending scheme can properly be dispensed with.

- (6) If, in the case of any marketing scheme for the time being in force, a request for a poll on the question whether or not the scheme should be revoked is made in writing by or on behalf of the prescribed number of persons registered under the scheme to the board administering the scheme, the board shall forthwith communicate the request to the Commission, and thereupon the Commission shall cause a poll of persons so registered to be taken in the prescribed manner, and shall communicate the result of the poll to the Ministers; and if the result of the poll shows that not less than half the total number of votes polled have been cast in favour of revocation of the scheme, the Ministers shall by order revoke the scheme:

Provided that no poll under this subsection on the question whether or not a scheme should be revoked shall, without the consent of the board administering the scheme, be taken—

- (a) within the two years immediately following the date on which the order confirming that scheme was made, or
 - (b) within such period after the date of the declaration of any previous poll taken under this subsection in relation to that scheme as may be specified in the scheme.
- (7) Without prejudice to any other powers conferred on them by this Part of this Act, the Ministers, if, after consulting the Commission, they are of opinion that any provision of a marketing scheme, or any act or omission in the administration of such a scheme, is contrary to the interest of consumers of white fish, or that any such provision, act or omission is contrary to the interest of a substantial number of persons affected by the scheme and is not in the public interest, may lay before Parliament the draft of an order revoking the scheme, and if each House of Parliament resolves that the order be approved, the Ministers shall make the order in terms of the draft.
- (8) The provisions contained in Part IV of the Fourth Schedule to this Act (being incidental provisions with respect to the revocation of schemes) shall have effect in relation to any marketing scheme.
- (9) The revocation of a marketing scheme shall be without prejudice to the making, submission and approval of a new scheme.

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- (10) In this section—
- (a) the expression " appropriate registered persons " means—
 - (i) in relation to an original marketing scheme, persons who, at the beginning of the relevant day, are persons registered in the Commission's register as carrying on the class of business to which the scheme relates and are not exempted by the provisions of the scheme from registration thereunder; or
 - (ii) in relation to a scheme amending or revoking a marketing scheme, persons who, at the beginning of the relevant day, are persons registered under the scheme which it is proposed to amend or revoke, or registered in the Commission's register as carrying on the class of business to which the scheme relates, not being persons exempted from registration by the provisions of the revoking scheme or, as the case may be, by the provisions of the original scheme as proposed to be amended;
 - (b) the expression " the relevant day " means such day falling after the expiration of two months from the commencement of this Act as may be prescribed; and
 - (c) the expression " prescribed " means prescribed by regulations of the Ministers.
- (11) In relation to a marketing scheme for regulating, in any respect, the carrying on of two or more designated businesses, this section shall have effect as if for subsections (3) and (6) thereof there were respectively substituted the subsections directed by the Fifth Schedule to this Act to be substituted therefor.

14 Regulations governing the conduct of polls

- (1) The Ministers may make, in relation to schemes generally or in relation to any particular scheme or class of schemes, regulations prescribing the manner in which polls are to be taken for the purposes of the last preceding section, and containing provisions for determining the number of votes which a person entitled to vote at any poll so taken may cast; and the regulations shall secure that, for the purpose of determining the said number of votes, there is taken into account the extent (calculated by reference to such factors as may be specified in the regulations) to which the voter has been or is carrying on the relevant designated business in Great Britain.
- (2) Any such regulations as aforesaid—
- (a) may apply, with any necessary modifications, any enactments (including the penal provisions thereof) relating to parliamentary or local government elections and to the prevention of corrupt and illegal practices thereat;
 - (b) may prescribe the information which, before or at the time of voting, is to be furnished by every person entitled to vote, and the manner in which the information is to be furnished, and may require the rejection of the vote of any person who fails to furnish the prescribed information in the prescribed manner.

15 Appointment and functions of consumers' committee and committee of investigation

- (1) If a marketing scheme takes effect, the Ministers shall constitute two committees, of which one shall be a consumers' committee for the purposes of this Part of this Act and is hereafter in this Part of this Act referred to as " the consumers' committee ", and

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the other shall be a committee of investigation for the said purposes and is hereafter in this Part of this Act referred to as " the committee of investigation ".

- (2) The consumers' committee—
- (a) shall consist of a chairman and not less than six other members, who shall be persons appointed by the Ministers to represent the interests of consumers of white fish, and
 - (b) shall be charged with the duty of considering and reporting to the Ministers on—
 - (i) the effect of any marketing scheme which is for the time being in force, on consumers of white fish, and
 - (ii) any complaints made to the committee as to the effect of any such scheme on consumers of white fish.
- (3) The committee of investigation—
- (a) shall consist of a chairman and four other members appointed by the Ministers, and
 - (b) shall be charged with the duty, if the Ministers in any case so direct, of considering, and reporting to the Ministers on any report made by the consumers' committee and any complaint made to the Ministers as to the operation of any marketing scheme which, in the opinion of the Ministers, could not properly be considered by the consumers' committee under the last preceding subsection.
- (4) For the purpose of enabling either of the committees appointed under this section to consider any matter which it is its duty under this section to consider, the board administering the scheme to which the matter relates shall furnish to the committee such accounts and other information relating to the affairs of the board as the committee may reasonably require, and shall be entitled to make representations to the committee with respect to the matter in such manner as may be prescribed by regulations of the Ministers.
- (5) If the committee of investigation reports to the Ministers that any provision of a marketing scheme or any act or omission of a board administering such a scheme is contrary to the interests of consumers of white fish, or that any such provision, act or omission is contrary to the interests of any persons affected by the scheme and is not in the public interest, the Ministers, if they think fit so to do after considering the report,—
- (a) may by order make such amendments in the scheme as they consider necessary or expedient for the purpose of rectifying the matter;
 - (b) may by order revoke the scheme;
 - (c) in the event of the matter being one which it is within the power of the board administering the scheme to rectify, may by order direct the board to take such steps to rectify the matter as may be specified in the order;

and it shall be the duty of the board administering such a scheme to comply with any directions applying to that board which are contained in an order under paragraph (c) of this subsection :

Provided that—

- (i) every order under paragraph (a) or paragraph (c) of this subsection shall, as soon as may be after it is made, be laid before Parliament, and if either House of Parliament within the next twenty-eight days on which that House has sat after any such order is laid before it, resolves that the order be annulled, it shall

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thereupon become void, without prejudice, however, to anything previously done thereunder or to the making of a new order;

- (ii) an order under paragraph (b) of this subsection shall not take effect unless and until it has been approved by a resolution of each House of Parliament; and
 - (iii) before taking any action under this subsection the Ministers shall give the board administering the scheme notice of the action which they propose to take, and shall consider any representations made by the board within fourteen days after the date of the notice.
- (6) In considering for the purpose of this section whether any person represents the interests of consumers of white fish, or whether any provision of a marketing scheme or any act or omission of the board administering such a scheme is contrary to the interests of consumers of white fish, regard shall be had to the interests of persons who individually or collectively purchase white fish for their own consumption or use, and not to the interests of persons who purchase white fish for the purpose of any trade or industry carried on by them.

16 Incidental provisions as to consumers' committee and committee of investigation

- (1) The Ministers may appoint a secretary to each of the committees constituted under the last preceding section, and each of those committees may employ such other officers, and such servants, as the Ministers may, with the approval of the Treasury, determine.
- (2) The members of each of the said committees shall hold and vacate office in accordance with the terms of the respective instruments under which they are appointed, and the meetings, quorum and procedure of the said committees shall be regulated in accordance with such regulations as may be made by the Ministers for the purpose, and the committees shall have power to act notwithstanding any vacancy among the members thereof.

17 Payment of expenses of promoting marketing schemes

- (1) Upon the coming into operation of a marketing scheme, the board shall pay to the Commission, and, if the Ministers so direct, pay to any other person designated by the Ministers, the amounts certified by the Ministers to represent the expenses properly incurred by the Commission and by that other person, respectively, in connection with the taking of the relevant poll or otherwise in connection with the preparation and promotion of the scheme; and any expenses incurred by the board under this subsection shall be deemed to be expenses incurred by it under the scheme.
- (2) Where a motion made in either House of Parliament on behalf of His Majesty's Government for the approval of a marketing scheme, the draft of which has been laid before that House in accordance with this Part of this Act, is negatived or withdrawn, the Minister of Agriculture and Fisheries may, with the approval of the Treasury, pay to any person such amount, if any, as may be certified by the Ministers to represent the expenses properly incurred by that person in connection with the preparation and promotion of the scheme.