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SCHEDULES

FOURTH SCHEDULE

Sections 12 and 13.

PROVISIONS CORRESPONDING TO CERTAIN PROVISIONS OF THE AGRICULTURAL MARKETING ACTS, 1931 TO 1934

PART I

PROVISIONS WITH RESPECT TO REGISTRATION UNDER MARKETING SCHEMES, AND FINANCIAL POWER OF BOARDS

- 1 A marketing scheme may provide for securing the removal from the register to be kept under the scheme of the names of persons who have ceased to carry on in Great Britain the business by virtue of which they may have been registered in the said register or who are exempted from registration under the scheme.
- 2 For the purpose of determining the financial powers and duties of the board, a marketing scheme may provide—
 - (a) for the establishment of a fund to be administered and controlled by the board, for the payment into the said fund of all moneys received by the board, and for the payment out of the said fund of all expenses lawfully incurred by the board;
 - (b) for determining the manner in which any moneys standing to the credit of the said fund may be invested, and for the keeping, audit and publication of accounts relating to the fund;
 - (c) for empowering the board to borrow money for the purpose of discharging its functions under the scheme;
 - (d) for empowering the board to lend money to any person registered under the scheme, on such terms, and against such security, as may be specified in the scheme.

PART II

PROVISIONS WITH RESPECT TO INCORPORATION, REGISTRATION AND WINDING-UP OF BOARDS

- 1 The board constituted to administer a marketing scheme shall be a body corporate with a common seal and power to hold land without licence in mortmain.
- 2 The board administering any such scheme shall notify to the Ministers the address of the office of the board at which communications and notices will at all times be received, and of any change in that address; and the Ministers shall cause a register to be kept showing the address of every such board, and the register shall be open for inspection by the public at such times and at such places as the Ministers may direct.

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- 3 A marketing scheme may provide for the winding-up of the board, and for that purpose may apply Part X of the Companies Act, 1929, subject to the following modifications, that is to say :—
- (a) for the purpose of section three hundred and thirty-eight of the Companies Act, 1929, the principal place of business of the board shall be deemed to be the office of the board registered under this Part of this Schedule;
 - (b) sub-paragraph (ii) of paragraph (e) of subsection (1) of section three hundred and thirty-eight of the Companies Act, 1929, shall not apply, and sub-paragraph (iii) of that paragraph shall apply as if the words " or any member thereof as such " were omitted;
 - (c) a petition for winding-up a board may be presented by the Ministers as well as by any person authorised under the provisions of the Companies Act, 1929, to present a petition for winding-up a company; and
 - (d) in the event of the winding-up of a board, every person - who, at any time during the relevant period, was a person registered under the scheme shall be liable to contribute to the payment of the debts and liabilities of the board and of the payment of the costs and expenses of the winding-up an amount assessed in such manner and subject to such limitations as may be provided by the scheme, but save as aforesaid no person shall be liable to contribute to the assets of the board in the winding-up by reason only of his being or having been a person registered under the scheme or a member of the board.

In this paragraph the expression " the relevant period " means—

- (a) in a case where, before the commencement of the winding-up, the scheme has been revoked, the year immediately before the revocation of the scheme, or
- (b) in any other case, the year immediately before the commencement of the winding-up.

PART III

EFFECT OF MARKETING SCHEMES ON CONTRACTS

- 1 Subject as hereinafter provided, a contract of which neither the making nor the performance was, at the time when the contract was made, prohibited by or under any marketing scheme in force shall not, unless the terms of the contract otherwise provide, be void or unenforceable by reason that, at the time for the performance of any provision of the contract, the performance thereof is so prohibited :

Provided that, where the performance of any such contract is prohibited by or under any such scheme, this paragraph shall cease to apply to that contract upon the expiration of three months after the prohibition first takes effect, unless the contract is registered under this Part of this Schedule,

- 2 It shall be the duty of the board administering a marketing scheme, on the application of any party to such a contract as aforesaid, to register the contract within the period of fourteen days after the application unless—
- (a) the application is made after the time at which it is provided by the proviso to the preceding paragraph that that paragraph shall cease to apply to the contract; or
 - (b) the board is of opinion—

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- (i) that the contract is unenforceable by any party thereto by virtue of the provisions of section four of the Statute of Frauds or section four of the Sale of Goods Act, 1893; or
- (ii) in the case of a contract made during the relevant period, that the contract was made with a view to evading the operation of the scheme;

and if any party to a contract is aggrieved by the omission of a board to register the contract within the period aforesaid, he may, within twenty-one days after the expiration of that period, appeal to the court, and, pending the determination of any such appeal, paragraph 1 of this Part of this Schedule shall, notwithstanding anything in the proviso to that paragraph, continue to apply to the contract.

3 On any appeal under the last preceding paragraph the board concerned and any party to the contract may appear and be heard, and if, on the hearing of any such appeal, the court finds—

- (a) that the application for registration of the contract was made before the time at which it is provided by the proviso to paragraph 1 of this Part of this Schedule that that paragraph shall cease to apply to the contract; and
- (b) that the contract is not unenforceable by any party thereto by virtue of the provisions of section four of the Statute of Frauds or section four of the Sale of Goods Act, 1893; and
- (c) in the case of a contract made during the relevant period, that the contract was not made with a view to evading the operation of the scheme;

the court shall by order direct the registration of the contract, and thereupon the contract shall be deemed to be registered as from the date of the order; but where, in the case of a contract made during the relevant period, the court does not direct the registration of the contract, any party to the contract certified by the court to have entered into the contract bona fide without a view to the evasion of the operation of the scheme may recover the amount of any damage suffered by him by reason of the avoidance of the contract from any party certified by the court to have entered into the contract with a view to such evasion as aforesaid.

4 For the purposes of an appeal under this Part of this Schedule with respect to any contract, the court shall be any county court within the district in which any party to the contract has dwelt or carried on business at any time during the period within which the appeal may be brought:

Provided that—

- (a) if, before proceedings in respect of any such appeal are commenced in the county court, the board and all parties to the contract agree that the appeal should be heard by the High Court, the High Court shall be the court for the purposes of the appeal; and
- (b) section one hundred and eleven of the County Courts Act, 1934, which provides for- the removal of matters from the county court to the High Court shall apply with respect to any appeal under this section as if the appeal were a matter commenced in the county court under that Act.

5 No person shall be liable to any penalty in respect of a contravention of any marketing scheme, if he proves that the contravention was necessary for the performance of a contract which, by virtue of this Part of this Schedule, was not, at the time of the contravention, void or unenforceable.

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- 6 For the purposes of this Part of this Schedule, the expression " the relevant period " means, in relation to a scheme, a period beginning twelve months before the date when notice of the submission of the scheme was published in the Gazettes and ending six months after the date when the scheme comes into force.

PART IV

INCIDENTAL PROVISIONS WITH RESPECT TO REVOCATION OF MARKETING SCHEMES

- 1 Where a marketing scheme is revoked by a subsequent scheme, the subsequent scheme may provide for the transfer to the new board of the whole or any part of the property, rights and liabilities of the existing board, for the continuation by or against the new board of any legal proceedings instituted by or against the existing board which are pending at the time of the revocation, and for the dissolution, without winding-up, of the existing board.
- In this paragraph the expression " the new board " means the board administering the subsequent scheme, and the expression " the existing board " means the board administering the scheme revoked.
- 2 The Ministers shall by order revoke a marketing scheme if an order is made for the winding-up of the board.
- 3 The board administering a marketing scheme shall not be deemed to be dissolved by reason only that the scheme has been revoked, and (except in a case where the board is dissolved without winding-up under paragraph 1 of this Part of this Schedule) so much of the scheme as relates to the winding-up of the board shall continue in force notwithstanding the revocation.
- 4 Where a marketing scheme or any provision of such a scheme is revoked, subsection (2) of section thirty-eight of the Interpretation Act, 1889, (which relates to the effect of repeals) shall apply as if the revocation of the scheme or of that provision, as the case may be, were the repeal of an enactment by another Act.