



Agriculture Act 1993

1993 CHAPTER 37

PART II

POTATO MARKETING

Introductory

25 Activation of Part II

- (1) If it appears to the Ministers that it is necessary or expedient that the Potato Marketing Scheme should be brought to an end, they may by order specify a day as the first day of the period mentioned in section 26(2) below.
- (2) Until a decision has been made by the Council of the European Communities to introduce a regulation on the establishment of a common organisation of the market in potatoes, subsection (1) above shall have effect with the substitution for “expedient” of “in the public interest”.
- (3) Where subsection (2) above applies, no order shall be made under subsection (1) above unless the Ministers have consulted on a proposal to bring the Potato Marketing Scheme to an end with such persons appearing to them to be representative of the interests of producers, purchasers, retailers and consumers of potatoes as they consider appropriate.
- (4) If the Ministers certify that they are of the opinion that it is necessary that the Potato Marketing Scheme should be brought to an end because its continued existence is inconsistent with a regulation of the Council of the European Communities, section 62(4) below shall apply as if the references therein to sections of this Act included a reference to this section.
- (5) Where an order under this section is contained in a statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament, then, if the instrument is annulled in pursuance of such a resolution, the order shall be treated for the purposes of this Part of this Act as never having been made.

- (6) Subject to subsection (4) above, no order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

Ending of Potato Marketing Scheme

26 Revocation of Scheme

- (1) The Potato Marketing Scheme is hereby revoked.
- (2) Subject to subsections (3) and (4) below, subsection (1) above shall come into force at the end of the period of twelve months beginning with the day specified by order under section 25 above.
- (3) The Ministers may by order extend the period mentioned in subsection (2) above.
- (4) Subsection (2) above shall not apply where property, rights and liabilities of the Board are transferred under section 35 below (statutory transfer on vesting day under approved transfer scheme) and in that case subsection (1) above shall come into force on the day of the transfer.
- (5) Where subsection (4) above applies, the Ministers shall by order certify the fact and date of its application.

Transfer scheme

27 Application for approval

- (1) The Board shall, subject to any poll of registered producers that may be carried out under section 40 below, at any time before the end of the period of six months beginning with the day specified by order under section 25 above, apply to the Ministers for approval of a scheme providing for the transfer of its property, rights and liabilities (“transfer scheme”).
- (2) Subject to subsection (3) below, an application under this section may be amended at any time before the Ministers have finally determined it.
- (3) An application under this section may not be amended at any time after the Ministers have given the Board notice under section 29(2) or (3) below.
- (4) Where the Board has made an application under this section, it may, before the end of the period mentioned in subsection (1) above, make a further such application but not until the previous application has been finally determined.
- (5) The Board may not make an application under this section after obtaining approval of a transfer scheme under this Part of this Act.
- (6) The Ministers may by order extend the period for the making of an application under this section.

28 Determination of application

- (1) The Ministers shall not grant an application under section 27 above for approval of a transfer scheme unless they are satisfied—

- (a) that the Board has taken reasonable steps to bring the principles of the scheme to the attention of persons who are registered producers,
- (b) that the scheme is a qualifying scheme under Schedule 3 to this Act, and
- (c) that in preparing the scheme for approval the Board has had regard to the desirability of proposing such arrangements as it considers would be likely to ensure the continuation or introduction by one or more successor bodies of—
 - (i) schemes for the orderly marketing of potatoes, including market intelligence and the identification of market opportunities,
 - (ii) research and development,
 - (iii) the generic promotion of potatoes,
 - (iv) the collection of statistics on the potato industry, and
 - (v) a forum for discussion of matters of common interest to producers, purchasers, retailers and consumers of potatoes,

and unless they have consulted about the principles of the scheme such persons appearing to them to be representative of the interests of producers, purchasers, retailers and consumers of potatoes as they consider appropriate.

- (2) Subject to that—
 - (a) if the Ministers are satisfied that the scheme meets the criteria mentioned in subsection (3) below, they shall grant the application, and
 - (b) if they are not so satisfied, section 29 below shall apply.
- (3) The criteria referred to above are—
 - (a) that the scheme is in the public interest;
 - (b) that the scheme takes account of the interests of consumers of potatoes, producers of potatoes and those who purchase potatoes otherwise than as consumers;
 - (c) that any provision made by the scheme for the distribution of assets to persons by reference to their being, or having been, registered producers is reasonable; and
 - (d) that it is unlikely that any person to whom a liability is transferred under the scheme will be unable to meet it.
- (4) A scheme shall not be treated as failing to meet the criterion mentioned in subsection (3)(c) above by virtue only of the fact that it provides for any distribution of assets to persons by reference to their being, or having been, registered producers to be in proportion to their respective basic areas for the purposes of the Potato Marketing Scheme for the last year to have been prescribed a quota year under it.

29 Procedure where scheme fails to meet criteria for approval

- (1) This section applies where, on an application under section 27 above for approval of a transfer scheme, the Ministers are satisfied as mentioned in subsection (1) of section 28 above, but are not satisfied that the scheme meets the criteria mentioned in subsection (3) of that section.
- (2) Where the Ministers are satisfied that the scheme is not capable of being modified so as to make it meet those criteria, they shall refuse the application, but, before finally concluding that the application should be refused under this subsection, they shall—
 - (a) give the Board notice of the conclusions they propose to reach about the scheme and of the reasons for them,

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- (b) specify in the notice under paragraph (a) above a day, at least 28 days after the date of the notice, on or before which the Board may make written representations to them about those conclusions, and
 - (c) take into consideration any representations made to them under paragraph (b) above or in response to an invitation by them to the Board to make oral representations about those conclusions.
- (3) Where the Ministers are satisfied that the scheme is capable of being modified so as to make it meet those criteria, they shall give the Board notice of—
- (a) the modifications which they consider would make it meet those criteria,
 - (b) the reasons for them, and
 - (c) a day, at least 28 days after the date of the notice, on or before which the Board may respond to the proposed modifications.
- (4) If, before the end of the period for responding to the proposed modifications, the Board gives the Ministers notice of its agreement to them, the application shall be treated as relating to the scheme with those modifications.
- (5) If, at the end of the period for responding to the proposed modifications, the Board has not—
- (a) persuaded the Ministers that no modifications are required,
 - (b) given the Ministers notice of its agreement to the proposed modifications, or
 - (c) given the Ministers notice of proposed alternative modifications,
- the Ministers shall refuse the application.
- (6) Where, before the end of the period for responding to the proposed modifications, the Board gives the Ministers notice of proposed alternative modifications, then—
- (a) if, before the end of the period of 28 days beginning with the date of the Board's notice, the Ministers reach agreement with the Board about what modifications should be made to the scheme, the application shall be treated as relating to the scheme with those modifications, and
 - (b) if they do not, they shall refuse the application.
- (7) The Ministers may by notice to the Board extend (or further extend) as they think fit—
- (a) the period under subsection (2)(b) above for making representations,
 - (b) the period under subsection (3)(c) above for responding to proposed modifications, or
 - (c) the period under subsection (6)(a) above for reaching agreement about what modifications should be made to the scheme.

30 Variation of approved scheme

- (1) Subject to subsection (2) below, the Ministers may approve a variation of an approved scheme on the application of the Board before the vesting day under the scheme.
- (2) The Ministers shall not approve a variation of an approved scheme unless—
- (a) they are satisfied—
 - (i) that the Board has taken reasonable steps to bring the principle of the proposed variation to the attention of persons who are registered producers, or
 - (ii) that the proposed variation is not sufficiently important to require it to be brought to their attention; and

- (b) they are satisfied that their decisions under section 28(1)(b) and (2)(a) above would not have been different had the scheme included the proposed variation.

31 Information

- (1) The Ministers may by notice require any person to supply to them such information as may be specified in the notice, being information the supply of which the Ministers consider necessary or desirable for the purpose of enabling them to carry out their functions in relation to an application under section 27 or 30 above.
- (2) A notice under subsection (1) above shall require the information to be supplied within such period as may be specified in the notice, being not less than 21 days from the date of the notice.
- (3) Where the Ministers give a notice under subsection (1) above to the Board, it shall be treated as having withdrawn its application under section 27 or, as the case may be, 30 above unless—
 - (a) it complies with the notice, or
 - (b) before the end of the period allowed for compliance, it shows to the Ministers' satisfaction that it has reasonable grounds for not doing so.
- (4) Where—
 - (a) the Ministers give a notice under subsection (1) above to the Board,
 - (b) the Board purports to comply with the notice, and
 - (c) it becomes apparent to the Ministers after the time allowed for compliance with the notice and before the application concerned has been finally determined that the Board has not in fact complied with it,the Ministers shall give the Board notice of that fact.
- (5) Where, within 14 days of the date of a notice under subsection (4) above, the Board shows to the satisfaction of the Ministers that the failure to comply with the notice under subsection (1) above was accidental and not attributable to a failure to take reasonable care, subsection (3) above shall be treated as never having had any application in relation to it.
- (6) If any person other than the Board fails without reasonable excuse to comply with a notice under subsection (1) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) If any person, in purported compliance with a notice under subsection (1) above, knowingly or recklessly supplies information which is false or misleading in a material respect, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

32 Publicity for determinations

As soon as reasonably practicable after granting an application under section 27 or 30 above, the Ministers shall make public in such manner as they think fit—

- (a) the fact that they have granted the application, and
- (b) the principles of the approved scheme or, as the case may be, of the approved variation.

*Carrying out of approved scheme***33 Functions of the Board**

The Board may do whatever is necessary for, or conducive to, the carrying out of an approved scheme in the period up to and including the vesting day under the scheme.

34 Functions of the Ministers

- (1) The Ministers shall satisfy themselves, in relation to an approved scheme, that any steps which need to be taken to enable the scheme to be carried out are taken before the vesting day under the scheme.
- (2) The Ministers may by notice require the Board to supply to them such information as may be specified in the notice, being information which they consider necessary or desirable for the purpose of enabling them to discharge their function under subsection (1) above.
- (3) A notice under subsection (2) above shall require the information to be supplied within such period as may be specified in the notice, being not less than 7 days from the date of the notice.
- (4) If, at any time before the vesting day, it appears to the Ministers—
 - (a) that the Board has failed to supply information required by a notice under subsection (2) above, or
 - (b) that steps which need to be taken to enable the scheme to be carried out are unlikely to be taken before the vesting day under the scheme,they may give the Board notice of that fact and of the reasons for it.
- (5) No notice under subsection (4) above may be given by virtue of paragraph (a) of that subsection more than 28 days after the Board has purported to comply with the notice under subsection (2) above.
- (6) The Ministers shall, by notice to the Board, withdraw a notice under subsection (4) above if they are satisfied—
 - (a) that there is no longer any ground for it, and
 - (b) that it continues to be practicable for the scheme to be carried out.
- (7) If the Board, in purported compliance with a notice under subsection (2) above, knowingly or recklessly supplies information which is false or misleading in a material respect, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

35 Statutory transfer on vesting day

- (1) On the vesting day under an approved scheme, any transfer under the scheme which—
 - (a) is a transfer of property, rights or liabilities of the Board,
 - (b) is a transfer to a body which is a qualifying body, and
 - (c) is a transfer which the scheme provides is to have effect under this section,shall have effect by virtue of this Act.
- (2) Subsection (1) above shall not apply if—

- (a) a notice under section 34(4) above has been given in respect of the scheme, and
 - (b) the notice has not been withdrawn under section 34(6) above.
- (3) For the purposes of subsection (1) above, a body is a qualifying body if it is—
- (a) a development council established under the Industrial Organisation and Development Act 1947,
 - (b) a society registered under the Industrial and Provident Societies Act 1965 which has not previously traded, or
 - (c) a company registered under the Companies Act 1985 which has not previously traded.

36 Other provisions

Schedule 4 to this Act (which makes provision in relation to or in connection with the carrying out of an approved scheme) shall have effect.

Position of Board post-revocation

37 General

The Board shall not be deemed to be dissolved by reason of the revocation of the Potato Marketing Scheme by section 26(1) above and so much of the Scheme as relates to the winding up of the Board shall (subject to any provision of regulations under section 38(2) below) continue in force notwithstanding the revocation.

38 Position following transfer under section 35

- (1) Subsections (2) to (5) below apply where property, rights and liabilities of the Board are transferred under section 35 above in accordance with an approved scheme.
- (2) The Ministers—
 - (a) shall by regulations make such provision as they think fit for the purpose of giving effect to so much of the approved scheme as relates to the Board in the period after the transfer under that section, and
 - (b) may by regulations make such provision as they think fit—
 - (i) in relation to the constitution of the Board, or
 - (ii) for the purpose of enabling the Board to wind up its affairs.
- (3) Regulations under subsection (2) above may—
 - (a) provide that, notwithstanding section 26(1) above, such provisions of the Potato Marketing Scheme as are specified in the regulations shall continue to have effect, subject to such modifications as may be so specified, or
 - (b) make such new provision as appears to the Ministers to be necessary or expedient.
- (4) Regulations under subsection (2) above may not confer a power to raise compulsory levies.
- (5) As soon as the Ministers are satisfied that the Board has carried out any remaining functions, and on being given notice by the Board that it has wound up its affairs, they

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shall, after consultation with the Board, make an order dissolving it on such day as is specified in the order.

- (6) Regulations under subsection (2) above may be made in anticipation of the application of that subsection.

39 Position in the absence of transfer under section 35

- (1) This section applies where the revocation of the Potato Marketing Scheme by section 26(1) above takes place without property, rights and liabilities of the Board having been transferred under section 35 above.
- (2) The Ministers shall present a petition for the winding up of the Board in accordance with the Potato Marketing Scheme and Schedule 2 to the Agricultural Marketing Act 1958.
- (3) If, in the event of the Board being so wound up, any assets of the Board remain after the discharge of its debts and liabilities and the payment of the costs and expenses incurred in the winding up, those assets shall be distributed to the producers who would have been by virtue of paragraph 5 of that Schedule liable to contribute in the winding up, and shall be so distributed in proportion to their respective basic areas.
- (4) For the purposes of subsection (3) above, “basic area”, in relation to a producer, means the area which was his basic area for the purposes of the Potato Marketing Scheme for the last year to have been prescribed a quota year under that scheme.

Miscellaneous

40 Power to poll registered producers

- (1) The Board may carry out a poll of persons who are registered producers in such manner as it thinks fit for the purpose of ascertaining the level of support amongst them—
- (a) for the making of any application under section 27 above, or
 - (b) for the making of an application under that section in relation to a particular scheme.
- (2) Where the Board carries out a poll under subsection (1)(a) above and a majority of the votes cast are cast against the making of any application under section 27 above, the Board shall cease to be subject to the duty imposed by subsection (1) of that section.
- (3) Where the Board carries out a poll under subsection (1)(b) above and a majority of the votes cast are cast against the making of an application under section 27 above in relation to the scheme which is the subject of the poll, no such application may be made in relation to that scheme.

41 Voting in poll under section 40

- (1) A person shall only be eligible to vote in a poll under section 40 above if—
- (a) he was registered as a producer under the Potato Marketing Scheme at noon on the day four weeks before the day of the poll (“the relevant time”), and
 - (b) he was, at the relevant time, in occupation of land which—
 - (i) was under potatoes on 1st June immediately preceding the day of the poll, or

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- (ii) was under potatoes at any time in the period beginning with 2nd June immediately preceding the day of the poll and ending with the day four weeks before the day of the poll.
- (2) A person voting in a poll under section 40 above shall be treated as having cast his standard number of votes, which shall be determined as provided below.
- (3) Where a person who is eligible to vote in a poll under section 40 above was, at the relevant time, in occupation of land which was under potatoes on 1st June immediately preceding the day of the poll, his standard number of votes shall be calculated as provided by paragraph 14(5) of the Potato Marketing Scheme, the appropriate area for the purposes of that provision being taken to be the area of such land of which he was in occupation at that time.
- (4) Where a person who is eligible to vote in a poll under section 40 above was not, at the relevant time, in occupation of land which was under potatoes on 1st June immediately preceding the day of the poll, his standard number of votes shall be one.
- (5) For the purposes of this section, a poll shall be treated as taking place on the last day for the return of voting papers.

42 Membership of the Board

- (1) No election of members of the Board (other than an election for the purpose of filling a casual vacancy) shall be held after the day specified by order under section 25 above or such later day as the Ministers may by order specify.
- (2) The term of office of any member of the Board shall, instead of expiring at any other time, expire—
 - (a) where property, rights and liabilities of the Board are transferred under section 35 above, on the day of the transfer, and
 - (b) where the Potato Marketing Scheme is revoked by section 26(1) above without property, rights and liabilities of the Board having been transferred under section 35 above, at such time as the Board is dissolved in consequence of being wound up under section 39(2) above.

43 Overriding nature of functions under Part II

Nothing done in pursuance of this Part of this Act by the Board, or by any member or officer of the Board, shall be taken to constitute a breach of any duty owed, apart from the provisions of this Part of this Act, to persons who are registered producers.

44 Functions under section 19 of the Agricultural Marketing Act 1958

The functions of a committee appointed under section 19 of the Agricultural Marketing Act 1958 (consumers' committees and committees of investigation) shall not include the consideration of anything done by the Board in connection with an application under this Part of this Act or the carrying out of an approved scheme.

45 Quota years

No calendar year shall, on or after the day specified by order under section 25 above, be prescribed a quota year for the purposes of the Potato Marketing Scheme.

46 Restriction of Agricultural Marketing Act 1958

Part I of the Agricultural Marketing Act 1958 (agricultural marketing schemes) shall cease to have effect in relation to potatoes on the day on which section 26(1) above comes into force.

Supplementary

47 Service of documents

- (1) Any document required or authorised under this Part of this Act to be served on any person may be served—
 - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address, or
 - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body, or
 - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
 - (a) in the case of service on a body corporate or its secretary, it shall be the address of the registered or principal office of the body;
 - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (3) If a person to be served under this Part of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined under subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of section 7 of the Interpretation Act 1978 in its application to this section.
- (4) In this section “secretary”, in relation to a local authority within the meaning of the Local Government Act 1972 or the Local Government (Scotland) Act 1973, means the proper officer within the meaning of that Act.

48 Consequential amendments

The Ministers may by order make such modifications of any provision contained in any Act passed, or subordinate legislation made, before the day on which section 26(1) above comes into force as appear to them to be necessary or expedient in consequence of the coming into force of that provision.

49 Interpretation of Part II

(1) In this Part of this Act—

“approved scheme” means a transfer scheme approved under section 28 above (with any variations approved under section 30 above);

“the Board” means the Potato Marketing Board;

“notice” means notice in writing;

“registered producers” means persons registered as producers under the Potato Marketing Scheme; and

“transfer scheme” has the meaning given by section 27(1) above.

(2) In this Part of this Act, references to the Ministers are to the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales, and, in relation to things done by the Ministers, are to those ministers acting jointly.