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## STATUTORY INSTRUMENTS

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# 1982 No. 1080

## The Agricultural Marketing (Northern Ireland) Order 1982

### PART III

#### AGRICULTURAL MARKETING SERVICE SCHEMES

##### *Submission and approval of schemes*

##### ***Agricultural marketing service schemes***

**30.**—(1) This Part makes provision for agricultural marketing service schemes for the marketing of a specified product by the producers thereof under which—

- (a) producers of the specified product and the board administering the scheme may contract for the sale of the specified product by the producers to the board;
- (b) the board may exercise in relation to that product the powers conferred on it by the scheme and by this Part.

(2) An agricultural marketing service scheme may be—

- (a) a transitional scheme under Article 31;
- (b) a scheme under Article 32 (change-over from scheme under Part II); or
- (c) a substitutional scheme under Article 33.

(3) The application of a scheme shall not be restricted to any particular part or parts of Northern Ireland.

##### ***Transitional scheme—The Pigs Marketing Board (Northern Ireland)***

**31.**—(1) The Pigs Marketing Board (Northern Ireland) shall, within the period of six months beginning with the date of which this Order is made, prepare and submit to the Department a pigs marketing service scheme.

(2) The Department, after consultation with the Pigs Marketing Board (Northern Ireland) and with representatives of any other interests appearing to the Department to be directly affected by the scheme, may make such modifications in a scheme submitted under paragraph (1) as it thinks proper.

(3) The Department shall make an order approving the scheme submitted to it under paragraph (1) (or that scheme as modified under paragraph (2), as the case may be).

(4) A scheme under this Article shall provide—

- (a) that the Pigs Marketing Board (Northern Ireland) shall continue in existence as constituted under the scheme;
- (b) that a person who immediately before the date on which the scheme comes into force is registered as a producer under the Pigs Marketing Scheme (Northern Ireland) 1933<sup>F1</sup> and, during the period of 12 months immediately preceding that date, has—
  - (i) sold pigs to the Pigs Marketing Board (Northern Ireland); and

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(ii) not given notice in writing to the Board that he no longer wishes to sell pigs to the Board.

shall on that date be enrolled as producer under the scheme;

(c) for such other transitional provisions as appear to the Board or the Department (as the case may be) to be necessary or expedient in the circumstances.

(5) A scheme approved by an order under paragraph (3) shall come into force on such date as may be specified in the order.

(6) If the Pigs Marketing Board (Northern Ireland) does not comply with paragraph (1) within the period mentioned in that paragraph, the Department may by order revoke the Pigs Marketing Scheme (Northern Ireland) 1933.

(7) In this Article—

“the Pigs Marketing Board (Northern Ireland)” means the Pigs Marketing Board (Northern Ireland) constituted under the Pigs Marketing Scheme (Northern Ireland) 1933;

“pigs marketing service scheme” means a scheme for the marketing of pigs.

**F1** SR & O (NI) 1933 No. 93

### ***Change-over from scheme under Part II to agricultural marketing service scheme***

**32.**—(1) A board administering an agricultural marketing scheme under Part II regulating the marketing of an agricultural product may at any time prepare and submit to the Department an agricultural marketing service scheme for the marketing of that product.

(2) The Department, after consultation with the board administering the agricultural marketing scheme and with representatives of any other interests appearing to the Department to be directly affected by the scheme, may make such modifications in a scheme submitted under paragraph (1) as it thinks proper.

(3) The Department shall make an order approving the scheme submitted to it under paragraph (1) (or that scheme as modified under paragraph (2) as the case may be).

(4) A scheme prepared under paragraph (1) shall provide—

(a) for the continuation in existence as constituted under the scheme of the board which administered the agricultural marketing scheme;

(b) that a person who immediately before the date on which the scheme comes into force is registered as a producer under the agricultural marketing scheme shall on that date be enrolled as a producer under the scheme;

(c) for such other transitional provisions as appear to the board preparing the scheme to be necessary or desirable in the circumstances.

(5) A scheme approved by an order under paragraph (3) shall come into force in such date as may be specified in the order.

### ***Substitutional schemes***

**33.**—(1) A substitutional scheme may be submitted to the Department by the board or boards administering the scheme or schemes revoked by the substitutional scheme.

(2) Before a substitutional scheme is submitted to the Department under paragraph (1) it shall be published in the prescribed manner to all producers enrolled under the scheme or schemes revoked by it and if, within the prescribed period after it has been so published to producers enrolled under a scheme revoked by it, a poll on the question whether it shall be submitted to the Department

is demanded by the prescribed number or the prescribed proportion, as the case may be, of the producers enrolled under the scheme revoked, the substitutional scheme shall not be submitted to the Department unless a poll on that question has been taken and the result thereof shows that the requisite majority of those producers has voted in favour of its submission.

(3) In paragraph (2) “prescribed” means, in relation to a scheme revoked by a substitutional scheme, prescribed by the scheme revoked.

(4) The Department, after complying with Schedule 4, shall make an order approving the substitutional scheme submitted to it under paragraph (1) (or that scheme as modified under that Schedule, as the case may be).

(5) A substitutional scheme approved by an order under paragraph (4) shall come into force on such date as may be specified in the order.

#### ***Amendment and revocation of schemes***

**34.**—(1) An amendment of a scheme may be submitted to the Department by the board.

(2) Before an amendment of a scheme is submitted to the Department under paragraph (1) the amendment shall be published in the prescribed manner to all enrolled producers and if, within the prescribed period after it has been so published, a poll on the question whether it shall be submitted to the Department is demanded by the prescribed number or the prescribed proportion, as the case may be, of the enrolled producers, the amendment shall not be submitted to the Department unless a poll on that question has been taken and the result thereof shows that the requisite majority of enrolled producers had voted in favour of its submission.

(3) In paragraph (2) “prescribed” means prescribed by the scheme.

(4) The Department, after complying with Schedule 4, shall make an order approving the amendment submitted to it under paragraph (1) (or that amendment as modified under that Schedule, as the case may be).

(5) An amendment approved by an order under paragraph (4) shall come into force on such date as may be specified in the order.

(6) A scheme may be revoked in accordance with the provisions of Schedule 5.

#### *Provisions which may or must be included in schemes*

#### ***Constitution of boards to administer schemes***

**35.**—(1) Every scheme shall constitute a board to administer the scheme.

(2) The provisions of Schedule 6 shall have effect with respect to the incorporation, constitution, registration and winding up of boards.

#### ***Enrolment of producers***

**36.**—(1) Every scheme shall provide for the enrolment of any producer who—

- (a) has entered into such contracts for the sale to the board of the specified product as in accordance with the terms of the scheme qualify him for enrolment; and
- (b) complies with such other conditions as are specified in the scheme.

(2) Enrolment under a scheme of the name or style under which two or more persons carry on business in partnership as producers shall operate as the enrolment of all the partners for the time being; but for the purposes of the provisions of this Part and of the scheme which relate to elections, polls and voting at meetings, and to the assessment of contributions on enrolled producers, all the partners shall be treated as constituting together a single enrolled producer.

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(3) Every scheme shall provide for the removal from the roll of producers of the names of persons who no longer fulfil the conditions referred to in paragraph (1).

### ***Powers of boards***

**37.**—(1) A scheme may provide—

- (a) for empowering the board to buy the specified product or goods wholly or partly manufactured or derived from that product, to produce goods wholly or partly manufactured or derived from that product, and to sell, grade, pack, store, adapt for sale, insure, advertise, promote the sale of and transport the specified product and any goods so bought or produced by the board;
- (b) for empowering the board to manufacture or acquire, and to sell or let for hire to enrolled producers and other persons, anything required for the production, grading, packing, storing, adaptation for sale, transport or sale of the specified product;
- (c) for empowering the board to render to enrolled producers and other persons, on payment or otherwise, any service which is calculated to promote the more efficient production, grading, packing, storing, adaptation for sale, transport or sale of the specified product or any goods an ingredient of which is derived from that product;
- (d) for empowering the board to co-operate with any other person in doing anything which the board is or might be empowered to do so by virtue of any of the foregoing provisions of this paragraph;
- (e) for empowering the board to do anything calculated to procure, promote or facilitate the doing by any other person of anything in the doing of which the board is or might be empowered to co-operate by virtue of sub-paragraph (d);
- (f) for regulating the manner in which the specified product to be sold to the board or any description or quantity thereof is to be graded by or on behalf of enrolled producers, or the manner in which such specified product or any description or quantity thereof is to be marked, packed, stored, adapted for sale, insured, advertised or transported by or on behalf of enrolled producers;
- (g) without prejudice to any functions of the Department under section 5 of the Agriculture Act (Northern Ireland) 1949, for enabling the board to encourage, promote or conduct agricultural co-operation, research and education;
- (h) for empowering the board to acquire, hold and dispose of securities in, and arrange for the formation of, a body corporate one of whose objects is to do anything which the board is or might be empowered to do by virtue of sub-paragraph (a), (b) or (c), and for regulating the exercise by the board of any powers exercisable by it in relation to the appointment of directors of any such body corporate;
- (i) for empowering the board to do such other things as appear to the board to be complementary or supplementary to anything which the board is or might be empowered to do so by virtue of any of the foregoing provisions of this paragraph.

(2) A provision included in a scheme by virtue of paragraph (1)(a) shall be so framed as to secure that, in any period of two years, at least one half of the specified product bought by the board is bought from enrolled producers.

### ***Miscellaneous provisions of schemes***

**38.**—(1) Every scheme shall provide for the manner in which polls are to be taken for the purposes of this Part and in particular but without prejudice to the generality of the foregoing provision—

- (a) may apply with any necessary modifications any statutory provision (including the penal provisions thereof) relating to parliamentary, Assembly or local government elections and to the prevention of corrupt and illegal practices thereat;
  - (b) may prescribe the information relating to the specified product which is to be furnished by every enrolled producer before or at the time of voting, and the manner in which the information is to be furnished, and may require the rejection of the vote of any producer who fails to furnish the prescribed information in the prescribed manner, and may impose penalties for furnishing false information;
  - (c) shall prescribe the manner in which the result of the poll is to be declared and published.
- (2) Every scheme shall provide for the calling by the board of annual general and other meetings of enrolled producers and may make provision for the business to be conducted at such meetings.
- (3) A scheme may provide—
- (a) for securing that where, by reason of an enrolled producer dying, or becoming subject to some legal disability, or entering into a composition or scheme of arrangement with his creditors, any property in, or control of, the specified product is transferred from the enrolled producer to a personal representative, trustee, assignee, committee or other person, the personal representative, trustee, assignee, 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 an enrolled producer;
  - (b) for such other matters as are incidental to or consequential on the provisions of this Part relating to the contents of schemes or are necessary for giving effect to those provisions.

*Financial powers and duties of boards*

***Schemes to provide for establishment of a fund, investment, accounting, etc.***

- 39.** Every scheme shall provide—
- (a) for the establishment of a fund (in this Article referred to as “the fund”) to be administered and controlled by the board, for the payment into the fund of all moneys received by the board, and for the payment out of the fund of any moneys required by the board for the operation of the scheme or otherwise for the purposes of this Part;
  - (b) for the distribution, in such manner as may be provided by the scheme, of all moneys standing to the credit of the fund which are not required for the operation of the scheme or otherwise for the purposes of this Part;
  - (c) for the manner in which the moneys of the board may be invested;
  - (d) for the accounts to be kept by the board and for the audit of those accounts;
  - (e) for the furnishing by the board to the Department and to enrolled producers of accounts, returns and other information, including (without prejudice to the generality of the foregoing)—
    - (i) an annual balance sheet and either an annual profit and loss account or, in the case of a board which does not trade for profit, an annual income and expenditure account;
    - (ii) an annual statement in accordance with Schedule 3;
    - (iii) a statement of the manner in which any moneys of the board are invested;
  - (f) for the furnishing by the board, on payment of such reasonable fee (if any) as the board may determine, of a copy of the balance sheet of the board to any person requiring it.

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### ***Power of boards to make loans to enrolled producers***

**40.** A scheme may provide for empowering the board to pay on account or lend to any enrolled producer a portion in the amount which the board estimates that he will receive from the sale of any quantity of the specified product produced or in course of production of held in store by him.

### ***Borrowing power of boards and provisions as to loans and grants made to boards***

**41.—(1)** Every scheme shall provide for empowering the board to borrow money for the purpose of exercising its functions under the scheme.

(2) A board shall have power to accept from any other person any grant to be applied for any of the purposes for which the board is empowered to expend money.

(3) A scheme may provide for empowering the board, in any case where a loan or grant is proposed to be made to it, to agree with the person proposing to make the loan or grant, as the case may be, and, in the case of a loan, with any person proposing to guarantee the repayment thereof, that if the loan or grant is duly made or the guarantee duly given, the board will apply the money obtained by it by means of the loan or grant subject to such conditions (including conditions as to the persons on whose advice the board is to act in applying the said money) as may be specified in the agreement.

(4) Where a scheme provides for empowering the board to make any such agreement as aforesaid, the scheme shall impose upon the board the duty of carrying into effect any such agreement entered into by it.

### *Relations of board with Department*

### ***Action following report by Monopolies and Mergers Commission***

**42.—**<sup>F2</sup>(1) Paragraph (1D) applies in any of the following cases.

(1A) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.

(1B) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.

(1C) The third case is where—

- (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
  - (i) certain matters indicated in the report operate against the public interest, and
  - (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
- (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).

(1D) The Department, if it thinks fit so to do—

- (a) may by order make such amendments in the scheme as it considers 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 to rectify, may by order direct the board to take such steps to rectify the matter as may be specified in the order, and thereupon it shall be the duty of the board forthwith to comply with the order.]

(2) Before taking any action under<sup>[F2]</sup> paragraph (1D)] the Department shall give the board notice of the action which it proposes to take and shall consider any representations made by the board within 28 days after the date of the notice.

(3) The Department may at any time, after consultation with the board concerned, by order revoke or vary any order in force under<sup>[F2]</sup> paragraph (1D)(c)] so as either—

- (a) to withdraw the whole or any part of the directions in force thereunder; or
- (b) to vary or add to those directions in any manner which it thinks necessary or expedient in order better to attain the purposes for which those directions were given;

but, except with the consent of the board, the Department shall not vary or add to any directions under sub-paragraph (b) where, in its opinion, the need for the variation or addition arose from circumstances not obtaining at the date when the directions were given.

(4) Any order made under paragraph (3) shall state the general nature of the reasons for the making thereof.

(5) Any order made under<sup>[F2]</sup> paragraph (1D)(a) or (c)] or paragraph (3) shall be subject to negative resolution, and any order made under<sup>[F2]</sup> paragraph (1D)(b)] shall be subject to affirmative resolution.

<sup>[F3]</sup>(5A) Any order made under this Article in a case falling within paragraph (1A) or (1B) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).]

**F2** 2002 c. 40

**F3** 2002 c. 40

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