



# Agricultural Marketing Act 1958

1958 CHAPTER 47 6 and 7 Eliz 2

## PART I

### AGRICULTURAL MARKETING SCHEMES

#### *Imposition of penalties, etc.*

#### **9 Disciplinary provisions of schemes.**

- (1) Every scheme shall be so framed as to secure that there is a committee of the board, to be known as the disciplinary committee, constituted, at each sitting thereof, of not less than four nor more than six members of the board and a chairman who is not a member of the board but is an independent person [<sup>F1</sup>who—
- (a) has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) is an advocate or solicitor in Scotland of at least 7 years' standing; or
  - (c) is a member of the Bar of Northern Ireland or [<sup>F2</sup>solicitor of the Court of Judicature of Northern Ireland ] of at least 7 years' standing,
- and is approved by the Minister.]
- (2) Subject to the provisions of this section, every scheme shall require the disciplinary committee to impose on, and the board to recover from, any registered producer who contravenes any provision of the scheme made in pursuance of any of the provisions of this Act which are specified in the next following subsection such monetary penalties as may be specified by the scheme, so however that no such penalty shall be imposed in respect of a contravention of the scheme which constitutes an offence under this or any other Act.

Except in the case of a substitutional scheme, the operation of any provision of a scheme made in pursuance of this subsection shall be suspended until the expiration of the suspensory period.

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- (3) The provisions of this Act referred to in the last foregoing subsection are subsection (2) of section six, paragraphs (a), (b), (c), (h) and (i) of subsection (1) of section seven and subsection (2) of section eight.
- (4) Every scheme shall be so framed as to secure—
- (a) that no penalty is imposed on a registered producer for a contravention of any provision of the scheme made in pursuance of any of the provisions of this Act which are specified in the last foregoing subsection except after a hearing by the disciplinary committee and by the decision thereof, taken in accordance with the opinion of all or the majority of the members thereof;
  - (b) that notice of the time and place of every such hearing and a written statement of the charge against the producer in question is served personally or by registered post on that producer at least fourteen days before the hearing;
  - (c) that no penalty is imposed for any such contravention which occurred more than six years, or such less time as is specified in the scheme, before the service of the said written statement of the charge;
  - (d) that, where such a written statement of a charge against a producer has been sent to or served on him as aforesaid and the charge is withdrawn or is not substantiated before the said committee, the board have the power, and, to such extent as the said committee may decide, the duty, to make payments to the producer in respect of his costs in connection with the charge; and
  - (e) that, in such circumstances and subject to such conditions as may be specified in the scheme, the said committee have the power and the duty to reconsider and, if need be, vary their decisions and that effect is given to any such variation.
- (5) For the purposes of paragraph (b) of subsection (1) of section eight of this Act and of any provision of a scheme made in pursuance of that paragraph, acts or omissions of the disciplinary committee shall be deemed to be acts or omissions of the board.
- (6) Every hearing by the disciplinary committee of a board shall be held in public unless the committee for special reasons direct that the whole or part thereof shall not be so held.
- (7) The chairman of the disciplinary committee of a board may direct that any evidence given at a hearing by the committee shall be given on oath and may for that purpose administer oaths.
- (8) If, at any sitting of the disciplinary committee of a board, there is an equal division of opinion on any question, the opinion of the chairman shall prevail, and the reference in paragraph (a) of subsection (4) of this section to the opinion of the majority of the members of such committee shall be construed accordingly.

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**Textual Amendments**

- F1** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 12**
- F2** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 5**; S.I. 2009/1604, art. 2(d)
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**Modifications etc. (not altering text)**

- C1** S. 9(4)(b) amended by [Recorded Delivery Service Act 1962 \(c. 27\)](#), **Sch. para. 5**

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## **10 Losses sustained by boards to be recoverable in the same way as penalties.**

- (1) Where a contravention of a provision of a scheme (being a contravention for which the disciplinary committee have the duty to impose, and the board the duty to recover, a penalty) causes loss to the board, the disciplinary committee may, if the written statement of the charge served on the producer in accordance with the provisions of subsection (4) of the last foregoing section embodies an estimate by the board of the amount of the loss, together with a statement of the grounds on which that estimate is based, require by their decision that the producer shall pay to the board, in addition to any penalty imposed, such sum, to be stated in the decision, as the committee may think fit, not exceeding the sum which appears to the committee justly to represent the amount of the loss.

Provided that the amount so stated in the decision shall not exceed the amount stated in the said estimate.

- (2) Where the written statement of the charge served on a producer in accordance with the provisions of subsection (4) of the last foregoing section embodies such an estimate of the loss caused to the board as is referred to in subsection (1) of this section, no loss caused to the board by the contravention to which the charge relates shall be recoverable from the producer otherwise than in the manner for which provision is made by subsection (1) of this section, and, whether or not the written statement of the charge embodies such an estimate as aforesaid, the penalty itself shall not be fixed with a view to recovering the whole or any part of any loss caused to the board by the contravention.
- (3) Where such a contravention as aforesaid is concerned with the giving of information or returns to the board and as a result of the contravention the board fail to assess on or demand from the producer a contribution or other payment, or the full amount of a contribution or other payment, which they are entitled to receive from him, the contribution or payment, or the amount not assessed or demanded, as the case may be, shall, if the board so elect by including an estimate of the amount thereof in the written statement of the charge served on the producer in accordance with the provisions of subsection (4) of the last foregoing section, be treated for the purposes of this section as lost to the board by reason of the contravention.

## **11 Power to postpone imposition of penalty.**

So much of any scheme as, in pursuance of subsection (2) of section nine of this Act, requires the disciplinary committee to impose penalties on a registered producer and the board to recover penalties from such a producer shall not be construed as preventing the disciplinary committee, if they find that a contravention has occurred, from postponing the imposition of a penalty for such period, not exceeding twelve months, as may be specified in the scheme, but save as aforesaid nothing in this section, in subsections (4) to (8) of the said section nine or in the last foregoing section shall be construed as derogating from the duty to impose and recover penalties which is required by the said subsection (2) to be provided for by every scheme.

## **12 Enforcement of decisions of disciplinary committee and power to state cases.**

- (1) [F<sup>3</sup>Sections 45 and 69 of the Arbitration Act 1996 (which relate to the determination by the court of questions of law) and section 66 of that Act (enforcement of awards) apply] in relation to the hearing and determination of the matters which by virtue of any of the provisions of this Act are referred to the disciplinary committee of a board, and

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in relation to the enforcement of the decisions of that committee, as if the proceedings were [<sup>F3</sup>arbitral proceedings] under an arbitration agreement to which the board and the producer were parties and as if the disciplinary committee were the arbitrator or umpire appointed by the agreement.

- (2) Subsection (1) of this section shall not apply to Scotland and the following provisions shall have effect in Scotland in lieu thereof—
- (a) the disciplinary committee of a board may, and if so directed by the Court of Session shall, state a case for the opinion of that Court on any question of law arising in the proceedings relating to any matter referred to the committee by virtue of any of the provisions of this Act, and an appeal shall lie with the leave of the Court of Session or of the [<sup>F4</sup>Supreme Court] from any decision of the Court of Session under this paragraph and such leave may be given on such terms as to expenses or otherwise as the Court of Session or the [<sup>F4</sup>Supreme Court] may determine;
  - (b) any decision of a disciplinary committee in such proceedings as aforesaid may be recorded for execution in the books of council and session, and shall be enforceable accordingly.

#### Textual Amendments

- F3** Words in s. 12(1) substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 12** (with s. 81(2)); S.I. 1996/3146, **art. 3**.
- F4** Words in s. 12(2)(a) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 11**; S.I. 2009/1604, art. 2(d)

**Changes to legislation:**

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