



Sea Fish Industry Act 1938

1938 CHAPTER 30

An Act to make provision for the better organisation of the white fish industry; to amend the Sea-Fishing Industry Act, 1933, the Whaling Industry (Regulation) Act, 1934, Part IV of the Merchant Shipping Act, 1894, and other enactments relating to sea fisheries; and to make provision for purposes connected with the matters aforesaid. [2nd June 1938.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I

ORGANISATION OF WHITE FISH INDUSTRY

The White Fish Commission and the White Fish Industry Joint Council

1 Constitution and general functions of White Fish Commission

- (1) There shall be constituted a Commission to be called " the White Fish Commission " (hereafter in this Act referred to as " the Commission "), which shall have the functions of keeping generally under review matters relating to the white fish industry, and of advising and assisting the Ministers in such matters as aforesaid, and such other functions as are entrusted to the Commission by or under the following provisions of this Act.
- (2) The Commission shall consist of five members appointed by the Ministers.
- (3) The Ministers may appoint a secretary to the Commission, and the Commission may appoint such other officers, and such servants, as the Ministers may, with the approval of the Treasury, determine.

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- (4) The incidental provisions contained in the First Schedule to this Act shall have effect in relation to the Commission.

2 White Fish Industry Joint Council

- (1) For the purpose of giving advice and assistance to the Commission in the discharge of its functions, there shall be constituted a council for Great Britain to be called the White Fish Industry Joint Council (hereafter in this Act referred to as " the Joint Council ").
- (2) The Joint Council shall consist of a chairman appointed by the Ministers as being an independent person, and such other members as may be appointed by the Ministers to represent respectively the interests of persons who carry on in Great Britain any of the following businesses, that is to say,—
- (a) the business of a home producer of white fish,
 - (b) the business of selling white fish by wholesale,
 - (c) the business of a fishmonger,
 - (d) the business of a fish frier, and
 - (e) the business of curing, salting, drying, smoking or canning white fish,
- and any such other interests (including the interests of fishermen and others who are employed by persons engaged in the white fish industry) as the Ministers consider to be immediately affected, or likely to be immediately affected, by the operation of this Part of this Act.

Any of the businesses specified in paragraphs (a) to (e) of this subsection is hereafter in this Part of this Act referred to as " a designated business."

- (3) For the purposes of this Part of this Act, a person shall be deemed to carry on the business of selling white fish by wholesale if, in the course of any business carried on by him, he sells any white fish to a person who buys the fish for the purpose of selling them again, and shall be deemed to carry on the business of a fishmonger if, in the course of any business carried on by him, he sells white fish by retail:

Provided that—

- (a) a sale of white fish by auction effected at a port by or on behalf of the catcher of the fish shall be deemed not to be a sale by wholesale ;
- (b) a person shall not be taken to carry on the business of selling white fish by wholesale, or the business of a fishmonger, by reason only that he sells white fish preserved in any airtight container;
- (c) a person shall not be taken to carry on the business of a fishmonger by reason only that at any premises he sells white fish for consumption at those premises; and
- (d) a sale of white fish to a person who, in the course of carrying on any business other than that of a fish frier, buys white fish for the purpose only of selling them again in a condition in which they are ready for eating without further treatment, shall be deemed to be a sale by retail and not a sale by wholesale ;

and, whenever a person whose business or part of whose business it is to buy white fish for the purpose of selling them again buys any white fish, he shall, until the contrary is proved, be deemed to buy the fish for that purpose.

- (4) For the purposes of this Part of this Act, a person shall not be taken to carry on the business of curing or salting white fish by reason only that, in the course of the business of catching and landing white fish, he cures or salts white fish on board a vessel.
- (5) Before appointing a person to be a representative member of the Joint Council, the Ministers shall consult such bodies (if any) as appear to them to be representative of the interests concerned.
- (6) The incidental provisions contained in the Second Schedule to this Act shall have effect in relation to the Joint Council.

Regulation of the white fish industry under the administration of the Commission

3 Registration of persons engaged in the white fish industry

- (1) It shall be the duty of the Commission to keep a register (hereafter in this Part of this Act referred to as "the Commission's register") of persons carrying on in Great Britain any designated business; and the Commission, on application made by any person to be registered in the Commission's register as a person carrying on such a business in Great Britain and on payment of any fee which, by virtue of the following provisions of this Part of this Act, is payable on such application, shall register him in the said register as a person carrying on that business.
- (2) Subject to the following provisions of this Part of this Act, no person shall, after the expiration of the appropriate period beginning at the commencement of this Act, carry on a designated business unless he either is registered in the Commission's register as a person carrying on that business or is exempt, by virtue of the following provisions of this Part of this Act, from the obligation to be registered as aforesaid; and if any person contravenes this 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.

In this subsection the expression "the appropriate period" means, in relation to the business of a home producer of white fish, the period of two months or, in relation to any other designated business, the period of six months.

- (3) The Commission's register shall be so kept as to show—
 - (a) in relation to a person registered as carrying on the business of a home producer of white fish, the number of fishing boats which for the time being are in the possession of that person; and
 - (b) in relation to a person registered as carrying on any other designated business, the several premises at which for the time being he carries on that business in Great Britain, and (if and so far as that business involves the use of vehicles for the purpose of offering or exposing white fish thereon for sale) the number of vehicles used or intended to be used for that purpose which for the time being are in his possession in Great Britain.
- (4) A person shall, on making application to be registered in the Commission's register, and also on demand made by the Commission at any time while his name appears in that register, furnish to the Commission such information as it may require for the purpose of performing its duties under this section, and any person registered in the Commission's register as carrying on a designated business shall, whenever requested

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in writing by the Commission so to do, make to the Commission a written declaration stating whether or not he is carrying on that business as a nominee of another person, and, if so, specifying the name of that other person.

- (5) The Commission may, either absolutely or subject to limitations, exempt any class of persons from any obligation to be registered in the Commission's register as carrying on a designated business; and the Commission, on being satisfied that a person whose name is entered in the Commission's register as a person carrying on a designated business has ceased to carry on that business in Great Britain, shall delete that entry in the register.
- (6) The Commission's register shall, at all reasonable times, be open to public inspection at the office of the Commission, and any person shall be entitled to take a copy of any entry in the said register.

4 Power of Commission to regulate marketing of white fish

- (1) The Commission may make regulations—
 - (a) for securing that, subject to any exemption for which provision may be made by the regulations, white fish of any description or quality defined by the regulations shall not be sold, or consigned, offered or exposed for sale, unless such designation, mark or other means for indicating that the fish are of the said description or quality as may be prescribed by the regulations is used in relation to the fish, in such manner as may be so prescribed;
 - (b) for prohibiting, except in relation to white fish of such description or quality as may be so defined, the use, in any manner or circumstances specified in the regulations, of such designation, mark or other means as may be so prescribed for indicating that such fish are of that description or quality :

Provided that regulations under this subsection shall be of no effect if and so far as they are inconsistent with any regulations made with regard to fishery produce under section one or section two of the Agricultural Produce (Grading and Marking) Act, 1928, as amended by the Agricultural Produce (Grading and Marking) Amendment Act, 1931.

- (2) With a view to improving the condition in which white fish are offered for sale, the Commission may make regulations for determining the manner in which white fish are to be graded or packed for purposes of trade.
- (3) The Commission may make regulations regulating the carrying on, in Great Britain, of any of the businesses of curing, salting, drying, smoking or canning white fish—
 - (a) by prescribing the quality of white fish which may be used for the purpose of that business, and the manner and extent to which any process applied to white fish in the course of that business is to be so applied;
 - (b) by prescribing the condition in which premises, plant and utensils used for the purpose of that business are to be maintained;
 - (c) by making provision for securing the cleanliness and purity of the materials used in treating white fish for the said purpose.
- (4) The Commission may make regulations—
 - (a) for regulating the holding and conduct of auctions in respect of white fish, and, in particular, for fixing or limiting the number of places at which such auctions may be separately held at any one place or set of premises at the same time;

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- (b) for fixing or limiting the charges that may be made by any person in respect of sales of white fish which are effected by him on behalf of another person (whether by auction or on commission or otherwise), or in respect of goods supplied, or services rendered, by him in connection with the consignment of white fish to him for sale as aforesaid;
 - (c) for requiring that where, in the case of any white fish consigned for sale on commission, the salesman makes a charge by way of commission or otherwise, he shall enter in a book kept by him for the purpose the names of the owner or consignor of the fish and of every purchaser, and the price paid or agreed to be paid by each purchaser, and shall, as soon as practicable after the sale, send by post or deliver to the owner or consignor an account containing the following particulars :—
 - (i) the actual price paid or agreed to be paid for the fish and, where there is any variation in price, the number, weight or quantity sold, or agreed to be sold, at each price,
 - (ii) the commission or other charge made by the salesman for selling the fish, together with details of any charges made for services in connection with the sale,
 - (iii) the amounts, if any, paid or payable by the salesman on behalf of the owner or consignor in connection with the sale, with details thereof, and
 - (iv) if any of the fish are bought by the salesman or by any person on his behalf, a statement that those fish have been so bought.
- (5) Any person carrying on the business of effecting sales of white fish by auction or of selling white fish by wholesale or the business of a person who effects sales of white fish consigned to him for sale on commission shall, on demand made in that behalf by any person authorised in writing by the Commission, produce to the person so authorised, and allow him to examine, such books and other documents relating to the said business as he may reasonably require for the purpose of enabling the Commission to enforce any regulations having effect by virtue of paragraph (b) or paragraph (c), as the case may be, of the last preceding subsection and any such regulations may require persons carrying on business as aforesaid to keep, in such form as may be prescribed by or under the regulations, such books and other documents as the Commission considers necessary for the said purpose.
- (6) Any regulations under subsection (2), subsection (3) or subsection (4) of this section may be made so as to relate only to a particular area or a particular description of white fish.
- (7) Regulations under this section may provide, in relation to any provisions of such regulations, that a person contravening those provisions shall be liable on summary conviction to such penalties, not exceeding a fine of one hundred pounds or imprisonment for a term of three months or both, as may be specified in the regulations.
- (8) With a view to securing compliance with any regulations having effect by virtue of this section, any person authorised in that behalf in writing by the Commission shall, on producing, if so required, some document showing his authority, have a right to enter and inspect, at any reasonable time, any vessel or premises which the Commission has reasonable cause to believe to be used by way of trade for any purpose connected with the marketing of white fish.

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- (9) Where the amount of any charge is fixed or limited by virtue of any regulations under this section, no sum shall, by way of that charge, be recoverable in excess of the amount at or to which it is so fixed or limited; and if any sum is paid by any person from whom, by virtue of this subsection, it is not recoverable, the amount of that sum shall be a debt due to that person from the person to whom the sum is paid.
- (10) No regulations under this section shall be of any effect unless and until they have been confirmed by the Ministers, and the provisions of the Third Schedule to this Act shall have effect with respect to the making, confirmation and publication of such regulations.

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.
- (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.

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;

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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 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

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- (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
 - (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 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.

- (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 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.
- (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,

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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 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

Status: This is the original version (as it was originally enacted).

- (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 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.

Co-operative Schemes for In-shore Fishermen

18 Co-operative schemes

- (1) If, with respect to any class of persons carrying on the business of a home producer of white fish within an area in Great Britain, the Commission is satisfied—
 - (a) that no useful purpose would be served by the application of a marketing scheme to such persons, and
 - (b) that measures should be taken to promote co-operation between such persons in the marketing of white fish,

the Commission may, subject to the following provisions of this Part of this Act, submit to the appropriate Minister a scheme (hereafter in this Part of this Act referred to as "a co-operative scheme") applicable to that area, for enabling a body constituted under the scheme as representing the interests of such persons as aforesaid (hereafter in this Part of this Act referred to as "the authorised body") to exercise such control,

and perform such services, as may be authorised under the following provisions of this section.

- (2) A co-operative scheme may make provision—
- (a) incorporating the authorised body, providing for the manner in which that body is to be constituted, and specifying the class of persons whose interests are to be represented by that body;
 - (b) enabling the authorised body—
 - (i) to direct that no person registered under the scheme shall sell white fish, or any particular description of white fish, otherwise than to or through the agency of the authorised body or such persons as that body may designate;
 - (ii) to acquire, deal with and dispose of white fish, and any such other property as the said body considers it desirable, for the discharge of its functions under the scheme, to acquire;
 - (iii) to purchase on behalf of, or to make arrangements for supplying to, persons registered under the scheme any such things as are required by them for the carrying on of their business;
 - (iv) to take such other measures as the authorised body thinks desirable with a view to promoting or encouraging economy and efficiency in the carrying on of their business by such persons as aforesaid;
 - (v) to co-operate with any persons in the exercise of any powers conferred upon the authorised body by virtue of sub-paragraphs (ii), (iii) and (iv) of this paragraph;and to make such charges in respect of services performed by the said body as may be authorised 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 authorised body;
 - (d) for securing that the expenses lawfully incurred by the authorised body in connection with the operation of the scheme shall be defrayed by means of contributions to be made to that body by persons registered under the scheme, and for the assessment and recovery of such contributions ;
 - (e) for requiring persons registered under the scheme to furnish to the authorised body such estimates, returns, accounts and other information as that body considers necessary for the operation of the scheme;
 - (f) for the reference to arbitration 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.
- (3) A co-operative scheme containing such provisions as are authorised by sub-paragraph (i) of paragraph (b) of subsection (2) of this section shall be of no effect unless provision is made by such a scheme requiring the authorised body to impose on, and to recover from, any person who contravenes or fails to comply with the said provisions such monetary penalties as may be specified in the scheme:

Provided that a co-operative 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.

19 Registration under co-operative schemes

- (1) A co-operative scheme shall be of no effect unless provision is made by the scheme whereby any person of the class whose interests are, by virtue of the scheme, to be represented by the authorised body is entitled, on application made by him in that behalf, to be registered under the scheme; and the scheme may provide that, on and after such date as may be specified in the scheme, no such person shall carry on business as a home producer of white fish in the area to which the scheme is applicable, unless he is either registered under the scheme or, by virtue of the provisions of the scheme, exempt from registration thereunder.
- (2) If any person carries on business in contravention of any provisions of a co-operative 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.
- (3) If and so long as any person is registered under a co-operative scheme,—
 - (a) he shall be exempt from any obligation to be registered in the Commission's register, or under a producers' marketing scheme, as carrying on the business of a home producer of white fish, and
 - (b) it shall be the duty of the Commission and of the board administering any producers' marketing scheme to secure that he is not so registered as aforesaid.

20 Provisions with respect to submission, confirmation, amendment and revocation of co-operative schemes

- (1) Where a co-operative scheme is duly submitted to the appropriate Minister, then, if he is satisfied—
 - (a) that the scheme is likely to promote efficiency or economy in the production and marketing of white fish or to increase the demand for white fish, and is desirable in the public interest, and
 - (b) that there is a preponderating opinion in favour of confirmation of the scheme among the persons of the class whose interests are by virtue of the scheme to be represented by the authorised body,
 he may, subject to the following provisions of this section, lay a draft of the scheme before Parliament, and if each House of Parliament resolves that the scheme be approved, the appropriate Minister shall make an order confirming the scheme in terms of the draft.
- (2) The Commission shall, before submitting a cooperative scheme to the appropriate Minister, cause to be published, in such manner as he may direct, 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 said Minister) at which such copies will be supplied, and the time (not being less than twenty-eight days after publication of the notice) within which objections to the scheme and representations with respect thereto may be made in writing to the said Minister.
- (3) The appropriate Minister, before laying the draft of a co-operative scheme before Parliament, shall consider any objections to the scheme and representations with respect thereto which have been duly made to him, and may, after holding such

inquiries (if any) as he thinks fit, make such modifications in the scheme as he may, after consulting the Commission, consider desirable :

Provided that—

- (a) where an objection to the scheme has been duly made by any person appearing to the appropriate Minister to be affected thereby, and has not been withdrawn, the said Minister, unless he considers 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 with respect to the scheme, direct the holding of an inquiry with respect to the objection and consider the report of the person holding the inquiry; and
 - (b) if the appropriate Minister decides to make any modifications in the scheme, he shall cause notice of the proposed modifications to be published in such manner as he thinks best adapted for informing persons affected.
- (4) Any power conferred by this Part of this Act to make, submit or confirm a co-operative scheme shall include a power, exercisable in the like manner and subject to the like conditions, to make, submit or confirm a scheme amending or revoking a co-operative scheme.
- (5) The appropriate Minister may by order revoke a co-operative scheme, if it appears to him, after consultation with the Commission, that there is a preponderating opinion in favour of revocation of the scheme among the persons of the class whose interests are by virtue of the scheme to be represented by the authorised body, or that the scheme is not serving the purposes for which it was made, or that the continued operation of the scheme would be contrary to the public interest, but the revocation of a co-operative scheme shall be without prejudice to anything previously done under the scheme or to the making, submission or confirmation of a new scheme.
- (6) An order revoking a co-operative scheme may make provision with respect to the winding up of the authorised body, and with respect to the disposal of any assets of that body remaining after the payment of its debts and liabilities and of the cost and expenses of the winding up.

21 Loans to meet initial expenses of authorised bodies

- (1) The Minister of Agriculture and Fisheries, upon a recommendation of the Commission in that behalf, may make such advances by way of loan to the authorised body constituted under a co-operative scheme as the Ministers and the Treasury may approve as being necessary for the purpose of providing for expenses incurred by that body in connection with the initial operation of the scheme.
- (2) Every loan under this section shall be made on such terms, and subject to such conditions, as the Ministers, with the approval of the Treasury, may determine.
- (3) No such loan as aforesaid shall be made after the expiration of the period of five years from the commencement of this Act, and not more than ten thousands pounds in all shall be advanced by way of loans under this section.

*General and Supplementary Provisions***22 Registration fees payable to Commission**

- (1) Every person who applies to be registered in the Commission's register as carrying on the business of a home producer of white fish, shall pay to the Commission, for each fishing-boat which is in his possession at the date of the application, such fee (if any) not exceeding five shillings as the Commission, with the approval of the Ministers, may by order prescribe in relation to that business; and every person who applies to be registered in the Commission's register as carrying on any other designated business, shall pay to the Commission—

- (a) for each set of premises at which he is carrying on that business in Great Britain at the said date, and
- (b) (if and so far as that business involves the use of vehicles for the purpose of offering or exposing white fish thereon for sale) for each vehicle used or intended to be used for that purpose which, at the said date, is in his possession in Great Britain,

such fee (if any) not exceeding five shillings as the Commission, with the approval of the Ministers, may by order prescribe in relation to that business.

- (2) Every person who, at the beginning of any financial year after the date on which he was first registered in the Commission's register as carrying on the business of a home producer of white fish, is a person registered in that register as carrying on that business, shall pay to the Commission, for every fishing-boat which, at the beginning of that year, is shown in the said register as being in his possession, such fee (if any) not exceeding five shillings as the Commission, with the approval of the Ministers, may by order prescribe in relation to that business; and every person who, at the beginning of any financial year after the date on which he was first registered in the Commission's register as carrying on any other designated business, is a person registered in that register as carrying on that business, shall pay the Commission—

- (a) for each set of premises which, at the beginning of that year, is shown in the said register as premises at which he is carrying on that business in Great Britain, and
- (b) for each vehicle which, at the beginning of that year, is shown in the register as being in his possession in Great Britain,

such fee (if any) not exceeding five shillings as the Commission, with the approval of the Ministers, may by order prescribe in relation to that business.

- (3) Any fee payable by a person to the Commission under the last preceding subsection shall be taken to accrue due from that person to the Commission at the beginning of the financial year in respect of which the fee is payable; and any fee so payable may (without prejudice to the recovery thereof as a debt due to the Crown) be recovered by the Commission summarily as a civil debt.

- (4) Any order under this section shall be laid before Parliament as soon as may be after it is made, 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 thereupon become void, without prejudice, however, to anything previously done thereunder or to the making of a new order.

23 Power of Commission to receive and apply voluntary contributions for general benefit of white fish industry

- (1) The Commission shall have power to accept payments voluntarily made to it by any person, and may, after consulting the Joint Council, apply such payments for the purpose of promoting or conducting research and experiments in matters affecting the white fish industry, for the purpose of taking any measures which the Commission thinks likely to increase the consumption of white fish, and for any other purpose the effecting of which appears to the Commission to be likely to be of benefit to the said industry as a whole.
- (2) The board administering any marketing scheme shall have power to make voluntary contributions to the Commission, to be applied by the Commission in the exercise of its powers under the preceding subsection; and any payment made by the board under this subsection shall be deemed to be expenses incurred by it under the scheme.
- (3) All sums received by the Commission under this section shall be paid into a fund, which shall be established under the control of the Commission, and all expenditure of the Commission under subsection (1) of this section, and such other expenses of the Commission as may be determined by the Treasury to be attributable to the discharge of the functions of the Commission under this section, shall be defrayed out of that fund.
- (4) The Commission shall prepare and submit to the Ministers, at such time, and in such form and manner, as they may determine, an account for each accounting period of sums received, and payments made, by the Commission under this section; and the Minister of Agriculture and Fisheries shall, on or before the thirtieth day of November next following the end of each accounting period transmit to the Comptroller and Auditor General the accounts for that accounting period which have been submitted to him under this subsection, and the Comptroller and Auditor General shall examine and certify the said accounts and lay copies thereof, together with his report thereon before Parliament.
- (5) In this section the expression " accounting period " means—
 - (a) the period beginning at the commencement of this Act and ending with the thirty-first day of March nineteen hundred and thirty-nine;
 - (b) the financial year ending with the thirty-first day of March nineteen hundred and forty or any subsequent financial year.

24 General power of Commission to obtain information

Without prejudice to any special provisions having effect by virtue of this Part of this Act, the Commission may from time to time serve on any person registered in the Commission's register, or on the board administering any marketing scheme, or on the authorised body constituted under a co-operative scheme, a written notice requiring that person, board or body to furnish to the Commission such returns and other information specified in the notice as the Commission may require for the discharge of its functions under this Part of this Act or any scheme or regulations having effect by virtue of this Part of this Act.

25 Offences in connection with the making of returns, and in connection with obstruction

- (1) If any person fails to produce or furnish to any authority or person any book or other document, or any estimate, return, account or other information, which he is required under or by virtue of this Part of this Act to produce or furnish to that authority or person, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds and to a further fine not exceeding ten pounds for every day on which the failure continues, and if, in furnishing any information for the purposes of any of the provisions of this Part of this Act or any scheme made thereunder, any person knowingly or recklessly makes a statement false in a material particular, he shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.
- (2) Every person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Part of this Act shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds and to a further fine not exceeding ten pounds for every day on which the offence continues after conviction therefor.

26 Restrictions on disclosure of information

No information with respect to any particular undertaking which has been obtained under or by virtue of this Part of this Act shall, without the consent of the person carrying on that undertaking, be disclosed otherwise than in connection with the execution of this Part of this Act or the execution of any regulations or scheme having effect by virtue of this Part of this Act; and if any person discloses any such information in contravention of this section, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and such fine or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine :

Provided that nothing in this section shall apply to any disclosure of any information made for the purposes of any proceedings pursuant to this Part of this Act (including arbitrations), or any criminal proceedings which may be taken whether by virtue of this Part of this Act or otherwise, or for the purposes of any report of such proceedings as aforesaid.

27 Incidental provisions as to regulations and schemes

- (1) Any regulations or scheme under this Part of this Act may make provision for such matters as are incidental and supplementary to any of the matters for which provision is made by the regulations or scheme by virtue of the preceding provisions of this Part of this Act.
- (2) As soon as may be after making or confirming any regulations under this Part of this Act, the Ministers shall lay the regulations before Parliament, and if either House of Parliament, within the next twenty-eight days on which that House has sat after any such regulations are laid before it, resolves that the regulations be annulled, they shall thereupon become void, without prejudice, however, to anything previously done thereunder or to the making or confirmation of new regulations.

- (3) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, regulations and schemes under this Part of this Act shall be deemed not to be statutory rules to which that section applies.

28 Power of Commission to hold inquiries

- (1) The Commission may hold such inquiries as it considers necessary or desirable for the discharge of any of its functions; and if the Ministers are satisfied that, for the purposes of any inquiry on the part of the Commission into a particular matter, it is necessary so to do, the Ministers may by order, specifying the matter to be inquired into, direct that in respect of any meeting of the Commission held for the purpose of inquiring into that matter, being a meeting at which not less than three members of the Commission are present, the Tribunals of Inquiry (Evidence) Act, 1921, shall apply to the Commission as if it were a tribunal established in accordance with that Act and as if that Act had been applied to the Commission in the manner prescribed :

Provided that the said Act shall in its application to the Commission have effect as if for paragraph (a) of section two of the Act there were substituted the following paragraph :—

- “(a) may refuse to allow the public or any portion of the public to be present at the proceedings of the Commission, if and so far as it is, in the opinion of the Commission, necessary so to do for reasons connected with the subject-matter of the inquiry or the nature of the evidence to be given;”.
- (2) Any order under this section 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 the order is laid before it, resolves that the order be annulled, it shall thereupon become void, without prejudice, however, to anything previously done thereunder or to the making of a new order.

29 Provisions as to inquiries held by Ministers

- (1) For the purpose of any inquiry which, in relation to any regulations or scheme under this Part of this Act is held by direction of the Ministers or the appropriate Minister, the person appointed to hold the inquiry may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined :

Provided that no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

- (2) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this section, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he may be required to produce for the purpose of this section, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

30 Annual reports to be made by Commission

The Commission shall, as soon as may be after the end of each financial year, prepare and submit to the Ministers a report on the operation in that year of any schemes under this Part of this Act which have been in force in that year and generally on the discharge of the functions of the Commission in that year, and the Ministers, upon receiving any report submitted to them under this section, shall lay copies of the report before Parliament.

31 Form, publication, validity and commencement of orders confirming schemes

- (1) An order confirming a scheme under this Part of this Act shall set forth the scheme in a schedule to the order, and the scheme shall come into operation at the same time as the order confirming it.
- (2) As soon as may be after such an order as aforesaid has been made, the Ministers or the appropriate Minister, as the case may be, shall cause to be published in the Gazettes, and in such other manner as appears to them or him to be best adapted for informing persons affected, a notice stating that the order has been made and specifying the place where copies of the order may be obtained.

The reference in the preceding provisions of this subsection to the Gazettes shall, in relation to an order confirming a co-operative scheme applicable to an area wholly in England, be construed as a reference to the London Gazette, or, in relation to an order confirming a co-operative scheme applicable to an area wholly in Scotland, be construed as a reference to the Edinburgh Gazette.

- (3) The validity of such an order as aforesaid shall not be called in question except in proceedings duly begun during the period of six weeks from the beginning of the day on which notice of the order having been made is published in accordance with this section; and unless the final decision in proceedings duly begun during the said period is that the order is invalid, the order shall be conclusive evidence that the requirements of this Part of this Act have been complied with in relation to the making of the order, and that the order and the scheme confirmed thereby have been duly made and confirmed respectively and are within the powers conferred by this Part of this Act.
- (4) Subject as hereinafter provided, such an order as aforesaid shall come into operation at the end of the period of six weeks from the beginning of the day on which notice of the making of the order is published in accordance with this section :

Provided that, if proceedings for the purpose of questioning the validity of such an order are duly begun within the period aforesaid, the court before which such proceedings are taken may, at any time before the end of the said period, direct that the order shall not come into operation before the final determination of the proceedings.

32 Service of notices, and c

Any notice or demand to be served for the purposes of this Part of this Act, or of any regulations or scheme under this Part of this Act, may be served by post, and—

- (a) if it is to be served on the owner or occupier of any premises, may be addressed " the owner " or " the occupier," as the case may be, of those premises (identifying them by their postal address), or

- (b) if it is to be served on the owner, charterer or skipper of a fishing-boat, may be addressed "the owner," "the charterer," or "the skipper," as the case may be, of the fishing-boat (identifying it by name or otherwise);

and any such notice or demand to be served on the skipper of a fishing-boat shall be deemed to be duly served if it is delivered or sent by post to, or to the agent of, the owner or the charterer (if any) of the fishing-boat, together with a written request that it be transmitted to the skipper.

33 Registration of partnerships

- (1) Any two or more persons jointly carrying on a designated business (whether in partnership or otherwise) shall, in so far as it is material, for the purposes of this Part of this Act or any scheme under this Part of this Act, to ascertain the number of votes to which those persons are entitled in connection with any poll, or the amount of any fee or contribution payable by them to the Commission or to the board or authorised body, be treated as constituting together a single person.
- (2) Registration, in the Commission's register or under a marketing or co-operative scheme, in the name or style under which two or more persons carry on any designated business in partnership, shall operate as the registration of all the partners for the time being.

34 Meaning of home producer of white fish

For the purposes of this Part of this Act, a person shall be deemed to carry on the business of a home producer of white fish if, and only if, while carrying on the business of catching and landing white fish, he causes white fish to be landed in Great Britain from a fishing-boat registered in the United Kingdom or in 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.

35 Provisions as to amending schemes

Where a marketing scheme or co-operative scheme is amended by any subsequent scheme or schemes, then, for the purposes of so much of this Part of this Act as determines the provisions which must or may be contained in any marketing scheme or co-operative scheme, as the case may be, the original scheme and the amending scheme or schemes shall be treated as a single scheme.

36 Expenses of Ministers, Commission, Joint Council, consumers' committee and committee of investigation, and receipts of Commission

- (1) There shall be paid out of moneys provided by Parliament—
 - (a) to the members, officers and servants of the Commission, and to the members, officers and servants of the consumers' committee and of the committee of investigation, such remuneration (whether by way of salaries or by way of fees) as the Ministers, with the approval of the Treasury, may determine,
 - (b) the amounts necessary to defray such expenses of the Commission (other than expenses which, by virtue of this Part of this Act, are to be defrayed out of the fund established under the control of the Commission), such expenses of the Joint Council, and such expenses of the consumers' committee and of the

Status: This is the original version (as it was originally enacted).

committee of investigation, as the Ministers and the Treasury may approve, and

- (c) the amounts necessary to defray any expenses incurred in pursuance of this Part of this Act by the Minister of Agriculture and Fisheries or a Secretary of State.
- (2) All sums received under this Part of this Act by the Commission (other than sums which, by virtue of this Part of this Act, are to be paid into the fund established under the control of the Commission) shall be paid into the Exchequer.

37 Extension of Part I to Northern Ireland

- (1) His Majesty may, by an Order in Council made in pursuance of a resolution passed by both Houses of the Parliament of Northern Ireland, direct that the provisions of this Part of this Act or any of them (except in so far as they relate to co-operative schemes) shall with such adaptations and modifications as may be specified in the order extend to Northern Ireland.

Any such order may be varied or revoked by a subsequent Order in Council made in pursuance of such a resolution as aforesaid.

- (2) If any provisions of this Part of this Act are so extended to Northern Ireland, such sums paid out of the Exchequer of the United Kingdom in connection with the execution of those provisions as may be determined by the Joint Exchequer Board to be properly payable by the Government of Northern Ireland shall be made good by means of deductions from the Northern Ireland residuary share of reserved taxes.
- (3) Subject to the provisions of any Order in Council under this section, this Part of this Act shall not extend to Northern Ireland.

PART II

AMENDMENTS OF THE SEA-FISHING INDUSTRY ACT, 1933

38 Provisions for giving effect to convention as to meshes of nets and size limits for fish

Whereas a convention for the regulation of the meshes of fishing nets and size limits for fish was signed in London on the twenty-third day of March nineteen hundred and thirty-seven on behalf of His Majesty's Government in the United Kingdom :

And whereas it is expedient to make such amendments of the Sea-Fishing Industry Act, 1933, as are necessary for giving effect to the said convention, and, in connection therewith, to make further amendments of the said Act:

Now, therefore, the following sections shall be substituted for sections three and four of the Sea-Fishing Industry Act, 1933, (hereafter in this Part of this Act referred to as " the principal Act "):—

“3 Mesh of nets.

- (1) The appropriate Ministers may make an order for securing that the fishing nets carried in any British fishing-boat registered in the United Kingdom are

constructed in such manner, and have a mesh of at least such size, as may be prescribed by the order, and an order under this section, or any provisions of such an order, may be framed so as to apply only in relation to fishing for specified descriptions of sea-fish, to specified methods of fishing or to fishing in specified areas or during specified periods.

- (2) An order under this section prescribing minimum sizes of mesh may also—
- (a) prescribe the manner in which the sizes of mesh are to be measured and, in the case of any class of nets, prescribe different sizes for the nets when in different conditions;
 - (b) make provision for securing that the restrictions imposed by the order are not evaded by the use of any nets in such manner as practically to diminish their mesh, or by the covering of nets with canvas or any other material, or by the use of any other artifice;
 - (c) provide for exempting any nets from any such restrictions as aforesaid, either generally or in relation to particular fishing-boats or classes of fishing-boats, if and so long as such conditions as may be imposed by or under the order for securing that the nets will be used only for taking sea-fish of the descriptions specified in the order are complied with.
- (3) Nothing in any order under this section shall—
- (a) affect the carrying of any nets for the purpose of fishing only within the limits of the territorial waters adjacent to the United Kingdom, or
 - (b) apply in relation to fishing operations which, under the authority of one of the appropriate Ministers, are conducted for the purpose of scientific investigation or for the purpose of transplanting fish from one fishing ground to another.
- (4) If any order under this section is contravened in the case of any fishing-boat, the master, the owner and the charterer (if any) shall each be liable on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine, and the court by which the offender is convicted may order the forfeiture of the net in respect of which the contravention occurred.
- (5) Section six hundred and eighty-four of the Merchant Shipping Act, 1894, (which relates to the jurisdiction of courts) shall apply for the purposes of this section as it applies for the purposes of that Act.
- (6) Any British sea-fishery officer may seize any net in respect of which a contravention of an order under this section has been, or is being, committed.
- (7) Any restrictions imposed by an order under this section shall be in addition to, and not in substitution for, any restriction imposed by or under any other Act, and nothing in this section shall affect any power conferred by any Act to regulate sea-fishing.

4 Size limits for fish.

- (1) No person shall, in Great Britain, land, sell, expose or offer for sale, or have in his possession for the purpose of sale, any sea-fish of any description being a fish of a smaller size than such size as may be prescribed in relation to sea-fish of that description by an order of the Minister of Agriculture and Fisheries and the Secretary of State for Scotland :

Status: This is the original version (as it was originally enacted).

Provided that nothing in this subsection shall restrict the landing of fish taken in the course of fishing operations which, under the authority of the said Minister or Secretary of State, are conducted for the purpose of scientific investigation.

- (2) If the Minister of Agriculture and Fisheries and the Secretary of State for Scotland by order so direct, no person shall, in Great Britain, land, sell, expose or offer for sale, or have in his possession for the purpose of sale, any lobster which is carrying any spawn attached to the tail or some other exterior part of the lobster, or which is in such a condition as to show that, at the time when it was taken, it was carrying spawn so attached.
- (3) Every person who contravenes either of the two preceding subsections shall, for each offence, be liable on summary conviction to a fine not exceeding fifty pounds.
- (4) Where, in the course of any fishing operations conducted by means of a fishing-boat, any sea-fish of any description which are of less than the minimum size prescribed in relation to sea-fish of that description by any order under subsection (1) of this section are taken on board the boat, those fish shall be returned to the sea forthwith:

Provided that the preceding provisions of this subsection shall not apply in relation to fishing operations which, under the authority of one of the appropriate Ministers, are conducted for the purpose of scientific investigation or for the purpose of transplanting fish from one fishing ground to another.

- (5) The last preceding subsection shall apply to all fishing-boats within the limits of the territorial waters adjacent to the United Kingdom and also to British fishing-boats registered in the United Kingdom, wherever they may be; and if that subsection is not complied with in the case of any fishing-boat, the master, the owner and the charterer (if any) shall each be liable on summary conviction to a fine not exceeding fifty pounds, and the court by which the offender is convicted may order the forfeiture of any fish in respect of which the offence was committed.
- (6) With a view to enforcing any order under this section, any of the following officers, that- is to say,—
 - (a) any officer authorised by the Minister of Agriculture and Fisheries or the Fishery Board for Scotland,
 - (b) any officer of police,
 - (c) any officer of a market authority, acting within the limits of any market which that authority has power to regulate,
 - (d) any fishery officer of a local fisheries committee acting within the district of the committee,
 - (e) any officer authorised by the Fishmongers' Company and acting within the city of London ;

may, at all reasonable times, go on board any fishing-boat or enter any premises used for carrying on any business in connection with the treatment, storage or sale of sea-fish, may search for and examine any sea-fish in any place, whether on board a fishing-boat or elsewhere, and whether in a receptacle or not, and may seize any sea-fish which have been landed, sold or exposed or offered for sale by any person in contravention of this section, or which any person has in his possession in contravention of this section; and a local fisheries committee

may take proceedings in respect of any contravention of this section occurring within the district of the committee.

For the purposes of this subsection, the district of a local fisheries committee shall be deemed to extend throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by this subsection on the committee or any officer thereof shall not be exercisable in respect of any matter arising within the limits of any market under the control of the council of any county borough or county district.

- (7) On the date on which the first order under subsection (1) of this section relating to crabs comes into operation, paragraph (1) of section eight of the Fisheries (Oysters, Crabs and Lobsters) Act, 1877, shall cease to have effect in Great Britain; and on the date on which the first order under this section relating to lobsters comes into operation, section nine of that Act, shall cease to have effect in Great Britain.

4A Powers of British sea-fishery officers.

Any British sea-fishery officer may exercise, with respect to any fishing-boat within the limits of the territorial waters adjacent to the United Kingdom and with respect to any British fishing-boat registered in the United Kingdom, wherever it may be, such of the powers conferred on British sea-fishery officers by paragraphs (1) to (8) of section twelve of the Sea Fisheries Act, 1883, as may be conferred on him by order of the appropriate Ministers, being powers which the said Ministers consider necessary for the enforcement of sections three and four of this Act, and of any orders under those sections; and for the purpose of an order under this section—

- (a) section twelve of the Sea Fisheries Act, 1883, shall apply as if any reference in paragraph (7) of that section to that Act or to an Order in Council thereunder included a reference to sections three and four of this Act or to an order under either of those sections, as the case may be; and
- (b) section fourteen of the Sea Fisheries Act, 1883, as amended by any subsequent enactment, (which section provides for the protection of sea-fishery officers and for the punishment of persons obstructing such officers) shall apply as if any reference in that section to that Act included a reference to this section.

4B Application to Isle of Man and Channel Islands, and fishing-boats registered therein.

His Majesty may by Order in Council direct—

- (1) that, subject to such exceptions, adaptations and modifications (if any) as may be specified in the Order, the provisions of sections three and four of this Act shall apply in relation to British fishing-boats registered in the Isle of Man or any of the Channel Islands, as those provisions apply in relation to British fishing-boats registered in the United Kingdom ;
- (2) that, subject as aforesaid, the said provisions shall extend to the Isle of Man or any of the Channel Islands.”

39 Provisions as to orders regulating and prohibiting landing of sea-fish

- (1) On the date on which the first producers' marketing scheme under Part I of this Act comes into operation, subsection (3) of section one of the principal Act (which provides that no order regulating the landing of sea-fish shall be made under that section unless orders made under sections two, three and four of the said Act are in force) shall cease to have effect.
- (2) An order under section two of the principal Act (which enables the appropriate Ministers temporarily to prohibit the landing in the United Kingdom of sea-fish caught in certain waters) may be made so as to apply either to all sea-fish or to sea-fish of a particular description, and so as to apply to sea-fish caught in any specified waters; and accordingly subsection (1) of the said section shall have effect as if in that subsection after the word " sea-fish " there were inserted the words " or any particular description of sea-fish, being fish, " and as if the words from " being waters situate " to the end of the subsection were omitted.

40 Abolition of Sea Fish Commission

Section five of the principal Act (under which the Sea-Fish Commission for the United Kingdom was constituted) shall cease to have effect.

41 Amendment of definition of " sea-fish."

References to sea-fish in the principal Act, as amended by this Part of this Act, shall be construed as including references to parts of sea-fish, and accordingly subsection (1) of section nine of the said Act shall have effect as if, in the definition of the expression " sea-fish " contained in that subsection, after the word " shell-fish " there were inserted the words " and includes parts of such fish as aforesaid. "

42 Citation of Part II

The principal Act and this Part of this Act may be cited together as the Sea-Fishing Industry Acts, 1933 and 1938.

PART III

AMENDMENTS OF THE WHALING INDUSTRY (REGULATION) ACT, 1934

43 Extension of category of protected whales

Grey whales shall be included among the classes of whales the killing or taking of which is prohibited by section three of the Whaling Industry (Regulation) Act, 1934 (hereafter in this Part of this Act referred to as " the principal Act "), and accordingly—

- (a) the said section shall have effect as if in paragraph (a) of subsection (1) thereof, after the words " right whale," there were inserted the words " or a grey whale " and as, if at the end of subsection (3) of the said section there were inserted the following paragraph:—
 - “(e) the expression ' grey whale' means a whale known by any of the names set out in Part IV of the Schedule to this Act;”and

- (b) the following Part shall be inserted at the end of the Schedule to the principal Act:—

“PART IV.

GREY WHALES.

California grey.
Devil fish.
Grey back.
Grey whale.
Hard head.
Mussel digger.
Rip sack.”

44 Duration of, and fees for, whaling licences

A licence under section five of the principal Act authorising the use of a ship or factory for taking whales or for treating whales may be granted for a shorter period than one year, and the fee charged in respect of the grant of such a licence for such a shorter period may be less than that charged in respect of the grant of such a licence for a year; and accordingly the said section shall have effect as if at the end of subsection (3) thereof there were added the following words " or for such shorter " period beginning on the said day as may be specified " in the licence; and subject to the provisions of the last " preceding subsection, different fees may be charged in " respect of the grant of licences for different periods."

45 Further conditions of whaling licences

- (1) The following subsection shall be inserted in section six of the principal Act after subsection (1) of that section :—

“(1A) There shall be attached to every licence under this Act authorising the use of a ship or factory for treating whales a condition that the remuneration of the persons employed in treating whales on board the ship or at the factory must, so far as it is calculated by reference to the results of their work, be calculated by reference to the size, species, oil-yield and value of the whales treated.”

- (2) At the end of subsection (3) of section six of the principal Act (which prescribes the conditions to be attached to every licence under that Act) there shall be inserted the words " and also a condition requiring " the master or occupier of the ship or factory to which " the licence relates to furnish, at such time, in such " form and to such authority, as may be specified in " the licence, an account showing the remuneration of " each gunner and member of the crew of the ship, " or of each person employed at the factory, as the " case may be, and the manner in which that remuneration is calculated ".

- (3) The following subsection shall be substituted for subsection (4) of section six of the principal Act:—

“(4) There may be attached to any licence under this Act such conditions (if any), in addition to the conditions required by the foregoing provisions of this

section, as appear to the licensing authority to be necessary or expedient for the purpose of preventing, so far as practicable,—

- (a) any excessive destruction of whales and any wastage of whales or whale products;
- (b) the taking of whales in particular areas ;
- (c) the killing of whales otherwise than by a particular method;

and any conditions attached to such a licence as aforesaid for the purpose of preventing the taking of whales in any particular area, or, for the purpose of preventing the killing of whales otherwise than by a particular method, may prohibit the taking, in that area, of any whales whatever or particular descriptions of whales, either at any time whatever or during particular periods, or, as the case may be, may prohibit the killing of whales otherwise than by that method either generally or in a particular area.”

46 Citation of Part III

The principal Act and this Part of this Act may be cited together as the Whaling Industry (Regulation) Acts, 1934 and 1938.

PART IV

PROVISIONS WITH RESPECT TO CREWS OF FISHING-BOATS

47 Accounts to be rendered by owners with respect to profits of fishing-boats

The following section shall be substituted for section three hundred and eighty-eight of the Merchant Shipping Act, 1894, (hereafter in this Part of this Act referred to as " the principal Act "):—

- (1) Where the skipper or any other member of the crew of a fishing-boat is paid, wholly or in part, by a share in the catch, an account in a form approved by the Board of Trade, certified by or on behalf of the owner of the boat to be true, and showing the amounts for which the fish have been sold and all deductions from the said amounts which are made for the purpose of arriving at the net value of the catch, shall be delivered by the owner of the boat to the skipper and to the second hand, and shall be kept by the owner at such place, and in such manner, as the Board may direct with a view to ensuring that the account is readily available for inspection at any reasonable time by any member of the crew so paid as aforesaid.
- (2) The account which under the preceding subsection must be delivered by the owner of a fishing-boat to members of the crew who are paid, wholly or in part, by a share in the catch shall, in the case of a fishing-boat being a trawler of twenty-five tons tonnage or upwards, also be delivered by the owner to the superintendent at or nearest the port at which payment is made.
- (3) Where the skipper or any other member of the crew of a fishing-boat is paid, wholly or in part, by a share in the catch, a further account in such form as may be approved by the Board of Trade, showing the amount of the remuneration payable to him in respect of his share in the catch and the amount of all deductions to be made therefrom on any account whatever, shall be rendered by the owner of the boat to the skipper and by the owner or skipper of the

boat to every seaman who is so paid as aforesaid; and a deduction from the said remuneration shall not be allowed unless it is included in the account so rendered or is in respect of a matter happening after the account has been so rendered.

- (4) The Board of Trade may, for the purposes of this section, approve different forms of accounts for use in different circumstances.
- (5) If the owner or skipper of a fishing-boat fails without reasonable cause to comply with the foregoing provisions of this section, he shall for each offence be liable to a fine not exceeding five pounds; and if any person gives in relation to such an account as aforesaid a certificate which, to his knowledge, is false, he shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.
- (6) A superintendent may inquire into the correctness of any account prepared in pursuance of this section; and, for the purpose of any inquiry which he may make under this subsection, a superintendent shall have all the powers of a Board of Trade inspector under this Act, and the provisions of the last preceding section shall apply in relation to any decision that the superintendent may give as to the correctness of the account which is the subject of the inquiry, as those provisions apply in relation to a decision given by a superintendent on determining a dispute under that section.
- (7) If a dispute arises as to the amount payable to the skipper, or any other member of the crew of a fishing-boat in respect of his share of the catch, he or some person acting on his behalf shall be entitled to inspect, at all reasonable times, the owner's accounts and books relating to the catch; and if the owner, upon demand, fails without reasonable cause to submit his said accounts or books for inspection as aforesaid at a reasonable time, he shall for each offence be liable to a fine not exceeding twenty pounds."

48 Deductions from proceeds of sale of catch

- (1) The following section shall be inserted in Part IV of the principal Act as the first of the sections under the heading " Provisions applying to Trawlers " :—

Where the skipper or any other member of the crew of a fishing-boat, being a trawler of twenty-five tons tonnage or upwards, is paid wholly or in part by a share in the catch, any deduction from the amount for which the fish have been sold shall, for the purpose of arriving at the net value of the catch be deemed not to be lawful, unless it is made in accordance with express provisions in that behalf contained in the agreement under which he was engaged, being provisions which specify the item in respect of which the deduction is to be made and the manner in which the amount of the deduction is to be calculated."

- (2) Section four hundred of the principal Act (which prescribes the terms to be contained in every agreement under which a seaman is engaged as a member of the crew of a trawler of twenty-five tons tonnage or upwards) shall have effect as if at the end of subsection (2) of that section there were inserted the following paragraph :—

"(h) in a case where the remuneration of a seaman is wholly or in part by share in the catch, the items in respect of which it is agreed that deductions from the amount for which the fish are sold will be made for the purpose of arriving at the net value of the catch and the manner

in which it is agreed that the amounts of any such deductions will be calculated.”

49 Functions of superintendents in relation to engagement and discharge of seamen

The following section shall be inserted in the principal Act after section four hundred and eleven thereof:—

- (1) In relation to fishing-boats, being trawlers of twenty-five tons tonnage or upwards, the Board of Trade may by order direct—
 - (a) that, subject to the provisions of subsection (3) of section four hundred and one of this Act (which relates to the engagement of substitutes), every fishing-boat's agreement under which a seaman is engaged, at any port specified in the order, to serve as one of the crew of such a fishing-boat as aforesaid shall be signed by the seaman in the presence of a superintendent, and that the duties of ascertaining that the seaman understands the agreement and of attesting his signature thereof which are imposed on the skipper by subsection (1) of the said section shall be performed instead by the superintendent;
 - (b) that whenever, in pursuance of section four hundred and four of this Act, an endorsement with respect to engagements of seamen at such a port as aforesaid, or discharges of seamen engaged at such a port, is made by the skipper of a fishing-boat of the said class on a fishing-boat's running agreement, the skipper shall deliver the agreement so endorsed to the superintendent, and that the superintendent shall, if the provisions of this Part of this Act relating to fishing-boats' agreements have been complied with, sign the endorsement and return the agreement to the skipper;
 - (c) that, whenever a seaman engaged at any such port is discharged from such a fishing-boat as aforesaid, he shall be discharged in the presence of a superintendent, and that the certificate of discharge required by section four hundred and ten of this Act to be signed by the skipper and delivered by him to the seaman, shall be so signed and delivered in the presence of a superintendent;

and in relation to any case in which, by virtue of any provisions of an order which are authorised by paragraph (a) of this subsection, a fishing-boat's agreement must be signed in the presence of a superintendent, subsection (2) of section four hundred and one of this Act shall have effect as if in that subsection for the word 'sent' there were substituted the word 'delivered.'
- (2) If any skipper fails without reasonable cause to comply with an order under this section, he shall be liable to a fine not exceeding five pounds.
- (3) Any order under this section may be varied or revoked by a subsequent order made in like manner.”

50 Citation of Part IV

The Merchant Shipping Acts, 1894 to 1937, and this Part of this Act may be cited together as the Merchant Shipping Acts, 1894 to 1938.

PART V

SEA FISHERIES

51 Constitution of local fisheries committees

- (1) The Sea Fisheries Regulation Act, 1888, (hereafter in this Part of this Act referred to as " the principal Act") shall, subject to the provisions of the next following subsection, have effect as if for subsection (2) of section one of the principal Act (which subsection relates to the constitution of local fisheries committees) there were substituted the following subsection :—

“(2) The local fisheries committee for a sea-fisheries district shall be a committee of such county council, or a committee of such borough council, or a joint committee of such councils, being county councils or borough councils, as may be determined by the order creating the district, and shall consist of—

- (a) such number of members to be appointed by the council, or by the constituent councils in such proportions as may be so determined, and
- (b) such number of additional members, not exceeding the number of members required to be appointed by the council or constituent councils, as may be appointed in accordance with the following provisions of this section.

The additional members of such a committee shall include one person appointed by each fishery board having jurisdiction within the district of the committee, and as to the rest shall be persons appointed by the Minister of Agriculture and Fisheries as being persons acquainted with the needs and opinions of the fishing interests of that district.”

- (2) In relation to any local fisheries committee constituted by an order made before the commencement of this Act, the preceding subsection shall not take effect until the first day of April nineteen hundred and forty.
- (3) The persons who, immediately before the first day of April nineteen hundred and forty are members of such a committee shall cease to hold office on that day, and their places shall be filled by newly appointed members, who shall come into office on that day; and the term of office of any person who becomes a member of such a committee on or after that day shall expire not later than the end of the triennial period in which he takes office.

In this subsection the expression " triennial period " means the period of three years beginning with the first day of April nineteen hundred and forty and with every third anniversary of that day.

- (4) At the beginning of the first day of April nineteen hundred and forty so much of any order made before the commencement of this Act as relates to the additional members of a local fisheries committee or to the term of office of the members of such a committee shall cease to have effect.
- (5) Subsection (3) of section one of the principal Act shall have effect as if in that subsection after the word " subject" there were inserted the words " to the " provisions of the last preceding subsection and of " section fifty of the Sea Fish Industry Act, 1938, " and to " .

- (6) In the definition of " fishing interests " contained in section fourteen of the principal Act, the words " and any board of salmon conservators " shall be omitted.

52 Amendment of definitions of " sea-fish " and " salmon conservators."

In section fourteen of the principal Act for the words " The expression ' sea-fish ' shall not include salmon as defined by any Act relating to salmon " there shall be substituted the words " The expression " ' sea-fish ' shall not include salmon as defined by the " Salmon and Freshwater Fisheries Act, 1923, or migratory trout as so defined ", and for the words " The " expression ' salmon conservators ' means conservators " under the Salmon and Freshwater Fisheries Acts, 1861 " to 1886, or any of them " there shall be substituted the words " The expression ' board of salmon conservators ' means any board of conservators or other similar " body constituted under the Salmon and Freshwater " Fisheries Act, 1923, or any enactment repealed by " that Act, for the regulation of fisheries in a fishery " district."

53 Liability of owners of fishing boats for illegal fishing

- (1) Where any vessel is used for fishing in any manner constituting a contravention of any byelaw of a local fisheries committee having effect by virtue of paragraph (a) of subsection (1) of section two of the principal Act, as amended by section seven of the Fisheries Act, 1891, the skipper and the owner of the vessel shall each be guilty of an offence and liable on summary conviction to a fine not exceeding, in the case of a first offence, fifty pounds, or in the case of a second offence, one hundred and fifty pounds, or, in the case of a third or subsequent offence, to imprisonment for a term not exceeding three months, or to a fine not exceeding three hundred pounds or to both such imprisonment and such fine:

Provided that, in any proceedings which by virtue of this section are taken against the owner of a vessel in respect of an offence under this section committed by the skipper, it shall be a good defence for the owner to prove that he exercised all due diligence to prevent the commission of that offence.

- (2) The preceding subsection shall, in relation to any vessel which at the material time is under charter, have effect as if any reference in that subsection to the owner were a reference to the charterer.

54 Increase of certain penalties

- (1) The maximum penalty for refusing to allow a fishery officer to exercise the powers conferred upon him by the principal Act, or for resisting or obstructing any such officer in the performance of his duty, shall be fifty pounds and, accordingly, in subsection (3) of section six of the principal Act for the word " five " there shall be substituted the word " fifty. "
- (2) Without prejudice to the operation of the last preceding section, any person who contravenes any bye-law made, whether before or after the commencement of this Act, by a local fisheries committee shall be liable on summary conviction to a fine not exceeding fifty pounds or, in the case of a second or any subsequent conviction, to a fine not exceeding one hundred pounds.
- (3) Section three of the principal Act (which relates to penalties and forfeitures for the contravention of byelaws) is hereby repealed, and so much of any byelaw made by a

local fisheries committee as imposes penalties or forfeitures on persons contravening byelaws so made shall be deemed to have been revoked, and subsection (2) of section six of the principal Act shall have effect as if in paragraph (c) of that subsection for the words " liable to be forfeited in pursuance" there were substituted the words " taken or used in contravention ".

- (4) The maximum fine under subsection (3) of section seven of the Sea Fisheries Act, 1883, (which section relates to foreign sea-fishing boats entering within exclusive fishery limits) shall be, in the case of a first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and accordingly in the said subsection (3) for the words " ten" and " twenty" there shall be substituted respectively the words " fifty " and " one hundred."
- (5) His Majesty may by Order in Council extend the provisions of the last preceding subsection and of section five of the Fisheries Act, 1891, to the Channel Islands.

55 Power of Minister to revoke byelaws

If it appears to the Minister of Agriculture and Fisheries that the revocation of a byelaw made by any local fisheries committee is necessary or desirable for the maintenance or improvement of fisheries, he may, after giving notice to the committee and considering any objection raised by them and, if so required by them, holding a public inquiry, revoke the byelaw.

56 Extension of powers of local fisheries committees

- (1) A local fisheries committee shall have the following further powers, that is to say—
 - (a) the committee may, with the approval of the Minister of Agriculture and Fisheries and subject to such conditions as he may impose, undertake, or cause to be undertaken, the destruction of predatory fish, predatory marine animals, predatory birds and eggs of predatory birds, if and so far as such destruction appears to the committee to be desirable for the preservation and improvement of the fisheries within their district, and is not illegal under any Act other than this Act;
 - (b) the committee may contribute to the payment of the cost of executing works for the maintenance or improvement of any small harbour situate wholly or in part within the district of the committee, being a harbour as to which the Minister of Agriculture and Fisheries is satisfied that it is principally used by persons engaged in the sea-fishing industry; and
 - (c) if the committee or any of its officers is authorised in that behalf under subsection (4) of section seven of the Oil in Navigable Waters Act, 1922, the committee may institute proceedings for any offence under that Act committed within the district of the committee.
- (2) In this section the expressions " harbour " and " works " have the meanings respectively assigned to them by paragraph (4) of section two of the Fishery Harbours Act, 1915.

57 Variation and revocation of orders constituting local fisheries committees

The power to vary an order under section one of the principal Act (which enables the Minister of Agriculture and Fisheries to constitute local fisheries committees for specified districts) shall include a power, exercisable in the like manner, to revoke such an order, and an order varying or revoking a previous order made under the said section

may be made on the application of the local fisheries committee and after consultation with every county or borough council concerned, and accordingly subsection (1) of that section shall have effect as if in that subsection for the words " on like application by subsequent order vary" there were substituted the words " by a subsequent order made " on like application or made on the application of the " local fisheries committee and after consultation with " every county or borough council concerned, vary or " revoke ".

58 Amendments of Part III of 31 and 32 Vict. c. 45

- (1) The provisions of sections thirty-two and thirty-three of the Sea Fisheries Act, 1868, as amended by the Sea Fisheries Act, 1884, (which sections require the making of an inquiry with respect to any proposed order under Part III of that Act for the establishment or improvement, or the maintenance and regulation, of an oyster, mussel and cockle fishery) shall apply in relation to any such proposed order as aforesaid only in a case where an objection with respect to the proposed order, being an objection which the Minister of Agriculture and Fisheries considers to be neither frivolous nor irrelevant, has been duly made to the said Minister and has not been withdrawn; but the said Minister may, in any case, cause any such inquiry as he thinks fit to be held with respect to any such proposed order.
- (2) In section thirty-four of the Sea Fisheries Act, 1868, for the words " proceed to consider the objections " or representations that have been made respecting the " proposed order and also the report of the inspector, and " thereupon they shall" there shall be substituted the words " after considering the objections or representations, if any, that have been made with respect to " the proposed order, and also the report of the person " by whom any inquiry with respect thereto has been " held."
- (3) The following section shall be substituted for section thirty-seven of the Sea Fisheries Act, 1868 :—
 - (1) As soon as may be after the making of an order under this Part of this Act, the promoters shall cause to be published in such manner as the Minister of Agriculture and Fisheries thinks sufficient for giving information to all parties interested, and shall, in such manner as the said Minister may direct or approve, give to the persons to whom notices are required to be given under section thirty-five of this Act, a notice stating that the order will become final and come into operation unless within such period, not being less than thirty days, as may be specified in the notice, a memorial praying that the order shall not become law without confirmation by Parliament is presented to the said Minister by some person affected by the order.
 - (2) If no such memorial has been presented within the period aforesaid, or if every such memorial so presented has been withdrawn, the order shall thereupon come into operation; but if such a memorial has been so presented and has not been withdrawn, the order shall have no effect until confirmed by Parliament."

59 Extent of Part V

Except in so far as it amends the Sea Fisheries Act, 1883, and the Sea Fisheries Act, 1868, this Part of this Act shall not extend to Scotland or to Northern Ireland.

PART VI

SUPPLEMENTARY PROVISIONS

60 Offences by corporations

Where any offence under Part I or Part V of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

61 Application to Scotland

- (1) Section three of the Illegal Trawling (Scotland) Act, 1934, shall have effect as if the reference in that section to section five of that Act included a reference to the Sea-Fishing Industry Act, 1933, as amended by Part II of this Act.
- (2) Section fifty-eight of this Act and section thirty-seven of the Sea Fisheries Act, 1868, as amended by the said section fifty-eight, shall, in their application to Scotland, have effect as if for any reference in those sections to the Minister of Agriculture and Fisheries there were substituted a reference to the Secretary of State.
- (3) Subsection (3) of section twenty-two of this Act shall, in its application to Scotland, have effect as if the word " summarily " were omitted.

62 Interpretation

- (1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say :—
 - " fishing-boat " means (except for the purposes of Part IV of this Act) a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea-fishing or in the sea-fishing service;
 - " local fisheries committee " means a local fisheries committee constituted by an order under section one of the Sea Fisheries Regulation Act, 1888;
 - " production," in relation to white fish, means the catching and first landing of white fish;
 - " the appropriate Minister " means—
 - (a) in relation to a co-operative scheme applicable to an area wholly in England, the Minister of Agriculture and Fisheries;
 - (b) in relation to a co-operative scheme applicable to an area wholly in Scotland, the Secretary of State concerned with the sea-fishing industry of Scotland, or
 - (c) in relation to a co-operative scheme applicable to an area partly in England and partly in Scotland, the Minister of Agriculture and Fisheries and the Secretary of State concerned with the sea-fishing industry of Scotland;
 - " the board, " in relation to a marketing scheme, means the board constituted to administer the scheme;
 - " the Gazettes " means the London Gazette and the Edinburgh Gazette;

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" the Ministers " means the Minister of Agriculture and Fisheries and the Secretary of State concerned with the sea-fishing industry of Scotland;

" white fish " means fish of any kind found in the sea, other than—

(a) herring,

(b) fish of the salmon species, or

(c) trout which migrate to and from the sea,

and includes shell-fish; and references to white fish shall be construed as including references to parts of white fish.

- (2) Any reference in an Act passed before this Act to an enactment which is amended by this Act shall, unless the contrary intention appears, be construed as including a reference to that enactment as so amended.

63 Short title and extent

- (1) This Act may be cited as the Sea Fish Industry Act, 1938.

- (2) Subject to any special provisions contained in this Act, this Act extends to the whole of the United Kingdom.

SCHEDULES

FIRST SCHEDULE

Section 1.

INCIDENTAL PROVISIONS AS TO THE WHITE FISH COMMISSION

Constitution of the Commission

- 1 The Commission shall be a body corporate, with a common seal and power to hold land without licence in mortmain.
- 2 The functions of the Commission and of its officers and servants shall be deemed to be exercised on behalf of the Crown.
- 3 Every member of the Commission shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; but notwithstanding anything in such an instrument, any member of the Commission may resign his office by a notice given under his hand to the Ministers, and a member of the Commission who ceases to hold office shall be eligible for re-appointment to the Commission :

Provided that a person shall not hold office as a member of the Commission for more than five years under any one appointment.
- 4 A person shall be disqualified for membership of the Commission, if and so long as he is a member of the Commons House of Parliament.
- 5 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 Commission, 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 Commissioner, and also to satisfy themselves from time to time, with respect to any person who is a member of the Commission, 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 paragraph.

Meetings and Proceedings of the Commission

- 6 Unless and until the Commission otherwise determines, three shall be a quorum at any meeting of the Commission and the Commission shall have power to act notwithstanding a vacancy among the members thereof.
- 7 If at any meeting of the Commission the votes are equally divided on any question, the person acting as Chairman of the meeting shall have a second or casting vote.
- 8 All acts done at any meeting of the Commission shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualifications of a person purporting to be a member of the Commission, be as valid as if that defect had not existed.
- 9 Minutes shall be kept of the proceedings of the Commission, and any such minutes shall, if signed by a person purporting to have acted as chairman of the meeting to

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which the minutes relate, or of a meeting at which they were read, be evidence of the proceedings at the first-mentioned meeting, and a meeting to which any such minutes relate shall, unless the contrary is proved, be deemed to have been regularly convened and constituted.

- 10 Subject to the preceding provisions of this Schedule, the Commission shall have power to regulate its own procedure.

Incidental Duties and Powers of the Commission

- 11 The Commission shall have an office at which communications and notices will at all times be received, and shall notify to the Ministers the address of that office and any change of that address.
- 12 The Commission may enter into such agreements, acquire such property, and do such things (including the employment from time to time of technical and professional agents), as may, in the opinion of the Commission, be necessary or desirable for the exercise or performance of any of its powers or duties, and may dispose, as it thinks fit, of any property acquired by it.

The Common Seal

- 13 The application of the common seal of the Commission to any document shall be attested by at least one member of the Commission and by the person for the time being acting as secretary to the Commission.

Instruments executed or issued by the Commission

- 14 Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Commission by any person generally or specially authorised by it for that purpose.
- 15 Any document purporting to be a document duly executed or issued under the seal of the Commission or on behalf of the Commission shall, until the contrary is proved, be deemed to be a document so executed or issued, as the case may be.

SECOND SCHEDULE

Section 2.

INCIDENTAL PROVISIONS AS TO WHITE FISH INDUSTRY JOINT COUNCIL

- 1 Every member of the Joint Council shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; but, notwithstanding anything in such an instrument, any member of the Council may resign his office by a notice given under his hand to the Ministers, and a member of the Council who ceases to hold office shall be eligible for re-appointment.
- 2 Unless and until the Council otherwise determines, the quorum of the Council shall be such number as may be fixed by the Ministers, and the Council shall have power to act notwithstanding any vacancy among the members thereof.
- 3 Subject to any directions which may be given by the Ministers, the Council shall have power to regulate its own procedure.

- 4 The Commission shall appoint a person to act as secretary to the Council.

THIRD SCHEDULE

Section 4.

PROVISIONS WITH RESPECT TO THE MAKING, CONFIRMATION AND PUBLICATION OF COMMISSION'S REGULATIONS

- 1 At least two months before making any regulations under Part I of this Act the Commission shall cause to be published in the Gazettes and in such other manner as it thinks best adapted for informing persons affected, a notice of the Commission's intention to make the regulations—

- (a) specifying the place where the draft regulations 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
- (b) stating that the Commission is prepared to receive and consider any objection to the proposed regulations which may be made to the Commission in writing within such period after the date of the publication of the notice, not being less than two months, as may be specified in the notice;

and the Commission shall, before making the regulations, take into consideration any such objection so made to it before the end of the period specified on that behalf in the said notice.

- 2 When submitting any such regulations as aforesaid to the Ministers for confirmation, the Commission shall transmit to them any objection to the regulations which has been duly made to the Commission and has not been withdrawn.

- 3 Before confirming any such regulations as aforesaid submitted to them for confirmation, the Ministers shall consider any objections to the regulations which have been transmitted to them under the last preceding paragraph, and may, after holding such inquiries (if any) as they think fit, make such modifications in the regulations as they may, after consultation with the Commission, consider desirable :

Provided that—

- (a) where an objection to the regulations has been duly made by any person appearing to the Ministers to be affected thereby, and has not been withdrawn, the Ministers, unless they consider the objection to be frivolous or irrelevant or unless the regulations have been modified as required by the objection, shall, before taking any further action with respect to the regulations, direct the holding of an inquiry with respect to the objection and consider the report of the person holding the inquiry; and
- (b) if the Ministers decide to make any modifications in the regulations, they shall cause notice of the proposed modifications to be published in such manner as they think best adapted for informing persons affected.

- 4 As soon as may be after confirming any such regulations as aforesaid, the Ministers shall cause to be published by advertisement in the Gazettes, and in such other manner as they think best adapted for informing persons affected, a notice stating that the regulations have come into operation, and specifying the place where copies of the regulations may be obtained.

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.
- 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—
 - (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;

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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.

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.

FIFTH SCHEDULE

Section 13.

PROVISIONS TO BE SUBSTITUTED FOR SUBSECTIONS (3) AND (6) OR SECTION
THIRTEEN OR THIS ACT IN RELATION TO A MARKETING SCHEME FOR
REGULATING THE CARRYING ON OF TWO OR MORE DESIGNATED BUSINESSES

Subsection to be substituted for subsection (3) of section thirteen

- “(3) If, after the preceding provisions of this section have been complied with in relation to a marketing scheme for regulating, in any respect, the carrying on of two or more designated businesses, the Ministers decide to proceed in the matter of the scheme, they shall forthwith direct the Commission to cause to be taken in the prescribed manner, in relation to each of those businesses, a poll of appropriate registered persons, being persons who are registered in the Commission's register as carrying on that business, and shall take no further action in the matter of the scheme unless, in the case of each poll so taken, the result of the poll shows that at least half the total number of appropriate registered persons entitled to vote have voted, and that at least two-thirds of all the votes polled have been cast in favour of the scheme.”

Subsection to be substituted for subsection (6) of section thirteen

- “(6) If, in the case of any marketing scheme for the time being in force which is a scheme for regulating, in any respect, the carrying on of two or more designated businesses, a request for a poll on the question whether or not the scheme should be revoked is made in

writing to the board administering the scheme by or on behalf of the prescribed number of persons registered under the scheme as carrying on a particular designated business, the board shall forthwith communicate the request to the Commission, and thereupon the Commission shall cause to be taken in the prescribed manner a poll of persons registered under the scheme as carrying on that business, and shall communicate the result of the poll to the Ministers; and if the result of the poll shows that not less than half of 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 of persons registered under the scheme as carrying on a particular designated business shall, without the consent of the board, be taken under this subsection—

- (a) within the two years immediately following the date on which the order confirming the scheme was made; or
- (b) within such period after the date of the declaration of any previous poll of persons registered under the scheme as carrying on that business, being a poll taken under this subsection in relation to the scheme, as may be specified in the scheme.”