

Statutory Instrument 1997 No. 1573

The Potato Marketing Board (Residuary Functions) Regulations 1997

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STATUTORY INSTRUMENTS

1997 No. 1573

AGRICULTURE

The Potato Marketing Board (Residuary Functions) Regulations 1997

<i>Made</i>	<i>23rd June 1997</i>
<i>Laid before Parliament</i>	<i>25th June 1997</i>
<i>Coming into force</i>	<i>30th June 1997</i>

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales, acting jointly in exercise of the powers conferred on them by section 38(2), (3), (4) and (6), and 62(1) and (2) of the Agriculture Act 1993[1], hereby make the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the Potato Marketing Board (Residuary Functions) Regulations 1997, shall apply in Great Britain and shall come into force on 30th June 1997.

Interpretation

2. In these Regulations -

"the Act" means the Agriculture Act 1993;

"the approved scheme" means the approved scheme (within the meaning of section 49(1) of the Act) of the Board;

"the Board" means the Potato Marketing Board, constituted under paragraph 7 of the Schedule to the Potato Marketing Scheme (Approval) Order 1955[2];

"the Council" means the British Potato Council, established by the Potato Industry Development Council Order 1997[3];

"the Ministers" means the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales acting jointly;

"preserved", in relation to a given provision of the Scheme means subjected to section 38(3) (a) of the Act (which provides that, notwithstanding section 26(1) and (2) of the Act, the provision shall continue to have effect by virtue of these Regulations, subject to such modifications as may be specified in these Regulations);

"producer" means a producer of potatoes;

"the Scheme" means the Potato Marketing Scheme[4]; and

"Vesting Day" means 30th June 1997 being the day on which, in accordance with the approved scheme, certain property, rights, and liabilities of the Board are, as a result of section 35 of the Act, transferred by virtue of the Act.

Effect of provisions of the Scheme as preserved, inserted or continuing in force
3. The provisions of the Scheme which -

- (a) are preserved, whether or not subject to modifications,**
- (b) are inserted by virtue of these Regulations, or**
- (c) by virtue of section 37 of the Act continue in force subject to the provisions of these Regulations,**

shall in aggregate have effect as set out in the Schedule to these Regulations.

Restructuring of the Board's functions

4. The Board shall, immediately after the transfer under section 35 of the Act, continue to exist until dissolved by order made under section 38(5) of the Act, as a body corporate with a common seal, called the Potato Marketing Board but with their functions confined to those set out in these Regulations.

Members of the Board

5. - (1) The Board, as constituted after the transfer under section 35 of the Act, shall consist of three members whom the Ministers shall appoint.

(2) The Ministers shall designate one of the members appointed under this regulation as chairman of the Board.

(3) The Ministers shall designate a second member to act as chairman, in the event

that the first designated chairman is unable to attend a meeting of the Board.

(4) Subject to the following provisions of this regulation, a member of the Board shall hold and vacate office in accordance with the terms of his appointment specified in the instrument by which the Ministers appoint him, which shall include a condition that the member shall comply with the provisions of these Regulations which are binding on him and ensure in combination with the other members that the Board complies with the provisions of these Regulations binding on them.

(5) Any appointment of a person as a Board member shall be for a term not exceeding two years, but a person who ceases to be such a member at the end of the term shall be eligible for re-appointment.

(6) A member of the Board may by giving a calendar month's notice in writing to the Ministers resign his office with effect from such time as is specified in the notice.

(7) If the Ministers are satisfied in relation to a member of the Board -

(a) that that member has been absent without the written permission of the chairman of the Board from two consecutive meetings of the Board, or

(b) that that member has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors, or

(c) that that member is unable or unfit to discharge the functions of a member, or

(d) that that member has not complied with the terms of his appointment,

the Ministers may by notice to him remove him from office with effect from such time as is specified in the notice.

Official address of the Board

6. The Board shall have an office at which communications and notices will at all times be received and shall notify the Ministers of the address and of any change in the address thereof.

General powers and staff

7. - (1) The Board may by power of attorney or otherwise -

(a) appoint a person to be the agent of the Board, and

(b) delegate to that person any of their functions,

for such purposes, for such time and on such terms and conditions (including as to remuneration) as they think fit and may at any time revoke or alter such terms and conditions.

(2) The Council shall permit its employees to carry out work for the Board, when the Board considers this to be necessary for the purpose of carrying out the Board's functions.

(3) The Board shall appoint a person to act as Secretary to the Board from among the employees of the Council.

(4) The Council shall pay to any member of the Board any such travelling and out-of-pocket expenses as have, in the opinion of the Board, been reasonably incurred by him in connection with the business of the Board.

(5) The Council shall pay members of the Board such remuneration as shall be determined by the Ministers.

Disciplinary Committee

8. - (1) There shall be a committee of the Board to be known as the Disciplinary Committee, which will complete any disciplinary hearings and other matters outstanding as at 30th June 1997.

(2) The Disciplinary Committee shall consist of -

(a) not less than two members of the Board, and

(b) an independent member -

(i) who is a solicitor or a barrister or a Scottish advocate, and

(ii) who has been qualified as such for not less than seven years, and

(iii) who is not and never has been a member of the Board, and

(iv) whose appointment is approved by the Ministers.

(3) The independent member shall act as chairman of the Disciplinary Committee.

(4) Paragraph 83 of the Scheme is preserved, subject to modifications, and shall have effect as set out in the Schedule to these Regulations.

Proceedings of the Board

9. - (1) Any meeting of the Board shall have a quorum of two members.

(2) In the case of an equality of votes at any meeting of the Board or of the Disciplinary Committee, the chairman shall have a second or casting vote.

Minutes

10. Paragraphs 32 and 34 of the Scheme are preserved, subject to modifications and shall have effect as set out in the Schedule to these Regulations.

The seal

11. Paragraph 37 of the Scheme is preserved, subject to modifications, and shall have effect as set out in the Schedule to these Regulations.

Contracts

12. Paragraphs 35 and 36 of the Scheme are preserved and shall have effect as set out in the Schedule to these Regulations.

Annual report and accounts and other financial provisions

13. - (1) The Board shall have power to operate a bank account in the name of the Potato Marketing Board, to be used to receive monies paid to it by producers under the Scheme.

(2) The Board shall draw up the annual report and accounts for the financial year ending 30th June 1997 and shall -

(a) submit that report and accounts to the Ministers; and

(b) circulate that report and accounts to all producers who were registered with the Board on 30th June 1997.

(3) The Board shall pay to the Council the monies referred to in paragraph (1) of this regulation.

Annual General Meeting

14. Notwithstanding the provisions of paragraph 58 of the Scheme, the Board shall not be required to hold a general meeting of producers for the calendar year 1997.

Arbitration

15. Paragraph 90 of the Scheme is preserved and shall have effect as set out in the Schedule to these Regulations.

Indemnity

16. - (1) Subject to paragraph (2) below, every member or officer or auditor of the Board shall be indemnified out of the assets of the Council from and against -

(a) any action, cost, charge, loss, damage and expense which he may incur, and

(b) any liability which by virtue of any rule of law or equity would otherwise attach to him,

by reason of, or in connection with, any act done, concurred in or omitted in or about the execution of his duty in relation to the affairs of the Board.

(2) Paragraph (1) above shall not apply where any such action, cost, charge, loss, damage, expense or liability has arisen from or been contributed to by any dishonest act or omission, wilful default or wilful neglect on the part of such member, officer or auditor.

Completion of functions, winding-up and payments of surplus

17. - (1) As soon as the Board has -

(a) completed all disciplinary hearings outstanding as at 30th June 1997 and

(b) dealt with the annual report and accounts for the financial year ending 30th June 1997, as specified in paragraph 13(2) of these regulations,

then the Board shall pay any remaining monies it holds to the Council.

(2) When the Board has paid the remaining monies to the Council, in accordance with paragraph (1) of this regulation, the Board shall notify the Ministers that it has wound up its affairs in accordance with section 38(5) of the Act.

Lord Donoughue

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

19th June 1997

Signed by authority of the Secretary of State for Wales

Win Griffiths

Parliamentary Under Secretary of State, Welsh Office

23rd June 1997

Sewel

Parliamentary Under Secretary of State, Scottish Office

18th June 1997

THE SCHEDULE

Regulations 3,8(4), 10, 11, 12, and 15

PROVISIONS OF THE POTATO MARKETING SCHEME PRESERVED, INSERTED OR CONTINUING IN FORCE

THE POTATO MARKETING SCHEME 1955

PENALTIES AND PROCEDURES OF THE DISCIPLINARY COMMITTEE (Paragraph 83)

1. - (1) If any producer formerly registered with the Board has failed without reasonable excuse to comply with any demand or requirement made by the Board in pursuance of paragraph 81 of the Scheme or if he without reasonable excuse has made any false statement in complying therewith or in furnishing to the Board any information relating to potatoes which may have been required by the Board for the purposes of paragraph 84 of the Scheme or if he has obstructed or interfered with any person duly authorised by the Board under paragraph 82(1) of the Scheme the Disciplinary Committee referred to in regulation 8 of these regulations (hereinafter called the Disciplinary Committee) shall impose upon him and shall recover from him such monetary penalty not exceeding £2,000 as that Committee think just.

(2) No such penalty shall be imposed in respect of any such contravention as aforesaid which constitutes an offence under any Act other than the Agricultural Marketing Act 1958.

(3) No penalty shall be imposed upon a Producer pursuant to this paragraph except after a hearing by the Disciplinary Committee and by the decision thereof taken in accordance with the opinion of the majority of the members thereof, so however that if there is an equal division of opinion on any question, the opinion of the Chairman shall prevail. At any such hearing the Producer shall be entitled to appear and be heard in person or by Counsel or solicitor or by any other person authorised by him.

(4) Notice of the time and place of every such hearing and a written statement of the charges against the Producer shall be served personally or by registered post on that Producer not later than the 14th day before the date of the hearing.

(5) No penalty shall be imposed for any such contravention which occurred more than 6 years before the service of the said written statement of charge.

(6) When a written statement of charge against a Producer has been sent to or served on him as aforesaid and the charge is withdrawn or not substantiated before the Disciplinary Committee, the Board shall have the power and to such extent as the Disciplinary Committee may decide the duty to make payments to the Producer in respect of his costs in connection with the charge.

(7) As soon as may be after every hearing by the Disciplinary Committee, written notice of their decision shall be sent to the Producer in question and he may on or before the 14th day after the date on which the notice was sent to him give notice to the Board referring the matter to arbitration and if the matter is so referred, no proceedings shall be taken by the Board otherwise than for the purposes of the arbitration or to enforce the award of the Arbitrator; and the Arbitrator may award payment by the Producer of such penalty or other sums (if any) as he thinks just but not exceeding the maximum penalty or other sums respectively which could have been imposed or required by the Disciplinary Committee.

(8) Where a decision has not been referred to arbitration under paragraph 1(7) above, or where a decision has been so referred but the reference has been withdrawn, the Disciplinary Committee shall have the power to reconsider and if need be vary that decision (but not so as to increase the amount of any penalty or other sum required to be paid to the Board). An application for reconsideration may be made to the Disciplinary Committee by the Producer concerned or by the Board within two months after the date on which notice of the decision of the Disciplinary Committee was sent to the Producer, on the ground that: -

(a) there are facts relevant to the case other than the facts which were before the Disciplinary Committee at the hearing; and

(b) if such facts had previously been known to the Disciplinary Committee, their decision might have been influenced thereby.

(9) If pursuant to an application under the foregoing sub-paragraph the Disciplinary Committee (or a person appointed to act as Chairman of the Disciplinary Committee) determines that a decision should be reconsidered, it shall be the duty of the Disciplinary Committee to review the matter in the light of the facts then available to them. Upon any such review the Disciplinary Committee shall not be bound to rehear the case unless the application for reconsideration is made by the Board, or, in the case of an application by the Producer, unless a request for a rehearing is made by him in writing either at the time of the application or on or before the seventh day after the date on which the Board sent him notice calling attention to his right to make such request. The Board shall send notice accordingly by registered post to any Producer who makes an application for reconsideration but who does not indicate whether or not he requests a rehearing. Where the Disciplinary Committee are bound to rehear the case (but not otherwise) the provisions of paragraphs 1(3) and 1(4) of this Schedule shall apply. If the Disciplinary Committee vary the previous decision, the Board shall thereupon give effect to the variation. Notice of the variation shall be sent to the Producer concerned and paragraph 1(7) of this Schedule shall apply as it applies to a previous decision.

(10) Subject as aforesaid every penalty imposed and every sum required to be paid by the Producer by a decision of the Disciplinary Committee shall be a debt due to the Board and recoverable accordingly.

MINUTES (Paragraph 32)

2. - (1) Minutes shall be kept of the proceedings of the Board and of every Committee thereof, and any such minutes shall, if signed by a person purporting to have acted as chairman of the meeting to which they relate, or of a meeting at which they were read, be evidence of those proceedings, and the meeting to which any such minutes relate shall be presumed, until the contrary is proved, to have been regularly convened and constituted.

(2) A copy purporting to be certified in writing by the chairman of the meeting or Secretary of the Board to be a true copy of the minutes or any parts of the minutes of the Board or any Committee of the Board shall be received by all courts and tribunals as evidence of such of the proceedings at the said meeting as such minutes or parts of the minutes purport to relate to, and until the contrary be proved, the meeting shall be presumed to have been regularly convened and constituted.

DEFECT IN APPOINTMENT, ELECTION OR QUALIFICATION OF A PURPORTED MEMBER (Paragraph 34)

3. All acts done at any meeting of the Board or of any committee thereof shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of a person purporting to be a member of the Board or the Committee, or that a member of the Board or of the Committee had voted upon any question upon which he was not entitled to vote, be as valid as if that defect had not existed or such member had been entitled to vote.

THE SEAL (Paragraph 37)

4. The common seal of the Board shall be used by the authority of the Board only and shall be attested by the chairman and at least one other member and by the Secretary of the Board.

CONTRACTS (Paragraph 35 and 36)

5. - (1) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Board by any person authorised by them in that behalf, either generally or specially.

(2) No contract to which the Board are a party shall be avoided by reason only that a member of the Board is also a party thereto, or is interested therein, and a member of the Board who is a party to or is interested in such contract shall not, by reason only that he is a member of the Board, be liable to account to the Board for any profit realised by him by reason of the contract; but a member of the Board must forthwith disclose to the Board any interest which he has or acquires in any contract whatever, if such interest in any way conflicts with his duty as a member of the Board, and shall not vote upon any question relating to the contract: and if he does vote, his vote shall not be counted:

Provided always that a member of the Board shall not be precluded from voting on a question relating to the general policy of the Board with respect to any matter, by reason only that the determination of that question will, or may, affect contracts which have been, or may thereafter be, entered into by him with the Board.

ARBITRATION (Paragraph 90)

6. Any producer who is aggrieved by an act or omission of the Board may refer the matter to the arbitration of a single arbitrator to be agreed upon between the producer and the Board or, in default of agreement, to be nominated by the Ministers on the application of either party, and the arbitrator may make such order in the matter as he thinks just. Every such arbitration may be held either in England or in

Scotland as the arbitrator may think fit. If held in England it shall be conducted in accordance with the law of England, and the Arbitration Act 1996[5], shall apply in relation thereto; if held in Scotland it shall be conducted in accordance with the law of Scotland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

In accordance with the Agriculture Act 1993 ("the Act") the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales have granted an application by the Potato Marketing Board ("the Board") for the approval of a scheme providing for the transfer of its property, rights and liabilities under section 27 of the Act on 30th June 1997.

As a result of the transfer, section 26 of the Act provides that the Potato Marketing Scheme 1955, which constituted the Board, is also revoked with effect from 1st July 1997 although, under section 37 of the Act, the Board shall not be deemed to be dissolved by reason of the revocation but shall continue to exist in residuary form and so much of the potato marketing scheme as relates to the winding up of the Board shall continue in force, subject to Regulations which may be made under section 38 of the Act.

These Regulations, which come into force on 30th June 1997, make provision for the purpose of giving effect to so much of the approved scheme as relates to the Board in the period after the transfer and make provision in relation to the constitution of the Board and for the purpose of enabling the Board to wind up its affairs. In accordance with that section the Regulations provide for certain provisions of the potato marketing scheme to continue to have effect, subject to certain modifications, and contain new provisions.

Notes:

[1] 1993 c. 37; section 49(2) contains a definition of "the Ministers".

[2] S.I. 1955/690 amended by S.I. 1962/883, 1971/711, 1976/133, 1985/312, 1987/282, 1990/1626 and 1994/2404, and by section 64 of, and Schedule 5 to, the Agriculture Act 1993 (c. 37).

[3] S.I. 1997/266.

[4] Approved by the Potato Marketing Scheme (Approval) Order (S.I. 1955/690) amended by S.I. 1962/883, 1971/711, 1976/133, 1985/312, 1987/282, 1990/1626 and 1994/2404, and by section 64 of, and Schedule 5 to, the Agriculture Act 1993 (c. 37).

[5] 1996 c. 23.

