

Statutory Instrument 1997 No. 266

The Potato Industry Development Council Order 1997

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STATUTORY INSTRUMENTS

1997 No. 266

INDUSTRIAL ORGANISATION AND DEVELOPMENT

The Potato Industry Development Council Order 1997

Approved by both Houses of Parliament

Made

10th February 1997

*Coming into force in accordance
with article 1*

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland and the Secretary of State for Wales acting jointly in exercise of the powers conferred by sections 1, 2, 3, 4, 5, 6 and 14 of and Schedule 2 to the Industrial Organisation and Development Act 1947[1] and now vested in them[2], and of all other powers enabling them in that behalf, after consultation with the organisations appearing to them to be representative of substantial numbers of persons carrying on business in the industry and with the organisations representative of persons employed in the industry appearing to them to be appropriate, being satisfied that the establishment of a development council for the industry is desired by a substantial number of persons engaged in the industry, and having satisfied themselves that the incidence of the charges as between different classes of undertakings in the industry will be in accordance with a fair principle, hereby make the

following Order, a draft of which has been laid before and approved by resolution of each House of Parliament -

Title and commencement

1 . This Order may be cited as the Potato Industry Development Council Order 1997 and shall come into force on the day after the day on which it is made.

Interpretation

2 . - (1) In this Order, unless the context otherwise requires -

"the Act" means the Industrial Organisation and Development Act 1947;

"commission agent" means a person who acts on behalf of another and is paid -

(a) a previously agreed sum related to the amount of money involved in the principal transaction,

(b) a fixed sum related to the weight of potatoes bought or delivered, or

(c) a fixed sum related to the area of potatoes grown;

"the Council" means the Potato Industry Development Council established under the provisions of this Order;

"first point of sale" means the point at which a person carrying on business in the industry takes delivery of potatoes, with or without the exchange of monies, as a first purchaser;

"first purchaser" means a person (including a commission agent, a co-operative or a co-operative owned by growers) carrying on business in the industry who buys or who takes delivery as an agent of 100 tonnes or more of potatoes a year where those potatoes have not previously been sold or delivered to an agent;

"the industry" means the activities of persons in growing, selling, purchasing or in any way dealing in potatoes, whether raw or processed, in Great Britain by way of business;

"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;

"potatoes" means -

(i) tubers of *Solanum tuberosum* L and any part thereof, and

(ii) other tuber-forming species or hybrids of the genus *Solanum*, produced or in the course of production in Great Britain for any purpose;

"processing" in relation to raw potatoes means an operation carried out upon raw potatoes which includes -

(a) peeling, slicing, heating, pasteurising, canning, freezing, drying, chilling or any other similar operation which alters the raw product, and

(b) grading and packing them for sale;

and processed shall be construed accordingly;

"producer" means a person who grows one hectare or more of potatoes per year, including seed potatoes, by way of business for the purpose of selling them, either as seed potatoes or in raw or processed form;

"producer/merchant" means a producer who in addition to selling his own produce also buys in and sells the produce of others;

"producers' co-operative" means a co-operative where 51% or more of the shares are owned by producers; and

"take delivery" means to take into a person's possession or control, including where he does not take physical possession.

(2) For the purposes of this Order, where a person produces potatoes, processes them or arranges for them to be processed and then sells the processed product he shall be treated as selling the potatoes at the time that he sells the processed product.

(3) For the purposes of this Order, the quantity of potatoes which a person shall be treated as selling shall be the quantity after the stones and soil have been removed from them.

(4) For the purposes of this Order, unless the context otherwise requires -

(a) any reference to a numbered article and paragraph or Schedule is a reference to the article and paragraph or Schedule so numbered in this Order, and

(b) any reference in an article to a numbered paragraph is a reference to the paragraph so numbered in the article in which the reference occurs.

Establishment of the Development Council

3. - (1) There shall be established a development council for the industry, to be known as the British Potato Council, and there shall be assigned to it the functions specified in Schedule 1.

(2) The Council shall exercise its functions in such manner as appears to it to be likely to increase efficiency and productivity in the industry, to improve and develop the service that the industry renders or could render to the community or to enable the industry to render that service more economically.

(3) The Council may enter into such agreements, acquire such property and do such things as may in the opinion of the Council be necessary or desirable for the exercise of any of its functions and may dispose of any property acquired by it as it thinks fit.

Constitution of the Council

4. The Council shall consist of the following sixteen members appointed by the Ministers, that is to say -

(a) twelve persons capable of representing the interests of persons carrying on business in the industry, being nine producers (at least one of whom shall be a specialist seed producer) and three other persons with knowledge of aspects of the industry subsequent to production;

(b) one person capable of representing the interests of people employed in the

industry;

(c) two persons (including the chairman) as to whom the Ministers are satisfied that they have no such financial or industrial interest as is likely to affect them in the discharge of their functions as members of the Council (hereinafter referred to as "independent members"); and

(d) one person having special knowledge of matters relating to the marketing or distribution of products of the industry.

Membership and proceedings of the Council

5. - (1) The provisions of Schedule 2 shall have effect in relation to the membership and proceedings of the Council.

(2) The Council shall, immediately after its members are appointed by the Ministers, set up a committee to be known as the Seed Sectoral Group.

(3) The Seed Sectoral Group shall have responsibility for reporting to the Council how the functions set out in Schedule 1 should best be carried out in relation to the part of the industry carrying out business in connection with seed potatoes.

(4) The Seed Sectoral Group shall be chaired by a specialist seed producer appointed pursuant to Article 4(a).

Register of producers and first purchasers

6. - (1) The Council shall, in accordance with the following provisions of this article, establish and maintain a register of persons carrying on business in the industry ("the register").

(2) The register shall be divided into two parts: one part to contain producers and the other to contain first purchasers.

(3) The Council may acquire such information as it is reasonably practicable for it to acquire in order to enter on the register the name and address of each person who is carrying on business in the industry, who is a producer or first purchaser at the time of coming into force of this Order, and shall enter on the register the names and addresses of those so identified.

(4) Within thirty days after making any entry in the register in respect of any person, the Council shall give written notice to that person of the fact that it has done so and of details of the entry.

(5) The Council shall also enter on the register the name and address of every person who applies to the Council in writing, on the grounds that he is carrying on business in the industry as a producer or first purchaser, to have his name and address entered thereon.

(6) The Council may enter on the register, in addition to the name and address of any registered person, any business name under which and the address of any place at which he carries on business in the industry, and the names of his partners in any such business, but no other information.

(7) Any registered person who becomes aware that the entry on the register relating to him is inaccurate or incomplete shall give written notice to the Council of that fact within thirty days of his becoming aware of it, and the Council, if satisfied that the register is inaccurate or incomplete, shall amend it accordingly.

(8) Any registered person may apply in writing to the Council for the removal of his

name from the register and the Council, if satisfied that such person is not carrying on business in the industry, shall remove his name forthwith.

(9) The register shall be kept at the office of the Council and any person shall be entitled to inspect the register during normal business hours and on the payment of reasonable photocopying charges, to take, or be supplied with, a copy of the entries.

(10) In this article "registered person" means a person whose entry is for the time being on the register.

Registration of producers and first purchasers

7. - (1) Every person who is carrying on business in the industry as a producer or first purchaser at the time at which this Order comes into force shall within 120 days thereafter apply for registration in writing to the Council unless he has received a notice given under article 6(4).

(2) Every person who commences business in the industry as a producer or first purchaser after this Order comes into force shall no later than 30 days after so commencing apply for registration in writing to the Council.

(3) Where two or more persons jointly carry on business in the industry as a producer or first purchaser they shall, for the purpose of registration, be treated as constituting a single person.

(4) In this article "registration", in relation to any person, means the entering of his name and address on the register of persons carrying on business in the industry as producer or first purchaser maintained under article 6, and in article 8 "registered" shall be construed accordingly.

Returns and information

8. - (1) Each producer shall make an annual return to the Council by the 15th May each year such return to be set out in the form required under paragraph (3).

(2) Each first purchaser shall make an annual return to the Council for the year 1st July to 30th June in the form required under paragraph (3) and such return shall be due on 30th June each year.

(3) Subject to paragraph (6), the Council may require any registered person to furnish such returns and information relating to activities carried out as part of his business and comprised in the industry as appear to the Council to be required for the exercise of any of its functions.

(4) Where a producer fails to make a return within twenty-eight days after the due date in any year the following procedure shall be followed -

(a) the Council shall make an estimate, based on the producer's previous year's return, of the number of hectares which he has grown in the relevant year;

(b) where in any year the previous year's return is not available, the Council shall make an estimate, by reference to the Potato Marketing Board's previous records, of the number of hectares which he has grown in the previous year;

(c) the Council shall then give the producer notice that it has made such an estimate and the amount of it;

(d) the producer may within 28 days of the date of the notice make a return and the Council will accept this as his return;

(e) if the producer fails to make such a return within 28 days following the date of the notice, then the estimate shall be treated as his return;

(f) where in any year a producer fails to make a return, having failed in the previous year to make such a return then until such time as a return is made -

(i) the estimate shall be adjusted up or down in accordance with the statistics collected by the Council which show the national level of plantings in that particular year or in the light of any other information which is available to the Council relating to the number of hectares grown by the producer in the relevant year, and

(ii) that estimate will be treated as his return for that year.

(5) Where a first purchaser fails to make a return within twenty-eight days after the due date, the following procedure shall be followed -

(a) the Council shall make an estimate of the number of tonnes of potatoes the first purchaser has sold in the preceding year based on the published accounts where available;

(b) when published accounts are not available, the Council shall make an estimate based on any figures available from a previous year;

(c) when neither the published accounts nor figures from a previous year are available, the Council shall make the estimate by looking at any records obtainable, including records of the Potato Marketing Board;

(d) the Council shall then give the first purchaser notice that it has made such an estimate and the amount of it,

(e) the first purchaser may within 28 days of the date of the notice make a return and the Council will accept this as his return;

(f) if the first purchaser fails to make a return within 28 days following the date of the notice, then the estimate shall be treated as his return;

(g) where in any year a producer fails to make a return, having failed in the previous year to make such a return then until such time as a return is made -

(i) the estimate shall be adjusted in accordance with the statistics collected by the Council, which set out the market trends for the sale of potatoes in that particular year, or in the light of other information available to the Council relating to the number of tonnes of potatoes purchased by him as first purchaser in the relevant year, and

(ii) that estimate will be treated as his return for that year.

(6) The Council shall not exercise the powers conferred upon it under this article generally as regards the industry or any section thereof unless the Ministers have consented to such exercise and have approved the form in which the returns or other information will be required to be furnished.

Charges for expenses

9. - (1) For the purposes of enabling it to meet its administrative and other expenses incurred or to be incurred in the exercise of its functions the Council may, with the approval of the Ministers, impose on every person carrying on business in the industry as a producer or a first purchaser or both, a charge at such a rate as it considers from time to time to be appropriate, subject to the following provisions of this article.

(2) Any charge imposed under this article shall be paid to the Council at its office or at such other place as the Council may direct on giving at least 30 days notice in writing.

(3) Producers shall pay a charge per hectare of land used to grow potatoes, not exceeding £40 per hectare.

(4) First purchasers who buy or take delivery of potatoes for human consumption shall pay a charge per tonne at the first point of sale not exceeding 25p per tonne.

(5) Payment of the charges referred to in this article shall become due -

(a) in the case of producers, on the 1st November in each year, and

(b) in the case of first purchasers, quarterly, in arrears, on 31st December, 31st March, 30th June and 30th September in each year and the payment made on 30th September shall be adjusted to reflect the amounts shown in the return referred to in Article 8(2).

(6) Where two or more persons jointly carry on business in the industry they shall, for the purpose of calculating any charge payable by them in respect of potatoes produced and sold in the joint business, be treated as constituting a single person.

(7) Where a first purchaser who is a commission agent or a producers' co-operative pays the charge referred to in paragraph (4) he may -

(a) recover the charge from the purchaser to whom he next sells, and where he does so he may deduct from the charge which he pays to the Council a sum equal to the reasonable expenses incurred by him in so doing, and

(b) where the purchaser to whom he next sells is adjudged bankrupt or insolvent so that the first purchaser cannot recover the charge from him, the first purchaser shall not be liable to account for the charge to the Council.

(8) A producer/merchant shall pay the charges referred to in this Article as follows -

(a) on potatoes which he has grown himself, he shall pay the charge referred to in paragraph (3) and the next person who buys or takes delivery from him shall be regarded as the first purchaser of those potatoes and shall pay the charge referred to in paragraph (4),

(b) on potatoes which he has acquired as a first purchaser, he shall pay the charge referred to in paragraph (4).

(9) Where seed potatoes are sold to producers for the purposes of planting, the producer shall pay the charge referred to in paragraph (3) and no other charge shall be paid on seed potatoes at any stage.

(10) Any charge imposed under this article shall, if not paid in accordance with this article, be recoverable by the Council as a debt.

(11) Where the Council is entitled to recover a charge as a debt it may in addition recover interest on the amount of that debt calculated at the rate of one percentage point above the sterling three months London Interbank Offered Rate on a day to day basis from the date when that debt became due to the date of its recovery by the Council.

Borrowing and investment of money

10. - (1) The Council may borrow money and pledge, mortgage, charge or grant standard security over any of its property (including the proceeds of the charges imposed in accordance with the provisions of article 9) for the purpose of defraying any expenses incurred or to be incurred in the discharge of its functions.

(2) The Council may establish and thereafter maintain one or more reserve funds for the purpose of carrying out its functions.

(3) Any monies for the time being comprised in a reserve fund maintained under this article and any other monies of the Council which are not for the time being required for any other purpose may be invested in accordance with paragraph (4).

(4) Sections 1, 2, 5, 6, 12 and 13 of the Trustee Investments Act 1961[3] (which relate to the investment powers of trustees) shall have effect in relation to any such monies, and in relation to any investments or other property for the time being representing any such monies, as if they constituted a trust fund and the Council were the trustees of that trust fund.

Returns

11. - (1) For the purposes of the imposition or recovery of its charges, the Council may from time to time require by notice in writing any person carrying on business in the industry to furnish to the Council a written return, in such form, within such period and showing such information as may be specified in the notice, or to produce for examination at such time as may be specified in the notice, books or other documents of records in the custody or under the control of that person, or to keep records and produce them for examination as aforesaid.

(2) The Council shall ensure that the returns to be furnished in accordance with the provisions of article 8 or the returns to be furnished or the books or other documents or other records to be produced in accordance with the provisions of this article shall be examined only by the independent members of the Council or by officers of the Council specially authorised in that behalf by the Council.

(3) Where a person uses in his business a process which he claims ought not to be disclosed on the ground of risk of prejudice to his business, he shall not be required by anything in this article or in article 8 to disclose particulars relating to that process unless the requirement and the form thereof have been approved by the Ministers, after consideration of his claim.

(4) In this article, "person carrying on business in the industry" includes any person carrying on any business consisting wholly or partly in the production of, or dealing in, any of the materials of the industry.

Offences and penalties

12. - (1) If any person carries on his business in the industry after the expiration of the period within which he is required by article 7(1) or (2) to apply to be registered without having so applied he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person required to furnish returns or information or to keep records or to

produce for examination books or other documents or records under this order fails, without reasonable excuse, to furnish, keep or produce them in accordance with the requirement he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any person who is required to give a notice under article 6(7) fails to do so he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless either -

(a) he has a reasonable excuse, or

(b) he is a recipient of notice given under article 6(4) and can prove that he was not carrying on business in the industry at the time of the coming into force of this Order.

(4) If any person knowingly or recklessly makes any statement or furnishes any information, in compliance with a requirement under the provisions of article 8 or 11, which is false in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If any person who is convicted of an offence under paragraph (1) of this article continues his business in the industry after the expiration of 21 days commencing with the date of the conviction without having applied for registration he shall be guilty of a further and continuing offence and shall be liable on summary conviction to a fine not exceeding five pounds in respect of each day during which he continues such business without having applied for registration.

(6) If any person who is convicted of an offence under paragraph (2) of this article, fails without reasonable excuse to furnish such return or to produce for examination such books, other documents or records to the Council within 21 days after such conviction he shall be guilty of a further and continuing offence and shall be liable on summary conviction to a fine not exceeding five pounds in respect of each day during which such failure continues.

Tim Boswell

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

10th February 1997

Lindsay

Parliamentary Under Secretary of State, Scottish Office

7th February 1997

Signed by authority of the Secretary of State for Wales

Jonathan Evans

Parliamentary Under Secretary of State, Welsh Office

6th February 1997

FIRST SCHEDULE

Article 3(1)

FUNCTIONS OF THE COUNCIL

- 1. Promoting or undertaking scientific research.***
- 2. Promoting or undertaking inquiry as to materials and equipment and as to methods of production, management and labour utilisation, including the discovery and development of new materials, equipment and methods and of improvements in those already in use, the assessment of the advantages of different alternatives, and the conduct of experimental establishments and of tests on a commercial scale.***
- 3. Promoting the production and marketing of standard products.***
- 4. Promoting the better definition of trade descriptions and consistency in the use thereof.***
- 5. Promoting or undertaking research for improving arrangements for marketing and distributing products.***
- 6. Promoting or undertaking research into matters relating to the consumption or use of goods and services supplied by the industry.***
- 7. Promoting the development of export trade, including promoting or undertaking arrangements for publicity overseas.***
- 8. Promoting or undertaking arrangements for better acquainting the public in the United Kingdom with the goods and services supplied by the industry and methods of using them.***
- 9. Promoting or undertaking the collection and formulation of statistics.***
- 10. Advising on any matters relating to the industry (other than remuneration or conditions of employment) as to which the Ministers may request the Council to advise, and undertaking inquiry for the purpose of enabling the Council so to advise.***
- 11. Undertaking arrangements for making available information obtained, and for advising, on matters with which the Council are concerned in the exercise of any of their functions.***

SECOND SCHEDULE

Article 5

MEMBERSHIP AND PROCEEDINGS OF THE COUNCIL

- 1. The members of the Council shall hold office for such term, not exceeding four years, as the Ministers may determine and on the expiry of their term shall be eligible for reappointment.***
- 2. - (1) If a member, appointed as an independent member, after his appointment acquires a financial or industrial interest which the Ministers consider is likely to affect***

him in the discharge of his functions as a member of the Council, the Ministers may by written notice given to him terminate his appointment from such date as may be specified in the notice.

(2) If a member appointed as an independent member so conducts himself, in respect of any financial or industrial interest which he has at the time of his appointment, that the Ministers consider that that interest is likely to affect him in the discharge of his functions as a member of the Council, the Ministers shall request him in writing to satisfy them within such period as is specified in the request that he has ceased to have that interest and if he fails within that period so to satisfy the Ministers, the Ministers may by written notice given to him terminate his appointment from such date as may be specified in the notice.

3. Subject to paragraph 4 below, a quorum of the Council shall be such number as the Council may decide not being fewer than eight and shall include at least two members who are not producers.

4. The Council may appoint committees of their members, may authorise any such committee to discharge such functions of the Council as may be specified in the authorisation and may determine the quorum and procedure of any such committee.

5. The seal of the Council shall not be applied to any document except by the authority of the Council or a duly authorised committee of members of the Council and the application of the seal shall be authenticated by the signatures of two members of the Council.

6. 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 Council by any person generally or specially authorised by it for the purpose.

7. Any document purporting to be a document duly executed or issued either under the seal of the Council authenticated in the manner provided by this Schedule or on behalf of the Council, or purporting to be signed by the secretary to the Council or any person authorised to act in that behalf, shall, until the contrary be proved, be deemed to be a document so executed, issued or signed as the case may be.

8. The Council may pay its members any expenses properly incurred by them in the business of the Council and may pay such remuneration and allowances to any of the members of the Council as the Ministers may determine.

9. Without prejudice to paragraph 3, the validity of any proceedings of the Council shall not be affected by any vacancy amongst its members.

10. Minutes shall be kept of the proceedings of the Council and any such minutes shall, if signed by any person purporting to have acted as chairman of the meeting or at 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 taken to have been regularly convened and constituted.

11. - (1) A member of the Council, shall, if he is in any way directly or indirectly interested in a contract or any other transaction made or proposed to be made by the Council, disclose the nature of his interest at a meeting of the Council as soon as possible after the relevant circumstances have come to his knowledge.

(2) Any disclosure made by a member under the foregoing sub-paragraph shall be recorded in the minutes of the Council, and that member shall not take part after the disclosure in any deliberation or decision of the Council with respect to that contract or other transaction, but may, nevertheless, be taken into account for the purpose of

constituting a quorum of the Council.

12. The Council shall have an office in Great Britain at which communications and notices shall at all times be received and shall notify the Ministers of that address and any change of address.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes a development Council for the potato industry in Great Britain to be known as the British Potato Council.

In particular the Order -

- (a) assigns functions to the Council (article 3 and Schedule 1);*
- (b) provides for the appointment of members and the proceedings of the Council (articles 4 and 5 and Schedule 2);*
- (c) provides for the keeping of a register of producers and first purchasers (articles 6 and 7);*
- (d) empowers the Council to require registered producers and first purchasers to furnish returns and information (articles 8 and 11);*
- (e) provides for the imposition of charges by the Council for its expenses in the exercise of its functions (article 9);*
- (f) empowers the Council to borrow and invest money (article 10); and*
- (g) prescribes offences and penalties (article 12).*

This Order comes into force on the day after the day on which it is made.

Notes:

[1] 1947 c.40; section 4 was modified, in the case of any development council order relating to agriculture, by the Agricultural Act 1993 (c.37), section 60.

[2] By virtue of S.I. 1978/272.

[3] 1961 c.62.

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