STATUTORY INSTRUMENTS

1990 No. 1626

AGRICULTURE

The Potato Marketing Scheme (Amendment) Order 1990

Made - - - -	*1st August 1990*
Coming into force	*15th August 1990*

Whereas the Potato Marketing Board duly submitted to the Minister of Agriculture, Fisheries and Food, the Secretary of State concerned with agriculture in Scotland and the Secretary of State for Wales (hereinafter called "the Ministers") certain amendments of the Potato Marketing Scheme 1955(a), in accordance with sub-paragraphs (1) to (3) of paragraph 1 of the First Schedule to the Agricultural Marketing Act 1958(b) (hereinafter called "the 1958 Act");

And whereas the Ministers caused notice of those amendments to be published in accordance with section 2(1) of the 1958 Act as applied to amendments by paragraph 1(4) of the First Schedule thereto;

And whereas, in order to meet an objection duly made to those amendments by a person affected thereby, the Ministers proposed to modify those amendments;

And whereas the Ministers gave notice of their proposed modifications to the Potato Marketing Board;

And whereas the Potato Marketing Board, within four weeks after that notice had been so given, notified the Ministers that they assented to those modifications;

And whereas the Ministers are satisfied that those amendments as so modified will conduce to the more efficient operation of the Potato Marketing Scheme;

And whereas those amendments as so modified are set out in the Schedule hereto;

Now, therefore, the Ministers, acting jointly, in exercise of the powers conferred by section 2 of, and Schedule 1 to, the 1958 Act, and now vested in them (c), hereby make the following Order:

1. This Order may be cited as the Potato Marketing Scheme (Amendment) Order 1990.

2. The amendments of the Potato Marketing Scheme 1955 which are set out in the Schedule hereto are hereby approved and shall come into force on 15th August 1990.

(a) Approved by S.I. 1955/690, amended by S.I. 1962/883, 1971/711, 1976/133, 1985/312, 1987/282.
(b) 1958 c.47.
(c) In the case of the Secretary of State for Wales, by virtue of S.I. 1969/388 and 1978/272.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 29th July 1990.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

1st August 1990

Sanderson of Bowden
Minister of State, Scottish Office

31st July 1990

David Hunt
Secretary of State for Wales

SCHEDULE

Article 2

The Potato Marketing Scheme 1955 shall be further amended to give effect, in each provision of that Scheme mentioned in the first column of Part A or C below, to each proposed amendment specified opposite that provision in the second column of that Part below, and to replace Schedule A to that Scheme by the Schedule in Part B below:

PART A

Scheme paragraph or other provision	*Proposed Amendment*
Title	Delete the current title and replace it by:– "The Potato Marketing Scheme A Scheme under the Agricultural Marketing Act 1958 regulating the Marketing of Potatoes."
1	Delete the current paragraph and replace it by:– "1. This Scheme is made under the Potato Marketing Scheme (Approval) Order 1955 as amended by the Potato Marketing Scheme (Amendment) Orders 1962(**a**), 1971(**b**), 1976(**c**), 1985(**d**), 1987(**e**) and 1990 and may be cited as the Potato Marketing Scheme. This Scheme applies to Great Britain and is in substitution for the Potato Marketing Scheme 1933 (hereinafter called "the old Scheme") which is hereby revoked."
8	Delete the current paragraph and replace it by:– "8.—(1) Until the first retirement date the Board shall consist of those persons elected or appointed under the Potato Marketing Scheme 1955 as amended by the Potato Marketing Scheme (Amendment) Orders 1962, 1971, 1976, 1985 and 1987. (2) The first retirement date shall be such day in the month of September or October next following the coming into force of the Potato Marketing Scheme (Amendment) Order 1990 as the Board shall fix."
9	Delete the current paragraph and replace it by:– "9. Subject to the next following paragraph and to the provisions of this Scheme as to the filling of casual vacancies, the Board shall consist, after the first retirement date, of eighteen district members, one special member for Scotland and one special member for England and Wales, all of whom shall be elected as hereinafter provided, and three persons appointed by the Minister in accordance with paragraph 2(1) of Schedule 2 to the Act."

(**a**) S.I. 1962/883. (**b**) S.I. 1971/711. (**c**) S.I. 1976/133.
(**d**) S.I. 1985/312. (**e**) S.I. 1987/282.

Scheme paragraph or other provision	*Proposed Amendment*
10(1)	Delete the current sub-paragraph and replace it by:– "10.—(1) Subject to paragraph 8 of this Scheme and to sub-paragraphs (2) and (3) of this paragraph, for the purposes of this Scheme there shall be eighteen districts constituted in accordance with Schedule A of this Scheme, and each district shall, subject to the provisions of this Scheme, elect a district member."
10(2)	Delete "twenty-five" and insert "eighteen" in the two places where this occurs in this sub-paragraph.
11	Delete the current paragraph and replace it by:– "11.—(1) An election of district members shall be held for all districts on such day before the first retirement date as may be fixed by the Board. (2) Subject to the provisions of this Scheme the members of the South-Western, Shropshire and Staffordshire, North-East England and Northern Scotland districts who are elected pursuant to sub-paragraph (1) above shall hold office until the 31st October in the second year after the first retirement date; the members of the said districts who are elected in the second year after the first retirement date shall hold office until the 31st October in the fifth year after the first retirement date; the members of the Southern, Eastern Central England, North Lincolnshire, North-West England and Central Scotland districts who are elected pursuant to sub-paragraph (1) above shall hold office until the 31st October in the second year after the first retirement date; the members of the Southern East Anglia, Central England, Wales and the East Riding of Yorkshire districts who are elected pursuant to sub-paragraph (1) above shall hold office until the 31st October in the third year after the first retirement date and the members of the remaining districts who are elected pursuant to sub-paragraph (1) above shall hold office until 31st October in the fourth year after the first retirement date. (3) Every subsequent election of district members shall be held on such day in the month of September or October as may be fixed by the Board and any member then elected shall subject to the provisions of this Scheme hold office for four years from the 31st October next following his election. (4) Whenever there shall have been an amalgamation, subdivision or alteration of the boundaries of, or alteration to the number of members to be elected by, any district pursuant to paragraph 10(3) of this Scheme– (a) elections shall be held in every new or altered district on such day in the month of September or October following the date on which such amalgamation, subdivision or alteration took effect as may be fixed by the Board; and (b) the Board shall prescribe a timetable for future district elections which ensures as far as is practicable that no more than four years shall elapse between elections for every district member."
12	Delete the current paragraph and replace it by:– "12. Elections of all the Special Members shall be held on such day before the first retirement date as may be fixed by the Board and on such day in the month of September or October in every fourth year thereafter as may be fixed by the Board.

Scheme paragraph or other provision	*Proposed Amendment*
	Subject to the provisions of this Scheme, members so elected shall hold office for four years from the 31st October next following their election, except that Special Members who are elected in the elections held before the first retirement date shall hold office from the first retirement date until the 31st October in the fourth year after the first retirement date."
13(2)	Delete the current sub-paragraph and replace it by:– "(2) Not later than the 42nd day before the day fixed for the election of a district member or of a special member, as the case may be, the Board, if practicable, shall publish in "The Times" newspaper and in such other newspapers (if any) as the Board shall think fit, notice that the Board is prepared to receive nominations. In the case of an election of a special member for Scotland or of a district member for a district situated in Scotland, the said notice, if practicable, shall also be published in "The Scotsman" and "The Glasgow Herald" newspapers."
13(8)	Delete "£20" and replace it by "£100".
13(17)	Delete the current sub-paragraph and replace it by:– "(17) The result of every election shall be published, if practicable, in "The Times" newspaper, or in such other manner as the Board shall think fit."
13(18)	After "(c) entered into a composition or scheme of arrangment with his creditors or" add: "is subject to an interim order for a proposed voluntary arrangement or has made an approved voluntary arrangement under Part VIII of the Insolvency Act 1986(a) or" After "an intent to defraud" add: "or (e) has a controlling interest in assets which are subject to the appointment of a receiver other than an appointment in circumstances which do not involve insolvency or an appointment in respect of a sum owing of less than £1,000 or an appointment which is terminated or discharged within 28 days"
16	Delete the current paragraph and replace it by:– "16.—(1) If a district or special member of the Board dies, or pursuant to paragraph 17 of this Scheme ceases to hold office, then an election shall be held for that district or territory as soon as may be reasonably practicable in accordance with the provisions of paragraphs 13 and 14 of this Scheme so far as such provisions are applicable: Provided that this paragraph shall not apply if the vacancy occurs less than six months before the beginning of September in the year in which the next election for that district or territory would be held under the foregoing provisions of this Part of the Scheme. (2) The term of office of any person so elected to the Board under this paragraph shall cease not later than the date on which the term of office of his immediate predecessor would have ceased if such predecessor had not died or, pursuant to paragraph 17 of this Scheme, ceased to hold office."

(a) 1986 c.45.

Scheme paragraph or other provision	*Proposed Amendment*
17(c)	After "arrangement with his creditors" add: "or is subject to an interim order for a proposed voluntary arrangement or has made an approved voluntary arrangement under Part VIII of the Insolvency Act 1986 or has a controlling interest in assets which are subject to the appointment of a receiver other than an appointment which does not involve insolvency or an appointment in respect of a sum owing of less than £1,000 or an appointment which is terminated or discharged within 28 days"
20	Delete "ten" and insert "eight" in the two places where this occurs in this paragraph. Delete the proviso to this paragraph.
23	Delete the proviso to this paragraph.
24	Delete the current paragraph and replace it by:– "24.—(1) The Board shall constitute a Committee (to be known as "the Joint Consultative Committee") consisting of a Chairman and not more than twenty-five members of whom (a) not more than nine members shall be nominated by the Board, of whom not more than five shall be nominated from among the members of the Board, and one of whom shall be a member of the Board who is a member of the Retailers' Committee hereinafter referred to; (b) not more than three members shall be appointed by the Retailers' Committee hereinafter referred to from amongst the members of that Committee who are not members of the Board; (c) the remaining members shall be nominated by such organisations as the Board, with the approval of the Minister, think best qualified to represent and express the views of consumers of potatoes and of others apart from producers and retailers who have a significant interest in the potato industry. (2) The Chairman of the Joint Consultative Committee shall be a person who is not a member of the Board and who is not associated directly with any of the interests represented on the Joint Consultative Committee but is an independent person appointed by the Joint Consultative Committee with the assistance of the good offices of the Minister. (3) The Joint Consultative Committee shall consider those matters which may be referred to it by the Board or by the Minister and shall make recommendations to the Board or the Minister, as the case may be, on the matters so referred. (4) The Joint Consultative Committee shall reach its decisions as to the recommendations to be made on the matters referred to it under sub-paragraph (3) of this paragraph by a simple majority vote of the members (other than the Chairman) of the Joint Consultative Committee. In the case of an equality of votes amongst the members on the recommendations to be made, the Chairman of the Joint Consultative Committee shall have power to decide on the recommendations to be made from within the proposals suggested by members of the Joint Consultative Committee or, if there be no such proposals, on the basis of his own judgement.

Scheme paragraph or other provision	*Proposed Amendment*
	(5) The Board shall give fair and due weight to the recommendations of the Joint Consultative Committee.
	(6) The Joint Consultative Committee shall meet not less than three times a year and when a meeting is convened by the Chairman of the Joint Consultative Committee.
	(7) The Joint Consultative Committee may, subject to the approval of the Board, appoint sub-committees (whether or not from amongst their own members) for the purpose of considering and advising on such specific matters as the Joint Consultative Committee may direct.
	(8) The remuneration of the Chairman of the Joint Consultative Committee shall be paid by the Board and shall be defrayed out of the fund. The Board may receive from those organisations which nominate members of the Joint Consultative Committee such contributions as they may wish to make to the remuneration of the Chairman of the Joint Consultative Committee and shall apply such contributions accordingly."
25	Delete the whole of the current paragraph and replace it by:
	"25.—(1) The Board shall constitute an Advisory Committee (to be known as "the Retailers' Committee") consisting of not more than two members of the Board and of ten representatives of such organisations as the Board may consider best qualified to express the views of retailers and of persons who buy potatoes for the purpose of selling them to the public in a cooked state. The Retailers' Committee, in exercise of its power to appoint members of the Joint Consultative Committee, shall have regard to the level of sales through and the extent of investment by different sectors of the retail trade represented on the Retailers' Committee.
	(2) The Board may constitute Advisory Committees for the purpose of considering such matters as the Board may direct.
	(3) The Board may invite any person or any representative of any organisation to serve upon any such Advisory Committee as is referred to in the preceding sub-paragraph of this paragraph and may appoint representatives to any Advisory Committee set up by any other persons or organisations."
26	Delete the word "Advisory" wherever it occurs in this paragraph.
28	Insert "and Consultative" between "Advisory" and "Committee".
	Insert at the end of sub-paragraph (c):
	"provided that the Chairman of the Joint Consultative Committee may hold office for up to three years and may be re-appointed at the end of any term of office;"
	Delete the proviso at the end of this paragraph.
31	Insert after "or of a Committee thereof," the words "other than the Joint Consultative Committee,"

Scheme paragraph or other provision	*Proposed Amendment*
51(3)	Delete the current sub-paragraph and replace it by:– "(3) The result of the poll as shown in the certificate given by the returning officer shall be declared at a meeting of the Board by a member acting as chairman of that meeting, and that certificate (or such part thereof as the Minister may determine) shall be published by the Board, if practicable, in "The Times", "The Scotsman" and "The Glasgow Herald" newspapers or such other newspapers as the Board may think fit, or at the option of the Board, by sending a notice of the result to every registered producer."
70	Delete "made by the Board prescribing minimum prices under paragraph 71 of this Scheme and no prescription".
Title preceding 71	Delete the current title and replace it by: "TERMS OF SALE".
71	Delete the whole of the current paragraph and replace it by:– "71. The Board may from time to time regulate sales of potatoes by any registered producer by prescribing the terms on which potatoes or any description or quantity of potatoes may be sold otherwise than to the Board: Provided that such terms shall not include a term requiring that, on a sale of potatoes or on a resale of potatoes by the buyer or on any subsequent resale, the potatoes shall be sold at, below or above a specified price."
73	Delete the whole of the proviso to this paragraph and replace it by:– "Provided that no such terms or form of contract shall include a term requiring that, on a sale of potatoes or on a resale of potatoes by the buyer or on any subsequent resale, the potatoes shall be sold at, below or above a specified price."
83(1)(a)	Delete the words "knowingly or recklessly" and replace with the words "without reasonable excuse".
83(4)	Insert after "if an application for re-consideration is made to the Committee by the producer concerned or by the Board" the words "within three months after the date on which notice of the decision of the Disciplinary Committee was sent to the producer".
84(2)	Delete the whole of the current sub-paragraph and replace it by: "(2) The Board shall not require any registered producer to contribute in respect of any calendar year sums which exceed the aggregate of: (a) an ordinary contribution as provided for in sub-paragraph (3) of this paragraph, and (b) an excess area contribution at a rate per hectare not exceeding ten times the formula rate, and proportionately for each tenth of a hectare, of the excess area in the case of a producer who, if that year is a quota year, has exceeded his quota area in that year:

Scheme paragraph or other provision	*Proposed Amendment*
	Provided that the Board may require any registered producer to pay Value Added Tax or any tax, charge or duty which may replace or supplement Value Added Tax or any other tax, charge or duty which the Board is required by law to impose or collect in addition to the ordinary contribution and the excess area contribution referred to in subsections (a) and (b) of this sub-paragraph."
84(4)	Delete the whole of the current sub-paragraph and replace it by:– "(4) Where, as respects all or a specified part of the area applicable in the case of any registered producer for the purposes of ordinary contribution in respect of any calendar year, the registered producer satisfies the Board by such date and in such manner as the Board may require that on or before the relevant date the potatoes planted thereon had been lifted, then provided that the said area or any part thereof is not replanted with potatoes in the same calendar year, the rate of ordinary contribution in respect of that area shall be reduced by such proportion as the Board may prescribe of the rate per hectare which would otherwise apply. In this sub-paragraph, the expression "the relevant date" means such date as the Board prescribe for the year in question."
90	Add the following sentence at the end of the current paragraph:– "A producer shall not be entitled to refer decisions of the Disciplinary Committee to arbitration under the provisions of this paragraph of the Scheme."

PART B

SCHEDULE A

Paragraph 10

DISTRICT MEMBERS OF THE BOARD

Subject to paragraph 10 there shall be 18 districts bearing respectively the names set out in the first column of the following table; each district shall consist of the areas specified opposite thereto in the second column of that table; each such area shall be geographically identical to the equivalent area included in the table before the amendment of this Scheme approved by the Potato Marketing Scheme (Amendment) Order 1990, the equivalent area being–

(a) in the case of an area where no name is specified opposite it in the third column of that table, the area identically named in that table before that amendment, and

(b) in the case of an area where a name is specified opposite it in that third column, the area name with that specified name before that amendment;

except that the Parts of Lincolnshire and the Ridings of Yorkshire shall be as referred to in the Local Government Act 1933(a).

Name of District	*Area*	*Term previously used*
1. South-Western	Cornwall (including the Isles of Scilly)	
	Devon	Devonshire
	Dorset	Dorsetshire
	Somerset	Somersetshire
	Wiltshire	
2. Southern	Hampshire	
	Isle of Wight	The Isle of Wight
	Kent	
	Surrey	
	Sussex	
3. Southern East Anglia	Essex	
	Hertfordshire	
	Middlesex and London (including the City)	
	Suffolk	
4. Norfolk	Norfolk	
5. Eastern Central England	Bedfordshire	
	Cambridgeshire (including the Isle of Ely)	
	Huntingdonshire	
6. Central England	Derbyshire	
	Leicestershire	
	Northamptonshire (including the Soke of Peterborough)	
	Nottinghamshire	
	Rutland	
7. South Midlands	Berkshire	
	Buckinghamshire	
	Gloucestershire	
	Herefordshire	
	Oxfordshire	
	Warwickshire	
	Worcestershire	
8. Shropshire & Staffordshire	Shropshire	
	Staffordshire	

(a) 1933 c.51, repealed by the Local Government Act 1972 (c.70).

PART B *(continued)*

Name of District	*Area*	*Term previously used*
9. South Lincolnshire	The Parts of Holland	See above
	The Parts of Kesteven	See above
10. North Lincolnshire	The Parts of Lindsey	See above
11. Wales	Wales and Monmouthshire	
12. North-West England	Cheshire	
	Cumberland	
	Lancashire	
	Westmorland	
13. West Riding of Yorkshire	West Riding of Yorkshire	See above
14. North-East England	Durham	Durham (the whole County)
	North Riding of Yorkshire	See above
	Northumberland	
15. East Riding of Yorkshire	East Riding of Yorkshire	See above
16. Southern Scotland	Ayr	Ayrshire
	Berwick	Berwickshire
	Bute	Buteshire
	Clackmannan	Clackmannanshire
	Dumfries	Dumfriesshire
	Dunbarton	Dunbartonshire
	East Lothian	
	Fife	Fifeshire
	Kirkcudbright	Kirkcudbrightshire
	Lanark	Lanarkshire
	Midlothian	
	Peebles	Peeblesshire
	Renfrew	Renfrewshire
	Roxburgh	Roxburghshire
	Selkirk	Selkirkshire
	Stirling	Stirlingshire
	West Lothian	
	Wigtown	Wigtownshire
17. Central Scotland	Angus	
	Kincardine	Kincardineshire
	Kinross	Kinross-shire
	Perth	Perthshire
18. Northern Scotland	Aberdeen	Aberdeenshire
	Argyll	Argyllshire
	Banff	Bannffshire
	Caithness	
	Inverness	Inverness-shire
	Moray	Morayshire
	Nairn	Nairnshire
	Orkney	
	Ross & Cromarty	
	Sutherland	
	Zetland	

PART C

SCHEDULE B

Delete "What was the largest area of such land which was under potatoes" and insert:

"What was the largest number of hectares of such land which was under potatoes at any one time".

Delete "the largest area of such land which was under potatoes during the calendar year (5) ... planted either by yourself or by a previous occupier" and insert:

"your quota area for the calendar year (5) .....".

SCHEDULE D
Paragraph 2 and subsequent paragraphs

Delete the whole of the current paragraph 2 and renumber subsequent paragraphs accordingly.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reduces the size of the Potato Marketing Board, alters the boundaries of its electoral districts and lengthens the terms of office of elected Board Members. The Joint Consultative Committee is reconstituted under an Independent Chairman so as to increase the involvement of consumer and other non-producer interests in market management decisions and other matters referred to it. Certain Committees and obsolete powers of the Board are abolished. Provision is made for the Board to charge VAT on producers' contributions. The deposit paid by candidates standing for election to the Board is increased and the qualification required of candidates and members of the Board is amended to reflect changes in the statutory definition of insolvency. Other minor and consequential amendments to the Potato Marketing Scheme 1955 are made.

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