The Tomato and Cucumber Marketing Scheme (Approval) Order, 1950

1950 No. 1327

Made - - - - 31*st July*, 1950

Whereas the Minister of Agriculture and Fisheries and the Secretary of State for Scotland laid before each House of Parliament a draft of a Scheme, as set forth in the Schedule hereto, under the Agricultural Marketing Acts, 1931 to 1949(**a**), for regulating the marketing of tomatoes and cucumbers produced in Great Britain:

And Whereas the House of Commons resolved on the twentieth day of July, 1950, and the House of Lords resolved on the twenty-fifth day of July, 1950, that the said scheme should be approved.

Now, therefore, the Minister of Agriculture and Fisheries and the Secretary of State for Scotland, in pursuance of sub-section (8) of Section 1 of the Agricultural Marketing Act, 1931(**b**), hereby make the following Order:—

1. This Order may be cited as The Tomato and Cucumber Marketing Scheme (Approval) Order, 1950.

2. The said Scheme is approved in the terms of the said draft.

3. The said Scheme shall come into force on the first day of October, 1950.

In Witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this thirty-first day of July, 1950.

(L.S.) *T. Williams,*
Minister of Agriculture and Fisheries.

Given under the Seal of the Secretary of State for Scotland this thirty-first day of July, 1950.

(L.S.) *Hector McNeil,*
Secretary of State for Scotland.

(a) 21 & 22 Geo. 5. c. 42; 23 & 24 Geo. 5. c. 31; 24 Geo. 5. c. 1; 12, 13 & 14 Geo. 6. c. 38.
(b) 21 & 22 Geo. 5. c. 42.

SCHEDULE

SCHEME UNDER THE AGRICULTURAL MARKETING ACTS, 1931 TO 1949, REGULATING THE MARKETING OF TOMATOES AND CUCUMBERS

PART I.—PRELIMINARY

1. This Scheme may be cited as the Tomato and Cucumber Marketing Scheme 1950 and applies to Great Britain.

2. This Scheme shall apply to tomatoes and cucumbers, but for the purposes of section 3 (4) of the Act of 1931 these products shall not be treated as separate products.

3. The Interpretation Act 1889 applies for the interpretation of this Scheme as it applies for the interpretation of an Act of Parliament.

4. In this Scheme, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely:—

"The Act of 1931" means the Agricultural Marketing Act, 1931, and "the Act of 1949" means the Agricultural Marketing Act, 1949 (in each case as amended or extended by any subsequent Act).

"Calendar Year" means a period of twelve consecutive months beginning on the first of January.

"Cucumber" means a cucumber produced in Great Britain from a cucumber plant.

"Cucumber plant" means a cucumber plant which has been grown mainly in a glasshouse.

"Mature" means bearing saleable fruit.

"Minister" means the Minister of Agriculture and Fisheries and the Secretary of State for Scotland acting in conjunction.

"Producer" means a producer of either or both of the regulated products—namely, tomatoes and cucumbers.

"Registered" means registered under this Scheme, and "registration" shall be construed accordingly.

"Standard number of votes" has the meaning described in paragraph 62.

"Tomato" means a tomato produced in Great Britain from a tomato plant.

"Tomato plant" means a tomato plant whether or not it has been grown mainly in a glasshouse, but a tomato plant which does not fruit in a glasshouse shall not be deemed to have been grown mainly in a glasshouse.

"Unit of production" has the meaning described in paragraph 5.

5.—(1) A unit of production means—

(*a*) In respect of tomato plants and cucumber plants which have been grown mainly in glasshouses:

(i) 5 rods of land fully planted with mature tomato plants or mature cucumber plants or both, or

(ii) 500 mature tomato plants, or

(iii) 100 mature cucumber plants, or

(iv) such number of mature tomato plants and mature cucumber plants as is equivalent to 500 mature tomato plants if 5 mature tomato plants are reckoned as equivalent to 1 mature cucumber plant.

(*b*) In respect of tomato plants which have not been grown mainly in glasshouses:

(i) 20 rods of land fully planted with mature tomato plants, or

(ii) 2,000 mature tomato plants.

(2) Where a unit of production may, in accordance with the foregoing part of this paragraph, be reckoned either by reference to number of rods or number of plants, the producer may choose.

(3) When a producer has in his possession two or more whole units of production and part of a unit of production, the part shall be reckoned as a whole unit of production.

6. Subject to the provisions of paragraph 77 of this Scheme any requirement of this Scheme, that a document shall be sent to a person by the Board, shall be deemed to have been complied with if the document is despatched to him by post properly addressed and with the postage prepaid.

7. 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 Minister 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 Scotland. If held in England it shall be conducted in accordance with the law of England, and the Arbitration Acts 1889 to 1934 shall apply in relation thereto; if held in Scotland it shall be conducted in accordance with the law of Scotland.

PART II.—THE BOARD AND COMMITTEES

8. The Board to administer this Scheme shall be called the Tomato and Cucumber Marketing Board and is in this Scheme called "the Board."

9. The Board shall be a body corporate with a common seal and power to hold land without licence in mortmain.

10. Until the thirtieth day of September, 1951, the Board shall consist of the persons named in the First Schedule to this Scheme and not less than two and not more than four persons appointed by the Minister in accordance with sub-section (1) of section 1 of the Act of 1949.

11. Subject to the provisions of paragraph 19 of this Scheme as to the filling of casual vacancies in the case of district members, the Board shall, after the thirtieth day of September, 1951, consist of not more than twenty district members all of whom shall be elected as hereinafter provided, and not less than two and not more than four members appointed by the Minister as aforesaid.

12. For the purposes of this Scheme there shall be thirteen districts constituted in accordance with the Second Schedule to this Scheme, and each district shall elect a district member or members as therein specified, provided that, if at any time the Board are of opinion that the average number of registered producers engaged in producing tomatoes and cucumbers, or the average annual total quantity of tomatoes and cucumbers produced in any district or districts for the last three preceding calendar years is such that a re-adjustment should be made, the Board may by resolution, subject to the provisions of paragraph 11 hereof, alter the number of members to be elected by all or any of the districts. Such re-adjustment shall take effect at the next election in the district or districts affected thereby.

13. An election of district members for all districts shall be held in the month of September, 1951. One half of the members then elected shall hold office until the thirty-first day of October, 1952, and the remainder until the thirty-first day of October, 1953. The members to retire in 1952 and 1953 respectively shall be decided by the Board after the first election of district members has taken place.

14. After the first election of district members, every district member shall be elected in the month of October and shall hold office from the following first day of November for two years. In the month of August, 1951, in the case of the first election, and in the month of September in any subsequent year when an election of a district member or members is to be held for any district the

Board shall send to every registered producer entitled to vote, that is to say, every registered producer who produces tomatoes or cucumbers in that district notice of the election and of the candidates who have been duly nominated, together with a voting paper, and those registered producers shall vote by completing the voting paper and sending the same with postage prepaid to reach the address of the Board specified in the voting paper not later than 6 p.m. on the third Tuesday in the month of September, 1951, in the case of the first election, or on the third Tuesday in the month of October in the year of the election in the case of any subsequent election.

15. For the purpose of every election of district members to the Board, voting shall be in accordance with the provisions of paragraphs 62 and 64 of this Scheme.

16. To be qualified for election as a district member of the Board a person must be duly nominated in accordance with the following provisions:

(*a*) He must be nominated in writing—

(i) in respect of any district situate in England or Wales by a branch of the National Farmers' Union of England and Wales within that district; or in respect of Scotland, by an Area Executive Committee of the National Farmers' Union of Scotland; or (ii) by at least ten registered producers entitled to vote in that district.

(*b*) Every nomination must be received not later than 6 p.m. on the second Tuesday in the month of August, 1951, in the case of the first election, or on the second Tuesday in the month of September in the year of the election in the case of any subsequent election, at the principal office of the Board in England in respect of any district situate in England or Wales and at the principal office of the Board in Scotland in respect of Scotland.

(*c*) If the number of candidates duly nominated as aforesaid is less than the number of vacancies to be filled, the existing members of the Board elected for that district may nominate such number of candidates as will make the total number of candidates equal to the total number of vacancies.

17. If no more nominations are received than there are vacancies to be filled, the nominated candidates shall be declared elected, but otherwise those candidates shall be elected who receive the greatest number of votes.

18. A district member of the Board who retires or resigns shall be eligible for election or re-election to the Board.

19. If a district member of the Board dies or ceases to hold office before the first day of August next before an election for that district is due to be held in accordance with paragraph 14 of this Scheme a new member for his district shall be elected as soon as may be, in accordance with the provisions of paragraphs 14, 15 and 16 hereof so far as they are capable of applying. Every person elected under this paragraph shall hold office until the date on which his predecessor would have retired.

20. A district member of the Board shall cease to hold office—

(*a*) if he delivers to the Board a written resignation of his office, and the resignation is accepted by the Board or, if not so accepted, is not withdrawn within seven days; or

(*b*) if he is detained for more than seven days in any place under any enactment in force in the United Kingdom relating to persons of unsound mind; or

(*c*) if he is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; or

(*d*) if the Board, by resolution, declare that he has been absent from six consecutive meetings of the Board without reasonable excuse; or

(*e*) if he is convicted of any offence under sub-section (2) of section 17 of the Act of 1931.

21. The Board—

(*a*) shall elect from amongst their members a chairman and vice-chairman, both of whom shall (provided they remain members of the Board) hold office until the expiration of the day on which the next ensuing annual general meeting is held;

(*b*) may employ a secretary and such other officers, servants and agents as they think fit;

(*c*) shall have an office in England and an office in Scotland at either of which communications and notices (except as otherwise in this Scheme expressly provided) will at all times be received, and shall notify the Minister of the addresses thereof, and of any change in those addresses;

(*d*) may have such district and local offices as they think fit; and

(*e*) may enter into such agreements, acquire such property and do such things as may in their opinion be necessary or desirable for the purpose of exercising any of their powers or performing any of their duties under this Scheme, and may sell or otherwise dispose of any property acquired by them which they do not need for such purpose.

22. The Board may pay to members of the Board such travelling and other expenses as have, in the opinion of the Board, been reasonably incurred by them in connection with the business of the Board, and shall also pay to the members of the Board such remuneration, if any, as may be determined by a resolution of the registered producers in annual general meeting.

23. The quorum of the Board shall be such number, not being less than ten, as the Board may from time to time determine, and until otherwise so determined shall be ten, and the Board shall have power at all times to act, notwithstanding any vacancy in their number.

24. The Board shall appoint from among the members thereof an Executive Committee consisting of not more than seven persons of whom at least one shall be a member of the Board appointed by the Minister.

25. The Board shall delegate to the Executive Committee all their functions under this Scheme except their functions under the following paragraphs of Part II of this Scheme, namely, paragraphs 12, 19, 20a, 20d, 21, 23, 24, 25, 28 and 29 and except their functions under Parts III to VIII (inclusive) of this Scheme; provided that the Board may, at their discretion, so delegate all or any of the functions so excepted (other than a power to impose penalties or a power in connection with the borrowing of money).

26. A member of the Executive Committee shall cease to hold office if he ceases to be a member of the Board and in any case on the expiration of one year from the date of his appointment.

27. The quorum of the Executive Committee shall be three and the Committee shall report its proceedings to the Board.

28. The Board may appoint other Committees from among the members of the Board and may delegate to any such Committee any of the powers of the Board other than a power to impose penalties or a power in connection with the borrowing of money or a power which is required to be delegated to the Executive Committee. Every such Committee shall report its proceedings to the Board and shall comply with the Board's directions.

29.—(1) The Board shall set up and appoint an Advisory Committee which shall consist of members of the Board and of persons who, in the opinion of the Board, represent the views of wholesale and retail salesmen and processors of tomatoes and cucumbers.

(2) The Board may set up and appoint other Advisory Committees for the purpose of assisting the Board to exercise their functions under this Scheme, and may appoint representatives to any Advisory Committee set up by any other persons or organisations.

30. The Board may pay to members of the Executive and other Committees of the Board, members of any Advisory Committees set up by the Board, and to any persons appointed by the Board to represent them on an Advisory Committee set up by any other person or organisation, such travelling and other expenses as have, in the opinion of the Board, been reasonably incurred by them in the performance of their duties.

31. Seven members of the Board may, and the Secretary shall, on the request of any seven members or of the Chairman, convene a meeting of the Board.

32. 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 of 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.

33. Questions arising at any meeting of the Board or of a Committee thereof appointed under the provisions of paragraph 24 or paragraph 28 hereof shall be decided by a majority of the votes of the members present, and if at any such meeting the votes are equally divided on any question, the chairman of the meeting shall have a second or casting vote.

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

35. For the purpose of any proceedings a copy, purporting to be certified in writing by the Chairman or Vice-Chairman of the meeting or Secretary of the Board to be a true copy, of the minutes or any parts of the minutes of any meeting of the Board or any Committee of the Board, shall be 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.

36. The common seal of the Board shall not be applied to any document authorised by the Executive Committee under its powers under paragraph 25 of this Scheme except by the authority of the Executive Committee, and the application of the seal shall be attested by the Chairman and at least one other member and by the Secretary of the Committee; and, except as hereby provided, it shall not be applied to any document except by the authority of the Board, and the application of the seal shall be attested by the Chairman or Vice-Chairman and at least one other member and by the Secretary of the Board.

37. 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.

38. 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.

PART III.—REGISTER OF PRODUCERS

39. The Board shall keep a register of producers (hereafter in this Scheme called "the register") and every producer shall on application to the Board be entitled to be registered therein.

40. The register shall be open for inspection at the principal office of the Board in England from 10 a.m. to 4 p.m. on week-days other than Saturdays, except on Christmas Day, Good Friday and any Bank Holiday, and any person shall be entitled to be supplied with a copy of the register, or any part thereof, on payment of a fee of one shilling and an additional fee not exceeding one penny for each entry copied in excess of twelve or to take extracts therefrom for his own use free of charge.

41. The following producers shall be exempt from registration:

(*a*) Producers who do not carry on the business of selling tomatoes or cucumbers except to their servants for consumption in their own households; and

(*b*) Producers who have not had more than two units of production in their possession at any time either in the current or the preceding calendar year.

42. The Board on being satisfied that a person who is registered has ceased to be a producer or is exempt from registration shall remove his name from the register; provided that the name of a person shall not, by reason only that he is exempt from registration, be removed from the register without his consent.

43.—(1) A copy of any entry in the register purporting to be certified in writing by the Chairman or Vice-Chairman or Secretary for the time being of the Board to be a true copy shall be evidence of such entry in the register.

(2) A written statement purporting to be signed by the Chairman or Vice-Chairman or Secretary for the time being of the Board that the name of a person does not appear in the register or did not appear in the register upon any stated date shall be evidence that such person is not a registered producer or was not a registered producer at the date stated as the case may be.

44. Where by reason of a registered producer dying, or becoming subject to some legal disability, or entering into a composition or scheme of arrangement with his creditors, any property in, or control of, the regulated product is transferred from the registered producer to a personal representative, trustee, committee or other person, the personal representative, trustee, committee or other person, as the case may be, shall, for all the purposes of this Scheme be deemed to be a producer.

PART IV.—POLLS

45. Within six weeks of the coming into force of this Scheme a poll of the registered producers shall be taken on the question whether this Scheme is to remain in force. The said poll (in this Scheme referred to as the "initial poll"), and any poll held in connection with a proposal for the amendment or revocation of this Scheme and any poll held in pursuance of paragraphs 70 or 73 (1) of this Scheme shall be taken in accordance with the succeeding provisions of this Part of this Scheme.

46. The producers who are entitled to vote on a poll shall be the producers who are registered on the qualifying date, that is to say:

(*a*) in the case of the initial poll, the day on which the time for registration specified in the notice to be published by the Board in accordance with sub-section (1) of section 4 of the Act of 1931 expires; and

(*b*) in the case of any other poll on such day as may be determined by the Board.

Provided that a producer who is exempt from registration by or under the provisions of this Scheme shall, notwithstanding that he is registered, not be entitled to vote on the initial poll.

47. The poll shall be conducted by post and the Board shall not later than the fifth day after the qualifying date send a voting paper to every producer entitled to vote. In the event of the loss of a voting paper so sent the Board may supply a duplicate voting paper.

48. The voting paper shall be substantially in the form set out in the Third Schedule to this Scheme, and only voting papers which are properly completed and which reach the office of the Board in England on or before the fifteenth day after the qualifying date shall be taken into account.

49. Any person who knowingly makes any false statement in a voting paper shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, or to a fine not exceeding £100, or to both such imprisonment and fine.

50. The Board shall cause the votes given on any poll to be counted by an independent person, and the result of the poll as certified by him shall, as soon as possible, be declared at a meeting of the Board by the member acting as Chairman of that meeting, and shall be published in "The Times," "The Scotsman" and "The Glasgow Herald" newspapers, or, at the option of the Board, by sending a notice thereof, in the case of the initial poll, to every person who is known to the Board to be a producer, and in the case of any other poll, to every registered producer.

51.—(1) For the purpose of any poll, the quantity of tomatoes and cucumbers which a producer is capable of producing shall be taken to be in the same proportion to the total quantity of tomatoes and cucumbers produced by registered producers in any year as his standard number of votes bears to the total of the standard number of votes of all registered producers.

(2) In this paragraph, the expression "standard number of votes" has the meaning assigned to it by paragraph 62 (*c*) and the relevant date mentioned therein means the qualifying date referred to in paragraph 46 of this Scheme.

Part V.—Financial Provisions

52. There shall be established a fund (in this Scheme referred to as "the Fund") which shall be administered and controlled by the Board.. All monies received by the Board shall be paid into the Fund and any monies required by the Board for the operation of this Scheme shall be paid out of the Fund. Any monies for the time being standing to the credit of the Fund may be left on current or deposit account in any bank or, if not for the time being required for the purposes of the functions of the Board, may be invested, but, except with the approval of the Minister, shall not be invested otherwise than in securities in which a trustee is authorised, under Sections 1 and 2 of the Trustee Act, 1925, as extended by any subsequent enactment, to invest trust funds, or in the stocks, funds or securities mentioned in Section 10 or Section 11 of the Trusts (Scotland) Act, 1921, or for the time being approved by the Court of Session under Section 27 of the last-mentioned Act.

53. The Board shall keep proper accounts, and in particular shall annually make out a balance-sheet and either a profit and loss account or, if the Board do not trade for profit, an income and expenditure account, and shall cause them to be audited by a member of the Institute of Chartered Accountants in England and Wales or of one of the Chartered Societies in Scotland or of the Society of Incorporated Accountants and Auditors or of the Association of Certified and Corporate Accountants nominated by the registered producers in general meeting, and as soon as may be after the auditor has reported thereon and in any case within three months of the close of the period covered by the profit and loss account or income and expenditure account, shall send to the Minister and to every registered producer a copy of the account and balance-sheet and of the report of the auditor thereon, and also a report by the Board as to the working of this Scheme in the period covered by the profit and loss or income and expenditure account which shall include a statement of the manner in which, in accordance with the provisions of paragraph 52, any monies are invested.

54. The Board shall on the demand of any person, and on payment by him of such fee (not exceeding one shilling, in respect of each balance-sheet), as may be fixed by the Board, furnish him with a copy of any of their balance-sheets.

55. The Board may for the purpose of exercising any of their functions under this Scheme, borrow money in such manner, on such terms, and on such security, as may be arranged by them with the person from whom the money is borrowed.

56. A person or firm other than a retiring auditor or auditors shall not be capable of being appointed auditor or auditors by the registered producers in general meeting unless notice of intention to nominate that person or firm to the office has been given by a registered producer to the Secretary of the Board not later than the fourteenth day before the meeting.

PART VI.—MEETINGS OF REGISTERED PRODUCERS

57. At least once in every calendar year and when anything under this Scheme is to be done by registered producers in general meeting, the Board shall arrange for the holding of a general meeting at such time and place as the Board may appoint.

58. The Board may whenever they think fit convene a general meeting of registered producers or a meeting of registered producers who produce tomatoes or cucumbers in any district or districts and such meetings shall be held at such time and place as the Board may appoint.

59. The Chairman of every meeting of registered producers shall be appointed by the Board: provided that if the person so appointed is not present within fifteen minutes after the time appointed for the meeting, the meeting shall choose a chairman.

60. At least twenty-one days in the case of an annual general meeting or at least fourteen days in the case of any other meeting, before the day fixed for the holding of such meeting, the Board shall send to every registered producer who is entitled to vote at the meeting a written notice stating:—

(*a*) The time and place appointed for the holding of the meeting.

(*b*) The business to be transacted.

(*c*) The name of the chairman.

No business shall be transacted at any meeting other than the business of which notice has been given as aforesaid by the Board.

61. Every question put before a general meeting of registered producers shall be decided on a show of hands, unless, either before or immediately after the show of hands, a formal vote is demanded by, or on behalf of at least three registered producers entitled to vote, in which case a formal vote shall forthwith be taken.

62. On the taking of a formal vote or at elections the following provisions shall apply:—

(*a*) For the purpose of an election of Board members for any district each registered producer entitled to vote shall have the standard number of votes multiplied by the number of persons to be elected for that district, but shall not give more than the standard number of votes in favour of any one candidate.

(*b*) For the purpose of voting at general meetings of registered producers each registered producer shall have the standard number of votes.

(*c*) The standard number of votes means one vote for every unit of production which the producer has had in his possession at any one time during the preceding calendar year or during the current calendar year before the relevant date; provided that for the purposes of an election of district members of the Board for any district and for the purposes of a meeting of registered producers in any district only units of production in that district shall be counted.

(*d*) The relevant date means—

(i) In the case of the first election, the first day of September, 1951, and, in the case of any subsequent election, the first day of October next before that election.

(ii) In the case of a general or district meeting of registered producers, the date on which the vote is taken.

63. At any meeting a declaration by the Chairman of the meeting, of the result of any vote or show of hands shall be final, and in the event of an equality of votes the Chairman shall in addition to his other votes (if any) have a casting vote.

64. At any meeting and for the purpose of any election a registered producer may vote either personally or by proxy. The instrument appointing a proxy shall be in writing in such form as the Board may require under the hand of the registered producer or his attorney; or if the registered producer is a limited company under the hand of a person duly authorised in that behalf. The said instrument and the power of attorney or other authority (if any) under which it is signed (or a notarially certified copy thereof) shall be deposited at the principal office of the Board in England not later than the end of the third day before the day fixed for the meeting, or, in the case of an election, not later than the sixth day before the election and in default the instrument shall be treated as invalid. The proxy need not be a registered producer. Without prejudice to the foregoing, a registered producer who is a limited company or a partnership firm may exercise any of its rights at a meeting or on an election by one of its directors or partners.

Part VII.—Principal Powers of the Board

65. The provisions of this part of this Scheme shall come into force at the expiration of the suspensory period, that is to say, at the expiration of a period of one month commencing on the date on which the result of the initial poll is declared to be favourable to the continuance in force of this Scheme.

66. Subject to the provisions of the Act of 1931 with respect to existing contracts and to the provisions of this part of this Scheme, a producer who is neither registered nor exempt from registration shall not sell any tomatoes or cucumbers either in Great Britain or elsewhere.

67. The Board may from time to time determine that any class or description of producers or sales shall be exempt from such of the provisions of this Scheme as the Board may specify.

68.—(1) The Board may from time to time determine the descriptions of tomatoes and cucumbers which may be sold by registered producers, and the terms on which tomatoes and cucumbers or any description or quantity thereof may be sold as aforesaid.

(2) The Board may from time to time compile and maintain a list of persons to or through the agency of whom alone tomatoes and cucumbers or any description or quantity thereof may be sold by registered producers; provided that:—

(*a*) nothing contained in this Scheme shall affect the right of registered producers to select from among the persons whose names are for the time being included in any such list the persons to or through the agency of whom they wish to sell;

(*b*) the name of any person shall, at his request, be included in any such list of persons and shall not subsequently be removed therefrom unless at the time of the proposal to include his name or to remove it, as the case may be, it is established to the satisfaction of the Board, after consultation with the Advisory Committee established under the provisions of sub-paragraph (1) of paragraph 29 of this Scheme, that he is unable to perform or that he has failed to perform all such terms of sale to him of tomatoes and

cucumbers by a registered producer as may have been determined by the Board as the terms on which they may be sold by registered producers or all such terms of employment as agent of registered producers for the sale of tomatoes and cucumbers as may have been approved by the Board and the said Advisory Committee, but this clause of this proviso shall not apply to sales for use as described in sub-paragraph (3) (*b*) of this paragraph; and

(*c*) if the Board propose not to include in any such list of persons the name of any person who has notified them in writing of his desire to be included therein or propose to remove the name of any person from such list, the Board shall give written notice to that person specifying the action proposed to be taken and informing him of the effect of this clause of this proviso and if such person, by notice in writing served on the Board within twenty-one days after the service of the last-mentioned notice, requires that an opportunity be afforded him of being heard by the Board, such an opportunity shall be afforded to him and the Board shall not take the action in question until they have considered any representations made at the hearing.

(3) The following classes of sale shall be exempt from any determination of the Board under this paragraph and from the power of the Board to compile and maintain a list of persons as aforesaid, namely:—

(*a*) sales by retail, which means sales to buyers who buy for domestic consumption without further re-sale;

(*b*) sales for use, which means sales direct to persons who buy for use in their catering or manufacturing establishments;

(*c*) sales to retailers, which means sales direct to persons whose ordinary business as to tomatoes and cucumbers is to sell them wholly or mainly to buyers who buy for domestic consumption without further re-sale.

(4) A sale shall be deemed not to be direct to a person if it is made or negotiated by or through the agency of any third person other than a servant of the buyer or the seller.

69. The Board may:—

(*a*) Advertise tomatoes and cucumbers;

(*b*) Co-operate with any other person in grading, packing, storing, adapting for sale, insuring, advertising and transporting tomatoes and cucumbers;

(*c*) Encourage, promote or conduct agricultural co-operation, research and education;

(*d*) Encourage and promote the erection and use of packing stations, standards and the standardisation of marks and packing for tomatoes and cucumbers;

(*e*) In respect of any consignment of tomatoes or cucumbers and at the request of the registered producer thereof, act as producer's agent for the purpose of the Horticultural Produce (Sales on Commission) Act, 1926;

(*f*) Negotiate with any other person in respect of any matter concerning the marketing of tomatoes and cucumbers or of any commodity wholly or partly manufactured or derived therefrom.

70.—(1) The Board may, by resolution, exercise all or any of the powers set out in one or more of the following clauses of this sub-paragraph at any time after (*a*) the registered producers have declared that the Board may do so on a poll the result of which shows that there have voted in favour of the further powers (i) not less than two-thirds of the total registered producers voting on the poll and (ii) registered producers who are capable of producing not less than two-thirds of the quantity of tomatoes and cucumbers which all the registered producers voting on the poll are capable of producing and (*b*) the Minister has consented to the Board doing so, that is to say:—

(A) to require registered producers to sell tomatoes and cucumbers or any description thereof or such quantity thereof or of any description thereof as may from time to time be determined by the Board only to or through the agency of the Board;

(B) to determine from time to time the price at, below or above which tomatoes and cucumbers or any description or quantity thereof may be sold by any registered producer, provided that (i) in the case of sales by retail as defined in sub-paragraph (2) (*a*) of paragraph 68 of this Scheme, any such determination shall relate only to tomatoes and cucumbers produced by him and (ii) before making any such determination the Board shall notify the Minister and the Minister of Food of their intention to make such determination ;

(C) to buy tomatoes and cucumbers and to sell, grade, pack, store, adapt for sale, insure and transport tomatoes and cucumbers and any commodities produced therefrom by the Board and to co-operate with any other person in doing any of those things ;

(D) to produce from tomatoes and cucumbers any of the following commodities, namely, soup, juice, puree, cocktails, jam, ketchup, chutney, sauce, pickles and concentrates and to submit tomatoes and cucumbers to any preserving process ;

(E) to erect, acquire and operate packing stations for tomatoes and cucumbers ;

(F) to regulate the manner in which tomatoes and cucumbers or any description or quantity thereof is to be graded by or on behalf of registered producers or the manner in which tomatoes and cucumbers or any description or quantity thereof is to be marked, packed, stored, adapted for sale, insured, advertised or transported by or on behalf of registered producers.

(2) If and when the Board are authorised by virtue of the preceding sub-paragraph to exercise all or any of the powers set out in clauses (A) and (B) thereof, they may by resolution determine that all or any of the classes of sale specified in sub-paragraph (3) of paragraph 68 of this Scheme shall no longer be exempt from any determination of the Board under that paragraph or from the power of the Board to compile and maintain the list of persons mentioned in that paragraph ; provided that the Board shall not be empowered to compile and maintain a list of persons to whom alone tomatoes and cucumbers or any description or quantity thereof may be sold for the purpose of re-sale by retail.

71. The Board may, when they consider it necessary for the operation of this Scheme so to do, send to any registered producer a demand in writing requiring him to furnish to them such estimates, returns and other information relating to tomatoes and cucumbers as may be specified in the demand.

72. Any person authorised in writing by the Board may, for the purpose of securing compliance with this Scheme, enter and inspect, at any reasonable time and on production of his authority, any part of the land or premises occupied by a registered producer (being a producer specified in the authority) which the person so authorised has reason to believe is used for producing tomatoes or cucumbers or for doing any of the following things which, at the time of the exercise of the power conferred by this paragraph, is regulated by this Scheme by virtue of paragraph 70 hereof, that is to say, grading, marking, packing or storing tomatoes or cucumbers or adapting tomatoes or cucumbers for sale.

73.—(1) The Board may from time to time by resolution require every registered producer to contribute to the fund such sums as the Board may determine within the limit mentioned in clause (2) of this paragraph, provided that the Board may by resolution declare that some other limit specified in the resolution shall apply to any other calendar year or years in lieu of that mentioned in sub-paragraph (2) of this paragraph if the registered producers declare that the Board may do so on a poll the result of which shows that there have voted in favour of such a resolution (a) not less than two-thirds of the total registered producers voting on the poll, and (b) registered producers who are capable of producing not less than two-thirds of the quantity of tomatoes and cucumbers which all the registered producers voting on the poll are capable of producing.

(2) The said limit for each producer for each calendar year is the greater of the following, namely:—

(*a*) thirty shillings; or

(*b*) fifteen shillings for every unit of production which he has had in his possession at any one time in the calendar year.

(3) Any sum required by the Board to be paid by a registered producer under this paragraph shall be recoverable as a debt due to the Board.

74. If any registered producer satisfied the Board or establishes by arbitration in accordance with paragraph 7 of this Scheme, that he, having complied with all the provisions of this Scheme and any determination of the Board thereunder, has suffered damage by reason of the Board unfairly discriminating between him and any other registered producer he shall be entitled to receive from the Board such sum by way of compensation as may be necessary to make good the damage.

75.—(1) The Board may lend to any registered producer on such security, if any, and on such terms as to interest and otherwise as they think fit sums not exceding in all two-thirds of the total amount which the Board estimate that he will receive from the sale of tomatoes and cucumbers produced or in course of production by him.

(2) The Board may guarantee payment of any sums secured by an agricultural charge created by a registered producer under Part II of the Agricultural Credits Act, 1928.

76. The Board may set aside reserves for the operation of this Scheme, but subject thereto any monies standing to the credit of the Fund which in the opinion of the Board are not required for the operation of this Scheme, shall be distributed in such manner as the registered producers shall in general meeting determine.

77.—(1) (*a*) If any registered producer contravenes any of the provisions of paragraph 68 of this Schme or any determination of the Board thereunder, or if a list is for the time being maintained under that paragraph and any registered producer sells tomatoes or cucumbers to a person who is not one of the persons included in the list as being persons to or through the agency of whom alone such tomatoes or cucumbers may be sold or if any registered producer contravenes the provisions of any of the clauses (A), (B) or (F) of sub-paragraph (1) of paragraph 70 of this Scheme which are for the time being in force by virtue of a resolution of the Board made in accordance with the provisions of that paragraph or any determination of the Board under any such clause, then the Disciplinary Committee hereinafter described shall impose upon him and the Board shall recover from him such monetary penalty (not exceeding one hundred pounds plus half the price of any tomatoes or cucumbers sold in contravention of the said provisions) as that Committee think just.

(*b*) If any registered producer fails without reasonable excuse to comply with any demand made by the Board in pursuance of paragraph 71 of this Scheme, or if he knowingly makes any false statement in reply thereto, or if he obstructs or interferes with any person duly authorised by the Board under paragraph 72 of this Scheme, the Disciplinary Committee shall impose upon such producer and the Board shall recover from him such monetary penalty (not exceeding fifty pounds for a contravention of paragraph 71 and not exceeding twenty-pounds for a contravention of paragraph 72) as that Committee think just.

(*c*) No such penalty shall be imposed in respect of such a contravention as aforesaid which constitutes an offence under any Act other than the Act of 1931.

(2) (*a*) There shall be a Committee of the Board, to be known as the Disciplinary Committee, constituted at each sitting thereof of not less than four nor more than six members of the Board and a Chairman who is not a member of the Board but is an independent person who is a barrister of not less than seven years' standing, an advocate of not less than seven years' standing or a solicitor of not less than seven years' standing, and is approved by the Minister.

(*b*) No penalty shall be imposed on a registered producer pursuant to this paragraph except after a hearing by the said Committee, and by the decision thereof taken in accordance with the opinion of all or the majority of the members thereof, so, however, that, if there is an equal division of opinion, the opinion of the Chairman shall prevail.

(*c*) Notice of the time and place of every such hearing and a written statement of the charge against the producer in question shall be served personally or by registered post on that producer at least fourteen days before the hearing.

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

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

(*f*) The said Committee may postpone the imposition of a penalty for a period not exceeding twelve months.

(3) As soon as may be after every hearing by the Disciplinary Committee, written notice of their decision shall be sent to the registered producer in question and he may, on or before the fourteenth day after the date on which the notice was so sent to him, give notice to the Board referring the matter to arbitration under the provisions of this Scheme, 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 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.

(4) The said Committee shall have the power to reconsider their decision in relation to the case of any producer if, upon considering any written application in that behalf by the registered producer in question made within six months after the date of the original hearing by the said Committee, the Committee is satisfied that:—

(*a*) there may be facts relevant to the case other than the facts which were before the Committee at the original hearing, and

(*b*) if such other facts had been previously known to the Committee their decision would have been influenced thereby, and

(*c*) the matter has not been referred to arbitration pursuant to sub-paragraph (3) of this paragraph.

(5) (*a*) If the said Committee determine pursuant to the last preceding sub-paragraph of this paragraph to reconsider any case it shall be their duty to rehear the case, and if, as a result, they are of opinion that a substantial miscarriage of justice has occurred, they shall vary the previous decision of the Committee, and the Board shall thereupon give effect to such variation.

(*b*) The provisions of sub-paragraphs (2) (*b*) and (3) of this paragraph shall apply to every such rehearing.

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

(7) A person whose name appeared upon the register of producers at the date when he contravened any provision of this Scheme shall, notwithstanding that his name has since been removed from the register, be deemed to remain a registered producer for the purpose only of this paragraph.

Part VIII.—Amendment, Revocation and Winding-up of the Board

78. Before submitting a substitutional Scheme or an amendment of this Scheme to the Minister, the Board shall publish the proposed Scheme or amendment by sending notice thereof to every registered producer.

79. A poll on the question whether or not a substitutional scheme or amendment of this Scheme shall be submitted to the Minister may, within one month from the publication thereof be demanded in writing by any fifty registered

producers, and a poll on the question whether or not this Scheme is to be revoked may be demanded at any time in the said manner by any two hundred registered producers. No poll on the question whether or not this Scheme is to be revoked shall, without the consent of the Board, be taken within two years of the declaration of the result of the initial poll or of any previous poll on the same question.

80. Part IX of the Companies Act, 1948 (which relates to the winding-up of unregistered companies) shall apply to the Board subject to the modifications set out in paragraphs 4 to 8 of the Second Schedule to the Act of 1931.

81. Contributions under paragraph 7 of the Second Schedule to the Act of 1931 shall be assessed proportionately to the largest number of units of production which each contributor had in his possession at any one time during the relevant period defined in paragraph eight of the Second Schedule to the Act of 1931 and shall not exceed five shillings per unit of production.

FIRST SCHEDULE

J. H. Ashcroft, Hall Lane, Longton, Preston, Lancashire.
Wm. Christie Blackley, Lanark Road End, Hamilton, Lanarkshire.
G. E. Cumming, Leigh Vineries, Wimborne, Dorset.
J. C. Eeuwens, Avon-Holm, Offenham, Nr. Evesham, Worcestershire.
D. Fenwick, By-Pass Nurseries, Ipswich Road, Colchester, Essex.
E. H. Gardener, Steinbrook, Kington Langley, Nr. Chippenham, Wiltshire.
A. de B. Hovell, Church Farm Nurseries, Rustington, Sussex.
F. T. Hussey, Holly Bank Nursery, Sedlescombe Road South, St. Leonards-on-Sea, Sussex.
P. C. Kay, Old House, Cowley, Uxbridge, Middlesex.
L. C. Madsen, Hurst Lea, Baas Hill, Broxbourne, Hertfordshire.
A. E. Mason, 206, Uxbridge Road, Hampton Hill, Middlesex.
B. Meering, "Little Stiles," Back Lane, Nazeing, Essex.
S. A. Payne, "Clovelley House," North Street, Nazeing, Essex.
Wm. Robertson, Clochranhill, Ayr, Ayrshire.
E. Rutterford, The Lawns, Great Missenden, Buckinghamshire.
D. Austen Smith, The Old Place, Swanley, Kent.
J. T. Sutton, Oakcroft, Ledsham, Wirral, Cheshire.
Sir James Turner, West Bank Farm, South Anston, Sheffield, Yorkshire.
W. H. Young, Stanbridge, Kings Road, Lancing, Sussex.

SECOND SCHEDULE

District	*No. of Members*
1. Cumberland, Durham, Northumberland, Westmorland, East Riding of Yorkshire, North Riding of Yorkshire and West Riding of Yorkshire	1
2. Cheshire, Lancashire, Shropshire and Staffordshire	2
3. Buckinghamshire, Gloucestershire, Herefordshire, Oxfordshire, Warwickshire and Worcestershire	1
4. Derbyshire, Holland, Kesteven, Leicestershire, Lindsey, Nottinghamshire and Rutland	1
5. Cambridgeshire, Huntingdonshire, Isle of Ely, Norfolk, Northamptonshire, Soke of Peterborough, East Suffolk and West Suffolk	1
6. Bedfordshire and Hertfordshire	3
7. Essex and Middlesex	3
8. Kent and East Sussex	1
9. West Sussex	1
10. Cornwall, Devonshire, Dorsetshire, Somersetshire and Wiltshire	1
11. Berkshire, Isle of Wight, Hampshire and Surrey	1
12. Monmouthshire and Wales	1
13. Scotland	3
	20

THIRD SCHEDULE

FORM OF VOTING PAPER

THE TOMATO AND CUCUMBER MARKETING BOARD

To (1) .....

.....

.....

A poll is being held under the Tomato and Cucumber Scheme 1950 on the following question, viz.:—

(2) .....

Do you wish the question to be answered "Yes" or to be answered "No"?

Answer ("Yes" or "No").....

(3) What is the greatest number of units of production which you have had in your possession *at any one time* since the 1st January, 19

(Unit of production is defined in paragraph 5 of the Scheme, which is printed overleaf.)

Answer ..... units of production.

Do you carry on the business of selling tomatoes or cucumbers (not counting sales to your servants for consumption in their own households)?

Answer ("Yes" or "No").....

Signature of registered producer .....

If you wilfully mis-state the number of units of production which you are asked to state above, you will render yourself liable to imprisonment or a fine or both.

Your vote will not count unless this paper, properly filled in and signed, reaches the office of the Tomato and Cucumber Marketing Board.

(4) .....on or before

(5) .....

For the Tomato and Cucumber
Marketing Board.

.....

Secretary.

The Board must fill in:—

(1) The name and address of the registered producer;

(2) The question on which the poll is being taken;

(3) The year before the current year;

(4) The address of their office in England;

(5) The appropriate date.