



Agriculture Act 1993

1993 CHAPTER 37

PART II

POTATO MARKETING

Transfer scheme

27 Application for approval

- (1) The Board shall, subject to any poll of registered producers that may be carried out under section 40 below, at any time before the end of the period of six months beginning with the day specified by order under section 25 above, apply to the Ministers for approval of a scheme providing for the transfer of its property, rights and liabilities (“transfer scheme”).
- (2) Subject to subsection (3) below, an application under this section may be amended at any time before the Ministers have finally determined it.
- (3) An application under this section may not be amended at any time after the Ministers have given the Board notice under section 29(2) or (3) below.
- (4) Where the Board has made an application under this section, it may, before the end of the period mentioned in subsection (1) above, make a further such application but not until the previous application has been finally determined.
- (5) The Board may not make an application under this section after obtaining approval of a transfer scheme under this Part of this Act.
- (6) The Ministers may by order extend the period for the making of an application under this section.

28 Determination of application

- (1) The Ministers shall not grant an application under section 27 above for approval of a transfer scheme unless they are satisfied—

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- (a) that the Board has taken reasonable steps to bring the principles of the scheme to the attention of persons who are registered producers,
- (b) that the scheme is a qualifying scheme under Schedule 3 to this Act, and
- (c) that in preparing the scheme for approval the Board has had regard to the desirability of proposing such arrangements as it considers would be likely to ensure the continuation or introduction by one or more successor bodies of—
 - (i) schemes for the orderly marketing of potatoes, including market intelligence and the identification of market opportunities,
 - (ii) research and development,
 - (iii) the generic promotion of potatoes,
 - (iv) the collection of statistics on the potato industry, and
 - (v) a forum for discussion of matters of common interest to producers, purchasers, retailers and consumers of potatoes,

and unless they have consulted about the principles of the scheme such persons appearing to them to be representative of the interests of producers, purchasers, retailers and consumers of potatoes as they consider appropriate.

- (2) Subject to that—
 - (a) if the Ministers are satisfied that the scheme meets the criteria mentioned in subsection (3) below, they shall grant the application, and
 - (b) if they are not so satisfied, section 29 below shall apply.
- (3) The criteria referred to above are—
 - (a) that the scheme is in the public interest;
 - (b) that the scheme takes account of the interests of consumers of potatoes, producers of potatoes and those who purchase potatoes otherwise than as consumers;
 - (c) that any provision made by the scheme for the distribution of assets to persons by reference to their being, or having been, registered producers is reasonable; and
 - (d) that it is unlikely that any person to whom a liability is transferred under the scheme will be unable to meet it.
- (4) A scheme shall not be treated as failing to meet the criterion mentioned in subsection (3)(c) above by virtue only of the fact that it provides for any distribution of assets to persons by reference to their being, or having been, registered producers to be in proportion to their respective basic areas for the purposes of the Potato Marketing Scheme for the last year to have been prescribed a quota year under it.

29 Procedure where scheme fails to meet criteria for approval

- (1) This section applies where, on an application under section 27 above for approval of a transfer scheme, the Ministers are satisfied as mentioned in subsection (1) of section 28 above, but are not satisfied that the scheme meets the criteria mentioned in subsection (3) of that section.
- (2) Where the Ministers are satisfied that the scheme is not capable of being modified so as to make it meet those criteria, they shall refuse the application, but, before finally concluding that the application should be refused under this subsection, they shall—
 - (a) give the Board notice of the conclusions they propose to reach about the scheme and of the reasons for them,

- (b) specify in the notice under paragraph (a) above a day, at least 28 days after the date of the notice, on or before which the Board may make written representations to them about those conclusions, and
 - (c) take into consideration any representations made to them under paragraph (b) above or in response to an invitation by them to the Board to make oral representations about those conclusions.
- (3) Where the Ministers are satisfied that the scheme is capable of being modified so as to make it meet those criteria, they shall give the Board notice of—
 - (a) the modifications which they consider would make it meet those criteria,
 - (b) the reasons for them, and
 - (c) a day, at least 28 days after the date of the notice, on or before which the Board may respond to the proposed modifications.
- (4) If, before the end of the period for responding to the proposed modifications, the Board gives the Ministers notice of its agreement to them, the application shall be treated as relating to the scheme with those modifications.
- (5) If, at the end of the period for responding to the proposed modifications, the Board has not—
 - (a) persuaded the Ministers that no modifications are required,
 - (b) given the Ministers notice of its agreement to the proposed modifications, or
 - (c) given the Ministers notice of proposed alternative modifications,the Ministers shall refuse the application.
- (6) Where, before the end of the period for responding to the proposed modifications, the Board gives the Ministers notice of proposed alternative modifications, then—
 - (a) if, before the end of the period of 28 days beginning with the date of the Board's notice, the Ministers reach agreement with the Board about what modifications should be made to the scheme, the application shall be treated as relating to the scheme with those modifications, and
 - (b) if they do not, they shall refuse the application.
- (7) The Ministers may by notice to the Board extend (or further extend) as they think fit—
 - (a) the period under subsection (2)(b) above for making representations,
 - (b) the period under subsection (3)(c) above for responding to proposed modifications, or
 - (c) the period under subsection (6)(a) above for reaching agreement about what modifications should be made to the scheme.

30 Variation of approved scheme

- (1) Subject to subsection (2) below, the Ministers may approve a variation of an approved scheme on the application of the Board before the vesting day under the scheme.
- (2) The Ministers shall not approve a variation of an approved scheme unless—
 - (a) they are satisfied—
 - (i) that the Board has taken reasonable steps to bring the principle of the proposed variation to the attention of persons who are registered producers, or
 - (ii) that the proposed variation is not sufficiently important to require it to be brought to their attention; and

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- (b) they are satisfied that their decisions under section 28(1)(b) and (2)(a) above would not have been different had the scheme included the proposed variation.

31 Information

- (1) The Ministers may by notice require any person to supply to them such information as may be specified in the notice, being information the supply of which the Ministers consider necessary or desirable for the purpose of enabling them to carry out their functions in relation to an application under section 27 or 30 above.
- (2) A notice under subsection (1) above shall require the information to be supplied within such period as may be specified in the notice, being not less than 21 days from the date of the notice.
- (3) Where the Ministers give a notice under subsection (1) above to the Board, it shall be treated as having withdrawn its application under section 27 or, as the case may be, 30 above unless—
 - (a) it complies with the notice, or
 - (b) before the end of the period allowed for compliance, it shows to the Ministers' satisfaction that it has reasonable grounds for not doing so.
- (4) Where—
 - (a) the Ministers give a notice under subsection (1) above to the Board,
 - (b) the Board purports to comply with the notice, and
 - (c) it becomes apparent to the Ministers after the time allowed for compliance with the notice and before the application concerned has been finally determined that the Board has not in fact complied with it,the Ministers shall give the Board notice of that fact.
- (5) Where, within 14 days of the date of a notice under subsection (4) above, the Board shows to the satisfaction of the Ministers that the failure to comply with the notice under subsection (1) above was accidental and not attributable to a failure to take reasonable care, subsection (3) above shall be treated as never having had any application in relation to it.
- (6) If any person other than the Board fails without reasonable excuse to comply with a notice under subsection (1) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) If any person, in purported compliance with a notice under subsection (1) above, knowingly or recklessly supplies information which is false or misleading in a material respect, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

32 Publicity for determinations

As soon as reasonably practicable after granting an application under section 27 or 30 above, the Ministers shall make public in such manner as they think fit—

- (a) the fact that they have granted the application, and
- (b) the principles of the approved scheme or, as the case may be, of the approved variation.