

SCHEDULES

SCHEDULE 4

Section 36.

PROVISIONS RELATING TO CARRYING OUT OF APPROVED TRANSFER SCHEME

Taxation provisions

- 1 (1) The following provisions shall apply for the purposes of the Corporation Tax Acts, namely—
- (a) any property, rights or liabilities of the Board which are transferred under section 35 above shall be treated as having been, at the time when they became vested in the Board and at all times since that time, property, rights or liabilities of the transferee;
 - (b) anything done by the Board in relation to property, rights or liabilities of its which are transferred under section 35 above shall be deemed to have been done by the transferee.
- (2) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the Board ending before the date of the transfer under section 35 above.
- 2 (1) Stamp duty shall not be chargeable on an approved scheme or on any instrument which is certified to the Commissioners of Inland Revenue by the Ministers as having been made in pursuance of such a scheme.
- (2) No instrument which is certified as mentioned in sub-paragraph (1) above shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would, but for that sub-paragraph, be liable, or
 - (b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped.

Disclosure of information

- 3 Nothing in section 47(2) of the Agricultural Marketing Act 1958 (restriction on disclosure of information obtained under the Act) shall restrict the disclosure of information by the Board in accordance with the provisions of an approved scheme or in connection with the establishment of a development council under the Industrial Organisation and Development Act 1947.

Application of Transfer of Undertakings (Protection of Employment) Regulations 1981

- 4 The Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to any transfer under an approved scheme of the whole or any part of the undertaking of the Board, whether or not that undertaking would, apart from this

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provision, be treated as an undertaking in the nature of a commercial venture for the purposes of those Regulations.

Statutory accounts

- 5 (1) The following provisions of this paragraph have effect for the purposes of any statutory accounts of a successor body, that is to say, a body to which property, rights or liabilities of the Board are transferred under section 35 above.
- (2) The transfer to the successor body under section 35 above shall be taken to have been effected immediately after the end of the last complete accounting period of the Board to end before the date of the transfer under that section and—
- (a) in a case where all the property, rights and liabilities of the Board are transferred to the successor body under that section, to have been a transfer of all the property, rights and liabilities to which the Board was entitled or subject immediately before the end of that period;
 - (b) in any other case, to have been a transfer of such of the property, rights and liabilities to which the Board was so entitled or subject as are determined by or under the transfer scheme.
- (3) The value of any asset and the amount of any liability which is taken by virtue of subparagraph (2) above to have been transferred to the successor body shall be taken to have been—
- (a) in a case where all the property, rights and liabilities of the Board are transferred to the successor body under section 35 above, the value or amount assigned to the asset or liability for the purposes of the statement of accounts prepared by the Board in respect of its last complete accounting period to end before the date of the transfer under that section;
 - (b) in any other case, the value or amount so assigned or, if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.
- (4) The amount to be included in respect of any item shall be determined—
- (a) where all the property, rights and liabilities of the Board are transferred to the successor body under section 35 above, as if anything done by the Board (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor body;
 - (b) in any other case, as if so much of anything done by the Board (as mentioned in paragraph (a) above) as may be determined by or under the transfer scheme had been done by the successor body.
- (5) In this paragraph—
- “accounting period”, in relation to the Board, means the period by reference to which it prepares accounts under the Potato Marketing Scheme; and
 - “statutory accounts”, in relation to a successor body, means any accounts prepared for the purpose of any provision of the legislation under which the body is registered or, as the case may be, established.

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Restraints on alienation etc.

- 6 (1) Any provision which imposes a prohibition (whether absolute or qualified) on the transfer of any property or rights of the Board shall be treated as not applying in the case of a transfer under section 35 above.
- (2) Sub-paragraph (1) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of the Board being transferred otherwise than to a board constituted by a scheme under Part I of the Agricultural Marketing Act 1958.
- (3) For the purposes of this paragraph, any provision which has the effect of penalising a transfer shall be treated as prohibiting it.
- 7 (1) This paragraph applies to any provision which imposes a qualified prohibition on the effecting of any description of transaction, other than a transfer, with respect to any property or rights of the Board.
- (2) Where the prohibition imposed by a provision to which this paragraph applies is imposed for purposes other than public purposes, it shall, subject to sub-paragraph (3) below, be treated as not applying in the case of a transaction effected under an approved scheme.
- (3) Sub-paragraph (2) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of the Board being transferred otherwise than to a board constituted by a scheme under Part I of the Agricultural Marketing Act 1958.
- (4) For the purposes of this paragraph, any provision which has the effect of penalising the effecting of any description of transaction shall be treated as prohibiting it.
- 8 (1) If any person suffers a diminution in the value of any property or interest in consequence of the operation of paragraph 7 above or, where sub-paragraph (2) below applies, paragraph 6 above, such compensation as may be just shall be paid to that person by one or more of the parties to the transfer or other transaction.
- (2) This sub-paragraph applies where the effect of the transfer is to sever the ownership of the property or rights to which the provision concerned relates.
- (3) Any dispute as to whether, and, if so, how much, compensation is payable under this paragraph, or as to the person by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Ministers.
- 9 (1) For the purposes of this paragraph, a provision is a qualifying provision if—
- (a) it imposes an absolute prohibition on the effecting of any description of transaction, other than a transfer, with respect to any property or rights of the Board, and
 - (b) the prohibition which it imposes is imposed for purposes other than public purposes.
- (2) Where an approved scheme—
- (a) identifies a qualifying provision as one to which this paragraph applies, and
 - (b) if the scheme provides for there to be more than one transferee under section 35 above, specifies one of them as the body against which any claim under paragraph 10 below in relation to the identified provision is to be made,

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that provision shall, subject to any provision of regulations under sub-paragraph (3) (c) below, be treated as not applying in the case of a transaction effected under the scheme.

- (3) The Ministers may make regulations—
- (a) with respect to the giving of notice of a provision of an approved scheme which identifies a qualifying provision as one to which this paragraph applies,
 - (b) with respect to the giving by the Ministers of a certificate of compliance in relation to the giving of notice under paragraph (a) above, and
 - (c) excluding sub-paragraph (2) above where no certificate of compliance under paragraph (b) above has been given at the time that a transaction is effected.
- (4) Sub-paragraph (2) above shall not apply in the case of a provision which is formulated specifically with reference to the possibility of the undertaking of the Board being transferred otherwise than to a board constituted by a scheme under Part I of the Agricultural Marketing Act 1958.
- (5) For the purposes of this paragraph, any provision which has the effect of penalising the effecting of a description of transaction shall be treated as prohibiting it.
- 10 (1) If any person suffers a diminution in the value of any property or interest in consequence of the operation of paragraph 9 above in relation to any provision, such compensation as may be just shall be paid to him—
- (a) where the approved scheme provides for there to be one transferee under section 35 above, by that body, and
 - (b) where the scheme provides for there to be more than one transferee under that section, by the body which the approved scheme specifies as the body against which any claim for compensation under this paragraph, in relation to the provision concerned, is to be made.
- (2) Any dispute as to whether, and, if so, how much compensation is payable under this paragraph, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Ministers.

Certificates of vesting

- 11 (1) Where section 35(1) above applies on the vesting day under an approved scheme, the Ministers shall give to each person identified by the scheme as a person to whom any property, right or liability of the Board is to be transferred under section 35 above (“a relevant transferee”) a certificate (“qualification certificate”) stating—
- (a) that he is identified by the scheme as a relevant transferee,
 - (b) whether the concurrence of any person is required to the issue by him of a certificate of vesting in relation to the Board, and
 - (c) if it is, whose concurrence is required.
- (2) For the purposes of sub-paragraph (1) above, a person’s concurrence is required to the issue of a certificate of vesting in relation to the Board if he is identified by the scheme as a relevant transferee.
- (3) Where a person to whom a qualification certificate is given issues a certificate of vesting in relation to the Board, then, subject to sub-paragraphs (4) to (6) below, it shall be conclusive evidence for all purposes of any fact stated in it with respect to the effect of section 35 above in relation to any property, right or liability of the Board.

- (4) Where a qualification certificate states that the concurrence of one or more persons is required to the issue of a certificate of vesting in relation to the Board, sub-paragraph (3) above shall not apply in relation to such a certificate issued by the person to whom the qualification certificate is given unless it is issued with the concurrence of the person, or each of the persons, identified by the qualification certificate as a person whose concurrence is required.
- (5) Sub-paragraph (3) above shall not apply to a certificate of vesting in relation to the Board to the extent that the certificate relates to land which is registered land at the time the certificate is issued if a person has, at that time, been registered as the proprietor of the land in reliance on the operation of section 35 above in relation to it.
- (6) Sub-paragraph (3) above shall cease to apply to a certificate of vesting in relation to the Board—
- (a) to the extent that the certificate relates to land which is not registered land at the time the certificate is issued, on the land becoming registered land, and
 - (b) to the extent that the certificate relates to land which is registered land at the time the certificate is issued, on a person being registered as the proprietor of the land in reliance on the operation of section 35 above.
- (7) In this paragraph—
- (a) references to a certificate of vesting in relation to the Board are to a certificate with respect to the effect of section 35 above in relation to any property, right or liability of the Board, and
 - (b) references to registered land are to registered land within the meaning of the Land Registration Act 1925.

Land registration

- 12 (1) Where section 35(1) above applies on the vesting day under an approved scheme, the Ministers shall—
- (a) give a copy of the order under section 26(5) above to each person from or to whom property, rights or liabilities are transferred under section 35 above in accordance with the scheme, and
 - (b) annex to the copy order a copy of the scheme certified by them to be a true copy.
- (2) A copy of the scheme given under sub-paragraph (1) above shall be treated for land registration purposes in England and Wales as conclusive evidence of the terms of the scheme.
- 13 (1) This paragraph applies where any registered land in England and Wales is transferred under section 35 above.
- (2) The transferee shall be entitled to be registered as proprietor in place of the transferor on an application in that behalf made to the Chief Land Registrar.
 - (3) On an application under sub-paragraph (2) above, the transferee shall supply to the Chief Land Registrar such information and produce to him such documents as he may require for the purpose of enabling him to deal with the application.
 - (4) Section 43 of the Land Registration Act 1925 (effect of transmissions) shall apply in relation to any person registered in place of the transferor as it applies in relation

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to any person registered in place of a deceased or bankrupt proprietor, but with the omission of the words from “upon the trusts” to “applicable by law, and”.

- (5) In this paragraph, “registered land” has the same meaning as in the Land Registration Act 1925.
- 14 (1) This paragraph applies where any land in England and Wales which is not registered land is transferred by virtue of section 35 above.
- (2) Unless the transferee, or his successor in title or assign, has before the end of six months from the date of the transfer applied to be registered as proprietor of the land, section 35 above shall be deemed never to have had effect to transfer the legal estate in the land.
- (3) The power conferred by the proviso to section 123(1) of the Land Registration Act 1925 (power of Chief Land Registrar, or court on appeal from him, to extend the period within which an application for first registration must be made) shall also apply in relation to the period mentioned in sub-paragraph (2) above.
- (4) Any rules made by virtue of section 123(2) of the Land Registration Act 1925 shall—
- (a) apply to dealings with the land which may take place between the date of the transfer and the date of the application to register as if the land had been the subject of a conveyance or assignment on the date of the transfer, and
 - (b) apply in relation to an application for registration under this paragraph as they apply in relation to an application for registration under section 123 of that Act.
- (5) On an application for first registration under this paragraph, the applicant shall supply to the Chief Land Registrar such information and produce to him such documents as he may require for the purpose of enabling him to deal with the application.
- (6) In this paragraph, “registered land” has the same meaning as in the Land Registration Act 1925.
- 15 In relation to Scotland, any transfer under an approved scheme shall have effect subject to the provisions of any enactment which provides for transactions of that description to be given effect to by registration in any statutory register.

Transfers under section 35: transition

- 16 (1) Any agreement, transaction or other thing which—
- (a) is made, effected or done with respect to anything transferred under section 35 above in accordance with an approved scheme,
 - (b) is made, effected or done by, to or in relation to the transferor, and
 - (c) is in force or effective immediately before the vesting day under the scheme,
- shall, on and after that day, have effect as if made, effected or done by, to or in relation to the transferee in all respects as if the transferee were the same person in law as the transferor.
- (2) Sub-paragraph (1) above shall not affect the construction of any provision which is formulated specifically with reference to the possibility of the undertaking of the Board being transferred otherwise than to a board constituted by a scheme under Part I of the Agricultural Marketing Act 1958.

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Provisions of scheme effective on statutory vesting

- 17 (1) Where section 35(1) above applies on the vesting day under an approved scheme, the provisions of the scheme shall, to the extent that they fall within sub-paragraph (2) below, have effect by virtue of this paragraph.
- (2) The provisions of an approved scheme fall within this sub-paragraph to the extent that they purport—
- (a) to impose on one relevant body an obligation on or after the vesting day under the scheme to enter into a written agreement with, or execute an instrument in favour of, another relevant body;
 - (b) to create for one relevant body, on the vesting day under the scheme, an interest in or right over property transferred under section 35 above to another relevant body; or
 - (c) to adapt, with effect from the vesting day under the scheme, references to members or officers of the Board in a document or oral agreement relating to anything transferred under section 35 above.
- (3) The provisions of an approved scheme only fall within sub-paragraph (2) above by virtue of paragraph (c) of that sub-paragraph to the extent that their purpose is to prevent, so far as reasonably possible, the effect of the provisions in which the references concerned occur being materially altered as a result of the transfer.
- (4) For the purposes of sub-paragraph (2) above, the following are relevant bodies in relation to an approved scheme—
- (a) the Board, and
 - (b) any body to which property, rights or liabilities of the Board are transferred under section 35 above.
- 18 (1) Where section 35(1) above applies on the vesting day under an approved scheme, the provisions of the scheme shall, to the extent that they fall within sub-paragraph (2) below, have effect by virtue of this paragraph.
- (2) The provisions of an approved scheme fall within this sub-paragraph to the extent that they purport—
- (a) to impose on the Board, or on any body to which property, rights or liabilities are transferred under section 35 above, duties to take, on or after the vesting day under the scheme, such steps as may be requisite to secure that the vesting under that section of any foreign property, right or liability of the Board is effective under the relevant foreign law;
 - (b) to impose on the Board a duty, in relation to any foreign property, right or liability of its which is transferred under section 35 above, to hold that property or right for the benefit of, or discharge that liability on behalf of, the body to which it is so transferred, until the vesting of that property, right or liability in that body is effective under the relevant foreign law;
 - (c) to require a body to which any foreign property, right or liability of the Board is transferred under section 35 above to act on behalf of the Board (so far as possible) for the purposes of, or in connection with, the performance of any duty of the Board under the scheme in relation to any foreign property, right or liability of its so transferred to that body; or
 - (d) to require any body to which property, rights or liabilities of the Board are transferred under section 35 above to meet expenses incurred by the Board in consequence of provisions of the scheme which fall within this sub-paragraph by virtue of paragraph (a) or (b) above.

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- (3) Nothing in any provision which has effect by virtue of this paragraph shall be taken as prejudicing the effect, under the law of any part of the United Kingdom, of the vesting under section 35 above of any foreign property, right or liability.
- (4) Where provisions of an approved scheme have effect by virtue of this paragraph, the Board shall have all such powers as may be requisite for the performance of any duty to which it is subject as a result.
- (5) In this paragraph, references to any foreign property, right or liability are to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.