

CHAPTER No. 14

**AGRICULTURAL MARKETING
(AMENDMENT) ACT 2006**

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AGRICULTURAL MARKETING (AMENDMENT) ACT 2006

Arrangement of Sections

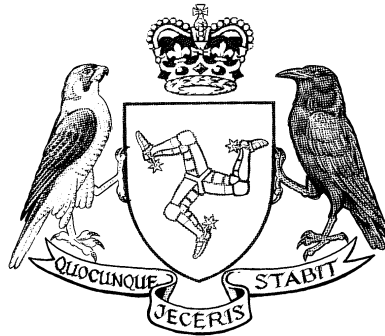
Section

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SCHEDULES —

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Isle of Man } Signed in Tynwald: 16th October 2006
to Wit } Received Royal Assent: 16th October 2006
Announced to Tynwald: 16th October 2006

AN ACT

to provide for the functions of the Isle of Man Agricultural Marketing Society, the Fat Stock Marketing Association and the Milk Marketing Association to be transferred to companies; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

1. (1) Schedule 1 shall have effect for the purpose of transferring the functions of —

Transfer of functions, etc

- (a) the Isle of Man Agricultural Marketing Society; and
- (b) the Isle of Man Fat Stock Marketing Association and the Isle of Man Milk Marketing Association (both being associations constituted by schemes under the Agricultural Marketing Act 1934),

[XIV p.245]

to companies incorporated under the Companies Acts 1931 to 2004.

(2) The supplementary powers set out in Schedule 2 shall have effect.

2. There shall be paid out of money provided by Tynwald any expenses of the Department of Agriculture, Fisheries and Forestry

Financial

under this Act and any increase attributable to this Act in the sums so payable under any other Act.

Short title and commencement

3. (1) This Act may be cited as the Agricultural Marketing (Amendment) Act 2006.

(2) This Act shall come into force on such day as the Department of Agriculture, Fisheries and Forestry may by order appoint and different days may be so appointed for different provisions and for different purposes.

Section 1 SCHEDULE 1

AMENDMENTS ENABLING THE TRANSFER OF FUNCTIONS

Agricultural Marketing Act 1934 (XIV p.245)

1. In section 2 —

- (a) in the definition of “Association” for “constituted by” substitute “designated under”;
- (b) for the definition of “Society” substitute —

““Society” means the body corporate designated as the Isle of Man Agricultural Marketing Society under section 3.”.

2. For section 3 substitute —

“The Isle of Man Agricultural Marketing Society **3.** (1) For the purposes of this Act, the Isle of Man Agricultural Marketing Society is the body corporate designated in accordance with this section.

(2) The Department shall by notice in writing designate a body corporate as the Isle of Man Agricultural Marketing Society.

(3) The Department shall not make a designation under this section unless the body corporate concerned complies with any requirements imposed by order under section 3A.

(4) As soon as possible after making a designation under subsection (2), the Department shall cause the designation to be published in two newspapers published and circulated in this Island, and in such other manner as the Department thinks best for informing persons affected.

(5) The reasonable expenses of the Society in exercising its functions under this Act shall be defrayed by the Associations in such proportions as the Society, with the approval of the Department shall declare.

(6) In any proceedings a certificate by the Attorney General that a body corporate is designated under subsection (1) shall be conclusive evidence of that fact and a certificate purporting to be signed by the Attorney General shall be accepted as such unless the contrary is proved.

Prescribed requirements for Society **3A.** (1) The Department may by order specify the requirements that a body corporate must comply with to be designated and continue to be designated as the Society under section 3 and, but without prejudice to the generality of that power, the order may make provision —

- (a) about the contents of the memorandum and articles of association of the body;
- (b) about membership and ownership generally;
- (c) about the qualifications for membership, the term of membership, resignations and casual vacancies;

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- (d) specifying the number of members, the method of appointing or electing members and specifying who shall be as well as who may or may not be members;
- (e) about the proceedings of the body and voting rights of members;
- (f) about the membership of the board of management (whether appointed as directors or otherwise);
- (g) specifying the number of members of the board of management, the method of appointing those members and specifying who shall be as well as who may or may not be members of the board of management;
- (h) about the proceedings of the board of management.

(2) No amendment of the Society's memorandum or articles of association shall have effect unless it is approved in writing by the Department.

(3) In any proceedings it shall be for the Society to prove that the Department has approved any amendment to the Society's memorandum and articles of association.

(4) Where the Articles of Association of the Society provide for the Council of Ministers or the Department to nominate any of the members, the Department may by order make provision for the payment of such attendance allowances and expenses as may be so prescribed to those members of the Society.

(5) Before making an order under this section the Department must consult the body that is, at the time the consultation is undertaken, the Isle of Man Agricultural Marketing Society.

(6) An order under this section shall not come into operation unless it is approved by Tynwald.

Elections by producers **3B.** (1) Where an order under section 3A requires any member of the Society to be elected by a ballot of producers of agricultural products, the Department may by regulations make provision for —

- (a) the conduct by the Department of the election of the producer members of the Society;
- (b) the production and maintenance of lists of the producers that are eligible to vote;
- (c) the manner and procedure for taking a poll of the eligible producers;
- (d) the resignation of office by any such member;
- (e) the filling of casual vacancies;
- (f) election districts.

(2) Regulations under this section shall not come into operation unless they are approved by Tynwald.”

3. For section 5 substitute —

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“Associations to administer schemes **5.** (1) Every scheme shall designate a body corporate that shall be the association for the purposes of this Act or of administering the scheme.

(2) A designation shall not be made under this section unless the body corporate concerned complies with the requirements imposed by an order under section 5A.

(3) In any proceedings it shall be for the Society to prove that a body corporate is designated under subsection (1).

Prescribed requirements for associations **5A.** (1) The Department may by order specify the requirements that a body corporate must comply with to be designated and continue to be designated as an association under section 5 and, but without prejudice to the generality of that power, the order may make provision —

- (a) about the contents of the memorandum and articles of association of the body;
- (b) about membership and ownership generally;
- (c) about the qualifications for membership, the term of membership, resignations and casual vacancies;
- (d) specifying the number of members, the method of appointing or electing members and specifying who shall be as well as who may or may not be members;
- (e) about the proceedings of the body and voting rights of members;
- (f) about the membership of the board of management (whether appointed as directors or otherwise);
- (g) specifying the number of members of the board of management, the method of appointing those members and specifying who shall be as well as who may or may not be members of the board of management;
- (h) about the proceedings of the board of management.

(2) No amendment of an association’s memorandum or articles of association shall have effect unless the amendment is approved in writing by the Department.

(3) Before making an order under this section the Department must consult the body that is, at the time the consultation is undertaken, the Isle of Man Agricultural Marketing Society.

(4) An order under this section shall not come into operation unless it is approved by Tynwald.

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Elections by producers **5B.** (1) Where an order under section 5A requires any of the members of an association to be elected by a ballot of producers, the Department may by regulations make provision for —

- (a) the conducting by the Department of the election;
- (b) the manner and procedure for taking a poll of the eligible producers;
- (c) the filling of casual vacancies;
- (d) election districts.

(2) Before making regulations under this section the Department must consult the body the is, at that time the consultation is undertaken, the Isle of Man Agricultural Marketing Society.

(3) Regulations under this section shall not come into operation unless they are approved by Tynwald.”.

4. In section 7 —

- (a) in subsection (1), paragraphs (a), (c), (d), (i) and (k) to (m) shall cease to have effect;
- (b) in subsection (2), the words from “and may” to “specified in such regulations” shall cease to have effect.

5. Section 9(1)(f)(i) shall cease to have effect.

6. Sections 10 and 11 shall cease to have effect.

7. Section 13 shall cease to have effect.

8. Section 15 shall cease to have effect.

9. Sections 21 and 22 shall cease to have effect.

10. Schedule 2 shall cease to have effect.

Agricultural Marketing Act 1950 (XVII p.847)

11. Sections 1 to 3 and 5 to 7 shall cease to have effect.

Agricultural Marketing Act 1954 (XVIII p.400)

12. Section 2 shall cease to have effect.

c.14 *Agricultural Marketing (Amendment) Act 2006* 337

Treasury Act 1985 (c.25)

SCH. 1

13. In Schedule 2, entry 49 shall cease to have effect.

Statute Law Revision Act 1989 (c.6)

14. In Schedule 1, entry 8(2) shall cease to have effect.

Section 1(2)

SCHEDULE 2

SUPPLEMENTARY

1. (1) The Department may make an order for the transfer of the property, rights and liabilities —

- (a) from the Isle of Man Agricultural Marketing Society (“the old Society”) to the company designated by the Department under section 3 of the Agricultural Marketing Act 1934 to be the Isle of Man Agricultural Marketing Society (“the new Society”) for the purposes of that Act;
- (b) from the Isle of Man Milk Marketing Association to the company designated in accordance with section 5(1) of the Agricultural Marketing Act 1934 to undertake the functions formerly undertaken by the Isle of Man Milk Marketing Association;
- (c) from the Isle of Man Fat Stock Marketing Association, to the company designated in accordance with section 5(1) of the Agricultural Marketing Act 1934 to undertake the functions formerly undertaken by the Isle of Man Fat Stock Marketing Association.

(2) Before making an order under sub-paragraph (1) the Department must consult the old Society, the Isle of Man Milk Marketing Association, the Isle of Man Fat Stock Marketing Association and every company to whom property, rights or liabilities would be transferred under the proposed order.

(3) The Department may by order make such modifications of any provision of the Agricultural Marketing Acts 1934 to 1955 and such other enactments as appear to it to be necessary or expedient in consequence of the provisions of this Act or of any order under this Act or section 3A or 5A of the Agricultural Marketing Act 1934.

(4) An order under this Schedule shall not come into operation unless it is approved by Tynwald.

(5) Where the Department is satisfied —

- (a) that all such transfers have been provided for as will secure that the dissolution of the old Society, the Isle of Man Milk Marketing Association or Isle of Man Fat Stock Marketing Association will not extinguish any of their liabilities, and
- (b) that it is no longer necessary, for any other reason, for the old Society, the Isle of Man Milk Marketing Association or the Isle of Man Fat Stock Marketing Association to continue to exist,

the Department may by order provide for them, or any of them, to cease to exist.

2. An order may set out the property, rights and liabilities to be transferred in one or more of the following ways —

- (a) by specifying or describing them in particular;

- (b) by identifying them generally by reference to a function or an undertaking from which they are to be transferred; or SCH. 2
- (c) by identifying them by reference to a specified part of an undertaking from which they are to be transferred.

Property, rights and liabilities that may be transferred

3. (1) The property, rights and liabilities that may be transferred by an order include —

- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
- (b) property acquired in the period after the making of the order and before it comes into force and rights and liabilities arising in that period;
- (c) rights and liabilities arising after the order comes into force in respect of matters occurring before it comes into force;
- (d) rights and liabilities under any statutory provision.

(2) The transfers to which effect may be given by an order include transfers that are to take effect in accordance with the order as if there were —

- (a) no such requirement to obtain a person's consent or concurrence,
- (b) no such liability in respect of a contravention of any other requirement, and
- (c) no such interference with any interest or right,

as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (3).

(3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.

(4) Sub-paragraph (5) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an order under paragraph 1 —

- (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject; or
- (b) to treat such an interest or right as modified or terminated.

(5) That entitlement shall be enforceable in relation to the interest or right —

- (a) in consequence of what is done or likely to be done by or under this Act, and
- (b) in corresponding circumstances arising after the transfer,

to the extent only that the order provides for it to be so enforceable.

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Dividing and modifying transferor's property, rights and liabilities

4. (1) An order may contain provision —
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property to be transferred in accordance with the order;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property to be retained by a transferor;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) An order may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between the transferors' undertakings which exist immediately before the coming into force of the order into a contract between different transferees, or between a transferee and a transferor.
- (3) An order may contain provision —
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee, or by or against both the transferee and the transferor; and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) An order may contain provision for interests, rights or liabilities of third parties in relation to anything to which the order relates to be modified in the manner set out in the order.
- (5) In sub-paragraph (4), "third party", in relation to an order, means a person other than the transferor and the transferee.
- (6) Paragraph 3(2) and (3) applies to the creation of interests and rights in accordance with an order as it applies to the transfer of interests and rights.

Obligation to effect transfers etc. under an order

5. (1) An order may contain provision for imposing on a transferee or a transferor an obligation —
- (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of this paragraph (whether in the same or a different order), or
 - (b) to execute such instruments in favour of any such person,
- as may be specified or described in the order.
- (2) An obligation imposed on a person by virtue of sub-paragraph (1) shall be enforceable by the relevant person in civil proceedings —

- (a) for an injunction; SCH. 2
- (b) for any other appropriate remedy or relief.

(3) The relevant person for the purposes of sub-paragraph (2) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed.

Effect of order

6. (1) Where an order provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities —

- (a) this Act and the Agricultural Marketing Acts 1934 to 1955 shall have the effect that, at the time when the order comes into force, the property or interests, rights or liabilities shall vest, without further assurance, in the transferee; and
- (b) the provisions of that order in relation to that property or those interests, rights or liabilities shall have effect from that time.

(2) Sub-paragraph (1) is subject to so much of an order as provides for —

- (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the order, or
- (b) the creation of interests, rights and liabilities which are to be created in accordance with the order,

to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 5(1).

Powers and duties under statutory provisions

7. (1) An order may make provision for some or all of the powers and duties to which this paragraph applies —

- (a) to be transferred to a transferee;
- (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees; or
- (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee.

(2) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the transferor by or under a relevant enactment so far as they relate to —

- (a) property to be transferred in accordance with the order;
- (b) the carrying out of works designed to be used in connection with such property; or
- (c) the acquisition of land for the purpose of the carrying out of such works.

SCH. 2 (3) In this paragraph “relevant enactment” means any enactment other than this Act.

(4) This paragraph does not require a restrictive construction to be given to what may be transferred by virtue of paragraph 3(1)(d).

Supplementary provisions of orders

8. (1) An order may make such incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the order as the Department thinks fit.

(2) In particular, an order may make provision, in relation to transfers in accordance with the order —

- (a) for the transferee to be treated as the same person in law as the transferor;
- (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
- (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the order; and
- (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.

(3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.

(4) In this paragraph references to a transfer in accordance with an order include references to the creation of an interest, right or liability in accordance with an order.

Continuity of employment

9. Where in accordance with an order a person employed by a transferor becomes an employee of a transferee —

- (a) the employee is not to be regarded for the purposes of any enactment as having been dismissed by virtue of the transfer;
- (b) the employee’s period of employment with the transferor counts for the purposes of any enactment as a period of employment with the transferee; and
- (c) the change of employment does not break the continuity of the period of employment for the purposes of any enactment.

Compensation for third parties

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10. (1) Where —

- (a) an entitlement of a third party to an interest or right would, apart from a provision of an order under paragraph 1 and paragraph 3(4) and (5), become enforceable in respect of the transfer or creation in accordance with such an order of any property, rights or liabilities,
- (b) the provisions of that order or of paragraph 3(4) and (5) have the effect of preventing the third party's entitlement to that interest or right from being enforced in respect of anything for which the order provides, and
- (c) provision is not made by the order for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the order provides,

the third party shall be entitled to compensation in respect of the extinguishment of the entitlement.

(2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to do so, that the third party does not suffer financial loss from the extinguishment of the entitlement.

(3) A liability to pay compensation under this paragraph shall fall on the transferee.

(4) In the preceding provisions of this paragraph "third party", in relation to an order, means a person other than the transferor and the transferee.

Provision of information to person making order

11. (1) The Department may direct —

- (a) a proposed transferor, or
- (b) a proposed transferee,

to provide it with such information as it considers necessary to enable it make the order.

(2) Such a direction must specify the period within which the information is to be provided.

(3) The period specified in the direction must be not less than 28 days beginning with the day of the giving of the direction.

(4) If a person fails to comply with such a direction, the Department may serve a notice on that person requiring —

- (a) the production to the Department of any documents which are specified or described in the notice and are in the person's custody or control; or

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(b) the provision to the Department of such information as may be specified or described in the notice.

(5) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice.

(6) No person may be required under this paragraph —

(a) to produce a document which a person could not be compelled to produce in civil proceedings in the High Court; or

(b) to provide information which a person could not be compelled to give in evidence in such proceedings.

(7) A person who intentionally alters, suppresses or destroys a document which that person has been required to produce by a notice under sub-paragraph (4) is guilty of an offence and liable —

(a) on summary conviction, to a fine not exceeding £5,000; and

(b) on conviction on indictment, to a fine.

(8) If a person fails to comply with a notice under sub-paragraph (4), the High Court may, on the application of the Department, make such order as the court thinks fit for requiring the failure to be made good.

(9) Any order under sub-paragraph (8) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of the following —

(a) the person in default;

(b) any officers of a company, society or association who are responsible for its default.

(10) In this paragraph —

(a) a reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and

(b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

PART 2

POWER TO ACT IN RELATION TO PROPOSALS FOR TRANSFER OF FUNCTIONS, PROPERTY ETC.

12. Where the Department is at any time proposing that any functions, property, rights or liabilities of the old Society or the Associations (“the transferors”) should be transferred to a company (“the transferee”), the functions of the relevant transferor shall include the power to do anything which in its opinion is appropriate for the purpose of —

- (a) facilitating the implementation of the proposal; or SCH. 2
- (b) facilitating the implementation of, or securing a modification of, any related proposals of the Department.

13. The proposals which are to be regarded for the purposes of this paragraph as related to a proposal of the Department for the transfer of any functions, property, rights or liabilities of a transferor shall include any proposal relating to, or to any matter connected with —

- (a) any relevant property, rights or liabilities which would be affected by the transfer, or any such property, rights or liabilities after their proposed transfer;
- (b) the exercise, whether before or after the transfer, of any function which it is proposed to transfer to the transferee.

14. Any power of a transferor to do anything under this Part in relation to a proposal for the transfer of any functions, property, rights or liabilities, or in relation to any related proposals, shall include power to do that thing whether or not with a view to promoting the interests of the transferor.

15. The powers conferred by this paragraph in relation to any proposal shall be exercisable whether or not Tynwald has given any approval on which the implementation of the proposal depends and are without prejudice to any power conferred otherwise than by virtue of this Part.

PART 3

INTERPRETATION

16. (1) References in this Schedule to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right's arising include references to its becoming exercisable.

(2) In this Schedule, any reference to functions, property, rights or liabilities is a reference to functions, property, rights or liabilities whether exercisable, situate or subsisting in the Island or elsewhere.

(3) An order means an order under paragraph 1.