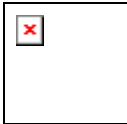

**Lodged au Greffe on 20th November 2001
by the Agriculture and Fisheries Committee**



STATES OF JERSEY

STATES GREFFE

REPORT

This Report introduces the Jersey Potato Export Marketing Scheme which has been developed in accordance with the Agricultural Marketing (Jersey) Law 1953, as amended. The main purpose of this Scheme is to achieve a co-ordinated and united approach to marketing Jersey Royal potatoes. This is considered to be a prerequisite for safeguarding the future of the potato industry in the Island.

Background

The Jersey Royal crop is the main outdoor crop grown in the Island and is a major export, with annual sales of £25 - £30 millions in the United Kingdom. There are about 80 growers (producers) in Jersey producing 35 - 45,000 tonnes of potatoes each year for export from about 14,500 vergées. Most of the crop is sold in the United Kingdom, about 80 per cent through supermarkets and 20 per cent through wholesale markets. The marketing and export of the crop is mainly handled through four Jersey-based marketing organisations acting independently. Two of these organisations handle at least 80 per cent of the exports.

Although production methods are generally efficient and competitive, the costs of production in the Island and of export and marketing are relatively high. The crop remains attractive for retailers in the United Kingdom and attracts premium prices. Increasing competition in the marketplace has, however, reduced the premium and squeezed profit margins for producers. Margins fluctuate significantly from year to year; in recent years, very low margins or losses have occurred about two years in three.

Efficient and effective marketing is widely recognised to be fundamentally important to the competitiveness of the crop. The marketing organisations have established close working relationships with the supermarkets and have developed efficient operations, but it is the opinion of the great majority of producers that the current arrangements are not serving the interests of the industry as a whole.

The history of marketing the crop has been characterised by -

- competition between the marketing organisations resulting in an overall lack of co-ordination in marketing strategy; this has had the effect of reducing prices and therefore margins for producers.

This problem is well recognised by producers and there have been many attempts by them over a long period to address it. These have involved attempts to achieve a more united approach through co-operation and co-ordination - but none has succeeded. The four current marketing organisations operate independently and in effect compete against one another in the marketplace. The result is a downward pressure on price which has a greater impact on the primary producers than on the marketing organisations.

- the inability of most producers to negotiate or influence the terms under which the marketing organisations sell their crops.

There have been repeated requests for greater 'transparency' with regard to the terms of business - but these requests have not been successful.

The great majority of producers have become increasingly dissatisfied because they are unable to negotiate the terms on which marketing organisations sell their crops; they do not know the price at which their crop has been sold; they do not know the basis of charges levied by the marketing organisations; poor market prices are passed back to them whilst the marketing organisations are largely insulated by their method of charging.

Producer dissatisfaction came to a head as a result of the 2000 season which produced very poor returns for producers and which followed a poor season in 1999. As a result, many producers were considering whether or not to continue in business. At that point the Agriculture and Fisheries Committee and the Jersey Farmers Union, recognising that the future of the industry was in jeopardy, launched an initiative in an attempt to identify a better way forward. The initiative took the form of an extensive consultation process with all stakeholders in the industry during the period July to September 2000, led by an independent facilitator (Mr. C. Horne from the United Kingdom). There were nine meetings involving 88 producer 12 interviews with the then five marketing organisations and interviews with many other stakeholders. The consultation meetings were followed by a questionnaire which obtained a 77 per cent response and strongly confirmed the comments and opinions expressed at the meetings.

A Report was prepared 'Developing a Strategy for the Potato Industry in Jersey' (known as the 'Horne Report'). The Report

recommended the formation of a Growers Association that would take responsibility for marketing the crop but would discharge this responsibility by employing agents, under contract, to market the crop. (There were no proposals and there is no intention by the Growers Association to become involved in any marketing activity unless any of the producer members are excluded by the marketing organisations.) The Report also included recommendations concerning the licensing of producers, managing the volume of production, improving quality throughout the growing and marketing process, administering advertising and promotion etc. To enable these recommendations to be implemented, the key recommendation was the development by the Growers Association of a new 'Scheme' under the Agricultural Marketing (Jersey) Law 1953, as amended.

A workshop was held, involving the full Committee, the Jersey Farmers' Union and legal and marketing advisers to consider the Report and its recommendations. A vote of producers was organised, by the Statistics Unit in the Policy and Resources Department, to ascertain the level of support for the proposals. About 80 per cent voted in favour. The Jersey Growers Association was formed, with an interim constitution, in December 2000. Development of the new Scheme was begun early in 2001 in accordance with the procedure prescribed in the Marketing Law.

The procedure has involved a period of consultation with stakeholders on the basis of a draft Scheme published in September 2001. During the consultation period, a meeting of producers demonstrated near-unanimous support for the Scheme. Suggestions for amendments were noted at that meeting and there were also six written submissions. *As a result of this consultation the draft Scheme was amended significantly - in effect to replace the list of 'powers' in the original draft with the power to enter into marketing agreements with producers, and into management agreements with marketing organisations, through a process of negotiation.* The outcome is the Scheme now submitted to the States for their consideration.

Rationale for the Scheme

The essential aim of the Scheme is to establish a co-ordinated and unified approach to marketing Jersey Royal potatoes. This will be achieved by enabling a Board, on behalf of producers, to negotiate management agreements (contracts) with marketing organisations. The management agreements will ensure a co-ordinated and unified approach. The terms of the management agreements will be determined by negotiation and so will establish a normal business relationship between 'producers' and 'marketing agents'.

Despite perceptions to the contrary, the Board will place strong emphasis on operating by means of agreement achieved through negotiation and on developing strong business relationships with marketing organisations. The Board will be committed to safeguarding the interests of all stakeholders in the industry.

Other important aims of the Scheme are to influence the scale of production in accordance with demand trends, to improve the quality and presentation of the product, to carry out studies into new product and market opportunities, to ensure effective advertising and promotion of Jersey Royals and to work closely with the Committee in defining research to improve the perceived quality of the product and to improve the efficiency of the production and marketing process.

The Agriculture and Fisheries Committee strongly recommends the States to approve the Scheme. This will give the industry a long-awaited opportunity to manage its affairs in the interests of all stakeholders and to compete effectively in the United Kingdom marketplace. If the States approve the Scheme there will be a ballot of producers to determine whether or not the Scheme will be implemented. This will require a two-thirds majority of producers voting and a two-thirds majority of the area of production they represent.

Commentary on the Scheme

The Agricultural Marketing (Jersey) Law 1953 sets out the information that must be included in all schemes (and is included in this Scheme) and additional information that could be included.

Part 1 Preliminary

This section defines the terminology used in the Scheme. In particular the definition of 'export' makes it clear that the Scheme will apply only to the sale of potatoes in the United Kingdom. Sales in Jersey are not covered by the scheme.

Part 2 The Board

This section defines the composition of the Board, the election and appointment of members of the Board and of the chairman and officers, the composition of the Executive Committee, etc. This section also defines the purpose and composition of the Stakeholder Committee - an advisory committee that will represent the range of interests in the potato

export industry.

Part 3 Financial provisions

This section prescribes the establishment of a 'fund' through which the Board will manage its finances. The Board may require registered producers to contribute to the fund. The section also defines the arrangements concerning accounting and auditing.

Part 4 Principal powers of the Board

This section describes -

- (i) *Exemptions* from the Scheme - sales within Jersey, gifts up to 100 kilogrammes of potatoes, exports by very small-scale producers, and other situations that the Board may exempt.
- (ii) *Prohibition of exports by unregistered persons* - potato producers who are not registered producers will not be permitted to export.
- (iii) *General power to regulate production and marketing* - registered producers may enter into marketing agreements with the Board: Schedule 1 indicates the matters that will be covered by these agreements. Marketing organisations may enter into management agreements with the Board: Schedule 2 indicates the matters that will be covered by these agreements. Arbitration is available to resolve issues concerning agreements. The existing marketing organisations will have the opportunity to become agents of the Board by entering into management agreements.
- (iv) *Miscellaneous Powers* - The Board would have powers, in case of need, to assist the industry by carrying out, or procuring others to carry out, activities normally undertaken by other stakeholders in the industry in the event that they were not able or willing, and also to undertake activities for the future development of the industry. The Board must consult the Stakeholder Committee before exercising these powers. The Board would have powers to collect information about the industry and to monitor whether the terms of agreements are being observed. The Board would have the power to impose penalties on registered producers with limits of £300 for each contravention (unless they persisted), with provision for hearings and referral to the Royal Court.

Part 5 General meetings of registered producers

This section sets out the way in which the Board must arrange formal general meetings of registered producers, and the voting procedures.

Part 6 Amendment and revocation of Scheme and winding-up of the Board

This section sets out the specific procedures for these actions.

Part 7 Miscellaneous

This section deals with several matters, including arbitration and compensation for producers and other parties, the de-registration of producers by the Committee and prescriptive resolutions - the means by which some activities of the Board are governed.

This draft Act has no implications for the financial or manpower resources of the States.

Explanatory Note

The purpose of this Act is to approve the Jersey Potato Export Marketing Scheme 200- which has been submitted by the Agriculture and Fisheries Committee under the powers contained in Article 2 of the Agricultural Marketing (Jersey) Law 1953 as amended.

Agricultural Marketing (Jersey) Law 1953

JERSEY POTATO EXPORT MARKETING SCHEME 200- (APPROVAL) (JERSEY) ACT 200-

(Promulgated on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, in pursuance of Article 2(6) of the Agricultural Marketing (Jersey) Law 1953, as amended, [\[1\]](#) have made the following Act -

- 1.** The Jersey Potato Export Marketing Scheme 200- set out in the Schedule to this Act is approved and will come into force on the promulgation of this Act.
- 2.** This Act may be cited as the Jersey Potato Export Marketing Scheme 200- (Approval) (Jersey) Act 200-.

SCHEDULE

JERSEY POTATO EXPORT MARKETING SCHEME 200-

ARRANGEMENT OF PARAGRAPHS

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1. Citation.
2. Interpretation.

PART 2

THE BOARD

3. Establishment of the Board.
4. Membership until 30th September 2002.
5. Membership after 30th September 2002.
6. Appointment of chairman and officers.
7. Members' remuneration and expenses.
8. Election of members of the board.
9. Vacancies.
10. Death of a member.
11. Re-election.
12. Quorum.
13. Executive committee.
14. Stakeholder Committee.
15. Committees.
16. Meetings.
17. Voting.
18. Defective appointments.
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FINANCIAL PROVISIONS

23. Establishment of the fund.
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PART 4

PRINCIPAL POWERS OF THE BOARD

28. Commencement of Part 4.
29. Exemptions.
30. Prohibition of sales and exports by unregistered person.
31. General power to regulate production and marketing.
32. Penalties.
33. Miscellaneous powers.
34. Distribution of Board's profits.

- 35. Contributions in the event of Board's losses.
- 36. Surplus funds.
- 37. Information and inspection.
- 38. Powers of entry.
- 39. Provisions as to penalties.

PART 5

GENERAL MEETINGS OF REGISTERED PRODUCERS

- 40. Convening meetings.
- 41. Chairman of registered producers' meetings.
- 42. Notice of registered producers' meetings.
- 43. Nominations.
- 44. Notice.
- 45. Proxies.
- 46. Voting.
- 47. Nominees.
- 48. Declaration of vote and casting vote.

PART 6

AMENDMENT AND REVOCATION OF SCHEME AND WINDING -UP OF THE BOARD

- 49. Notice of amendments or substitutional schemes.
- 50. Polls.
- 51. Winding-up.

PART 7

MISCELLANEOUS

- 52. Arbitration.
- 53. Compensation and costs.
- 54. Death of a registered producer.
- 55. Service of notices.
- 56. Deregistration.
- 57. Prescriptive resolutions.

SCHEDULE 1 - Minimum terms of marketing agreements.

SCHEDULE 2 - Minimum terms of management agreements.

JERSEY POTATO EXPORT MARKETING SCHEME 200-

PART 1

PRELIMINARY

Citation

1. This Scheme may be cited as the Jersey Potato Export Marketing Scheme 200-.

Interpretation

2. (1) In this Scheme, unless the context otherwise requires -

“Board” means the Jersey Potato Export Marketing Board established by paragraph 3;

“Chief Executive Officer” means the person from time to time employed by the Board as its Chief Executive Officer;

“Committee” means the Agricultural and Fisheries Committee of the States of Jersey;

“export” means the sending for sale of potatoes outside of the Island whether directly or via some other place to a destination in the United Kingdom, the Bailiwick of Guernsey or the Isle of Man for consumption there;

“fund” means the fund established by paragraph 23;

“Law” means the Agricultural Marketing (Jersey) Law 1953, as amended;^[2]

“marketing organisation” means any person -

- (a) having or acquiring potatoes for export by him; or
- (b) acting as an agent for another person in the export of potatoes,

pursuant to the provisions of this Scheme;

“potatoes” means harvested potatoes grown in Jersey, not being maincrop potatoes or of a class or description for the time being exempt by virtue of paragraph 29(c), and includes any product produced or derived from potatoes, whether consumable or not;

“prescriptive resolution” means a resolution of the Board embodying a determination of the Board in accordance with the provisions of this Scheme and which is recorded in the record provided for in paragraph 57;

“producer” means a person who is a producer of potatoes;

“registered” means registered under the provisions of the Law for the purposes of this Scheme;

“Secretary” means any person for the time being authorised by the Board to act as its Secretary; and

“suspensory period” means a period beginning on the date when the scheme is approved and ending at the expiration of one calendar month commencing on the date of the declaration of the result of the initial poll.

- (2) The Interpretation (Jersey) Law 1954,^[3] shall apply to the interpretation of this Scheme as it applies to the interpretation of an enactment.

- (3) A reference in this Scheme to a Part or a paragraph by number only and without further identification is a reference to the Part or paragraph of that number in this Scheme.

- (4) A reference in a paragraph or other division of this Scheme to a sub-paragraph or clause by number or letter

only and without further identification is a reference to the sub-paragraph or clause of that number or letter in the paragraph or other division of this Scheme.

(5) Unless the context otherwise requires, a reference in this Scheme to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Scheme.

PART 2

THE BOARD

Establishment of the Board

3. A Board shall be established to administer this Scheme which shall be called the Jersey Potato Export Marketing Board.

Membership until 30th September 2002

4. Until the 30th Day of September 2002 the Board Shall consist of -

- (a) John Le Maistre of Les Goues, Le Câtillon, Grouville;
Michael Cotillard of Le Croisic, La Rue des Landes, St. John;
Michael Labey of Val Poucin Farm, La Rue du Val Poucin, Grouville;
Glen Hamel of Washington, La Grande Route de St. Clément, St. Clement;
Adrian De Gruchy of Le Petit Côttil, La Rue de Maupertuis, St. Mary; and
Paul Le Bihan of Ty En Ar Park, La Chasse Mallet, St. Martin;
- (b) not less than three and not more than five persons appointed by the Committee; and
- (c) the Chief Executive Officer of the Board for the time being.

Membership after 30th September 2002

5. Subject to the provisions as to the filling of casual vacancies, the Board shall consist, after the 30th day of September 2002 of -

- (a) six members elected by the registered producers;
- (b) not less than three or more than five persons appointed by the Committee; and
- (c) the Chief Executive Officer of the Board for the time being.

Appointment of chairman and officers

6. (1) The Board shall elect from amongst its members a Chairman and Vice-Chairman, both of whom shall (provided that they remain members of the Board) hold office in the first instance until the 30th day of September 2002 and thereafter -

- (a) in the case of the Chairman until the third annual election of elected members of the Board after his appointment; and
 - (b) in the case of the Vice-Chairman until the second annual election of the elected members of the Board after his appointment.
- (2) The Board shall employ a Chief Executive Officer.

(3) The Board may appoint or employ a Secretary and such other officers, agents, servants and liquidator as it thinks fit.

(4) The Board shall have an office at which communications and notices will at all times be received, and shall notify the Committee of the address of that office and any change in that address.

(5) The Board may -

- (a) enter into such agreements;
- (b) acquire such property; and
- (c) do such other things,

as may, in its opinion, be necessary or desirable for the purposes of exercising any of its powers or performing any of its duties under this Scheme, and may sell or otherwise dispose of any property acquired by it which it does not need for such purposes.

Members' remuneration and expenses

7. The Board may pay to any member of the Board any such travelling and out-of-pocket expenses as have, in the opinion of the Board, been reasonably incurred by him 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 annually by the registered producers in general meeting.

Election of members of the board

8. (1) An election of members of the Board shall be held on such day as the Board may determine in the last fourteen days of September 2002, and of each subsequent year.

(2) Six members shall be elected at the first such election and two members shall be elected at each subsequent election.

(3) Subject to the provisions of sub-paragraph (4) each member so elected shall hold office until the end of the day on which the election of members is completed in the third calendar year after that in which he was elected.

(4) Subject to the provisions of paragraph 6(1) regarding the Chairman and Vice-Chairman, of the six members of the Board who are elected in September 2002 -

- (a) those two who received respectively the highest and second highest number of votes shall retire on the day of the election in 2005;
- (b) those two who received respectively the third and fourth highest number of votes shall retire on the day of the election in 2004; and
- (c) those who received respectively the fifth and sixth highest number of votes shall retire on the day of the election in 2003.

(5) If numbers of votes are equal so that the retiring member cannot be determined in accordance with sub-paragraph (4), lots shall be drawn to determine those members who will retire.

Vacancies

9. An elected 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;
- (b) if a curator is appointed to his person or to administer his property;
- (c) if he becomes bankrupt or enters into a composition or arrangement with his creditors or appoints an attorney

without whom he may not act in matters moveable or immovable;

(d) if the Board by resolution declares that he has been absent without reasonable excuse from four consecutive meetings of the Board or from one half of the meetings held in any period of six months; or

(e) if he is convicted of any offence under Article 23 of the Law.^[4]

Death of a member

10. (1) Where an elected member of the Board dies, or ceases to hold office under paragraph 9, a new member shall be elected in his place at the next annual election of members.

(2) A new member elected in accordance with paragraph (1) shall hold office until the time at which the first-mentioned member would regularly have retired.

(3) Where such a vacancy as is mentioned in sub-paragraph (1) occurs within six months after the date of the last annual election, the Board may co-opt a registered producer to fill that vacancy until the day of the next annual election.

Re-election

11. A retiring member of the Board or a member who resigns his office shall be eligible for election or re-election.

Quorum

12. (1) The quorum of the Board shall be six of which at least one shall be an appointed member.

(2) The Board shall have power at all times to act notwithstanding any vacancy in its number.

Executive committee

13. (1) The Board shall appoint from amongst its members an Executive Committee consisting of five members, one of whom shall be the Chairman of the Board, one of whom shall be the Vice-Chairman of the Board, one of whom shall be the Chief Executive Officer of the Board and two of whom shall be persons appointed by the Committee.

(2) The Board shall delegate to the Executive Committee all its functions under this Scheme except its functions under paragraphs 6, 8, 9, 10, 12, 15, 23, 24, 25, 26, 29, 30, 31, 32, 32, 33, 34, 34, 35, 39, 40, 41, 42, 49, 52 and 56.

(3) The quorum of the Executive Committee shall be three, at least one of whom shall be an elected Board member and another of whom shall be one of the persons appointed by the Committee.

(4) The Chairman of the Board or if he is not present the Vice Chairman of the Board shall chair the meetings of the Executive Committee and shall have a casting vote.

(5) The Board may appoint from amongst its members alternate members of the Executive Committee.

(6) A member of the Executive Committee may authorise any alternate member appointed under sub-paragraph (5) to attend meetings of the Executive Committee in his stead during his absence from Jersey or whenever he is unable to act as a member of the Executive Committee.

(7) A member of the Executive Committee may delegate to any alternate member authorised by him under paragraph (6) the exercise on his behalf of any of his rights as a member of the Executive Committee.

(8) An authorization under sub-paragraph (6), and a delegation under paragraph (7) shall be in writing and may be given or made in respect of a particular meeting or in the respect of all meetings until the authorization or delegation expires or is revoked.

Stakeholder Committee

14. (1) The Board shall appoint a committee to be known as the Stakeholder Committee for the purpose of advising the Board on the exercise of its powers under this Scheme.

(2) The Stakeholder Committee shall be composed of persons with a commercial interest in the export and marketing of potatoes.

(3) Members of the Stakeholder Committee -

(a) shall be appointed for a period of one year, and shall be eligible for re-appointment; and

(b) may resign their membership by giving one calendar month's notice in writing of their resignation to the Board.

(4) Members of the Stakeholder Committee may be removed from office for good reason by the Board who shall give the member one month's notice in writing of their intention to do so setting out in full in that notice their reasons for the proposed removal.

(5) The Stakeholder Committee shall consist of -

(a) two persons, who may be registered producers, appointed by the Board from among the members of the Board; and

(b) such other members as the Board shall appoint, who shall not be registered producers.

(6) The meetings of the Stakeholder Committee shall be chaired by a member appointed under paragraph (3)(a) who shall be designated as chairman of the Stakeholder Committee by the Board.

(7) The functions of the Stakeholder Committee shall be to make recommendations to the Board concerning the Board's business under this Scheme.

(8) The Stakeholder Committee shall meet on at least two occasions in every calendar year.

(9) The Board shall take account of all advice received from the Stakeholder Committee, but shall not be obliged to act in accordance with such advice.

Committees

15. (1) The Board may appoint Committees from among its members and may delegate to a Committee so appointed any of its powers except -

(a) a power to impose penalties;

(b) a power in connection with the borrowing of money; or

(c) the power to authorise the application of the Common Seal of the Board.

(2) The quorum of every Committee of the Board (except the Executive Committee) shall be such number as the Board may fix for that Committee.

(3) Every Committee of the Board shall report its proceedings to the Board and shall comply with the directions of the Board.

(4) The membership of Committees of the Board shall not subsist beyond the next election of elected members of the Board.

Meetings

16. The Secretary or, where none has been appointed, the Chief Executive Officer shall, on the request of the Chairman or on the written request of any three members, convene a meeting of the Board.

Voting

17. Questions arising at a meeting of the Board or of a Committee of the Board 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 for the purpose of deciding that question, have a second or casting vote, except in meetings of the Executive Committee where the second or casting vote shall be cast by the Chairman of the Board.

Defective appointments

18. All acts done at a meeting of the Board or of any Committee of the Board 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 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.

Minutes

19. (1) Minutes shall be kept of the proceedings of the Board and of every Committee of the Board.

(2) Any minutes kept under sub-paragraph (1) 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 meeting to which they relate.

(3) The meeting to which any minutes kept under sub-paragraph (1) relate shall be presumed, until the contrary is proved, to have been regularly convened and constituted.

The seal

20. (1) The Common Seal of the Board shall not be applied to any document except by the authority of the Board.

(2) The application of the Common Seal shall be attested by two members of the Board, at least one of whom shall be either the Chairman of the Board, or the Vice-Chairman, or the Chief Executive Officer.

Delegation of contractual authority

21. 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 the Board in that behalf, either generally or specially.

Members' interests

22. (1) No contract to which the Board is a party shall be avoided by reason only that a member of the Board is also a party thereto or is interested therein.

(2) A member of the Board who is a party to or interested in a contract to which the Board is a party 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.

(3) A member of the Board shall forthwith, on becoming aware of the contract or of negotiations leading to the contract, disclose to the Board any interest which he has or acquires in any contract to which the Board is, or may become, a party.

(4) If such an interest as is referred to in sub-paragraph (3), in the opinion of the other members of the Board, in any way conflicts with his duty as a member of the Board he shall not vote upon any question relating to the contract and, if he does vote, his vote shall not be counted.

(5) 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 a contract which has been, or may thereafter be, entered into by him with the Board.

PART 3

FINANCIAL PROVISIONS

Establishment of the fund

23. (1) There shall be established a fund (in this Scheme referred to as “the fund”) which shall be administered and controlled by the Board.

(2) All moneys received by the Board shall be paid into the fund, and any moneys required by the Board for the operation shall be paid out of the fund.

(3) Any moneys for the time being standing to the credit of the fund may be left on current or deposit account in any bank or invested in any securities which the Board may think fit.

Contributions to the fund

24. (1) The Board may by resolution require every registered producer to contribute to the fund each year a sum which shall be calculated, as the Board may from time to time elect, either -

(a) by reference to the weight in tonnes of the potatoes sold by him for export during the previous calendar year; or

(b) by reference to the area in vergées dedicated by him to the production of potatoes as declared in the preceding calendar year to the Committee.

(2) A resolution under sub-paragraph (1) shall state the amount or scale of amounts in pounds and or pence to be paid per tonne so exported or per vergée so dedicated.

(3) Every sum calculated in accordance with sub-paragraph (2) shall be recoverable by the Board as a civil debt.

(4) In the case of a newly registered producer’s first year of potato production his contribution shall be calculated by reference to the area in vergées to be dedicated by him to the production of potatoes.

Power to borrow

25. The Board may by resolution, for the purpose of exercising any of its functions under this Scheme, borrow money in such manner, on such terms, and on such security, as may be arranged by it.

Accounts and audit

26. (1) The Board shall -

(a) keep proper accounts and proper records in relation to the accounts; and

(b) shall annually make out a balance sheet and either a profit and loss account, or if the Board does not trade for profit, an income and expenditure account.

(2) The accounts of the Board shall, subject to paragraph 27, be audited by a member, or firm of accountants containing a member, of the Jersey Society of Chartered and Certified Accountants appointed by the registered producers in general meeting.

(3) The Board, as soon as may be after the auditor has reported thereon, and in any case within three months from the close of the period covered by the profit and loss account or income and expenditure account, shall send to the Committee and to every registered producer -

(a) a copy of the account and balance sheet;

(b) a copy of the report of the auditor;

(c) a copy of a report by the Board as to the working in the period covered by the profit and loss or income and expenditure account; and

(d) a statement as to the manner in which any moneys of the Board have been invested.

(4) The Board shall, on the demand of any person and on payment by him of such fee, not exceeding one pound,

as may be fixed by the Board, provide him with a copy of any one of its balance sheets.

Appointment of auditors

27. 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 at least fourteen days before the meeting.

PART 4

PRINCIPAL POWERS OF THE BOARD

Commencement of Part 4

28. The provisions of this Part and of paragraph 24, shall come into force at the expiration of the suspensory period.

Exemptions

29. There shall be exempt from the operation of this Part -

- (a) sales of potatoes within the Island to wholesale or retail purchasers where such potatoes are to be consumed within the Island;
- (b) gifts of potatoes of up to 100kg per month to a individual or of any amount to a charitable organisation or cause recognised as such by the Board;
- (c) sales of potatoes outside the Island by producers in occupation of land of which less than 10 perches (V0:10:0) has been used for the cultivation of potatoes in any season; and
- (d) such sales or other transactions involving potatoes or registered producers as the Board may determine from time to time by prescriptive resolution.

Prohibition of exports by unregistered person

30. Subject to the provisions of the Law with regard to existing contracts, a producer who is not a registered producer shall not export or make any arrangements intended or liable to lead directly or indirectly to the export of any potatoes outside the Island.

General power to regulate production and marketing

31. (1) A registered producer who enters into a marketing agreement under sub-paragraph (3) may export potatoes.
- (2) A marketing organisation which enters into a management agreement under sub-paragraph (8) may receive potatoes for handling export and marketing, and act as an agent of a registered producer in the marketing of potatoes.
- (3) The Board may enter into a marketing agreement with any registered producer.
- (4) An agreement under sub-paragraph (3) shall -
- (a) include, but not be restricted to, the matters listed in Schedule 1; and
 - (b) shall subject to sub-paragraph (6), expire on the 30 September next following the date of the Agreement.
- (5) Where the Board and the registered producer are unable to agree the terms of the renewal of a marketing agreement prior to the date for its expiry under sub-paragraph (4)(b), the issue shall immediately be referred to arbitration under the terms of Part 7 unless the registered producer has informed the Board prior to that date that he does not wish to renew the marketing agreement.
- (6) Where the terms of renewal of a marketing agreement have been referred to arbitration under sub-paragraph (5), the marketing agreement shall continue in full force and effect until the parties are informed in writing of the result of the arbitration.

(7) A registered producer who is not a party to a current marketing agreement may neither export potatoes nor offer potatoes for export.

(8) The Board may determine the maximum number of marketing organisations with which it is prepared to enter into a management agreement, but subject thereto, may enter into a management agreement with any marketing organisation.

(9) An agreement under sub-paragraph (8) shall -

(a) include, but not be restricted to, the matters listed in Schedule 2; and

(b) shall subject to sub-paragraph (11), expire on the 30 September next following the date of the Agreement.

(10) Where the Board and the marketing organisation are unable to agree the terms of the renewal of a management agreement prior to the date for its expiry under sub-paragraph (9)(b), the issue shall immediately be referred to arbitration under the terms of Part 7 unless the marketing organisation has informed the Board prior to that date that it does not wish to renew the management agreement.

(11) Where the terms of renewal of a management agreement have been referred to arbitration under sub-paragraph (10), the management agreement shall continue in full force and effect until the parties are informed in writing of the result of the arbitration.

(12) A marketing organisation who is not a party to a current management agreement may not receive potatoes for handling, export or marketing, or act as an agent of a registered producer in the marketing of potatoes.

Penalties

32. If a registered producer sells any potatoes in breach of the terms of a marketing agreement entered into by him with the Board, the Board shall, subject to the provisions of paragraph 39, by resolution impose upon, and recover from him, such monetary penalty as the Board thinks reasonable.

Miscellaneous powers

33. (1) The Board may -

(a) buy potatoes;

(b) produce or cause to be produced from potatoes any products or by-products;

(c) sell, grade, pack, store, adapt for sale, insure, promote, advertise and transport potatoes or any products or by-products thereof;

(d) acquire and sell or let for hire anything required and to be utilised wholly or mainly, for the production, grading, packing, storing, adapting for sale, promotion, advertisement, transport or sale of potatoes or any products or by-products thereof;

(e) co-operate with any other person in doing any of the things which the Board is empowered to do by virtue of the foregoing provisions of this sub-paragraph;

(f) encourage, promote or conduct schemes of co-operation, research or education in connection with the production and marketing of potatoes and any products or by-products thereof;

(g) lend to any registered producer, upon such security and terms as the Board may determine, a portion of the amount which the Board estimates that such registered producer will receive from the sale of potatoes produced, or in the course of production by him; and

(h) require each individual registered producer to supply to the Board such statistical information as the Board may by prescriptive resolution from time to time require.

(2) The Board shall consult the Stakeholder Committee before exercising its powers under sub-paragraph (1)(a),

(b) or (e) unless the need to exercise those powers arises from -

- (a) a registered producer ceasing business;
- (b) a marketing organisation ceasing business;
- (c) the emergence of a new marketing opportunity in connection with the export of potatoes;
- (d) the cessation of contractual arrangements between a registered producer and a marketing organisation; or
- (e) a surplus of potatoes in excess of the requirements of the marketing organisations.

(3) Where the Board exercises any of the powers conferred upon it by sub-paragraph (1)(c), the Board may authorise any persons to exercise any of those powers on its behalf subject to such conditions as it may impose.

Distribution of Board's profits

34. (1) Subject to the approval of a general meeting of registered producers, the Board shall from time to time determine the proportion of profits (if any) made by the Board that shall be retained in the fund and the proportion that shall be distributed to the registered producers.

(2) Whenever the Board shall determine that profits shall be distributed to the registered producers such distribution shall be made according to the respective quantities of potatoes sold by individual registered producers subject to adjustment according to any differing scales or rates of payment as may apply to differing grades or quality of potato during the period in which the profit was made.

Contributions in the event of Board's losses

35. When any trading loss is made by the Board, the Board may from time to time determine by prescriptive resolution that the amount of money so lost shall be contributed to the Board by the registered producers in proportion to the respective quantities of potatoes sold by individual registered producers subject to adjustment according to any differing scales or rates of payment as may apply to differing grades or quality of potato during the period in which the loss was made and the amount to be so contributed by any registered producer shall be recoverable by the Board as a civil debt.

Surplus funds

36. The Board may set aside reserves and may utilise such reserves in the operation in such manner as the Board may think fit; but subject thereto any moneys standing to the credit of the fund which, in the opinion of the Board, are not distributable under the provisions of paragraph 34 after meeting the Board's administrative and other expenses and losses (if any) shall be distributed in such manner as may be determined by a resolution passed at a general meeting of registered producers.

Information and inspection

37. The Board may, whenever it considers it necessary for the operation so to do, serve on any registered producer a demand in writing requiring him to furnish to the Board such estimates, returns and other information relating to potatoes as may be specified in the demand and if, without reasonable excuse, he fails to comply with the demand, or if he knowingly makes a false statement in reply thereto, the Board, subject to the provisions of paragraph 39, shall by resolution impose upon him, and recover from him, such monetary penalty as the Board thinks reasonable.

Powers of entry

38. 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 or otherwise dealing with any potatoes; and the registered producers shall afford reasonable facilities for such entry and inspection and for sampling. If any registered producer wilfully obstructs any person authorised under this paragraph in the carrying out of his duties, the Board shall, subject to the provisions of paragraph 39, by resolution impose upon, and recover from that registered producer such monetary penalty as the Board thinks reasonable.

Provisions as to penalties

39. (1) The provisions contained in sub-paragraphs (2) to (9) shall have effect with respect to the imposition of penalties by the Board on registered producers under the foregoing provisions of this Part and with respect to the recovery of such penalties.

(2) No penalty shall be imposed in respect of any act or omission which constitutes an offence under any enactment other than the Law nor until the registered producer has had a reasonable opportunity of being heard by the Board, in person or by counsel or solicitor or by any other person authorised by him.

(3) No penalty shall exceed three hundred pounds for each contravention or, in the case of a continuing contravention, three hundred pounds together with a further one hundred and twenty-five pounds for each day on which the contravention is continued.

(4) Notice of the time and place of any hearing under sub-paragraph (2) and a written statement of the allegation against the registered producer in question shall be served personally or by registered post on the producer at least fourteen days before the hearing.

(5) No penalty shall be imposed for any contravention which occurred more than one year before the serving of the written statement of the allegation.

(6) Where a written statement of an allegation against a registered producer has been sent to or served on him under sub-paragraph (4) and the allegation is withdrawn or is not substantiated, the Board shall have power to make to the registered producer, in respect of his costs in connection with the allegation, such payment as may be determined by the Board.

(7) Every penalty so imposed shall, subject to sub-paragraphs (8) and (9), be recoverable by the Board as a civil debt.

(8) Immediately on the passing of any resolution by the Board imposing a penalty, notice of the resolution shall be sent to the registered producer in question and he may, within one month from the day on which the notice was so sent to him, in writing require the Board to refer the matter to the Inferior Number of the Royal Court, and in such a case the Board shall so refer the matter.

(9) In a case where a matter is referred in accordance with sub-paragraph (8), no proceedings shall be taken by the Board otherwise than for the purposes of the reference or of enforcing the award of the Court.

PART 5

GENERAL MEETINGS OF REGISTERED PRODUCERS

Convening meetings

40. (1) The Board may convene general meetings of registered producers at such places and times as it may determine.

(2) The Board shall convene a general meeting of registered producers to be held within fifteen days of delivery to the office of the Board of a requisition, signed by not less than twenty-five registered producers, stating clearly the purpose for which the meeting is to be convened.

Chairman of registered producers' meetings

41. (1) The Chairman of every meeting of registered producers shall be appointed by the Board.

(2) If the person appointed by the Board to be Chairman is not present within fifteen minutes after the time appointed for the holding of the meeting, the members of the Board present shall choose a Chairman.

Notice of registered producers' meetings

42. (1) At least ten days before the day fixed for the holding of a meeting of registered producers, 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; and
- (c) in the case of a general meeting at which an election is to take place, that nominations of candidates must be received at the office of the Board six clear days before the date of the meeting.

(2) A list of names and addresses of candidates duly nominated shall be published before the date of the meeting in the Jersey Gazette, and shall also be posted in a conspicuous position inside the office of the Board throughout the three days immediately preceding the date of the meeting.

Nominations

43. All nominations shall be made in such form as the Board may accept or determine.

Notice

44. At a meeting of the registered producers no business shall be transacted other than the business of which notice has been given by the Board in accordance with paragraph 42.

Proxies

45. (1) The producers entitled to vote at a meeting of registered producers may vote either personally or by proxy.
- (2) An instrument appointing a proxy shall be in writing in such form as the Board may require.
- (3) An instrument appointing a proxy shall be deposited at the office of the Board not later than the end of the third day before the date of the meeting, failing which the instrument shall be invalid.
- (4) A proxy need not be a registered producer.
- (5) No person may act as a proxy for more than one registered producer.

Voting

46. (1) 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 ballot is demanded by the Chairman or by or on behalf of not less than ten registered producers, in which case a ballot shall be taken forthwith.

(2) On the taking of a ballot, the number of votes to which a registered producer is entitled (referred to in this paragraph as "the standard number") shall be based upon the area in vergées dedicated to the production of potatoes in the preceding calendar year as declared by the producer in his return to the Committee, as follows -

- (a) for the first 100 vergées declared - 1 vote per 25 vergées or part thereof;
- (b) for every 50 vergées declared thereafter - 1 vote per 50 vergées or part thereof.

(3) In the case of a ballot taken for the election of members of the Board, each registered producer shall have the standard number of votes multiplied by the number of persons to be elected, but he shall not give more than the standard number of votes in favour of any one candidate.

Nominees

47. A registered producer that is a body corporate may exercise any of its rights at a meeting of registered producers by a nominee of whose authority the Board has been previously notified, and registered producers who are in partnership may exercise any of their rights at such meeting by any one of the partners.

Declaration of vote and casting vote

48. At any meeting of registered producers, the declaration of the Chairman as to 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 vote or votes, if any,

have a casting vote.

PART 6

AMENDMENT AND REVOCATION OF SCHEME AND WINDING -UP OF THE BOARD

Notice of amendments or substitutional schemes

49. Before submitting a substitutional scheme or an amendment to the Committee, the Board shall publish the proposed scheme or amendment by serving notice thereof on every registered producer.

Polls

50. (1) Subject to sub-paragraph (2), a poll may be demanded in writing by not less than two-thirds of the registered producers who together grew not less than two-thirds of the area of potatoes grown in Jersey by all registered producers during the preceding calendar year -

- (a) on the question whether or not a substitutional scheme or an amendment shall be submitted to the Committee, within one month from the publication thereof; and
- (b) on the question whether or not this Scheme shall be revoked, at any time.

(2) The Committee may refuse to take a poll on the question of whether or not this Scheme shall be revoked within two years of the declaration of the result of a previous poll on that question.

Winding-up

51. (1) For so long as the Board shall remain legally entitled to do so, the Board shall conduct its own winding-up, but no winding-up shall be commenced by the Board except following a resolution to that effect passed by the registered producers in general meeting.

(2) Where, at a winding-up of the Board, the assets of the Board are more than sufficient to discharge its debts and liabilities, the surplus shall be distributed in such manner as the registered producers in general meeting shall determine.

(3) Where, at a winding-up of the Board, the assets of the Board are not sufficient to discharge the debts and liabilities of the Board, including the costs of the winding-up -

- (a) if the Scheme has been revoked before the commencement of the winding-up, every person who was a registered producer during the year immediately preceding the revocation of the Scheme shall be liable to contribute to the deficit an amount proportionate to the area of potatoes produced by him during that year; and
- (b) where the Scheme has not been so revoked, every person who was a registered producer during the year immediately preceding the commencement of the winding-up shall be liable to contribute to the deficit an amount proportionate to the area of potatoes produced by him during that year,

and in either case a registered producer's liability shall not in any case exceed the rate of three pounds per vergée.

(4) Every contribution payable under sub-paragraph (3) shall be recoverable by the Board or the Liquidator as a civil debt.

PART 7

MISCELLANEOUS

Arbitration

52. (1) Subject to sub-paragraph (3) a producer of potatoes whether registered or not, or a marketing organisation who is aggrieved by an act or omission of the Board may refer the matter to the arbitration of an Arbitration Board consisting of not more than three persons to be agreed upon between the parties, or, in default of agreement, to be nominated by the Committee on the application of either party, and the Arbitration Board may make such order in the matter as it thinks reasonable and such order shall be binding on the parties.

(2) At a hearing by an Arbitration Board a party to the arbitration shall be entitled to appear and be heard in person or by counsel or solicitor or by any other person authorised by him.

(3) A matter shall not be referred to arbitration under sub-paragraph (1) more than 28 days after the aggrieved party shall have served written notice of his grievance on the Board.

Compensation and costs

53. (1) A person who is entitled to refer a matter to arbitration who establishes by arbitration in accordance with paragraph 52, or by a judgment of the Court that the Board has in any respect given an undue preference to any other registered producer, marketing organisation or person shall be entitled to receive from the Board such sums by way of compensation as may be necessary to make good any loss or damage suffered by him by reason of the undue preference.

(2) A person who attempts and fails to satisfy the Board, or attempts and fails to establish by arbitration in accordance with paragraph 52, that the Board has in any respect given undue preference to any other registered producer may be required by the Board to make payment to it of such costs and disbursements as the Board may reasonably have incurred as a result of the investigation or arbitration undertaken.

(3) Every payment payable under sub-paragraph (2) shall be recoverable by the Board or the Liquidator as a civil debt.

(4) A registered producer who satisfies the Board without reference to arbitration that the Board has in any respect given an undue preference to any other registered producers shall be entitled to receive from the Board such sums by way of compensation as may be necessary to make good any loss or damage suffered by him by reason of the undue preference.

Death of a registered producer

54. Where, by reason of a registered producer dying, or becoming subject to some legal disability, or entering into a composition or scheme or arrangement with his creditors, any property in, or control of, potatoes is transferred from the registered producer to a personal representative, trustee, curator, special and general attorney or other person, such person shall, for all the purposes, be deemed to be a producer.

Service of notices

55. Any requirement that a document shall be sent to or served on a person by the Board shall be deemed to have been complied with if, within the period (if any) limited for the sending or service of the document, the document is despatched to him by post, properly addressed and with the postage prepaid.

Deregistration

56. (1) The Committee shall have power to remove from the register of producers the name of any producer who has been found, on two or more occasions, to have contravened the provisions of this Scheme.

(2) The Board shall inform the Committee of any such finding.

(3) The Board shall inform the Committee whenever a registered producer ceases to be a producer and on being so informed the Committee shall remove the name of that producer from the register.

(4) A producer whose name has been removed from the register in pursuance of subparagraph (1) may, after the expiration of twelve months from the date of such removal, apply to the Committee for registration and the Committee shall have power, after taking into consideration all the circumstances, to register that producer.

Prescriptive resolutions

57. (1) Where any provision requires that a resolution of the Board shall be a prescriptive resolution, that resolution shall be recorded by the Board in a separate record of prescriptive resolutions.

(2) Such record shall be open for inspection at the office of the Board at any time that the office is open and any person shall be entitled to be supplied with a copy of an entry in the record on payment of a fee not exceeding fifty pence in

respect of each prescriptive resolution copied, or to take extracts from the record for his own use free of charge.

(3) The Board shall send to each registered producer a copy of every prescriptive resolution as soon as practicable after it is made.

(4) The Board shall send to every registered producer once in every year a list of the prescriptive resolutions then in force, stating in respect of each resolution -

- (a) the date on which it was made;
- (b) the subject matter to which it relates; and
- (c) if any copy of it has been sent in the manner provided in sub-paragraph (5), the date or other identifying mark appearing on the journal which contains such copy.

(5) A copy resolution required to be sent under sub-paragraph (3) or a list of resolutions required to be sent under sub-paragraph (4) may be sent to a registered producer by sending to him, free of charge, any journal published by the Board containing such copy or such list.

SCHEDULE 1

Paragraph 31(4)

MINIMUM TERMS OF MARKETING AGREEMENTS

The terms of the marketing agreement between a registered producer and the Board shall include, but not be limited to:

1. The limits to the area of land which the registered producers may use for the cultivation of potatoes for export.
2. The identity of the persons authorised by the Board to whom the registered producer may sell, transfer (whether for value or not), deliver or supply, potatoes grown by him.
3. The quality standards to be attained.
4. The husbandry standards to be attained.
5. The circumstances in which the marketing agreement may be varied, revoked or terminated by either party.
6. The procedure to be adopted by the party seeking variation.
7. The identification of any agreement which may prevail over the marketing agreement.

SCHEDULE 2

Paragraph 31(9)

MINIMUM TERMS OF MANAGEMENT AGREEMENTS

The terms of the management agreement between a marketing organisation and the Board shall include but not be limited to:

1. The identity of the registered producers authorised by the Board from whom the marketing organisation may buy or receive potatoes for handling export and marketing or for whom it may act as an agent in the marketing of potatoes.
2. The quality standards to be attained.
3. The procedures for the export or other handling of potatoes that are surplus to actual or estimated market requirements.
4. The basis, supported by verifiable information, upon which the marketing organisation will charge for the services provided by it.
5. Details of any factors that may lead the marketing organisation to deal with third party providers of goods and services to it in pursuance of duties under the management agreement on any basis other than arm's length market transactions.
6. The basis, supported by verifiable information, upon which the marketing organisation will charge purchasers of the potatoes exported by it.
7. The basis, supported by verifiable information, upon which the marketing organisation will receive and transmit to the registered producers payment made to it by the purchasers of the potatoes exported by it.
8. Details of any performance related bonus or penalty scheme to operate in relation to the marketing organisation.
9. Details of any advertising marketing or promotional duties to be carried out or expenses incurred by the Board or the marketing organisation.
10. The circumstances in which a management agreement may be varied, revoked or terminated by either party.
11. The procedure to be adapted by the party seeking variation.
12. The identification of any agreement which may prevail over the Management Agreement.

^[1] Recueil des Lois, Tome VIII, page 270.

^[2] Recueil des Lois, Tome VIII, page 267, Volume 1990-1991, pages 425 to 430, Volume 1999, pages 387 and 388 and Volume 2001, page 6.

^[3] Recueil des Lois, Tome VIII, page 377, Volume 1990-1991, pages 90 and 1088 and Volume 1996-1997, page 489.

^[4] Recueil des Lois, Tome VIII, page 301 and Volume 1990-1991, pages 429 and 430.