



Number 14 of 2004

AN BORD BIA (AMENDMENT) ACT 2004

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Number 14 of 2004

AN BORD BIA (AMENDMENT) ACT 2004

AN ACT TO AMEND AND EXTEND AN BORD BIA ACT 1994, TO MAKE PROVISION FOR THE DISSOLUTION OF AN BORD GLAS — THE HORTICULTURAL DEVELOPMENT BOARD AND THE TRANSFER OF ITS FUNCTIONS TO AN BORD BIA, TO AMEND THE REGISTRATION OF POTATO GROWERS AND POTATO PACKERS ACT 1984, AND TO PROVIDE FOR RELATED MATTERS. [5th May, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as An Bord Bia (Amendment) Act 2004. Short title, collective citation and construction.

(2) An Bord Bia Acts 1994 to 1996 and this Act (other than *Part 4*) may be cited together as An Bord Bia Acts 1994 to 2004 and shall be construed together as one.

(3) The Registration of Potato Growers and Potato Packers Act 1984 and *Part 4* may be cited together as the Registration of Potato Growers and Potato Packers Acts 1984 and 2004 and shall be construed together as one.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“An Bord Glas” means An Bord Glas — The Horticultural Development Board;

“Board” means An Bord Bia;

“Minister” means the Minister for Agriculture and Food;

“Principal Act” means An Bord Bia Act 1994;

“transfer day” means the day appointed by the Minister under *section 3* to be the transfer day for the purposes of *Part 2*.

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(2) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
- (c) a reference to any other enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

PART 2

DISSOLUTION OF BORD GLAS

Transfer day.

3.—(1) The Minister shall by order appoint a day to be the transfer day for the purposes of this Part.

(2) On the transfer day An Bord Glas shall stand dissolved.

(3) References to An Bord Glas in any Act of the Oireachtas enacted before the transfer day or in any instrument made before the transfer day under an Act of the Oireachtas shall, on and after that day, be construed as references to the Board.

Transfer of staff.

4.—(1) Every person who is, on the day immediately before the transfer day, a member of the staff of An Bord Glas shall, on the transfer day, be transferred to and become a member of the staff of the Board.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the Board, be brought to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the transfer day.

(3) In relation to persons transferred to the Board pursuant to *subsection (1)*, previous service with An Bord Glas shall be reckonable for the purposes of, but subject to any exceptions or exclusions in:

- (a) the Redundancy Payments Acts 1967 to 2003,
- (b) the Protection of Employees (Part-Time Work) Act 2001,
- (c) the Organisation of Working Time Act 1997,
- (d) the Minimum Notice and Terms of Employment Acts 1973 to 2001,
- (e) the Unfair Dismissals Acts 1977 to 2001,
- (f) the Carer's Leave Act 2001, and
- (g) the Parental Leave Act 1998.

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(4) Any superannuation benefits awarded to or in respect of a person to whom *subsection (1)* applies and the terms and conditions relating to those benefits shall not be less favourable than those applicable immediately before the transfer day. Pt.2 S.4

(5) In this section “recognised trade union or staff association” means a trade union or staff association recognised by the Board for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions of employees.

5.—(1) With effect from the transfer day the following shall stand transferred to the Board— Transfer of property and liabilities to Board.

(a) all property and rights held or enjoyed immediately before that day by An Bord Glas, and

(b) all liabilities incurred before that day by An Bord Glas that had not been discharged before that day,

and, accordingly, without any further conveyance, transfer or assignment—

(i) the said property, real and personal, shall, on the transfer day, vest in the Board, for all the estate, term or interest for which, immediately before that day, it was vested in An Bord Glas, but subject to all trusts and equities affecting the property and capable of being performed,

(ii) such rights shall, as on and from the transfer day, be enjoyed by the Board, and

(iii) such liabilities shall, as on and from the transfer day, be the liabilities of the Board.

(2) All moneys, stocks, shares and securities transferred to the Board by this section which, on the transfer day, are standing in the name of An Bord Glas shall, upon the request of the Board, be transferred into its name.

(3) Every right and liability transferred by this section to the Board may, on or after the transfer day, be sued on, recovered or enforced by or against the Board in its own name and it shall not be necessary for the Board to give notice of the transfer to the person whose right or liability is transferred by this section.

6.—Every contract or agreement made between An Bord Glas or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the transfer day shall continue in force on and after that day and shall be construed and have effect as if the Board were substituted for An Bord Glas, or as the case may be, its trustee or agent acting on its behalf, and shall be enforceable against the Board. Preservation of certain contracts and adaptation of references to An Bord Glas.

7.—Where, immediately before the transfer day, any legal proceedings are pending in any court or tribunal and An Bord Glas is a party to the proceedings, the name of the Board shall be substituted in the proceedings for that of An Bord Glas and the proceedings shall not abate by reason of such substitution. Pending legal proceedings.

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Preparation of
accounts.

8.—(1) As soon as may be after the transfer day the Board shall cause to be prepared in such form as may be approved of by the Minister all proper and usual accounts of all moneys received or expended by An Bord Glas in the accounting year, or the part of an accounting year, of An Bord Glas ending immediately before transfer day.

(2) Accounts prepared pursuant to this section shall be submitted as soon as may be by the Board for audit and, promptly after the audit, a copy of such accounts and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

Repeal.

9.—The Bord Glas Act 1990 is repealed with effect from the transfer day.

PART 3

AMENDMENT OF PRINCIPAL ACT

Commencement
(Part 3).

10.—This Part comes into operation on such day or days as the Minister may appoint by order or orders, either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Amendment of
section 2
(interpretation) of
Principal Act.

11.—Section 2(1) of the Principal Act is amended—

(a) by substituting for the definition of “agricultural products” the following:

“‘agricultural products’ means meat, milk, eggs, cereals and other field crops, fish, poultry, rabbits, deer and horticultural produce;”;

(b) by inserting after the definition of “food” the following:

“‘horticulture’ means that branch of agriculture that relates to the cultivation of plants used for food or for the production of food or ornament, including the technical procedures necessary for the cultivation, production and preparation for market of—

- (a) fruit, whether fresh or processed,
- (b) vegetables, whether fresh or processed
(including potatoes and seed potatoes),
- (c) herbs, whether fresh or processed,
- (d) edible fungi, whether fresh or processed,
- (e) nuts, whether fresh or processed,
- (f) cut flowers,
- (g) dried flowers,
- (h) hops,
- (i) decorative foliage,
- (j) sports turf,

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(k) honey, Pt.3 S.11

(l) pot plants, bedding plants and herbaceous plants (including nursery stock),

(m) shrubs and trees (including nursery stock),

(n) fruit trees, fruit bushes and fruit plants (including nursery stock), and

(o) seeds, bulbs, corms, tubers, potatoes and seed potatoes,

and includes products of any of the foregoing, and cognate words shall be construed accordingly;”;

and

(c) by inserting after the definition of “prescribe” the following:

“‘subsidiary’ means a subsidiary (within the meaning of section 155 of the Companies Act 1963) of An Bord Bia;”.

12.—The Principal Act is amended by substituting for section 7 the following:

Amendment of section 7 (general functions of Board) of Principal Act.

“7.—(1) The functions of the Board shall be to promote, assist and develop in any manner which the Board considers necessary or desirable the marketing of Irish food and livestock and the production, marketing and consumption of horticultural produce.

(2) The Board shall have all such powers as are necessary, desirable, expedient or incidental to the performance of its functions.”.

13.—Section 8 of the Principal Act is amended—

Amendment of section 8 (particular functions of Board) of Principal Act.

(a) by substituting “food and horticulture” for “food” in each place where it occurs, and

(b) by substituting for paragraph (i) the following:

“(i) administer such schemes, grants and other financial facilities involving the disbursement of—

(i) European Union Funds,

(ii) Exchequer Funds, or

(iii) other funds,

as may from time to time be authorised by the Minister with the concurrence of the Minister for Finance.”.

18.—Section 14 of the Principal Act is amended—

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(a) by inserting after subsection (3) the following:

Amendment of section 14 (membership of Board and term of office of members) of Principal Act.

“(3A) Not fewer than 2 of the persons appointed to be ordinary members shall be persons having knowledge or experience of horticulture.”,

(b) by substituting for subsection (4) the following:

“(4) One ordinary member shall be appointed on the nomination of the Minister for Enterprise, Trade and Employment.”,

(c) by deleting subsection (4A) (inserted by An Bord Bia (Amendment) Act 1995), and

(d) by substituting for subsection (5) the following:

“(5) The chairman and the persons appointed to be ordinary members shall be persons having knowledge or experience of—

(a) the food industry or horticulture, and

(b) consumer requirements.”.

19.—The Principal Act is amended by inserting after section 15 the following:

Membership of horticulture subsidiary board and term of office of members.

“15A.—(1) The horticulture subsidiary board shall consist of a chairperson and not more than 12 ordinary members.

(2) Subject to subsection (4) the chairperson shall hold office for the period of 3 years from the date of his or her appointment.

(3) The ordinary members shall be persons engaged in or having knowledge or experience of the horticulture sector and shall be appointed by the Board with the consent of the Minister.

(4) The chairperson, who shall be a member of the Board, shall be appointed by the Board following consultation and with the consent of the Minister.

(5) Notwithstanding subsection (4) where the chairperson ceases to be a member of the Board he or she shall also cease to be a member of the subsidiary board.

(6) The persons who are first appointed by the Board to be ordinary members shall hold office as follows:

(a) 4 of such members shall hold office for the period of 3 years from the date of their appointment;

(b) 4 of such members shall hold office for the period of 4 years from the date of their appointment; and

(c) the remaining members shall hold office for the period of 5 years from the date of their appointment.

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(7) The members who are to hold office for the periods specified in paragraphs (a) and (b) of subsection (6) shall be decided by lot to be drawn in such manner as may be decided by the Board.

(8) Every person who is appointed pursuant to this section to be an ordinary member, other than a first member, shall hold office, for the period of 3 years from the date of their appointment.

(9) The Board in making nominations to the horticulture subsidiary board, and the Minister in considering whether to consent to such nominations, shall have regard to the desirability of achieving an appropriate gender balance.”.

Amendment of section 28 (committees of Board or subsidiary boards) of Principal Act.

20.—Section 28 of the Principal Act is amended by inserting after subsection (6) the following:

“(7) The Board may authorise a Committee comprised exclusively of its members to perform any of its functions.”.

Amendment of section 38 (levy due and payable) of Principal Act.

21.—Section 38 of the Principal Act is amended—

(a) by substituting for subsection (9) the following:

“(9) Levy in relation to livestock exported live from the State shall be paid directly to the Board, prior to exportation of the livestock, by the person by or on whose behalf the livestock are being exported.”,

(b) by substituting for subsection (10) the following:

“(10) Levy in relation to livestock exported live from the State shall be paid to the Board at such time or times and in such manner as may be prescribed.”,

(c) by substituting for subsection (11) the following:

“(11) The Minister may make regulations for the purposes of subsection (10) and, in particular but without prejudice to the generality of the foregoing, the regulations may provide—

(a) for the keeping of records and the making of returns (including electronic returns) by persons liable to pay levy,

(b) for the appointment and powers of authorised officers,

(c) for the collection and recovery of levy (including provision for the payment of a deposit by exporters to the Board on account of levy),

(d) for the enforcement of the regulations, and

(e) for such other matters as the Minister considers expedient or necessary.”,

and

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(d) by substituting for subsection (12) the following: Pt.3 S.21

“(12) It is an offence for any person to export or attempt to export live from the State, livestock in respect of which levy is payable unless he or she has complied with the provisions of this section and of any regulations made pursuant to subsection (11).”.

22.—The Principal Act is amended by deleting the Schedule to that Act. Deletion of Schedule to Principal Act.

PART 4

AMENDMENT OF REGISTRATION OF POTATO GROWERS AND POTATO PACKERS ACT 1984

23.—This Part comes into operation on such day or days as the Minister may appoint by order or orders, either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. Commencement (*Part 4*).

24.—The Registration of Potato Growers and Potato Packers Act 1984 is amended— Amendment of Registration of Potato Growers and Potato Packers Act 1984.

(a) in section 2 by—

(i) inserting after subsection (5)(b) the following:

“(c) The Minister may cause an entry in the Register to be deleted if he is satisfied, as respects that entry, that—

(i) the registered grower of potatoes concerned is no longer a grower of potatoes for sale, or

(ii) the registered packer of potatoes concerned is no longer a packer of potatoes for sale.”,

and

(ii) inserting after subsection (5) the following:

“(5A) The Register shall be available for inspection by any person at such times and in such manner as may be determined by the Minister.”,

and

(b) by substituting for section 3 the following:

“3.—(1) A person who grows potatoes shall not sell such potatoes unless he or she is a registered grower.

