

CHAPTER 320 - Agricultural Produce Marketing Act

Commencement Date: 1/1/1936

An Act of Parliament to control and regulate the marketing of agricultural produce, to enable Marketing Boards to be established for marketing such produce and to provide for the powers and functions of the Boards, and for matters connected therewith and incidental thereto

Part I – PRELIMINARY

Short title
L.N.321/1965

1.This Act may be cited as the Agricultural Produce Marketing Act.

Interpretation
39 of 1955, s.4, L.N.373/1963, L.N.321/1965. Cap. 318.

2In this Act, except where the context otherwise requires—

"agriculture" has the meaning assigned to it by section 2 of the Agriculture Act;

"agricultural produce" includes anything (whether live or dead) produced in the course of agriculture;

"dealer" means a person who acquires from any person any regulated produce for the purpose of manufacture or sale;

"financial year", when used with reference to a Marketing Board, means the twelve months ending on such day in each year as the Minister shall from time to time by notice in the Gazette prescribe in respect of that Board;

"Marketing Board" means a Marketing Board established under section 3;

"producer" means a person who has grown or produced by himself or his agent any agricultural produce and includes a marketing organization acting on behalf of producers;

"regulated produce" means any produce specified in an order made under section 3, and in relation to a Marketing Board means any produce for the marketing of which the Board is established;

"sell" includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange or disposal, and "purchase" has a corresponding meaning.

Part II - MARKETING BOARDS

Establishment of Marketing Boards.
39 of 1955, s.17, L.N.124/1964, L.N.321/1965

3.(1) Where the Minister is satisfied, in the case of any kind of agricultural produce produced in any area, that the interests of the producers of that produce will be promoted by the organized marketing thereof, he may, by order published in the Gazette, establish a Marketing Board for the marketing of

that produce; and every such order shall specify the kind, and the area of production, of agricultural produce for the marketing of which the Board is established.

(2) Marketing Boards may be established for different kinds of agricultural produce or for agricultural produce produced in different areas.

Constitution of Boards
39 of 1955, s. 17

4.(1) Every Marketing Board shall be constituted in accordance with, and be subject in all respects to, the provisions contained in the Schedule.

(2) The members of a Marketing Board, other than persons in the public service of Kenya, may be paid out of the funds of the Board such allowances as the Minister, with the concurrence of the Minister for the time being responsible for finance, may approve to meet any reasonable expenses incurred by them for travelling and subsistence in connexion with the business of the Board.

Protection of Minister, members and officers of Boards
39 of 1955, s. 17

5.No act or thing done by the Minister or by the chairman or any other member, or any officer or employee, of a Marketing Board shall, if the act or thing be done in good faith and without negligence for the purposes of this Act, render the Minister or the chairman, member, officer or employee, or any person acting by his directions, personally liable to any action, proceedings, claim or demand whatsoever.

Incorporation of Boards
39 of 1955, s. 17

6.(1) Every Marketing Board shall be a body corporate having perpetual succession and a common seal and be capable of suing and being sued and of acquiring, holding and disposing of property, movable and immovable, for the purposes for which it is established.

(2) The seal of a Marketing Board shall be authenticated by the signature of any two members of the Board authorized to act in that behalf, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of, a Marketing Board may be signified under the hand of the chairman or the secretary of the Board or any member of the Board authorized in that behalf.

Power of Boards to give directions and orders.
39 of 1955,s.17, L.N.321/1965

7.A Marketing Board may, with the prior approval of the Minister—

(a) give directions to a producer as to the method of collection, movement, drying, storage, processing and marketing of any regulated produce;

(b) subject also to the approval of the Minister for the time being responsible for agriculture, give directions to a producer as to the method of sowing, planting, cultivation and harvesting of any regulated produce;

(c) order that any regulated produce be crated, packed or marketed in such manner as the Board may direct;

(d) act as the agent, or agency, of any person or body empowered by or under any law for the time being in force to market, or to control or regulate the marketing of, the produce for the marketing of which the Board is established;

(e) provide, maintain or control, or assist in the provision, maintenance and control of, such storage and handling facilities for any or all of the regulated produce as the Board may at any time deem to be necessary;

(f) buy or otherwise acquire such quantities of the regulated produce for sale or for storage or for such other purposes as the Board may from time to time decide and sell or otherwise dispose of such stocks as and when it thinks fit;

(g) make rules regulating the terms and conditions of delivery and of the sale or disposal of any or all of the regulated produce;

(h) appoint and employ such persons as the Board deems requisite and fix the terms and conditions of their appointments;

(i) carry out, or enter into contracts for carrying out of, any work in connexion with the handling, milling, treating, storing, grading, processing, purchase, sale, import or export of any or all of the regulated produce;

(j) in consultation with the Minister for the time being responsible for finance, borrow money to enable the Board to carry out its functions and also for the purpose of making advances or other payments to producers, distributors, dealers and other persons;

(k) pledge as security for any loan any regulated produce vested in the Board;

(l) require any person to furnish in such manner and in such form as the Board may request information as to his transactions in any regulated produce and as to the stocks of any regulated produce in his possession or under his control.

Compulsory marketing orders

39 of 1955, s. 17

8.(1) A Marketing Board may, with the prior approval of the Minister, order that all producers of any regulated produce produced within the area specified in the order establishing the Board, or any part thereof, shall sell that produce to the Board or through such agency as the Board may direct.

(2) Any agency selected by a Board shall act under the directions of the Board regarding the handling, storing, processing, grading, marking, packing and marketing of any regulated produce.

Transmission of orders of Boards

39 of 1955, s. 17

9. Where any order or direction as given by a Marketing Board under this Act, the Board may convey its orders or directions to the persons concerned in such manner as may be prescribed.

Levy

39 of 1955, s. 17

10.(1) A Marketing Board may, with the approval of the Minister, impose a levy on any regulated produce, upon such basis as the Board may, with the Minister's approval, determine; and the levy shall be collected in such manner as may be prescribed.

(2) The Minister shall give notice in the Gazette of every levy imposed under this section, and every such levy shall come into operation on a date to be specified in the notice.

Funds of Boards
39 of 1955, s. 17

11.(I) Moneys raised by loan by a Marketing Board under section 7, and moneys derived from a levy imposed by a Marketing Board under section 10, shall be paid into the funds of the Board.

(2) If in the course of its operations in any year a Marketing Board makes a profit by the sale of regulated produce, it may, with the approval of the Minister, pay the profit or any part thereof into the funds of the Board.

Purposes for which funds of Boards may be applied
39 of 1955, s.17

12.A Marketing Board may apply any of its funds for all or any of the following purposes—

(a) payment of the expenses and charges incurred by the Board and for which the Board may become liable in the course of its business;

(b) payment of such staff as the Board may employ for the purpose of carrying out its business;

(c) the marketing and advertising of any regulated produce;

(d) the provision, subject to the general or special instructions of the Minister, of such services as the Board may consider necessary or desirable for promoting the economic development, production or preparation of any regulated produce, or for assisting any producer in giving effect to this Act, or the purposes for which the Board is established, or the provisions of any other law for the time being in force relating to cultivation, preparation, handling or marketing of any regulated produce or the prevention or eradication of any diseases thereof;

(e) such other purposes as may be prescribed.

Adoption of mark for regulated produce
39 of 1955, s.17

13.A Marketing Board may, by order published in the Gazette, adopt and require the use, in such manner as may be specified in the order, of a symbol or brand in respect of any regulated produce for the marketing of which the Board is established; but no such order shall be made except with the prior approval of the Minister.

Annual report to Minister by Boards
39 of 1955, s.17, L.N.124/1964. Act 13/1988

14.(1) A Marketing Board shall keep proper accounts and records of all its undertakings, works and property, and shall prepare a yearly balance sheet made up to the end of each financial year and a profit and loss account for that year.

(2) A Marketing Board shall, as soon as possible after the end of its financial year, furnish to the Minister a report upon its work and operations during that year, and the report shall include a balance sheet, a complete statement of revenue and expenditure duly audited and the report of the auditors.

(3) the accounts of every marketing board shall be examined, audited and reported upon annually by the Auditor-General (Corporations).

Part III – MISCELLANEOUS

Power to enter premises and examine stocks and accounts 39 of 1955, s. 17

15.At all reasonable times an administrative officer, police officer, officer of the Department of Agriculture or officer of a Marketing Board, if generally or specifically authorized by the Minister by notice in the Gazette, may enter upon the premises of, or any land or place occupied by, a producer, dealer or other person, and may examine all stocks of any regulated produce and all books, accounts and documents referring to, or suspected to refer to, transactions in any regulated produce, and may seize any such stocks of regulated produce, books, accounts or documents as may afford evidence of contravention of this Act or of any regulations made thereunder or of the terms of any order, notice or direction issued thereunder.

Regulations 39 of 1955, s.17

16.(1) The Minister may make regulations prescribing any matter which by this Part is to be or is required or permitted to be prescribed, and generally for carrying into effect the purposes of this Part or of any order made under section 20.

(2) The Minister may confer on Marketing Boards such additional powers and duties as he may consider necessary for furthering the objects of those Boards under this Act.

(3) Without prejudice to subsection (1), the Minister may make regulations prescribing a maximum, minimum or specific price to be paid to producers in respect of any regulated produce.

(4) Different prices may be fixed for produce produced or marketed in different areas of Kenya, and for different quantities, grades, qualities or varieties of any produce, for different classes or kinds of transactions and for different times of the year.

(5) Regulations made under this section may apply to Marketing Boards generally, or to any particular Board or class of Boards, or to Boards in any particular area.

Offences 39 of 1955. s. 17, L.N.321/1965.

17.(1) A producer who—

(a) sells or agrees to sell any regulated produce at a price which exceeds, or is less than, or differs from, as the case may be, the prescribed price; or

(b) produces or cultivates any regulated produce in contravention of any order or direction of a Marketing Board; or

(c) sells or buys any regulated produce in contravention of an order or direction of a Marketing Board,

shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both:

Provided that a producer may sell produce for which a maximum price is fixed at a price which is less than that maximum price.

(2) Whenever a manager, agent or employee of a producer or dealer in any regulated produce does or omits to do any act which it would be an offence under this Part, or under any regulations made or any order, notice or direction given thereunder, for the producer or dealer to do or omit to do, then unless it is proved that—

(a) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the producer or dealer; and

(b) all reasonable steps were taken by the producer or dealer to prevent any act or omission of the kind in question; and

(c) it was not under any condition or in any circumstances within the scope of the authority or in the course of the employment of the manager, agent or employee to do or to omit to do acts whether lawful or unlawful of the character of the act or omission charged, the producer or dealer, as the case may be, shall be presumed himself to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any act or omission of the kind in question shall not of itself be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(3) Whenever a manager, agent or employee of a producer or dealer does or omits to do an act which it would be an offence under this Part or under any regulation made, or order, notice or direction given, thereunder for the producer or dealer to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the producer or dealer.

(4) A manager, agent or employee may be so convicted and sentenced in addition to the producer or dealer.

(5) A person who contravenes any provision of this Part or of any regulation made, or any order, notice or direction given, thereunder with which it is his duty to comply shall be guilty of an offence under this Part, and shall, if no penalty is specially prescribed in this Act for the contravention or default, be liable to a fine not exceeding two thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve months; and a person who continues an offence after he has been convicted therefor shall be liable to a daily penalty not exceeding one hundred shillings or to imprisonment for a term not exceeding three months.

Evidence 39 of 1955,s.17

18.(1) At the trial of a person charged with the commission of an offence under this Part, any statement contained in a return furnished by or on behalf of the accused under this Part and any statement or record contained in a book or document kept by the accused or by a manager, employee or agent of the accused shall be admissible in evidence as an admission of the facts set forth in that statement or record.

(2) If at the trial of a person charged with the commission of an offence under this Part it is proved that a false statement appears in a document signed or a return furnished by him or on his behalf, he shall be deemed, unless the contrary is proved, knowingly to have made that false statement or caused it to be made.

Additional fines and confiscation of produce 39 of 1955 s. 17

19. On the conviction of a person for an offence under this Part, the court convicting the accused may, on the application of the prosecutor and in addition to any other penalty which it may inflict—

(a) (i) summarily inquire into and assess the monetary equivalent of any advantage which that person may have gained in consequence of that offence and give judgment against him and in favour of the prosecutor in a sum equal to the amount so assessed; and

(ii) if the offence consists of a failure to pay the full amount due by that person in respect of a levy imposed by a Marketing Board by virtue of section 10, forthwith give judgment against that person and in favour of the Marketing Board for the amount which the court finds is due to the Board by that person, and a judgment given under subparagraph (i) or subparagraph (ii) may be executed in the same manner as if it had been pronounced in the course of civil proceedings; and

(b) order that any produce in respect of which an offence under this Part has been committed, or the proceeds of any sale thereof under section 21 shall be forfeited.

Search of vehicle
39 of 1955, s.17, L.N.321/1965

20.(1) If a person generally or specifically authorized by the Minister by notice in the Gazette, or an administrative officer, a police officer of or above the rank of Assistant Inspector, or an officer of a Marketing Board, has reason to believe that a vehicle contains produce which is being transported in contravention of any provision of this Part, or of any order or regulation made, or order, notice or direction given, thereunder, he may order that vehicle to stop, and may examine the contents thereof, and may require the person in charge of the vehicle to inform him of the destination and source of origin of any produce found therein, and if that person fails to supply the information or supplies false information he shall be guilty of an offence.

(2) Where a vehicle has been stopped under subsection (1), the person stopping the vehicle may take it with its contents to the nearest police station, and the officer in charge of the police station may thereupon seize any produce found therein.

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding two thousand shillings or, in default of payment, to imprisonment for a period not exceeding twelve months.

Powers of court in regard to produce seized
39 of 1955, s.17, L.N.321/1965

21.(1) Where any produce has been seized under section 15 or section 20, the person seizing it shall forthwith report to a court the fact of seizure, and if the court is satisfied that the produce is of a perishable nature it may authorize the appropriate Marketing Board to dispose of the produce on such terms and in such manner as the Marketing Board thinks fit.

(2) Where the produce so seized is not of a perishable nature, it may be retained by the person seizing it or the Director of Agriculture, for a period of one month, or, if within that period there are commenced proceedings in respect of an offence under this Part in which the produce is, or can properly be, adduced in evidence, until the final determination of those proceedings.

(3) Where proceedings are taken in respect of such an offence, being proceedings in which the produce is, or can properly be, adduced in evidence, the court by which or before which the alleged offender is tried may make an order—

(a) authorizing the disposal or the destruction of the produce; or

(b) authorizing the further retention of the produce until such date as may be specified in the order or until further order.

(4) Where no order is made under paragraph (b) of section 19 for the forfeiture of perishable or non-perishable produce, the court shall order that the produce, or the net proceeds of sale thereof, sold under subsection (1), shall be returned or paid, as the case may be, to such person as the court may determine to be the person properly entitled thereto.

Savings in respect of other Acts regulating marketing of agricultural produce
39 of 1955,s. 17

22.(1) Nothing in this Act shall affect any law restricting except under licence or permit, or otherwise regulating or controlling, the planting, production, marketing or sale of any agricultural produce.

(2) Notwithstanding anything contained in this Act, where under or by virtue of any law provision is made for the exercise by any person or authority, in relation to any agricultural produce for the marketing of which a Marketing Board is established under this Act, of functions which but for this section would be exercisable by the Marketing Board, those functions shall not be exercisable, in relation to that produce, by the Marketing Board except to the extent that the person or authority may by order permit, and any such permission may be given subject to such terms and conditions as the person or authority may think fit from time to time to impose.