

THE AGRICULTURAL MARKETING ACT

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SCHEDULES

THE AGRICULTURAL MARKETING ACT

Cap. 6.
Acts
3 of 1978,
1 of 1991.

[16th November, 1944.]

1. This Act may be cited as the Agricultural Marketing Act. Short title.

2. In this Act—
“agricultural produce” includes the produce of any plant or animal in its natural state; Interpretation.

“approved association” means any association declared by the Minister in accordance with the provisions of section 5 to be an approved association;

“association” means any statutory corporation or company incorporated under any enactment for the time being in force in Jamaica, or any industrial and provident society registered under any such enactment;

“Committee of Enquiry” means any Committee of Enquiry appointed by the Minister in accordance with the provisions of section 8;

“Committee of Investigation” means any Committee of Investigation constituted by the Minister in accordance with the provisions of section 16;

“governing body” means the Board of Directors, Executive Committee, Committee of Management, or other body by whatever name called having power to conduct the affairs of any association;

“plan” means any marketing plan submitted by any approved association;

“producer” means the grower, breeder or rearer of any article of agricultural produce or any person who has the right to dispose of such article, such right having been acquired otherwise than by purchase of the article;

“registered producer” means any producer registered under this Act;

“specified article” means any article declared by the Minister in accordance with the provisions of section 3 to be a specified article.

Power to specify articles of agricultural produce.

3.—(1) Subject to the provisions of subsection (2), the Minister may declare any article of agricultural produce to be a specified article for the purposes of this Act.

(2) No article of agricultural produce shall be declared to be a specified article under subsection (1) at any time when the marketing thereof is under the control of or is vested in any statutory authority appointed or elected under any enactment, in force on the 16th November, 1944 in relation to the marketing of such article.

Power to make regulations for registration of producers of specified articles.

4.—(1) The Minister may make regulations for the registration of the producers of any specified article or of any class of such producers and for all matters incidental thereto.

(2) Regulations made under subsection (1) may, without prejudice to the generality of such power, make provision with regard to—

- (a) the form in which and the person or authority by whom the register is to be kept;
- (b) the form in which and the time within which application is to be made for registration;
- (c) the information to be supplied by any applicant for registration as to—

- (i) the quantity of the specified article produced by him during any prescribed period; and
 - (ii) the price for which he sold such specified article during any prescribed period; and
 - (iii) the channels through which he sold such specified article during any prescribed period; and
 - (iv) any other matter which the Minister may think necessary;
- (d) the date on which the register shall first come into force;
- (e) the amendment of the register by the deletion therefrom of the names of persons who have ceased to be producers or by the addition of the names of persons who desire to be registered as producers, and the rectification of the particulars in the register relating to any registered producer or to any of the matters referred to in paragraph (c);
- (f) the making by any registered producer of such returns in relation to any of the matters referred to in paragraph (c) at such time and in such form and to such authority as may be prescribed.

(3) Every person who is required by any regulations made under this section to be registered as a producer of any specified article and who, without being so registered, sells or offers for sale any quantity of such article after the date upon which the register comes into force, shall be guilty of an offence against this subsection and, upon summary conviction thereof before a Resident Magistrate, shall be liable to a fine not exceeding two hundred dollars or to be imprisoned for any term not exceeding twelve months or to both such fine and imprisonment.

(4) Every person who wilfully makes any statement which he knows to be false or does not believe to be true—

- (a) in any application for registration under any regulations made in pursuance of the powers conferred by this section; or
- (b) in any return which he is required to make under such regulations,

shall be guilty of an offence against this subsection and, upon summary conviction thereof before a Resident Magistrate, shall be liable to a fine not exceeding one hundred dollars or to be imprisoned for any term not exceeding six months or to both such fine and imprisonment.

Power to
declare
association
an approved
association.

5.—(1) Subject to the provisions of subsection (2), the Minister may on the application of any association declare such association to be an approved association in relation to any specified article or class of specified articles of agricultural produce.

(2) No association shall be declared to be an approved association unless the Minister is satisfied—

- (a) that it has as one of its principal objects the furtherance of the interests of the producers of agricultural produce in general or of the specified article or class of specified articles of agricultural produce in relation to which the application is made; and
- (b) that a substantial proportion of its members are producers or are engaged in the production of agricultural produce in general or of such specified article or class of specified articles of agricultural produce; and
- (c) that its constitution is such as to ensure that all of its members have a right to participate directly or

indirectly in the election or appointment of the governing body of the association; and

- (d) that its constitution is such as to ensure that the term of office of any member of its governing body does not exceed three years; so, however, that any member of the governing body may be eligible upon the expiration of any term of office to be re-elected for a further term of office.

6.—(1) Subject to the provisions of subsection (2), any approved association may submit to the Minister a plan for the marketing of any specified article of agricultural produce.

Association may submit a marketing plan for specified articles.

(2) Every marketing plan shall make provision for the matters set out in the First Schedule.

First Schedule.

(3) Every marketing plan may, in addition to containing provision for the matters set out in the First Schedule, contain also provision for any of the matters set out in the Second Schedule.

Second Schedule.

7.—(1) Where any marketing plan is submitted to the Minister under subsection (1) of section 6, the Minister shall cause the plan to be advertised in at least six issues of a newspaper at intervals of not less than one week.

Plan to be advertised.

(2) Where any plan is advertised in accordance with the provisions of subsection (1), there shall be inserted in the same issue of the newspaper in which the advertisement appears a notice that any person who objects to the adoption of the plan may give notice in writing of his objection and of the grounds upon which he relies in support thereof to such authority as may be specified in the notice on or before such day as may be so specified.

(3) Every notice of objection to any plan shall be in such form as the Minister may prescribe.

[The inclusion of this page is authorized by L.N. 480/1973]

Plan to be referred to a Committee of Enquiry.

8.—(1) So soon after the day referred to in subsection (2) of section 7 as may be convenient, the Minister shall appoint a Committee of Enquiry consisting of a Chairman and not less than two nor more than four other members to consider and to enquire into the plan and any objections thereto and to report to the Minister.

(2) Every Committee of Enquiry appointed under this section shall include among its members at least one producer of the specified article to which the plan relates and at least one person who is experienced in the marketing of such article.

Committee of Enquiry to have power of Commission of Enquiry.

9.—(1) Every Committee of Enquiry shall for all purposes be deemed to be, and shall have all the powers of, a Commission of Enquiry appointed under the Commissions of Enquiry Act.

(2) Every Committee of Enquiry shall afford to the approved association by which the plan was submitted and every objector to the plan an opportunity of being heard and of tendering evidence in support of the plan or of his objection, as the case may be.

Committee of Enquiry to report to Minister.

10.—(1) So soon as may be after any Committee of Enquiry has concluded its enquiry into any plan, it shall report to the Minister.

(2) Every report under subsection (1) shall state whether the Committee of Enquiry considers that the adoption of the plan—

- (a) would be in the interest of the producers of the specified article; and
- (b) would be likely to prejudice the interests of any class of producers of the specified article; and
- (c) would be likely to prejudice to an appreciable extent the interests of the consumers or any class of consumers of the specified article.

(3) Every report under subsection (1) may also contain any recommendations by the Committee of Enquiry as to any respects in which the plan might with advantage be amended, together with the reasons in support of such recommendations.

11.—(1) Subject to the provisions of subsection (2), upon receipt of any report under subsection (1) of section 10 the Minister shall consider such report and shall either—

Powers of Minister in relation to report.

- (a) approve the plan; or
- (b) approve the plan subject to such modifications as he may think fit, whether recommended by the Committee of Enquiry or not; or
- (c) reject the plan.

(2) Where the Minister approves any plan under subsection (1), the Minister shall cause a poll to be taken of all the registered producers of the specified article with a view to ascertaining whether such producers are or are not in favour of the adoption of the plan.

(3) Any poll under this section shall be taken by such persons and in such manner as the Minister may direct.

(4) Where the Minister approves of any plan subject to any modifications whether recommended by the Committee of Enquiry or not, the plan together with such modifications shall be referred to the approved association which may either accept or reject the modifications.

(5) Where the approved association accepts any plan subject to the modifications approved by the Minister, the Minister shall cause the plan as modified to be advertised in two issues of a newspaper at an interval of not less than one week and thereafter the provisions of subsection (2)

shall apply as they apply to a plan which is approved by the Minister without modification.

(6) Where the approved association does not accept any modification referred to it under subsection (4), the plan shall for all purposes be deemed to be rejected.

Procedure
after taking
a poll.

12.—(1) Where upon a poll being taken in accordance with any directions under subsection (3) of section 11, the Minister is satisfied that—

- (a) not less than two-thirds in number of the registered producers of the specified article or class of article voting on the poll; and
- (b) registered producers who are capable of producing not less than two-thirds of the quantity of the specified article or class of article which all the registered producers voting on the poll are capable of producing

are in favour of the adoption of the plan, the Minister shall cause the plan to be laid before the Senate and House of Representatives.

(2) Where upon a poll being taken in accordance with any directions under subsection (3) of section 11, the Minister is not satisfied that—

- (a) not less than two-thirds in number of the registered producers of the specified article or class of article voting on the poll; or
- (b) registered producers who are capable of producing not less than two-thirds of the quantity of the specified article or class of article which all the registered producers voting on the poll are capable of producing

are in favour of the adoption of the plan, the plan shall be deemed to be rejected.

13.—(1) Where any marketing plan is laid before the Senate and the House of Representatives in accordance with the provisions of subsection (1) of section 12, it shall be accompanied by the report of the Committee of Enquiry appointed under section 8 and any objections to the plan and all documents relating thereto.

Procedure on laying of plan before Parliament.

(2) The Senate and the House of Representatives may by resolution of either Chamber, if confirmed by resolution of the other Chamber, adopt any marketing plan laid before them in accordance with the provisions of subsection (1) of section 12 with effect from a date specified in such resolutions.

14.—(1) Where the Senate and the House of Representatives adopt any marketing plan in accordance with the provisions of subsection (2) of section 13, the provisions of the plan shall be deemed to form part of this Act with effect from the date specified in the resolution of the Senate and of the House of Representatives.

Effect of adoption of plan.

(2) Where any plan is deemed in accordance with the provisions of subsection (1) to form part of this Act, subject to the provisions of section 15 no producer shall sell, and no person shall purchase, any quantity of the specified article to which the plan relates except—

- (a) in accordance with the provisions of the plan; or
- (b) in circumstances which are exempted from the operation of the plan by some provision thereof.

(3) Every person who contravenes or fails to comply with the provisions of this section shall, on summary conviction before a Resident Magistrate, be liable to a fine not exceeding two hundred dollars or to be imprisoned for any term not exceeding twelve months, or on conviction before a Circuit Court to a fine not exceeding two thousand dollars or to be imprisoned for any term not exceeding two years, or to both such fine and imprisonment.

Saving for
existing
contracts.

15.—(1) Subject to the provisions of subsection (2), a contract of which neither the making nor the performance was, at the time when the contract was made, prohibited by or under any plan in force under this Act, shall not, unless the terms of the contract otherwise provide, be void or unenforceable by reason that, at the time for the performance of any provision of the contract, the performance thereof is so prohibited.

(2) (a) Where the performance of any such contract made during the relevant period is prohibited by or under any such plan, the provisions of subsection (1) shall cease to apply to that contract upon the expiration of three months after the prohibition first takes effect unless the contract is registered under this section.

(b) In this subsection the expression “the relevant period” in relation to a plan, means a period beginning twelve months before the first publication of an advertisement in relation to the plan in accordance with the provisions of section 7 and ending on the day that the plan is approved by the Minister in accordance with the provisions of section 11.

(3) The association shall, on the application of any party to a contract, register the contract within fourteen days of the application unless the association is of opinion that the contract was made with a view to evading the plan.

(4) Where any party to a contract is aggrieved by the failure or refusal of the association to register the contract, he may within twenty-one days of the expiration of the period referred to in subsection (3), appeal to the Court, and pending the determination of any such appeal, subsection (1) shall continue to apply to the contract, notwithstanding anything to the contrary in subsection (2).

(5) On any appeal under this section, the association concerned and any party to the contract may appear and be heard, and if, on the hearing of any such appeal, the

contract is found by the Court not to have been made with a view to evading the operation of the plan, the Court shall by order direct the registration thereof, and thereupon the contract shall be deemed to have been registered as from the date of the order; but where the Court does not direct the registration of a contract, any party to the contract certified by the Court to have entered into the contract *bona fide* without a view to the evasion of the operation of the plan may recover the amount of any damage suffered by him by reason of the avoidance of the contract from any party certified by the Court to have entered into the contract with a view to such evasion as aforesaid.

(6) For the purposes of this section the expression "the Court" means a Judge of the Supreme Court sitting in Chambers.

(7) No person shall be liable to any penalty in respect of a contravention of any plan in force under this Act, if he proves that the contravention was necessary for the performance of a contract which, by reason of the foregoing provisions of this section, was not, at the time of the contravention, void or unenforceable.

16.—(1) Where after the adoption of a plan in accordance with the provisions of section 13, the Minister thinks it expedient so to do, he may make an order—

- (a) amending the plan in such respects as he thinks fit; or
- (b) requiring the association to take such steps to rectify any matter specified in the order in relation to which the Minister thinks that the plan has proved defective or is not being properly operated; or;
- (c) revoking the plan.

Order of
Minister to
amend, re-
voke or
give direc-
tions con-
cerning
plan.
1/1991
S. 2.

(2) Where the association fails to comply with any order made under paragraph (b) of subsection (1) within the time specified in such order, the Minister may forthwith make any amendment to the plan which may be necessary to ensure compliance with the order or may revoke the plan.

17. *[Repealed by Act 1 of 1991.]*

FIRST SCHEDULE

(Section 6)

Every marketing plan shall provide for the following matters—

- (a) for making the plan applicable to all of the articles of agricultural produce or any kind, variety or grade thereof specified in the plan which may be produced by every registered producer;
- (b) for keeping of the register of producers;
- (c) for specifying the classes or description of producers which shall be exempted from registration and the procedure for securing such exemption;
- (d) for specifying the circumstances in which the sale or purchase of the specified article shall be exempt from the provisions of the plan;
- (e) for requiring registered producers to furnish to the association such estimates, returns, accounts and other information relating to the specified article of agricultural produce as the association may consider necessary for the operation of the plan;
- (f) for securing that any producer who is aggrieved by any act or omission of the association may refer the matter to one or more arbitrators appointed in such manner as may be provided by the plan and for the manner in which any such reference is to be heard and determined;
- (g) for regulating the manner in which the moneys of the association may be invested;
- (h) for the furnishing by the association to registered producers of returns and other information, including an annual balance sheet and either an annual profit and loss account or, in the case of an association which does not trade for profit, an annual income and expenditure account;
- (i) for the furnishing by the association to the Minister within **six months** after the expiration of each year of operation which year of operation shall be defined in the plan, of a report for the year upon the administration of the affairs of the association together with a balance sheet and statement of the revenue and expenditure of the association duly audited by an auditor approved by the Minister;
- (j) for enabling the association to submit an amendment of the plan and for prescribing the procedure to be followed in order to give effect to such amendment;
- (k) for the revocation of the plan by the submission of a subsequent plan.

SECOND SCHEDULE

(Section 6)

Every marketing plan may provide for all or any of the following matters—

- (a) for empowering the association to buy the specified article, to produce such commodities from that product as may be specified in the plan, and to sell, grade, pack, store, adapt for sale, insure, advertise and transport the specified article and any commodity so produced by the association;
- (b) for requiring registered producers to sell the specified article or any kind, variety or grade thereof, or such quantity thereof or of any kind, variety or grade thereof as may from time to time be determined by the association, only to, or through the agency of, the association;
- (c) for empowering the association to buy, and sell or let for hire to registered producers, anything required for the production, adaptation for sale, or sale of the specified article;
- (d) for empowering the association to co-operate with any other person in doing anything which the association is or might be empowered to do by virtue of paragraph (a) or paragraph (c);
- (e) for empowering the association to regulate sales of the specified article by any registered producer by determining for such period as may be fixed by the association on the occasion of each determination—
 - (i) the kind, variety or grade of the product which may be sold;
 - (ii) the price at, below or above which, the terms on which, and the persons to, or through the agency of, whom, the product or any kind, variety, grade or quantity thereof may be sold;
- (f) for regulating the manner in which the specified article or any kind, variety or quantity thereof is to be graded by or on behalf of registered producers or the manner in which the specified article or any kind, variety, grade or quantity thereof is to be marked, packed, stored, adapted for sale, insured, advertised or transported by or on behalf of registered producers;
- (g) for empowering any person authorized in writing by the association, for the purpose of securing compliance with the plan, to enter and inspect, at any reasonable time and on produc-

tion of his authority, any part of the land or premises occupied by any registered producer (being a producer specified in the authority) which the person so authorized has reason to believe is used for producing the specified article or for doing any of the following things which is regulated by the plan, that is to say, grading, marking, packing or storing the specified article or adapting it for sale;

- (h) for enabling the association to encourage agricultural co-operation, research and education;
- (i) for empowering the association to borrow money for the purpose of exercising its functions under the plan;
- (j) for empowering the association to accept grants of money from any source, and regulating the manner in which and the objects upon which such grants may be expended;
- (k) for empowering the association to lend to any registered producer a portion of the amount, which the association estimates that he will receive from the sale of any quantity of the specified article produced or in course of production by him;
- (l) for guaranteeing the payment of any sums secured by an agricultural charge created by a registered producer;
- (m) for all such matters as are incidental to or consequential on the provisions of this Act relating to the contents of plans or are necessary for giving effect to those provisions.