

## CHAPTER 18:14

### GRAIN MARKETING ACT

*Acts 20/1966, 21/1967 (s. 31), 47/1972, 39/1973 (s. 53), 13/1977, 41/1977 (s. 16 (4) as read with s. 17 (b)), 9/1991, 4/2012, 3/2016 (Part LXXI); S.I. 566/1979.*

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**AN ACT to provide for the establishment of a Grain Marketing Board and to prescribe the powers, functions and duties of such Board; to regulate and control the prices and marketing of certain agricultural products and their derivatives; and to provide for matters incidental to the foregoing.**

[Date of commencement: 1st May, 1966.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Grain Marketing Act [*Chapter 18:14*].

#### 2 Interpretation

In this Act—

“auditors” means the auditors appointed in terms of section *twenty-four*;

“Board” means the board of the Grain Marketing Board referred to in section four;

“controlled product” means any agricultural product or any product derived therefrom declared by the Minister, in terms of section *twenty-nine* to be a controlled product;

“financial year” means the period of twelve months ending on the 31st March each year;

“Grain Marketing Board” means the Grain Marketing Board established by section *three*;

“member” means member of the Board;

“miller” means any person who carries on the business of milling or processing any controlled product;

“Minister” means the Minister of Agriculture or any other Minister to whom the President may from time to time assign the administration of this Act;

“prescribed area”, in relation to a controlled product, means any area prescribed by the Minister under section *twenty-nine* in which that product is a controlled product;

“producer” means any person who, by himself or his agents, grows any controlled product, so, however, that if a member of any co-operative company or co-operative society registered in terms of any law relating to such companies or societies is under an obligation to deliver any controlled product grown by him to such co-operative company or co-operative society, the controlled product delivered to the Grain Marketing Board by such member shall be deemed to have been delivered for the account of such co-operative company or co-operative society, which shall, from the time of such delivery, be deemed to be the producer of the controlled product thus delivered;

“receiving depot” means any place appointed by the Grain Marketing Board in terms of any rules made under paragraph 2 of the Schedule to be a receiving depot;

“sell” includes—

- (a) sell by auction;
- (b) offer or attempt to sell;
- (c) expose, display or advertise for sale;

- (d) sell under an agreement in terms of the Hire-Purchase Act [*Chapter 14:11*];
  - (e) exchange or dispose of for any valuable consideration;
- and the expressions “sale”, “seller”, “purchaser”, “buyer”, “purchase”, “acquire” and “buy” shall be construed accordingly.

## PART II

### ESTABLISHMENT OF GRAIN MARKETING BOARD

#### 3 Establishment of Grain Marketing Board

There is hereby established a board to be known as the Grain Marketing Board, which shall be a body corporate and shall be capable of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as a body corporate may by law perform.

#### 4 Board of the Grain Marketing Board

The operations of the Grain Marketing Board shall, subject to this Act, be controlled by a board, to be known as the Board of the Grain Marketing Board, appointed in terms of this Part.

#### 5 Membership of Board

(1) The Board shall consist of not less than six and not more than nine members who shall be appointed by the Minister after consultation with the President and in accordance with any directions the President may give him.

(2) Members shall be appointed for their ability and experience in agriculture, business or administration or their suitability otherwise for appointment as members.

(3) The Minister shall designate one member as chairman and another member as vice-chairman of the Board and the vice-chairman shall exercise the functions of the chairman during any period that the chairman is unable to do so.

(4) The Minister may appoint any person to the Board as an alternate to a member, and such person—

- (a) shall act as a member only when the member to whom he is alternate is unable to exercise his functions on the Board by reason of illness, absence from Zimbabwe, suspension from office or other cause;
- (b) when acting as a member shall, subject to the conditions applicable to the member, exercise the functions of the member to whom he is alternate:

Provided that an alternate to the member who has been designated as chairman or vice-chairman of the Board shall not exercise the functions of chairman or vice-chairman, as the case may be.

#### 6 Conditions of office of members

(1) Subject to this Part, a member shall hold office for such period not exceeding three years as the Minister may fix on his appointment.

(2) On the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been reappointed or his successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for a period exceeding six months.

(3) Subject to section *fourteen* a member shall hold office on such conditions as the Minister may fix for members generally.

(4) A retiring member shall be eligible for reappointment as a member.

#### 7 Disqualification for appointment as a member

The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

- (a) is not a citizen of Zimbabwe ordinarily resident in Zimbabwe; or
- (b) is, or is married to a person who is, engaged in any activity connected with a business which, in the opinion of the Minister, is likely to interfere with the impartial discharge by that person of the duties of the office of a member; or
- (c) has, in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside;

or

- (d) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—
  - (i) within Zimbabwe of a criminal offence; or
  - (ii) outside Zimbabwe of an offence, by whatever name called, which, if committed within Zimbabwe, would have been a criminal offence;

whether or not such sentence has been suspended, and has not received a free pardon.

## **8 Vacation of office by member**

A member shall vacate his office and his office shall become vacant—

- (a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiration of such shorter period as he and the Minister may agree; or
- (b) thirty days after the date he is sentenced by a court to imprisonment referred to in paragraph (d) of section *seven* after conviction of an offence referred to in that paragraph:

Provided that, if, during the said period of thirty days, an application for a free pardon is made or an appeal is filed, the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside or a punishment other than imprisonment is substituted; or

- (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section *seven* to hold office as a member; or
- (d) if he is required in terms of section *nine* to vacate his office.

## **9 Member may be required to vacate office or be suspended**

(1) The Minister may require a member to vacate his office if the member—

- (a) has been guilty of improper conduct as a member; or
- (b) has failed to comply with the conditions of his office fixed by the Minister in terms of subsection (3) of section *six*; or
- (c) is mentally or physically incapable of efficiently performing his duties as a member.

(2) The Minister, on the recommendation of the Board, may require a member to vacate his office if the Minister is satisfied that the member has been absent without the permission of the Board from three consecutive meetings of the Board, of which he has been given not less than seven days' notice, and that there was no just cause for the member's absence.

(3) The Minister—

- (a) may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence or imprisonment without the option of a fine may be imposed; and
- (b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not suspended, pending determination of the question whether he is to vacate his office;

and whilst that member is so suspended he shall not carry out any duties or be entitled to any remuneration as a member.

## **10 Filling of vacancies**

Subject to section *five*, on the death of or the vacation of office by a member, the Minister may appoint a person to fill the vacancy.

## **11 Meetings and procedure of Board**

(1) The Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that the Board shall meet at least three times in every year.

(2) The chairman of the Board may himself at any time and shall, at the request in writing of not less than four members, convene a special meeting of the Board.

(3) If, at a meeting of the Board, the chairman and the vice-chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(4) A majority of members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall have one vote on every question before the Board and, in the event of an equality votes, the chairman shall have a casting vote in addition to a deliberative vote.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

## **12 Committees of the Board**

(1) For the better exercise of its functions, the Board may establish committees in which may be vested and on which may be imposed such of the functions of the Board as the Board may direct:

Provided that—

- (i) the vesting or imposition of any such functions in a committee shall not divest the Board of such functions;
- (ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions.

(2) The procedure of any committee of the Board shall be fixed by the Board.

(3) The chairman of the Board may at any time and place convene a meeting of a committee of the Board.

(4) On the establishment of a committee the Board—

- (a) shall appoint to that committee at least one member of the Board, who shall be the chairman of the committee;
- (b) may appoint to that committee, on such terms and conditions as the Board may fix, persons who are not members of the Board.

### **13 Right of certain officers to attend meetings, etc., of Board and committees**

Such officers of the Public Service as the Minister may designate shall be entitled—

- (a) to attend meetings of the Board or of a committee of the Board; and
- (b) to take part in the proceedings of the Board or of a committee of the Board;

as if they were members, but shall not have a vote on any question before the Board or the committee.

### **14 Remuneration and expenses of members**

A member or an alternate member of the Board or a member of a committee of the Board shall be paid from the funds of the Grain Marketing Board—

- (a) such remuneration, if any, as the Minister, after consultation with the Minister responsible for finance, may fix;
- (b) such allowances as the Minister, after consultation with the Minister responsible for finance, may fix to meet any reasonable expenses incurred by him in connection with the business of the Grain Marketing Board.

### **15 Members to declare interests**

(1) If a member or his spouse—

- (a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Grain Marketing Board; or
- (b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or firm applying or negotiating for a contract with the Grain Marketing Board; or
- (c) owns immovable property or a right in immovable property or has a direct or indirect pecuniary interest in a company or firm which results in his private interests coming or appearing to come into conflict with his duties as a member;

the member shall forthwith disclose the facts to the Board and to the Minister:

Provided that this subsection shall not apply in relation to a contract with the Grain Marketing Board for the delivery, sale or purchase of any products entered into by a member or his spouse in which the member or his spouse receives no preferential treatment over, or more advantageous terms than, other members of the public.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of or vote on any question before the Board which relates to a contract, right, immovable property or interest referred to in that subsection.

### **16 Validity of decisions and acts of Board**

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

- (a) the Board consisted of fewer than the number of persons prescribed in section *five*; or
- (b) a disqualified person acted as a member of the Board at the time the decision was taken or the act was done or authorized;

if the duly appointed members who were present when the decision was taken or the act was done or authorized by the Board constituted a quorum in terms of subsection (4) of section *eleven*.

### **17 Execution of contracts and instruments by Grain Marketing Board**

An agreement, contract or instrument may be entered into or executed on behalf of the Board by any person or persons generally or specially authorized by the Board for that purpose.

### **18 Transaction of business of an urgent nature**

If it is not practicable to hold a meeting of the Board for the transaction of business of an urgent nature, the chairman, after consulting such of the other members as are available in the circumstances, may deal with the business himself and, as soon as practicable thereafter, shall give to the Board full particulars of the nature and extent of the urgency of the business, the circumstances in which the urgency arose and the action taken by him in the matter.

## **PART III**

### FINANCIAL PROVISIONS RELATING TO GRAIN MARKETING BOARD

### **19 Trading reserve funds**

(1) The Grain Marketing Board shall establish and administer in accordance with this section a trading reserve fund for each controlled product or each class of controlled product for which a separate account is required to be prepared in accordance with subsection (3) of section *twenty-two* bought or acquired by it.

(2) If, at the close of any financial year, the accounts of any controlled product or class of controlled product prepared in accordance with subsection (3) of section *twenty-two* show a surplus or a deficit, such surplus or deficit shall be transferred to a trading reserve fund established for that controlled product or class of controlled product.

(3) If, in respect of any controlled product or class of controlled product, a surplus is transferred to the appropriate trading reserve fund under subsection (2), the Minister may direct that such surplus or part thereof shall be paid by the

Grain Marketing Board to the producers of that quantity of such controlled product or class of controlled product from which such surplus has been derived:

Provided that if, in the opinion of the Minister, it would be impracticable for the Grain Marketing Board to make such payments to any class or classes of producers, he may direct that such payments as are attributable to controlled products or classes of controlled products grown by such class or classes of producers shall be paid by the Grain Marketing Board to any fund, authority or body from which, in the opinion of the Minister, such class or classes of producers, directly or indirectly, will derive benefit.

(4) Such moneys as may be appropriated by Parliament and remitted to the Grain Marketing Board for the purposes of the trading reserve fund of any controlled product or class of controlled product shall be paid into the trading reserve fund established for that controlled product or class of controlled product.

(5) With the approval of the Minister and subject to such conditions as he may impose, moneys in any trading reserve fund established in terms of this section may be borrowed by the Grain Marketing Board for such purposes as the Board may consider expedient for the proper exercise of the functions of the Grain Marketing Board, including the development of its undertakings.

(6) Whenever any controlled product ceases to be a controlled product the balance in the trading reserve fund established for that controlled product or the trading reserve funds established for different classes of that controlled product, as the case may be, shall be disposed of in such manner as the Minister, with the concurrence of the Minister responsible for finance, may direct.

## 20 Revenue account

(1) The Grain Marketing Board shall charge to its revenue account all charges which in the normal conduct of business are regarded as proper to be made to revenue account and, in so doing, shall make in each financial year adequate provision for—

(a) the depreciation of assets; and

(b) the payment of interest on and all other charges and expenses incurred in connection with loans.

(2) In charging to its revenue account all charges provided for in subsection (1) the Grain Marketing Board may, with the approval of the Minister responsible for finance, make in each financial year provision for meeting, in whole or in part, increases in the cost of replacing assets.

## 21 Redemption of loans

(1) The Grain Marketing Board shall in each financial year make such provision as may be necessary for the redemption of loans.

(2) Moneys set aside by the Grain Marketing Board in pursuance of subsection (1) shall, until such time as they are used for the redemption of loans, be invested in such manner as the Board, with the approval of the Minister, acting on the advice of the Minister responsible for finance, may determine.

## 22 Accounts of Grain Marketing Board

(1) The Grain Marketing Board shall keep proper accounts and other records relating thereto in respect of all its operations, undertakings and property, including such particular accounts and records as the Minister may direct.

(2) The Grain Marketing Board shall prepare a statement of accounts in respect of each financial year or such other period as the Minister may direct.

(3) The Grain Marketing Board shall prepare in respect of each financial year or such other period as the Minister may direct separate accounts in respect of each controlled product and each agency undertaken in terms of subparagraph (b) of paragraph 32 of the Schedule and the allocation to each account of all charges made to its revenue account in terms of subsection (1) of section *twenty* shall be made by such method as the Grain Marketing Board may from time to time determine:

Provided that where the Minister so directs the Grain Marketing Board shall prepare in terms of this subsection separate accounts for such different classes of controlled product as may be fixed by the Minister.

## 23 Reports of Grain Marketing Board

In addition to the annual report which the Grain Marketing Board is required to submit to the Minister in terms of section 83 of the Public Finance Management Act [*Chapter 22:19*] (No 11 of 2009), the Grain Marketing Board—

(a) may submit to the Minister such other reports as the Board considers advisable; and

(b) shall submit to the Minister such other reports as he may require;

in regard to the operations, undertakings and property of the Grain Marketing Board.

[Subsection amended by Part LXXI of Act 3 of 2016]

## 24 Appointment of auditors and audit of accounts

(1) The Grain Marketing Board shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]

(2) The accounts of the Grain Marketing Board shall be examined by the auditors.

(3) The auditors shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2) of section twenty-two and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the state of the financial affairs of the Grain Marketing Board.

(4) In addition to the report referred to in subsection (3), the Minister may require the Grain Marketing Board to obtain from the auditors such other reports, statements or explanations in connection with the operations, undertakings and property of the Grain Marketing Board as the Minister may consider expedient.

(5) If, in the opinion of the auditors—

- (a) they have not obtained the information and explanations they require; or
- (b) the accounts and records relating thereto have not been properly kept; or
- (c) the Grain Marketing Board has not complied with the provisions of this Part;

the auditors shall include in the report made in terms of subsection (3) or (4), as the case may be, statements to that effect.

## 25 Powers of auditors

The auditors shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating thereto kept by the Grain Marketing Board and to require from any member or person in the employ of the Grain Marketing Board such information and explanations as in their opinion are necessary for the purposes of their audit.

## PART IV

### FUNCTIONS, DUTIES AND POWERS OF GRAIN MARKETING BOARD

## 26 Functions and duties of Grain Marketing Board

The functions and duties of the Grain Marketing Board shall be—

- (a) to do all things necessary and consistent with the provisions of this Act to ensure the orderly marketing of controlled products within any prescribed area;
- (b) to buy and sell any controlled product which is delivered to or acquired by it under the provisions of this Act;
- (c) to provide storage, handling and processing facilities for controlled products;
- (d) to maintain stocks of controlled products as it may consider necessary;
- (e) to import or export controlled products as it may consider necessary;
- (f) to do such other things, whether in relation to a controlled product or not, not inconsistent with this Act, as may be required by the Minister.

## 27 Appointment of general manager

(1) The Board—

- (a) shall appoint, subject to this Act and on such terms and conditions as the Board thinks fit, a person approved by the Minister to be general manager of the Grain Marketing Board in whom, subject to the control of the Board, shall be vested the management of the operations, undertakings and property of the Grain Marketing Board;
- (b) may, with the approval of the Minister, assign to the general manager of the Grain Marketing Board such of the functions of that Board as the Board thinks fit.

(2) Members shall not be eligible to be considered for appointment as general manager of the Grain Marketing Board.

(3) Without the authority of the Minister, no person shall be appointed as general manager of the Grain Marketing Board if he is not ordinarily resident in Zimbabwe.

(4) The appointment of the general manager of the Grain Marketing Board shall be terminated if he would be required in terms of paragraph (b) or (c) of section *eight* to vacate his office had that section and paragraphs (b) and (c) of section *seven* applied to him.

(5) Any assignment of functions in terms of paragraph (b) of subsection (1)—

- (a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;
- (b) may be revoked by the Board at any time;
- (c) shall not preclude the exercise of the functions by the Board itself.

(6) The general manager of the Grain Marketing Board shall have the right to attend meetings and take part in the proceedings of the Board as if he were a member but shall not have a vote on any question before the Board.

## 28 Powers of Grain Marketing Board

The Grain Marketing Board shall, subject to this Act, have power to do all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

## PART V

### CONTROLLED PRODUCTS AND PRICES

#### 29 Declaration of controlled products

(1) The Minister may, by statutory instrument, declare any agricultural product or any product derived therefrom to be a controlled product and shall specify in the statutory instrument the area within which the product shall be a controlled product.

(2) Different agricultural products may be declared by the Minister to be controlled products in different areas.

#### 30 Restriction on movement of controlled products into or out of prescribed areas

Subject to section *thirty-five*, no person shall—

- (a) remove a controlled product from a prescribed area; or
- (b) bring into a prescribed area any agricultural product or any product derived therefrom which when within the prescribed area becomes a controlled product;

without the permission of the Board, and in granting its permission the Board may impose such conditions as it thinks fit.

#### 31 Fixing of prices

(1) In each year the Minister shall, by statutory instrument, fix the price or prices payable by the Grain Marketing Board during the twelve months following the 1st April in that year for any controlled product which is sold to or acquired by the Grain Marketing Board and which complies with the terms of any rules made under paragraph 2 or 3 of the Schedule.

(2) A statutory instrument in terms of subsection (1) shall be published—

- (a) if it relates to the prices payable for a controlled product, the harvesting of which normally commences after the 1st September in any year, on or before the 1st October;
- (b) if it relates to the prices payable for a controlled product not referred to in paragraph (a), on or before the 1st July.

(3) In the case of any controlled product which is delivered to the Grain Marketing Board on or after the 1st April in any year and before the publication of the statutory instrument in terms of subsection (1), the Grain Marketing Board shall make such advance payment as it, with the approval of the Minister, thinks fit and thereafter if the price fixed in terms of subsection (1)—

- (a) exceeds the advance payment made in terms of this subsection, the Grain Marketing Board shall, as soon as possible after the publication of that statutory instrument, pay to the producer of the controlled product a sum equal to the difference between the amount paid to him and the amount that would have been paid to him had the advance payment been equal to the price fixed in terms of subsection (1):

Provided that the proviso to subsection (5) shall apply, *mutatis mutandis*, in relation to any class or classes of persons to whom, in the opinion of the Minister, it would be impracticable for the Grain Marketing Board to make such payment;

- (b) is less than the advance payment made in terms of this subsection, a sum equal to the difference between the amount paid to the producer of the controlled product and the amount that would have been paid to him had the advance payment been equal to the price fixed in terms of subsection (1) shall, on the publication of that statutory instrument, become a debt due and payable by that producer to the Grain Marketing Board.

(4) Subject to the direction of the Minister, the price or prices at which the Grain Marketing Board sells any controlled product shall be fixed by the Grain Marketing Board.

(5) If, at any time during the period for which the price or prices of any controlled product have been fixed in terms of subsection (1), the Minister is satisfied that supplementary payments to producers are justified, he may direct the Grain Marketing Board to make supplementary payments of such amount as he may fix to producers of that controlled product proportionately to the quantity of such controlled product delivered by or acquired from them during that period:

Provided that, if, in the opinion of the Minister, it would be impracticable for the Grain Marketing Board to make such supplementary payments to any class or classes of producers, he may direct that such supplementary payments as are attributable to controlled products grown by such class or classes of producers shall be paid by the Grain Marketing Board to any fund, authority or body from which, in the opinion of the Minister, such class or classes of producers, directly or indirectly, will derive benefit.

## PART VI

### CONTROLS RELATING TO DEALING WITH CONTROLLED PRODUCTS

#### 32 Registration

(1) Every person who is a member of such class of producers, millers or other persons as may be specified for the purposes of this section in a statutory instrument made in terms of paragraph 4 of the Schedule shall—

- (a) before acting in any such capacity, register with the Grain Marketing Board in such manner as may be specified in such statutory instrument his name and the address of the place or premises at which he grows his products or carries on business, as the case may be; and
  - (b) at the time of registration furnish to the Grain Marketing Board such other information as may be specified in such statutory instrument; and
  - (c) furnish to the Grain Marketing Board, in writing, details of any changes in the particulars furnished or deemed to have been furnished by him in terms of paragraph (a) or (b) as they occur from time to time.
- (2) The Board may cancel the registration of any person if such person has—
- (a) in the opinion of the Board, not carried on business in the capacity in respect of which he was registered, for a period of twelve months; or
  - (b) notified the Board of his intention to discontinue the operations in respect of which he has been registered and has made written application for the removal of his name from the register; or
  - (c) furnished false information in terms of subsection (1).

(3) Any person who is registered under this section shall continue to be bound by all the obligations, conditions and restrictions affecting him under this Act until he has received notice, in writing, from the Board to the effect that his registration has been cancelled.

(4) A person who is aggrieved by the cancellation of his registration in terms of subsection (2) shall have the right of appeal to the Minister whose decision shall be final.

### **33 Sale or delivery of controlled products**

(1) Subject to subsection (8), section *thirty-five* and any order made in terms of paragraph 1 of the Schedule, no person shall sell or otherwise dispose of any controlled product within the prescribed area except to the Grain Marketing Board.

(2) Any controlled product which is required to be sold to the Grain Marketing Board in terms of this section shall be delivered to the Grain Marketing Board at such time, at such place and in such quantities as the Board may direct and under such terms and conditions as the Grain Marketing Board may provide in any rules made in terms of paragraph 2 of the Schedule.

(3) If the Board directs that any controlled product shall be delivered at any place other than the receiving depot of the Grain Marketing Board which is nearest to the place of business of the person delivering the controlled product, the Grain Marketing Board shall pay the difference between the transport costs of delivering such controlled product at that receiving depot and the transport costs of delivering at such first-mentioned place, unless such direction by the Board was occasioned by the failure of such person to deliver a controlled product at that receiving depot on the date when it should have been delivered.

(4) Without derogation from subsection (3), the Board, with the approval of the Minister, may, subject to such conditions as it may fix, pay in respect of any controlled product or class of controlled product specified by the Board such portion of the transport costs of delivering to a receiving depot of the Board the controlled product or class of controlled product as it thinks fit.

(5) On the delivery of any controlled product which does not comply with any rules made in terms of paragraph 3 of the Schedule, the Board may decline to accept it and direct that it be delivered at a later date when it complies with such rules or may reject the controlled product and, on such rejection, the Board shall issue to the person delivering it a certificate of rejection.

(6) Subject to subsection (5), on the delivery to the Board of any controlled product the Board shall issue a receipt therefor to the person who has delivered it.

(7) The Board shall not be subject to any obligation or liability whatsoever in respect of any controlled product sold to it until it has taken possession of the controlled product and has issued a receipt in respect thereof in terms of subsection (6).

(8) Notwithstanding subsection (1), a person who is the producer of any controlled product may sell such controlled product otherwise than to the Board if it is *bona fide* sold by him for use as seed.

### **34 Acquisition and disposal of controlled products**

(1) Subject to subsection (8) of section *thirty-three*, section *thirty-five* and any order made in terms of paragraph 1 of the Schedule, no person shall buy or otherwise acquire within the prescribed area any controlled product otherwise than from the Grain Marketing Board.

(2) A person who acquires any controlled product in terms of subsection (8) of section *thirty-three* for use as seed shall not use or dispose of that controlled product for any other purpose unless with the written permission of the Grain Marketing Board.

### **35 Controlled products exempted from Act**

- (1) Nothing in this Act shall prevent any person—
- (a) who has acquired any controlled product from the Grain Marketing Board in terms of this Act from disposing of such controlled product within the prescribed area in the normal course of business and in accordance with any terms and conditions fixed by or in terms of any rules made in terms of paragraph 2 of the Schedule;

- (b) from acquiring a controlled product from any person disposing of such controlled product in terms of paragraph (a) or of any regulations made under section *thirty-nine*
- (c) who is the producer of a controlled product from using any such controlled product for consumption by himself, his household, his employees or his livestock.

(2) Notwithstanding anything to the contrary in any order made in terms of paragraph 1 of the Schedule, a person who has acquired any controlled product in terms of that order may remove such controlled product or portion thereof from the area prescribed in that order in such quantities as may be prescribed for consumption by himself or his household.

## PART VII

### GENERAL

#### **36 Exemption of Grain Marketing Board from liability**

No liability shall attach to the Grain Marketing Board or to any member of the Board for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance by the Grain Marketing Board or a committee thereof or by any employee or agent of the Grain Marketing Board of any power or duty conferred or imposed upon the Grain Marketing Board by this Act:

Provided that this section shall not be construed so as to prevent any person from recovering, by action in any competent court, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

#### **37 Powers of Board to make deductions from payments due to producers, etc.**

(1) Notwithstanding sections *thirty-one* and *thirty-three*, the Grain Marketing Board may deduct from any sum due and payable to a producer or any other person or the estate of such producer or other person (in this subsection referred to as a person) for any controlled product or other agricultural product which the Grain Marketing Board may be required to buy in terms of a direction of the Minister under subparagraph (b) of paragraph 32 of the Schedule delivered to the Grain Marketing Board in terms of section *thirty-three* or otherwise acquired by it any sum which—

- (a) is due and payable to the Grain Marketing Board by such person; or
- (b) in the opinion of the Grain Marketing Board, is sufficient to meet any contingent liability of a person in respect of any loan of money or goods which may have been made by the Grain Marketing Board to such person for the marketing of any such controlled product or other agricultural product:

Provided that, when the actual liability of the person concerned has been ascertained, the Grain Marketing Board shall pay to such person out of the sum so deducted any amount in excess of such liability.

- (2) Whenever any sum is due and payable to the Grain Marketing Board by a producer who—
  - (a) is a member of any co-operative agricultural company or co-operative society registered as such in terms of any enactment (in this subsection referred to as a co-operative); and
  - (b) is under an obligation to deliver to that co-operative any controlled product or other agricultural product which the Grain Marketing Board may be required to buy in terms of a direction of the Minister under the provisions of subparagraph (b) of paragraph 32 of the Schedule of which he is the grower;

the Grain Marketing Board may deduct that sum or part thereof from any sum due and payable by the Grain Marketing Board to such co-operative in respect of any such controlled product or other agricultural product bought or acquired by the Grain Marketing Board from that member and which by reason of such obligation is deemed to have been bought for the account of such co-operative.

#### **38 Powers of police officers and authorized persons**

(1) Subject to subsection (5), at all reasonable times a police officer or a person generally or specifically authorized thereto by the Minister may—

- (a) enter upon the premises or on any land or place occupied by any producer or miller or any other person whom he believes on reasonable grounds to be dealing in or handling a controlled product; and
- (b) examine all stocks of any controlled product and all books, accounts and documents relating thereto; and
- (c) seize any controlled product, books, accounts or documents as may afford evidence of a contravention of this Act or of any disregard of the terms of any notice or direction issued under this Act:

Provided that, if any controlled product seized under the provisions of this paragraph is of such a nature that it cannot reasonably be removed by the person seizing it, he shall declare it as having been secured in the place where he found it and the provisions of subsection (4) in so far as they apply to the return of controlled products to persons from whose custody they were taken shall apply, *mutatis mutandis*.

- (2) A police officer or a person authorized thereto by the Minister may—
  - (a) stop and search any vehicle which he believes on reasonable grounds to contain any controlled product which may afford evidence of a contravention of this Act or of any disregard of the terms of any notice or direction issued under this Act and direct the driver of such vehicle to deliver such controlled product forthwith to the nearest receiving depot of the Grain Marketing Board and upon such delivery subsection (4) shall apply, *mutatis mutandis*;

(b) require the driver of any such vehicle and any other person who is a passenger in such vehicle to furnish his full name and address.

(3) A person authorized by the Minister in terms of subsection (1) or (2) shall produce on request his authority to enter upon any premises, land or place or to stop and search any vehicle, as the case may be.

(4) A police officer or a person authorized in terms of subsection (1) or (2) who seizes any controlled product, books, accounts or documents in terms of subsection (1) or (2), as the case may be, shall give a receipt to the person from whose custody such controlled product, books, accounts or documents have been taken and such controlled product, books, accounts or documents shall be returned to the person from whose custody they were taken immediately it is decided that no prosecution will be instituted or after they have been released by the court, as the case may be.

(5) A police officer or a person authorized in terms of subsection (1) may not enter or search any dwelling-house unless he believes on reasonable grounds that evidence relating to a contravention of this Act is to be found in that dwelling-house.

### 39 Regulatory powers of Minister

(1) The Minister may by regulation prescribe all matters which by this Act are required or are permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Minister may, in the exercise of the powers conferred upon him by subsection (1), provide for the manner and terms and conditions under which any controlled product which has been rejected by the Grain Marketing Board under the provisions of subsection (5) of section *thirty-three* may be disposed of by the person who tendered delivery thereof.

### 40 Offences and penalties

(1) Subject to subsection (2), if any person—

- (a) fails to deliver at the time and place directed by the Grain Marketing Board any controlled product which is due to be sold to the Grain Marketing Board under this Act and which is at the time of such failure in his possession or under his control; or
- (b) assaults, resists, hinders, abuses or obstructs any police officer or person authorized under subsection (1) or (2) of section *thirty-eight* in the lawful exercise of the powers conferred by that section; or
- (c) fails to render any information required from him under this Act; or
- (d) in any information rendered under this Act, knowingly makes a false statement; or
- (e) fails to comply with the provisions of this Act relating to the keeping of records, books or documents; or
- (f) being a producer, miller or member of such other class of persons as may be required in terms of section *thirty-two* to be registered, acts in any such capacity without being so registered; or
- (g) contravenes or fails to comply with any provision of this Act or any condition imposed under this Act with which it is his duty to comply;

he shall be guilty of an offence and liable—

- (i) in the case of a first conviction, to a fine not exceeding four hundred dollars or, in default of payment, to imprisonment for a period not exceeding twelve months;
- (ii) in the case of a second or subsequent conviction, to a fine not exceeding eight hundred dollars or, in default of payment, to imprisonment for a period not exceeding two years.

(2) If any person—

- (a) who grows or acquires any controlled product in an area which is specified in relation to that controlled product in a statutory instrument made in terms of paragraph 1 of the Schedule sells or otherwise disposes of such controlled product otherwise than in accordance with the provisions of such statutory instrument; or
- (b) disposes of any controlled product which has been rejected by the Grain Marketing Board under subsection (5) of section *thirty-three* otherwise than in terms of any regulations made under section *thirty-nine*; or
- (c) sells, removes or otherwise disposes of any controlled product in contravention of this Act;
- (d) not being a person authorized thereto, imports any controlled product, whether in transit or otherwise, into or through an area which is not specified in relation to that controlled product in a statutory instrument made in terms of paragraph 1 of the Schedule; or
- (e) buys, imports or otherwise acquires any controlled product otherwise than under this Act;

he shall be guilty of an offence and liable to a fine not exceeding three times the value of such controlled product, calculated on the current selling price of the Grain Marketing Board within Zimbabwe of the highest grade or class of that controlled product or eight hundred dollars, whichever is the greater, or, in default of payment, to imprisonment for a period not exceeding two years.

(3) On the conviction of any person on a charge of an offence under this Act, the court convicting the accused may, on the application of the prosecutor and in addition to any other penalty which it may impose, if any controlled product which is the subject of the charge—

- (a) is proved to be in the possession of the accused, order that such controlled product or such portion of such controlled product as the court may determine be forfeited to the use of the Grain Marketing Board, and on any

such order the Grain Marketing Board shall be empowered to take all necessary measures to seize and dispose of any such controlled product or portion thereof; or

- (b) has been seized under subsection (1) or (2) of section *thirty-eight*, order that such controlled product or such portion of such controlled product as the court may determine be forfeited to the use of the Grain Marketing Board; or
- (c) is not proved to be in the possession of the accused and such controlled product has not been seized under subsection (1) or (2) of section *thirty-eight*, give summary judgment in favour of the Grain Marketing Board for an amount equal to the value of such controlled product, and such judgment shall have the same effect and may be executed in the same manner as if it had been given in a civil action duly instituted in the said court:

Provided that no magistrate shall be empowered under this subsection to give any such judgment for an amount in excess of the jurisdiction conferred upon him by law.

(4) On the hearing of any application made under subsection (3) the court shall, for the purpose of determining the possession of such controlled product, its value and the liability of the accused therefor, refer to the proceedings and evidence at the trial and hear such further evidence as may be tendered by the prosecutor and the accused, but the value of such controlled product shall be calculated on the current selling price of the Grain Marketing Board within Zimbabwe of the highest grade or class of that controlled product, unless the accused proves that its value is less.

#### **41 Evidence and presumptions**

(1) At the trial of any person charged with an offence under this Act, any statement contained in any return furnished by or on behalf of the accused in terms of this Act and any statement or record contained in any book, account or document kept by the accused or any employee or agent of the accused on his behalf shall, on its production by any person, be admissible as *prima facie* evidence of the facts set forth in that statement or record:

Provided that, except in the case of information or statements contained in any return furnished by or on behalf of an accused person, no such statement or record shall be tendered in evidence unless the accused has been given not less than ten days' written notice of the intention to produce such statement or record and an opportunity to inspect the same and make a copy thereof.

(2) If any person carrying on business is found in possession of any controlled product and—

- (a) he has failed to keep any record required in terms of a statutory instrument made under paragraph 5 of the Schedule in relation to the acquisition of that controlled product; or
- (b) the record kept by him in terms of a statutory instrument made under paragraph 5 of the Schedule in relation to the acquisition of that controlled product is shown to be false;

he shall be presumed, unless the contrary is proved, to have acquired that controlled product otherwise than under this Act.

(3) If, in the case of any person transporting any controlled product—

- (a) he does not possess a consignment or delivery note required under a statutory instrument made in terms of paragraph 5 of the Schedule in relation to the delivery of that controlled product; or
- (b) the consignment or delivery note kept by him in terms of a statutory instrument made under paragraph 5 of the Schedule in relation to that controlled product is shown to be false;

he shall be presumed, unless the contrary is proved, to have acquired that controlled product otherwise than under this Act or to have aided a person to have acquired that controlled product otherwise than under this Act, as the case may be.

#### **42 Acts and omissions of managers, agents or employees**

Whenever the manager, agent or employee of any person does or omits to do anything which it would be an offence under this Act for such person to do or omit to do, such person shall be deemed himself to have done or omitted to do such thing and be liable to the penalties therefor in terms of this Act unless he proves to the satisfaction of the court that all reasonable steps were taken by him to prevent any act or omission of the kind in question:

Provided that the fact that the person issued instructions forbidding, in respect of his manager, agent or employee any act or omission of the kind in question shall not by itself be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

#### **43 Minister may give directions on matters of policy**

(1) Subject to subsection (2), the Minister may give to the Board such directions of a general character as to the policy to be observed in the exercise by it of its functions, as appear to the Minister to be requisite in the national interest.

(2) Where the Minister considers that it might be desirable to give any direction in terms of subsection (1), he shall inform the Board, in writing, of his proposal and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible implications on the finances and other resources of the Grain Marketing Board.

(3) The Board shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given in terms of subsection (1), the Board shall ensure that the direction and any views it has expressed thereon in terms of subsection (2) are set out in its annual report.

## 56A Legal proceedings against Board

The State Liabilities Act [*Chapter 22:13*] applies with necessary changes to legal proceedings against the Board.

[Section inserted by Act 4 of 2012. Numbered 56A in error instead of 36A in error. Law Reviser]

### SCHEDULE (Section 28)

#### POWERS OF BOARD

1. With the approval of the Minister, by statutory instrument—
  - (a) to declare that any controlled product or class of controlled product grown in any area specified in the statutory instrument may be disposed of by its producer to any person or class of persons specified in the statutory instrument under such terms and conditions as to its acquisition and disposal as may be provided for in the statutory instrument;
  - (b) to regulate, control or prohibit the movement of any controlled product into or out of any area specified in the statutory instrument.
2. Subject to the approval of the Minister, to make rules, by statutory instrument relating to the terms and conditions of delivery and of the sale or disposal to or by the Grain Marketing Board of any controlled product required to be sold to the Grain Marketing Board.
3. To make rules, by statutory instrument, relating to the standards of quality, classification, grading, moisture content and packing of any controlled product which may be accepted by the Grain Marketing Board.
4. By statutory instrument—
  - (a) to specify, for the purposes of section *thirty-two*, the classes of producers, millers or other persons who are to be required to be registered and the manner in which application for registration shall be made; and
  - (b) to require any producer, miller or other person who deals in or with any controlled product, whether or not he is required to be registered, to furnish in such manner and in such form as may be provided in that statutory instrument—
    - (i) estimates and information in respect of the production and disposal of any controlled product grown or to be grown by him;
    - (ii) information as to his transactions in any controlled product and as to the stocks of controlled products in his possession;
    - (iii) returns or duplicate consignment notes in respect of any controlled product transported by him which is not consigned by or to the Grain Marketing Board.
5. To require, by statutory instrument, any miller or other class of persons specified in such statutory instrument to keep in such manner and in such form as may be provided in such statutory instrument—
  - (a) any record, book or other document in respect of his transactions in controlled products;
  - (b) any consignment or delivery note relating to the movement of controlled products.
6. To provide, by statutory instrument, for the forms and manner of issue of permits or any other documents required under this Act.
7. To arrange quota allocation, rationing or other distributive schemes in respect of any controlled product acquired by or required to be sold to the Grain Marketing Board and to impose conditions making the sale by the Grain Marketing Board of any quantity of any controlled product conditional upon the purchase by the buyer of any quantity of any other controlled product.
8. To provide, maintain, operate or control or assist in the provision, maintenance, operation or control of such storage and handling facilities and processing machinery and plant, whether within or outside Zimbabwe, as the Board considers necessary in connection with the acquisition, disposal, marketing, treatment or retention of any controlled product and deal in bags, sacks and other containers.
9. Subject to any direction by the Minister, to import any controlled product or export any controlled product bought or acquired by the Grain Marketing Board at such times and in such quantities and on such terms as the Grain Marketing Board thinks fit.
10. To appoint upon such terms and conditions as the Board, with the approval of the Minister, thinks fit such persons, other than the general manager, as may be necessary for conducting the affairs of the Grain Marketing Board and suspend or discharge any such persons.
11. Subject to paragraph 10, to pay to any person in the employ of the Grain Marketing Board such remuneration and allowances, grant such leave of absence and make such gifts, bonuses and the like as the Board may consider fit.
12. Subject to the approval of the Minister, to provide for persons in the employ of the Grain Marketing Board or their dependants, by means of insurance with an insurer registered in terms of the Insurance Act [*Chapter 24:07*] or a pension or provident fund or otherwise, pecuniary benefits upon leave, retirement, death or termination of service or in the event of distress, sickness or injury and to insure the members of the Board against injury or death.
13. To purchase, take on lease or in exchange or otherwise acquire dwelling-houses for occupation by persons in the employ of the Grain Marketing Board.

14. To purchase land and construct thereon dwelling-houses for occupation by persons in the employ of the Grain Marketing Board.
15. On such terms and conditions as the Board, with the approval of the Minister responsible for finance, may determine, to guarantee loans made to persons in the employ of the Grain Marketing Board or their spouses for the purchase of dwelling-houses or land for residential purposes and for the construction of dwelling-houses on land which is the property of persons in the employ of the Grain Marketing Board or their spouses.
16. To provide security in respect of loans such as are described in paragraph 15 by the deposit of securities, in which the Board is hereby authorized to invest such moneys as it may deem necessary for the purpose.
17. To make loans to persons in the employ of the Grain Marketing Board for the purpose of purchasing vehicles, tools or other equipment to be used by those persons in carrying out their duties.
18. To make loans, not exceeding the equivalent of three months' salary or wages, to persons in the employ of the Grain Marketing Board for any purpose on such security as the Board may consider adequate.
19. To do anything for the purpose of improving—
  - (a) the skill, knowledge or usefulness of persons in the employ of the Grain Marketing Board; or
  - (b) the efficiency of the equipment of the Grain Marketing Board or the manner in which the equipment is operated;and in that connection to provide or assist other persons in providing facilities for training, education and research.
20. To enter into such contracts as the Board considers necessary for the performance of its functions.
21. Subject to the approval of the Minister and the Minister responsible for finance—
  - (a) to borrow or advance money to enable the Grain Marketing Board to carry out its functions;
  - (b) to invest the surplus funds of the Grain Marketing Board;
  - (c) to establish and administer such funds not specifically provided for in this Act as the Board may consider appropriate or necessary for the proper performance of the functions and duties of the Grain Marketing Board.
22. To pledge as security for any loan any controlled product acquired by the Grain Marketing Board and mortgage any other property of the Grain Marketing Board, whether movable or immovable.
23. To enter into agreements with any organization concerned with the control, purchase or sale of any controlled product in any country.
24. To insure with an insurer registered under the Insurance Act [*Chapter 24:07*] against any losses, damages, risks or liabilities which the Grain Marketing Board may incur.
25. To purchase, take on lease or in exchange or otherwise acquire and hold property and interests in or rights over land, water rights and any other rights which may be necessary or convenient for the exercise of the functions or the performance of the duties of the Grain Marketing Board.
26. To draw, make, accept, endorse, discount, execute and issue for the purpose of the business of the Grain Marketing Board promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
27. To sell, exchange, lease, dispose of, turn to account or otherwise deal with any of the assets of the Grain Marketing Board or any part thereof, whether movable or immovable, which are not required for the purposes of the Grain Marketing Board, for such consideration as the Board may determine.
28. To promote sales of controlled products by means of advertising and market research.
29. To promote or embark upon research in connection with and to investigate problems affecting the handling, marketing or processing of or the methods of storing any controlled product.
30. Subject to the approval of the Minister and the Minister responsible for finance, to grant such scholarships or bursaries as the Board considers to be in the interests of the grain industry on such terms and conditions as the Board may fix in each particular case.
31. If the Minister so directs, to act as an agent for the State—
  - (a) in the collection of any levy imposed under any enactment upon any controlled product or other agricultural product which the Grain Marketing Board may be required to buy in terms of a direction of the Minister under subparagraph (b); and
  - (b) for any other purpose, including the purchase of agricultural products which are not controlled products.
32. Generally, to do all such things as are incidental or conducive to the exercise of the functions or the performance of the duties of the Grain Marketing Board or are incidental to the powers specified in this Schedule or which are calculated, directly or indirectly, to enhance the value of or develop the operations, undertakings and property of the Grain Marketing Board.