

## CHAPTER 18:20

# TOBACCO INDUSTRY AND MARKETING ACT

*Acts 32/1977, 5/1988, 29/1990, 4/1991, 1/1994, 4/1994, 15/1994, 5/1997, 22/2001 (s. 4), 5/2014 (s. 33);  
S.I. 566/1979.*

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## SCHEDULE

SCHEDULE: Powers of Board.

**AN ACT to provide for the control and regulation of the tobacco industry in Zimbabwe, the promotion of the export of tobacco from Zimbabwe and the imposition of a levy on tobacco grown or sold in Zimbabwe; to control the use of agricultural remedies on tobacco and tobacco plants or lands; to provide for the establishment of the Tobacco Industry and Marketing Board and to prescribe its functions and powers; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 1st January, 1978.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Tobacco Industry and Marketing Act [*Chapter 18:20*].

[Section amended by Act 5 of 1997]

#### 2 Interpretation

(1) In this Act—

“auction floor” means premises for the sale of auction tobacco;

“auction tobacco” means tobacco which is declared in terms of subsection (2) to be auction tobacco;

“Board” means the Tobacco Industry and Marketing Board established by section *three*;

[Definition amended by Act 5 of 1997]

“buyer” means a person who buys unmanufactured tobacco;

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

“grader” means a person who for a fee carries out the operation of grading or regrading tobacco for the grower thereof or his agent on premises other than the premises of such grower;

“grower” means a person who, by himself or his agents, grows tobacco;

“inspector” means a person appointed as an inspector in terms of section *sixty-nine*;

“levy” means a levy imposed in terms of section *fifty-three*;

“licensed”, in relation to—

(a) a grader, means licensed in terms of Part VI;

(b) a buyer, means licensed in terms of Part VII;

(c) an auction floor, means licensed in terms of Part VIII;

“manufacture”, in relation to tobacco, means to subject the tobacco to any process or treatment other than a process which is necessary—

(a) for preparing the tobacco for sale to a licensed buyer; or

(b) in the preparation of the tobacco for resale in the form of leaf tobacco, strip tobacco, tipped or thrashed tobacco, stem tobacco or scrap tobacco;

“mass”, in relation to tobacco, means the mass known in the usage of the trade as wet mass of leaf, scrap or strip tobacco, as the case may be;

“member” means the chairman or any other member of the Board;

“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;

“over-quota tobacco” means tobacco of a type or grade specified in terms of section *fifty-nine* which is produced by a registered grower in excess of the marketing quota allotted to him in terms of that section in respect of tobacco of that type or grade;

“pool tobacco” means tobacco which is, or the proceeds of which are, collected or required to be collected into a pool in terms of Part XI;

“recognized Buyers Association” means such association of buyers, represented by its governing body, as the Minister may recognize for the purposes of a provision of this Act in which the term appears;

“recognized Growers Association” means such association of growers, represented by its governing body, as the Minister may recognize for the purposes of a provision of this Act in which the term appears;

“registered”, in relation to a grower, means registered on the register kept in terms of section *twenty-four* which is current for the time being;

“remedy” means a remedy as defined in section 2 of the Fertilizers, Farm Feeds and Remedies Act [*Chapter 18:12*];

“Research Board” means the Tobacco Research Board established by section 3 of the Tobacco Research Act [*Chapter 18:21*];

“sales supervisor” means a person appointed by the Board to supervise sales of auction tobacco;

“selling season” means the period in each year fixed by the Board during which auction tobacco may be sold;

“tobacco” means unmanufactured tobacco but does not include tobacco stems;

“tobacco levy account” means the tobacco levy account established in terms of section *fifty-five A*;

[Definition inserted by Act 5 of 1997]

“tobacco stem” means the mid-rib of the tobacco leaf.

(2) The Minister, on the recommendation of the Board, may, by statutory instrument, declare any type of tobacco to be auction tobacco.

(3) The Minister may recognize two or more associations of buyers or associations of growers for the purposes of a particular provision of this Act.

## PART II

### TOBACCO MARKETING BOARD

#### 3 Establishment of Tobacco Marketing Board

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

[Definition amended by Act 5 of 1997]

#### 4 Composition of Board

(1) The Board shall consist not less than eight and not more than eleven 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) Of the members appointed in terms of subsection (1), at least one shall be a member of the Public Service employed in the Ministry for which the Minister is responsible.

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

[Section substituted by Act 5 of 1997]

#### 4A Chairman and vice-chairman of Board

(1) The Minister shall designate one member as chairman of the Board.

(2) The members shall elect one of their number as vice-chairman of the Board.

(3) the vice-chairman of the Board shall exercise the functions of the chairman during any period that the chairman is unable to do so.

[Section substituted by Act 5 of 1997]

## **5 Term of office of member**

A member shall hold office for a period of three years:

Provided that the Minister may, on the appointment of a member, direct that he shall hold office for such lesser period as the Minister may fix.

## **6 Disqualification for appointment as member**

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

(a) 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

(b) within the period of five years immediately preceding the date of his proposed appointment, been sentenced to a term of imprisonment of or exceeding six months imposed without the option of a fine and has not received a free pardon.

## **7 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) on the date he begins to serve a sentence of imprisonment the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine in any country; or

(c) if he becomes disqualified in terms of paragraph (a) of section *six* to hold office as a member; or

(d) if he is required in terms of section *eight* to vacate his office; or

(e) if he is absent from three consecutive meetings of the Board of which he has had notice, without the permission of the Board.

## **8 Minister may require member to vacate office or suspend him**

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

(a) has been guilty of improper conduct as a member; or

(b) is mentally or physically incapable of efficiently performing his duties as a member.

(2) The Minister may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed and, whilst that member is so suspended, he shall not carry out any duties or be entitled to any remuneration or allowances as a member.

## **9 Filling of vacancies**

On the death of, or the vacation of office by, a member, the Minister may appoint a person chosen in the same way as the member was chosen to fill the vacancy until the expiration of the period during which the member would, but for his death or the vacation of his office, have continued in office.

## **10 Meetings and procedure of Board**

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

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

(3) If, at a meeting of the Board, the chairman is absent, the members present shall appoint one of their number to preside at that meeting as chairman.

(4) At any meeting of the Board, a majority of the members shall form a quorum.

[Subsection substituted by Act 5 of 1997]

(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 a question before the Board and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

## **11 Committees of Board**

(1) For the better exercise of its functions and powers the Board may establish one or more committees in which may be vested and on which may be imposed such of the functions and powers of the Board as the Board may specify:

Provided that the vesting or imposition of any such functions and powers in a committee shall not thereby divest the Board of such functions and powers and the Board may amend or withdraw any decision of any such committee in the exercise of its functions and powers.

(2) The Board shall appoint, on such terms and conditions as it thinks fit, the members of a committee established in terms of subsection (1) and may so appoint persons who are not members of the Board.

(3) The procedure of a committee shall be fixed by the Board.

## **12 Remuneration and expenses of members and members of committee**

A member of the Board or of a committee established in terms of section *eleven* shall be paid from the funds of the Board—

(a) such remuneration, if any, as the Minister may in his case fix; and

(b) such allowance as the Minister may fix to meet any reasonable expenses incurred by him in connection with the business of the Board or that committee, as the case may be.

## **13 Right of certain officers to attend meetings of Board or committee**

Such officers of the Public Service as the Minister may designate shall be entitled to attend meetings and to take part in the proceedings of the Board or of a committee established in terms of section *eleven* as if they were members thereof but they shall not have a vote on any question before the Board or committee, as the case may be.

## **14 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 did not consist of the full number of members for which provision is made in section *four*; or

(b) a disqualified person acted as a member at the time the decision was taken or the act was done or authorized.

## **15 Contracts and instruments of 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.

# **PART III**

## **FUNCTIONS AND POWERS OF BOARD**

### **16 Functions of Board**

(1) Subject to this Act, the functions of the Board shall be—

(a) to control and regulate the marketing of tobacco; and

(b) to promote, protect and maintain the sale of tobacco; and

(c) to collate statistics relating to the provision, marketing, manufacture and consumption of tobacco; and

(d) to distribute market studies and information relating to the marketing, manufacture and consumption of tobacco; and

(e) to advise the Minister on all matters relating to the marketing of tobacco; and

(f) to do all things which this Act or any other enactment requires shall be done by the Board.

(2) The Minister may, by notice in writing, direct the Board not to exercise the functions specified in paragraph (b), (c) or (d) of subsection (1) for such period as the Minister may specify.

### **17 Powers of Board**

Subject to this Act, the Board shall, for the better exercise of its functions, have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others, and in so doing may deal differently with different persons and premises and different types, grades and varieties of tobacco.

### **18 Reports of Board**

The Board—

(a) may submit to the Minister such reports as it deems advisable; and

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

in regard to the operations, undertakings and property of the Board or in relation to any matter referred to in subsection (1) of section *sixteen*.

## PART IV

### FINANCIAL PROVISIONS RELATING TO BOARD

#### 19 Funds of Board

The funds of the Board shall consist of—

- (a) such sums as may be paid to the Board in terms of this Act: and
- (b) such sums as may be paid to the Board from moneys appropriated for the purpose by Parliament; and
- (c) such other moneys or assets as may vest in or accrue to the Board, whether in the course of its operations or otherwise.

#### 20 ....

[Section repealed by act 5 of 1997].

#### 21 Accounts of Board

(1) The 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 Board shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

#### 22 Audit of accounts of Board

(1) The 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 Board kept in terms of subsection (1) of section *twenty-one* 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-one* 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 Board.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from the auditors such other reports, statements or explanations in connection with the operations, undertakings and property of the 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 Board has not complied with 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.

#### 23 Powers of auditors

(1) 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 Board or its agents and to require from any member or person employed by the Board or its agents such information and explanations as in their opinion are necessary for the purposes of their audit.

(2) Any member, employee or agent of the Board who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## PART V

### REGISTRATION AND DUTIES OF GROWERS

#### 24 Register of growers

The Board shall keep in a form approved by the Minister an annual register of all growers and may keep separate registers for different classes of growers.

#### 25 Registration

(1) All persons who are, or *bona fide* intend to become, growers shall register as such.

(1a) Any person who is not registered and who, by himself or through his agents, grows tobacco shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(2) An application for registration as a grower shall be made to the Board in the manner prescribed by the Board and shall be accompanied by the prescribed fee.

(3) If separate registers are kept in terms of section *twenty-four*, a separate application shall be required in respect of each such register.

(4) A grower whose registration has been cancelled in terms of section *thirty-two* shall not be re-registered as a grower during the currency of the register in which he was registered unless the Board has revoked the order made in terms of section *thirty-two*.

## **26 Registration fee**

The Board, with the approval of the Minister, may prescribe a registration fee and a late registration fee for all growers or for any specified class of growers.

## **27 Allotment of registered numbers**

(1) The Board shall allot to each registered grower one, and not more than one, registered number.

(2) The Board may allot to itself or to any other person who is permitted to sell tobacco and who is not a registered grower one or more registered numbers.

(3) No person shall transfer to any other person the registered number which has been allotted to him and any purported transfer of such registered number shall be invalid.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **28 Only growers who are registered to sell tobacco**

(1) No person shall sell tobacco of a particular type grown by him unless he is a registered grower of tobacco of that particular type.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **29 Marking of registered numbers on bales**

(1) A registered grower—

(a) of auction tobacco shall mark his registered number or cause his registered number to be marked on each bale of auction tobacco which is delivered by him or on his behalf to a licensed auction floor for sale;

(b) of tobacco other than auction tobacco shall, if so required by the Board, mark his registered number or cause his registered number to be marked on each bale or other container of such tobacco which is delivered by him or on his behalf to a place specified in terms of section *sixty-three* for sale.

(2) No registered grower shall deliver for sale to a licensed auction floor or place specified in terms of section *sixty-three*, as the case may be, a bale or other container of tobacco which—

(a) was grown by him and is marked with a number other than his registered number; or

(b) was not grown by him and is marked with his registered number unless the permission in writing of the Board has been obtained.

(2a) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(3) A person who is allotted a registered number or numbers in terms of subsection (2) of section *twenty-seven*—

(a) shall not sell tobacco on a licensed auction floor or place specified in terms of section *sixty-three*, as the case may be, unless any such number is clearly marked on the bale or other container, if any, in which that tobacco is sold; and

(b) shall not mark any such number or cause it to be marked on a bale or other container of tobacco other than tobacco which he has purchased on a licensed auction floor or place specified in terms of section *sixty-three*, as the case may be.

(4) Any person who contravenes paragraph (b) of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **30 Failure of registered grower to furnish return**

(1) If a registered grower fails to furnish, within the period fixed or prescribed in terms of this Act, a return to the Board, completed to the satisfaction of the Board, the Board may order the cancellation of the registration of the grower.

(2) A grower who furnishes a return referred to in subsection (1) after the expiry of the period fixed or prescribed in terms of this Act shall, subject to subsection (3), pay to the Board a fee prescribed by the Board and approved by the Minister.

(3) The Board may waive the payment of the appropriate fee referred to in subsection (2) if it considers that there is a reasonable explanation for the failure of the grower to furnish the return timeously.

(4) As soon as the Board is satisfied that a grower whose registration has been cancelled in terms of subsection (1)—

- (a) has furnished the return referred to in that subsection, completed to the satisfaction of the Board; and
- (b) if payment of the fee is not waived in terms of subsection (3), has paid the fee referred to in subsection (2);

the Board shall revoke the order cancelling the registration of the grower.

(5) Notwithstanding anything to the contrary in this section, the Board may exempt any grower or class of growers from the obligation to furnish a return referred to in subsection (1) if the Board considers it appropriate to do so having regard to any difficulties the grower or class of growers may encounter in furnishing the return.

[Section inserted by Act 5 of 1997]

### **31 Delivery by registered grower of tobacco in excess of delivery quota**

A registered grower who delivers or causes to be delivered to a licensed auction floor tobacco in excess of his delivery quota as fixed by the Board in terms of paragraph 24 of the Schedule shall not deliver or cause to be delivered to a licensed auction floor for sale any further tobacco for such a period as the Board may fix.

### **32 Cancellation of registration of grower**

(1) If the Board is satisfied that a registered grower has—

- (a) been convicted of an offence in terms of this Act; or
- (b) furnished false information in any return furnished to the Board; or
- (c) failed to comply with any condition fixed or to perform any duty imposed on him by or in terms of this Act;

it may, subject to subsection (2), order that his registration as a grower be cancelled and that he shall not be entitled to be registered as a grower for such period as it thinks fit.

(2) Before making an order in terms of subsection (1)—

- (a) on the grounds referred to in paragraph (b) of that subsection, the Board shall call for and consider a report on the case by a person appointed by the Board to ascertain the correctness of returns furnished by registered growers to the Board;
- (b) on the grounds referred to in paragraph (c) of that subsection, the Board shall call for and consider a report on the case by an inspector or sales supervisor;
- (c) the Board shall afford the registered grower an opportunity of being heard.

(3) A registered grower who is aggrieved by an order made in terms of subsection (1) shall have a right of appeal to the Minister.

(4) On an appeal in terms of subsection (3) the Minister may confirm, amend or revoke the order made in terms of subsection (1).

## **PART VI**

### LICENSING OF GRADERS

### **33 Graders to be licensed**

(1) No person shall carry on the business of a grader unless he has been licensed as a grader by the Board.

(2) No licensed grader whose licence has been suspended in terms of section *thirty-five* shall carry on the business of a grader whilst his licence is suspended.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **34 Application for graders licence**

(1) An application for the issue of a graders licence shall be made to the Board in the manner prescribed by the Board.

(2) An applicant who is aggrieved by the refusal of the Board to issue to him a graders licence shall have a right of appeal to the Minister.

(3) On an appeal in terms of subsection (2) the Minister may confirm the decision of the Board or direct the Board to issue to the applicant a graders licence.

### 35 Cancellation or suspension of graders licence

- (1) If the Board is satisfied that a licensed grader—
  - (a) has been convicted of an offence in terms of this Act; or
  - (b) has furnished false information to the Board or to a registered grower; or
  - (c) has failed to comply with any condition fixed or to perform any duty imposed on him by or in terms of this Act;

it may, subject to subsection (2), order that his licence be cancelled or suspended for such period as it thinks fit.

- (2) Before making an order in terms of subsection (1)—
  - (a) on the grounds referred to in paragraph (b) of that subsection, the Board shall call for and consider a report on the case by an inspector;
  - (b) on the grounds referred to in paragraph (c) of that subsection, the Board shall call for and consider a report on the case by an inspector or a sales supervisor;
  - (c) the Board shall afford the licensed grader an opportunity of being heard.

(3) A person who is aggrieved by an order made in terms of subsection (1) shall have a right of appeal to the Minister.

(4) On an appeal in terms of subsection (3) the Minister may confirm, amend or revoke the order made in terms of subsection (1).

## PART VII

### LICENSING OF BUYERS

### 36 Buyers to be licensed

- (1) No person shall buy—
  - (a) on a licensed auction floor auction tobacco unless he is—
    - (i) licensed as a buyer of auction tobacco; or
    - (ii) registered as an authorized buyer of auction tobacco;by the Board;
  - (b) tobacco other than auction tobacco unless he is licensed as a buyer of such tobacco by the Board.

(2) No licensed buyer whose licence has been suspended in terms of section *thirty-eight* and no person registered as an authorized buyer on behalf of such a licensed buyer shall buy any tobacco whilst the licence is suspended.

[Subsection amended by Act 5 of 1997]

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### 37 Application for buyers licence

(1) An application for the issue of a licence to buy tobacco shall be made to the Board in the manner prescribed by the Board.

(2) The Board shall refuse to issue a licence to buy tobacco if it is not satisfied with the financial standing of the applicant for the licence.

[Subsection amended by act 5 of 1997]

(3) An applicant who is aggrieved by the refusal of the Board to issue to him a buyers licence shall have a right of appeal to the Minister.

(4) On an appeal in terms of subsection (3) the Minister may confirm the decision of the Board or direct the Board to issue to the applicant a buyers licence.

(5) If a licence to buy tobacco is issued to a body corporate or a partnership, the body corporate or partnership shall cause the person authorized to buy on its behalf to be registered as an authorized buyer by the Board.

[Subsection amended by act 5 of 1997]

(6) An application for the registration of a person as an authorized buyer on behalf of a body corporate or partnership shall be made in the manner prescribed by the Board.

### 38 Cancellation or suspension of buyers licence

- (1) If the Board is satisfied that a licensed buyer—
  - (a) has been convicted of an offence in terms of this Act; or
  - (b) has failed to comply with any condition fixed or to perform any duty imposed on him by or in terms of this Act;

it may, subject to subsection (2), order that his licence be cancelled or suspended for such period as it thinks fit.

(2) Before making an order in terms of subsection (1)—

- (a) on the grounds referred to in paragraph (b) of that subsection, the Board shall call for and consider a report on the case by an inspector or sales supervisor;
- (b) the Board shall afford the licensed buyer an opportunity of being heard.

(3) A person who is aggrieved by an order made in terms of subsection (1) shall have a right of appeal to the Minister.

(4) On an appeal in terms of subsection (3) the Minister may confirm, amend or revoke the order made in terms of subsection (1).

## PART VIII

### LICENSING OF AUCTION FLOORS

#### 39 Board to licence auction floors

The Board shall license such premises as it considers sufficient and suitable for the sale of auction tobacco.

#### 40 Auction tobacco to be sold only on licensed auction floor

(1) No person shall buy or sell or offer to sell or permit the sale of auction tobacco on premises owned or occupied by him—

- (a) unless the premises have been licensed as an auction floor by the Board; or
- (b) whilst the auction floor licence issued in respect of the premises is suspended.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### 41 Application for auction floor licence

(1) An application for the issue of an auction floor licence shall be made to the Board in the manner prescribed by the Board.

(2) The Board shall refuse any application in terms of subsection (1) if it considers that there are sufficient premises for the sale of auction tobacco or that the premises to which the application relates are not suitable for the sale of auction tobacco.

(3) An applicant who is aggrieved by the refusal of the Board to issue an auction floor licence to him shall have a right of appeal to the Minister.

(4) On an appeal in terms of subsection (3) the Minister may confirm the decision of the Board or direct the Board to issue to the applicant an auction floor licence.

#### 42 Cancellation or suspension of auction floor licence

(1) If the Board is satisfied that the holder of an auction floor licence or the manager of a licensed auction floor has—

- (a) been convicted of an offence in terms of this Act; or
- (b) furnished false information to the Board or a sales supervisor; or
- (c) failed to comply with any condition fixed or to perform any duty imposed on him by or in terms of this Act;

it may, subject to subsection (2), order that his licence be cancelled or suspended for such period as it thinks fit.

(2) Before making an order in terms of subsection (1)—

- (a) on the grounds referred to in paragraph (b) or (c) of that subsection, the Board shall call for and consider a report by an inspector or a sales supervisor;
- (b) the Board shall afford the holder of the auction floor licence an opportunity of being heard.

(3) A person who is aggrieved by an order made in terms of subsection (1) shall have a right of appeal to the Minister.

(4) On an appeal in terms of subsection (3) the Minister may confirm, amend or revoke the order made in terms of subsection (1).

#### 43 Conditional authority for auction floor licence

(1) A person, including the holder of an auction floor licence, who proposes to erect premises or to extend or alter premises, including a licensed auction floor, for use as an auction floor shall apply to the Board for a conditional authority in the manner prescribed by the Board.

(2) The Board shall issue a conditional authority referred to in subsection (1) to an applicant if it is satisfied that—

- (a) the premises to which the application relates will, when erected, extended or altered, as the case may be, be suitable for the sale of auction tobacco; and

(b) it is desirable, having regard to the amount of auction tobacco which can be sold on existing licensed auction floors, to license additional premises as auction floors.

(3) If, in the opinion of the Board, premises to which a conditional authority referred to in subsection (1) relates are erected or extended or altered substantially in conformity with such information and documents as the Board may require to be furnished in connection with the application for the conditional authority, the Board shall, on application made in terms of subsection (1) of section *forty-one*, issue an auction floor licence in respect of the premises.

## PART IX

### SALE OF TOBACCO ON LICENSED AUCTION FLOORS

#### 44 Auction tobacco to be sold on licensed auction floor

(1) Subject to subsection (2), no person shall within Zimbabwe—

- (a) barter auction tobacco; or
- (b) sell auction tobacco otherwise than by auction on a licensed auction floor; or
- (c) buy auction tobacco otherwise than at an auction on a licensed auction floor.

(2) Subsection (1) shall not apply to—

- (a) the barter, sale or purchase of tobacco which has been sold on a licensed auction floor or in accordance with the provisions of Part XI; or
- (b) the barter, sale or purchase of tobacco disposed of in accordance with the instructions of the Board given in terms of subsection (2) of section *fifty-one*; or
- (c) the sale or purchase of tobacco as a trade sample not exceeding three kilograms; or
- (d) the sale or purchase of tobacco which is bought with the written consent of the Board for such purposes as the Board may authorize.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### 45 Sale of auction tobacco grown within Zimbabwe

(1) The holder of an auction floor licence shall not accept or offer for sale or permit the sale on his auction floor of auction tobacco which was grown within Zimbabwe unless the tobacco—

- (a) was grown by a registered grower; and
- (b) is delivered by or on behalf of a registered grower or a person to whom a registered number has been allotted in terms of subsection (2) of section *twenty-seven*.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### 46 Sale of auction tobacco grown outside Zimbabwe

(1) No person shall accept for sale, buy or sell or offer to sell or permit the sale on a licensed auction floor of auction tobacco which was not grown within Zimbabwe unless the sale of such tobacco within Zimbabwe has been authorized by the Board.

(2) Before auction tobacco referred to in subsection (1) is sold on a licensed auction floor the holder of the auction floor licence shall make known to all buyers on the auction floor the country within which the tobacco was grown.

(3) Auction tobacco referred to in subsection (1) which is offered for sale on a licensed auction floor—

- (a) shall be offered for sale and sold separately from auction tobacco which was grown within Zimbabwe; and
- (b) shall not be purchased for the purposes of manufacture in Zimbabwe without the authority in writing of the Minister.

(4) The Minister shall not authorize the purchase of tobacco for the purposes of paragraph (b) of subsection (3) except in pursuance of a customs or trade agreement between the Government of Zimbabwe and the country within which the tobacco was grown.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level nine.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **47 Delivery of licensed auction floors of auction tobacco which was grown in previous growing season**

(1) No person shall deliver to a licensed auction floor, after the final delivery day, auction tobacco which was reaped before that day unless he is the holder of—

- (a) a certificate issued not more than thirty days before the tobacco is delivered to the auction floor by a person prescribed by the Minister to the effect that—
  - (i) the tobacco has been fumigated in a manner prescribed by the Minister; and
  - (ii) the tobacco or a representative sample of the tobacco has been inspected and no evidence of the presence of a living pest of tobacco has been found;

and

- (b) a permit issued by the Board in terms of subsection (1) of section *seventy-five*.

(2) Before tobacco referred to in subsection (1) is offered for sale on a licensed auction floor the sales supervisor on the auction floor shall make known to all the buyers on the auction floor the year of the growth and the state of the tobacco.

(2a) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

- (3) For the purposes of subsection (1)—

“final delivery day” means the day prior to the end of the selling season which is fixed by the Board to be the final day on or before which tobacco shall be received at a licensed auction floor for sale during that selling season.

#### **48 Auction tobacco to be sold only on sale days in the selling season, etc.**

(1) The holder of an auction floor licence shall not allow auction tobacco to be sold or offered for sale on his auction floor—

- (a) on any day which is not a day in the selling season fixed by the Board; or
- (b) on any day in the selling season or during any hour on a day in the selling season other than a day or an hour on a day fixed by the Board; or
- (c) at any time in any period in a selling season during which the Board or a sales supervisor has prohibited sales on his auction floor; or
- (d) which is delivered to his auction floor in contravention of the provisions of section *forty-seven*.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **49 Deductions from purchase price of auction tobacco**

(1) A buyer of auction tobacco shall pay the purchase price of the tobacco to the holder of the auction floor licence on whose auction floor the tobacco is sold.

(2) The holder of an auction floor licence, after deducting—

- (a) the charges which he is authorized to make in terms of paragraph (a) of subsection (1) of section *fifty*; and
- (b) the amount of the levy, if any, which he may be required to collect in terms of this Act;

shall, subject to the Farmers Stop-order Act [*Chapter 18:11*], pay the balance of the purchase price to the seller or such person as the seller may authorize in writing.

#### **50 Charges of holders of auction floor licences**

The holder of an auction floor licence—

- (a) may make—
  - (i) weighing, storage and handling charges in respect of auction tobacco which is accepted for sale on his auction floor; and
  - (ii) selling and commission charges in respect of auction tobacco which is sold on his auction floor; not exceeding such amount as the Board, with the approval of the Minister, may fix; and
- (b) may grant to registered growers or other sellers of auction tobacco any rebate or remission of a charge referred to in paragraph (a); and
- (c) shall not make any charge other than a charge referred to in paragraph (a).

## 51 Disposal of auction tobacco which is left unsold

(1) The Board may give notice to an owner of auction tobacco which remains unsold on a licensed auction floor after the last day of the selling season to remove the tobacco from the auction floor within a period fixed by the Board.

(2) If an owner of tobacco referred to in subsection (1) to whom notice has been given in terms of that subsection fails to remove the tobacco within the period fixed by the Board in the notice, the Board may instruct the holder of the auction floor licence to destroy or dispose of the tobacco without payment of compensation to the owner.

(3) The holder of an auction floor licence shall pay to the Board the proceeds of any tobacco referred to in subsection (1) which he disposes of in accordance with the instructions of the Board less the costs of disposal determined by the Board.

## 52 Supervision, suspension and prohibition of sales on licensed auction floors

(1) A sales supervisor may—

(a) attend a sale of auction tobacco which is held on a licensed auction floor; and

(b) in accordance with instructions supplied to him in terms of paragraph (a) of subsection (2)—

(i) control and regulate the sale and the sales programme; or

(ii) if, in his opinion, compliance is not being made with the provisions of this Act relating to the sale of auction tobacco, suspend or prohibit the sale for such period as he may fix;

and for that purpose give such directions to the holder of the auction floor licence or the auction floor manager as circumstances may require.

(2) The Board shall supply—

(a) sales supervisors with instructions in writing governing their powers to—

(i) control, regulate, suspend or prohibit sales of auction tobacco on licensed auction floors;

(ii) give directions such as are referred to in paragraph (b) of subsection (1);

and

(b) holders of auction floor licences with copies of all instructions referred to in paragraph (a), together with any alterations to the instructions made by the Board.

## PART X

### IMPOSITION OF LEVY ON TOBACCO

## 53 Imposition of levy

(1) Subject to this Act, the Minister may prescribe that a levy shall be payable on tobacco which is—

(a) sold in Zimbabwe; or

(b) grown in Zimbabwe and either manufactured in or exported from Zimbabwe.

(2) The Minister, after consultation with the recognised Growers Associations and the recognised Buyers Associations, shall prescribe the amount of the levy.

[Subsection substituted by Act 5 of 1997].

## 54 Prescribing of matters relating to levy

(1) The Minister shall prescribe—

(a) the persons who shall be responsible for the payment of the levy; and

(b) the persons who shall be responsible for the collection and remittal of the levy; and

(c) the manner in which and times at which the levy shall be paid, collected and remitted; and

(d) .....

[Paragraph repealed by Act 5 of 1997].

(2) In prescribing the persons, the rate of the levy and other matters which by this Part are required or permitted to be prescribed the Minister may—

(a) make different provision in respect of different types and grades of tobacco;

(b) make no provision in respect of particular types and grades of tobacco;

(c) make different provision in respect of different classes of persons prescribed for the purposes of subsection (1);

(d) provide that the levy may be paid, collected or remitted by different methods or at different times;

(e) provide for exemptions from the levy.

(f) .....

[Paragraph repealed by Act 5 of 1997].

(3) In prescribing types and grades of tobacco for the purposes of this Part the Minister may have regard, amongst other things, to the purposes for which or the manner or areas in which or the persons by whom tobacco is produced, manufactured or dealt in.

- (4) the levy shall be remitted to the Secretary.

[Subsection inserted by Act 5 of 1997]

## 55 Withdrawal or suspension of levy

- (1) The Minister may by order—

- (a) withdraw the levy; or  
(b) suspend the levy in whole or in part.

[Subsection amended by Act 5 of 1997]

- (2) .....

[Subsection repealed by Act 5 of 1997]

## 55A Establishment of levy account

(1) Notwithstanding section 23 of the Audit and Exchequer Act [*Chapter 22:03*], the Minister shall establish an account to be known as the tobacco levy account into which the Secretary shall pay the proceeds of the levy.

(2) The moneys in the tobacco levy account may, until such time as they are disbursed in terms of this Act, be invested by the Minister in such manner as the Minister, in consultation with the Minister responsible for finance, may determine.

(3) Moneys accruing by way of interest on or the realisation of investments made in terms of subsection (2) shall be credited to the tobacco levy account.

[Section inserted by Act 5 of 1997]

## 55B Disbursement of tobacco levy

From the moneys in the tobacco levy account the Minister shall, in each financial year—

- (a) pay to the Board such amount as he considers the Board requires for the purpose of meeting the expenditure incurred or to be incurred by the Board in that financial year in exercising its functions in terms of this Act; and  
(b) pay to each recognised Growers Association and recognised Buyers Association such amount as he considers the associations require for the purposes of subsections (1) and (2) of section *fifty-six*; and  
(c) pay to such person as he considers appropriate such amount as, in his opinion, is necessary or desirable to be expended on research and training in connection with the production and additionally or alternatively, marketing of tobacco.

[Section inserted by Act 5 of 1997]

## 56 Objects of levy and levy fund

(1) The moneys received by a recognized Growers Association or recognized Buyers Association from the tobacco levy account shall be kept in a separate fund and shall be applied to objects calculated to promote generally the interests of those classes of persons by whom the levy was paid.

[Subsection amended by Act 5 of 1997]

(2) Without derogation from the generality of subsection (1), the moneys in a levy fund may be applied to all or any of the following—

- (a) research, training or promotion in connection with the production or marketing of tobacco;  
(b) expenses incurred in the administration of the affairs of the association concerned;  
(c) expenses incurred in the collection of the levy, including amounts paid to persons for collecting and remitting the levy;  
(d) .....

[Paragraph repealed by Act 5 of 1997]

- (e) such investments as the association concerned thinks appropriate.

(3) Where any investment has been made from a levy fund—

- (a) any interest earned and any benefit received on the realization of the investment shall be credited to the levy fund;  
(b) any loss incurred on the realization of the investment shall be debited to the levy fund.

(4) A recognized Growers Association or recognized Buyers Association which has established a levy fund shall—

- (a) keep proper accounts and other records relating to its levy fund showing the manner in which moneys in the fund have been dealt with; and  
(b) submit a statement of accounts relating to its levy fund in respect of each financial year of the association concerned or such other period as the Minister may specify within such period as may be prescribed by the Minister after the end of the financial year or the period specified by him, as the case may be.

(5) A statement of accounts submitted in terms of paragraph (b) of subsection (4) shall be accompanied by a report from the auditors of the association concerned stating whether, in their opinion, the requirements of this section have been complied with.

(6) If at any time it appears to the Minister that a recognized Growers Association or recognized Buyers Association has spent moneys in its levy fund otherwise than in accordance with this section, he may require any person responsible for so spending the moneys to repay to the levy fund the moneys spent and for that purpose cause action to be brought in a court of competent jurisdiction.

(7) Any person authorized by the Minister for the purpose may at all reasonable times call for the production of, have access to and ask for any books, documents, records or information relating to a levy fund which are in the possession or under the control of the association concerned or any employee or agent thereof in order to inspect the same and ascertain whether the provisions of this section are being complied with.

(8) In this section—

“levy fund” means a fund referred to in subsection (1).

### **57 Summary judgment for levy in criminal proceedings**

(1) On the conviction of a person for an offence of failing or refusing to pay the levy or to collect or remit the levy to the Secretary in terms of this Act, the court convicting the accused may, on the application of the prosecutor and in addition to any penalty which it may impose, give summary judgment against the accused in favour of the Minister for the amount of the levy to which the offence relates.

[Subsection amended by Act 5 of 1997]

(2) A judgment given by a court in terms of subsection (1) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted in the court.

### **58 Recovery of levy**

The Secretary may, by proceedings in a court of competent jurisdiction, recover the amount of the levy which is due in terms of this Act from a person required in terms of this Act to pay the levy or to collect and remit the levy to the Secretary.

[Section amended by Act 5 of 1997]

## **PART XI**

### **MARKETING QUOTAS AND POOLS**

### **59 Control of marketing of tobacco of specified type or grade**

(1) If, in the opinion of the Board, the quantity of tobacco of a particular type or grade which is being produced or is likely to be produced in Zimbabwe will exceed the requirements of the local and outside markets, the Board may, by statutory instrument, make such provision as it considers necessary or convenient to regulate or control the sale of tobacco grown in Zimbabwe which is of that particular type or grade.

(2) In the exercise of the power conferred upon it by subsection (1) the Board may—

- (a) provide for the making of applications for marketing quotas or the circumstances in which a person shall be deemed to have made such an application;
- (b) provide for the manner in which the marketing quotas of registered growers of tobacco of a specified type or grade shall be fixed;
- (c) provide for the forms, information and returns which shall be submitted by registered growers of tobacco of a specified type or grade, licensed graders and holders of auction floor licences;
- (d) provide for the manner in which and period within which a registered grower may make representations to the Board, or any committee of registered growers or other persons appointed by the Board for the purpose, in connection with the marketing quota fixed or to be fixed for him;
- (e) provide that the Board may, in any particular case, refuse to fix a marketing quota for a registered grower;
- (f) provide that the Board may increase, reduce or withdraw a marketing quota fixed for any particular registered grower or class of registered growers;
- (g) control and regulate the marketing of tobacco of a specified type or grade;
- (h) prohibit the sale by a registered grower of tobacco of a specified type or grade which is in excess of the marketing quota fixed for that registered grower;
- (i) prescribe penalties for contraventions of the statutory instrument, but no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment;

[Paragraph inserted by section 4 of Act 22 of 2001]

(3) In making a statutory instrument in terms of subsection (1) the Board may—

- (a) provide that for certain classes of registered growers the marketing quota for each registered grower of that class shall be fixed by the Board after taking into consideration such factors as may be specified and any other factors which the Board considers to be relevant;

- (b) provide that the Board may appoint a committee or committees of registered growers or other persons to perform functions in connection with the fixing of marketing quotas and the hearing of representations by registered growers;
- (c) make different provision for different classes of registered growers.

## **60 Evidence of amount of marketing quotas**

A certificate by the Board stating the amount of the marketing quota of a registered grower shall, on its production by any person in any court, be *prima facie* evidence of the amount of his marketing quota.

## **61 Establishment of pools**

If the Board, after consultation with the recognized Growers Association, considers that it is necessary or desirable that—

- (a) tobacco of a particular type or grade which is grown in Zimbabwe or the proceeds thereof should be collected into a pool for disposal by the Board; or
- (b) tobacco which remains or will remain unsold after the close of a selling season should be collected into pools for disposal by the Board;

the Board may establish a pool for the collection and disposal of such tobacco or the proceeds thereof.

(2) On the establishment in terms of subsection (1) of a pool, the Board shall have power to do anything which, in its opinion, is necessary or convenient for, or incidental or conducive to, the collection of pool tobacco or the proceeds thereof into pools and to enable the Board to dispose of such tobacco to the best advantage on such terms as it considers reasonable:

Provided that the Board shall offer the pool tobacco to licensed buyers before disposing of it to any other buyer.

- (3) Without derogation from the generality of subsection (2), the Board may, in the exercise of its powers—
  - (a) require the delivery of pool tobacco to the Board;
  - (b) decline to accept pool tobacco which it considers unsuitable for collection into pools and disposal by the Board;
  - (c) repack, strip or recondition pool tobacco accepted by the Board;
  - (d) make advances and disbursements to or on behalf of registered growers who have delivered pool tobacco for the pool and, for the purposes of making such advances and disbursements, pledge as security pool tobacco and other assets in the possession or under the control of the Board;
  - (e) after deducting the amount of any advances or disbursements made to or on behalf of registered growers who have delivered pool tobacco for the pool, together with the cost estimated by the Board of administering the pool, make interim distributions to the registered growers of the proceeds of any sale or disposal of any pool tobacco;
  - (f) recover the costs of administering the pool from the registered growers who have delivered pool tobacco for the pool;
  - (g) make the costs of administering a pool a charge against pool tobacco over which the Board has a lien;
  - (h) after offering pool tobacco in the first instance for sale to licensed buyers and after consultation with the recognized Buyers Association, dispose of the pool tobacco which is not bought by licensed buyers in such manner and on such terms as the Board considers reasonable;
  - (i) order the destruction of pool tobacco or, after consultation with the recognized Buyers Association, the disposal of pool tobacco which the Board has declined to accept in terms of paragraph (b);
  - (j) issue participation certificates to registered growers who have delivered pool tobacco for a pool.

(4) A participation certificate issued in terms of paragraph (j) of subsection (3) may be assigned or ceded by a registered grower to whom it is issued and the assignment or cession shall be registered in the books of the Board.

## **62 Board may dispose of over-quota tobacco otherwise than through pools**

Nothing in section *sixty* or *sixty-one* shall be construed as precluding the Board from accepting and disposing of or providing for the disposal of over-quota tobacco in such manner and on such terms as the Board considers reasonable without collecting such tobacco into a pool:

Provided that the Board shall first offer such over-quota tobacco to licensed buyers.

## **PART XII**

### **GENERAL**

## **63 Sale of tobacco other than auction tobacco**

(1) The Board may direct that any class or classes of growers of tobacco other than auction tobacco shall deliver such tobacco for sale to any place or places which the Board may specify.

(2) Any person who contravenes a direction under subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **64 Marketing of tobacco which is not of prescribed variety prohibited**

(1) Subject to section *sixty-eight*, no person shall offer or deliver or accept for sale, sell or otherwise dispose of tobacco of a variety or seed of tobacco of a variety which is not a variety prescribed by the Board, on the recommendation of the Research Board, for the purposes of this section:

Provided that the Board, on the recommendation of the Research Board, may prescribe types or varieties of tobacco to which this section shall not apply.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **65 Limitations on use of remedies**

(1) Subject to subsection (2), no person shall, without the permission of the Board given after consultation with the Research Board—

- (a) treat any tobacco seedling or tobacco plant with a remedy which is not registered in terms of the Fertilizers, Farm Feeds and Remedies Act [*Chapter 18:12*] for use on tobacco; or
- (b) reap tobacco leaves from a tobacco plant which has been treated with a remedy in contravention of paragraph (a); or
- (c) sell or otherwise dispose of any tobacco from a tobacco plant referred to in paragraph (b).

(2) Paragraphs (a) and (b) of subsection (1) shall not apply in relation to tobacco grown by or on behalf of the Research Board.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **66 Destruction of tobacco or tobacco seed in certain circumstances**

(1) Subject to section *sixty-eight*, the Board may order any person in possession of tobacco of a variety, or seed of tobacco of a variety, which—

- (a) is not of a variety prescribed for the purposes of section *sixty-four*; and
- (b) is offered or delivered or accepted for sale or sold or otherwise disposed of within Zimbabwe;

to destroy the tobacco or seed in such manner and within such period as the Board may specify.

(2) The Board may order any person in possession of tobacco which has been treated with a remedy in contravention of section *sixty-five* to destroy the tobacco in such manner and within such period as the Board may specify:

Provided that this subsection shall not apply in relation to tobacco grown by or on behalf of the Research Board.

(3) Any person who contravenes an order in terms of subsection (1) or (2) shall be guilty of an offence and liable—

- (a) in the case of an order in terms of subsection (1), to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (b) in the case of an order in terms of subsection (2), to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section inserted by section 4 of Act 22 of 2001]

#### **67 Powers of inspectors in connection with tobacco which is not of prescribed variety or which is treated with an unauthorized remedy**

(1) Subject to section *sixty-eight*, if an inspector finds that on any land tobacco of a variety which, in his opinion, is not a variety prescribed for the purposes of section *sixty-four* is being or has been grown, he shall immediately inform the Board and the grower of his opinion.

(2) If an inspector finds that on any land tobacco seedlings or tobacco plants have, in his opinion, been treated with a remedy in contravention of section *sixty-five*, he shall immediately inform the Board and the grower of his opinion:

Provided that this subsection shall not apply in relation to tobacco grown by or on behalf of the Research Board.

(3) A grower referred to in subsection (1) or (2) may, within seven days of being informed of the inspector's opinion, request the Board to have his tobacco inspected by some other inspector or a person appointed by the Board.

(4) If—

- (a) a grower referred to in subsection (1) makes no request as in subsection (3) is provided; or
- (b) after the inspection of the tobacco of the grower by an inspector or other person referred to in subsection (3), it is confirmed that the tobacco of the grower is not of a variety prescribed for the purposes of section *sixty-four*;

the Board may, subject to section *sixty-eight*, order the grower in terms of section *sixty-six* to destroy the tobacco.

[Subsection amended by section 4 of Act 22 of 2001]

(5) If—

- (a) a grower referred to in subsection (2) makes no request as in subsection (3) is provided; or
- (b) an inspection of the tobacco of the grower by an inspector or other person referred to in subsection (3) confirms that the tobacco of the grower has been treated with a remedy in contravention of section *sixty-five*;

the Board may order the grower in terms of section *sixty-six* to destroy the tobacco seedlings or the tobacco plants or leaves reaped from such tobacco.

[Subsection amended by section 4 of Act 22 of 2001]

(6) This section shall apply, *mutatis mutandis*, to seed of tobacco which is not a variety prescribed for the purposes of section *sixty-four*.

### **68 Authorization of growing or marketing of tobacco which is not of prescribed variety**

(1) The Board, with the approval of the Research Board, may issue a permit authorizing, subject to such conditions as it may fix or prescribe, the growing or the offering or delivering or accepting for sale, the sale or other disposal of tobacco of a variety or seed of tobacco of a variety which is not a variety prescribed for the purposes of section *sixty-four*.

(2) Section *sixty-four*, subsection (1) of section *sixty-six* and subsections (1), (3) and (4) of section *sixty-seven* shall not apply in relation to tobacco or seed of tobacco which is—

- (a) grown, offered or delivered or accepted for sale, sold or disposed of in accordance with the conditions of a permit issued in terms of subsection (1); or
- (b) of a type or variety prescribed in terms of section *sixty-four* as being a type to which that section shall not apply.

### **69 Appointment of inspectors**

Subject to the law relating to the Public Service, the Minister may, for the purposes of this Act, appoint persons as inspectors:

Provided that the Minister shall not appoint as an inspector any person or class of persons in the employment of the Board without the consent of the Board.

### **70 Proceedings on failure of Board to comply with Act**

(1) If at any time it appears to the Minister that the Board has failed to comply with this Act, he may, by notice in writing, require the Board to make good the default within a period fixed by him.

(2) If the Board fails to comply with a notice referred to in subsection (1), the Minister may apply to the High Court for an order compelling the Board to remedy the default and the High Court may make such order on the application as it thinks fit.

### **71 Fixing of minimum prices at which tobacco may be sold**

(1) Subject to subsection (3), the Board may fix minimum prices at which tobacco may be sold for the purposes of the local market and outside markets.

(2) In the exercise of the powers conferred upon it by subsection (1), the Board may fix different minimum prices in respect of different markets and different types and grades of tobacco.

(3) The Board shall not vary a minimum price fixed in terms of subsection (1) during a selling season.

### **72 Fixing of minimum price at which tobacco stems may be sold**

No person shall sell tobacco stems to a person in Zimbabwe who manufactures tobacco for the purposes of smoking, chewing or snuffing below a minimum price fixed by the Board.

### **73 Duties of licensed buyers**

(1) A licensed buyer shall—

- (a) purchase tobacco only at or above the appropriate minimum price fixed for the purpose of the market in respect of which the purchase is made; and

(b) if the Board has, in terms of section *seventy-one*, fixed a minimum price for the local market or an outside market, declare at the time of the purchase the market for the purposes of which the tobacco is purchased.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **74 Resale of tobacco bought for the local market below the appropriate minimum price**

(1) Subject to subsection (2), no person shall resell in Zimbabwe tobacco which has not been bought by him or on his behalf at or above the appropriate minimum price fixed for the purposes of the local market.

(1a) Subject to subsection (2), any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(2) If the Minister is satisfied that tobacco bought in Zimbabwe at a price below the appropriate minimum price fixed for the purposes of the local market will be—

(a) manufactured in Zimbabwe by cutting at four cuts or more per twenty-five millimetres; and

(b) exported from and sold outside Zimbabwe;

the Minister may, on the recommendation of the Board, issue a permit authorizing, subject to such conditions as he may fix or prescribe, the resale of that tobacco.

#### **75 Destruction of tobacco which remains unsold**

(1) Subject to subsection (3), any person who has in his possession or under his control tobacco of a class specified by the Minister, by statutory instrument, which has not been sold before such date in any year as may be specified by the Minister in that statutory instrument shall, unless he is the holder of a permit issued by the Board, destroy all such tobacco on or before such date.

(2) In issuing a permit in terms of subsection (1) the Board may impose such terms and conditions as it may deem necessary or desirable.

(3) Subsection (1) shall not apply to auction tobacco which is kept by the grower in his possession or under his control for the purposes of manufacture in accordance with an authority referred to in section *seventy-six*.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **76 Manufacture, etc. of auction tobacco not sold on licensed auction floors prohibited**

(1) No person shall, without the authority in writing of the Board—

(a) manufacture within Zimbabwe auction tobacco, whether for sale as manufactured tobacco or otherwise; or

(b) keep auction tobacco in his possession or under his control within Zimbabwe for the purposes of manufacture and sale, whether as manufactured tobacco or otherwise;

unless the tobacco has been sold on a licensed auction floor.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **77 Certain returns to be confidential**

(1) Subject to subsection (2), no return or information in a return furnished to the Board by a registered grower or the holder of an auction floor licence which relates to the purchases of a particular licensed buyer shall be delivered or disclosed to any person, other than the Minister or an officer in his Ministry, without the permission of the licensed buyer.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(2) A return referred to in subsection (1) may, if required by the Prosecutor-General for the purposes of investigating or prosecuting an alleged offence, be delivered to the Prosecutor-General or such person as the Prosecutor-General may direct.

## 78 Period of validity of licences

A licence issued by the Board in terms of this Act shall not be valid after the 31st December of the year in respect of which the licence is issued.

## 79 Fees payable on issue of authorities, licences or permits by Board

(1) A fee of such amount and payable in such manner as the Board, with the approval of the Minister, may fix shall be payable in connection with an application for the issue and the issue by the Board of an authority, licence or permit in terms of this Act.

(2) In fixing a fee in terms of subsection (1) which is payable by graders or particular classes of graders the Board may—

- (a) fix a fee calculated in relation to the quantity of tobacco graded by that grader during any season;
- (b) provide for a system of refunds to, or additional charges payable by, licensed graders during the selling season.

(3) The Board shall not be liable to refund to the holder of an authority, licence or permit which is cancelled or suspended in terms of this Act the fee or any part of the fee paid to the Board in connection with the issue of the authority, licence or permit.

## 80 Regulatory powers of Minister

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

(2) Regulations in terms of subsection (1) may provide for—

- (a) the returns which shall be furnished to the Board by registered growers, licensed buyers, holders of auction floor licences and persons who handle, prepare or process tobacco for the purposes of sale or export after its sale, whether on licensed auction floors or otherwise;
- (b) the form in which applications shall be made for the issue by the Minister of authorities and permits;
- (c) the form and manner in which and the date by which or period within which the returns referred to in paragraph (a) shall be furnished;
- (d) the information to be contained in returns referred to in paragraph (a) and the information and documents to be supplied in connection with applications referred to in paragraph (b);
- (e) the form of, and the conditions to be contained in, authorities and permits issued by the Minister;
- (f) the circumstances in which, and the conditions subject to which, authorities and permits shall be issued by the Minister;
- (g) the periods of validity of authorities and permits issued by the Minister;
- (h) the fees to be paid in connection with applications for the issue, and the issue by the Minister, of authorities and permits;
- (i) the fees to be paid in connection with inspections performed by inspectors in terms of this Act.
- (j) the hearing and determination of appeals to the Minister for which provision is made in this Act and the fees to be paid and the procedure to be followed in connection therewith;
- (k) the inspection by inspectors and persons appointed by the Board of tobacco and of land or premises where tobacco is or has been grown, handled, graded, treated, processed, prepared, cured, sold or otherwise dealt in or stored;
- (l) the seizure by an inspector of books, documents and tobacco which, in the opinion of the inspector, may afford evidence of a contravention of this Act and the doing of such other things as may appear to the inspector to be necessary for ascertaining whether compliance has been made with this Act;
- (m) the seizure by a person, appointed by the Board to ascertain the correctness of returns furnished to the Board by registered growers, of books, documents and tobacco which, in the opinion of that person, may afford evidence of the furnishing of an incorrect return by a registered grower;
- (n) the production to inspectors of authorities, certificates, licences and permits issued in terms of this Act;
- (o) the prohibition, regulation or control of growers or other persons attending sales of tobacco on an auction floor;
- (p) the prohibition of the sale on a licensed auction floor of auction tobacco which is not packed in hessian or other packing materials obtained from a specified person;
- (q) the compulsory sale by persons selling tobacco on a licensed auction floor to a specified person, not being an authority established by or under the control of the State, at a specified price of hessian or other materials in which the tobacco is packed.
- (r) penalties for contraventions of regulations, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Paragraph inserted by section 4 of Act 22 of 2001]

(3) Regulations in terms of subsection (1) may provide for the furnishing of returns and information by—

- (a) registered growers relating to the quantities of tobacco, other than auction tobacco, bought from them by each licensed buyer and the prices paid by each licensed buyer for such tobacco;
- (b) licensed buyers relating to the quantities of auction tobacco and other tobacco bought by them and the prices paid by them for such tobacco;
- (c) holders of auction floor licences relating to the quantities of auction tobacco bought on their auction floors by each licensed buyer and the prices paid by each licensed buyer for such tobacco;
- (d) persons who handle, prepare or process tobacco for the purposes of sale or export relating to the ownership of the tobacco handled, prepared or processed by them, the places to which the tobacco is consigned and such other matters relating thereto as the Minister may consider expedient.

## 81 General offences and penalties

(1) Any person who, for the purpose of obtaining, whether for himself or any other person, registration or the issue of an authority, certificate, licence or permit under this Act—

- (a) makes a declaration or statement which he knows to be false in any material particular or does not have reasonable grounds for believing to be true; or
- (b) knowingly makes use of a declaration or statement such as is referred to in paragraph (a), or a document containing such a declaration or statement;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who, with intent to evade any provision or requirement of this Act, makes use of any forged authority, certificate, licence or permit shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who—

- (a) hinders or obstructs—
  - (i) an inspector; or
  - (ii) a sales supervisor; or
  - (iii) a person appointed by the Board to ascertain the correctness of returns furnished to the Board; in the exercise of his functions in terms of this Act; or
- (b) upon being lawfully required to do so by the Board or a person referred to in paragraph (a), fails or refuses to produce for inspection any authority, certificate, licence, permit or tobacco or any book, document or account relating thereto which is in his possession or under his control; or
- (c) fails or refuses to submit a statement required by subsection (4) of section *fifty-six* or to furnish any return or to supply any information in the manner or in the period prescribed, or furnishes a false or incomplete statement or return or supplies false or incomplete information;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) Any person who does anything contrary to a condition of an authority, licence or permit issued to him under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section inserted by section 4 of Act 22 of 2001]

## SCHEDULE (Section 17)

### POWERS OF BOARD

1. To acquire premises necessary or convenient for the exercise of its functions and the performance of its duties and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights over the same and concessions, grants, rights, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions and the performance of its duties.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions or the performance of its duties for such consideration as it may determine.
5. To draw, make, accept, endorse, discount, execute and issue for the purposes of its functions or duties promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.

7. With the approval of the Minister, to make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions or the performance of its duties and to modify or rescind such contracts or rescind such suretyships or guarantees.
8. Subject to the Audit and Exchequer Act [*Chapter 22:03*]—
  - (a) to raise moneys temporarily or otherwise by such means and for such purposes as the Minister may approve;
  - (b) to invest any of its moneys not immediately required by it in such manner as it, with the approval of the Minister in consultation with the Minister responsible for finance, may determine and to vary or realize investments so made.
9. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or the performance of its duties or any of them and to obtain from such government or authority rights, privileges and concessions which it thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
10. To appoint and employ such persons, including persons to supervise the sale of tobacco and to ascertain the correctness of returns furnished to the Board. as it considers to be expedient or necessary for the exercise of its functions or the performance of its duties.
11. To pay such remuneration and allowances and grant such leave of absence and, with the approval of the Minister, to make such gifts, bonuses and the like to its employees as it considers fit.
12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.
13. Subject to the approval of the Minister and with the consent of the Minister responsible for finance, the Board may, on such terms and conditions as it may determine—
  - (a) guarantee loans made to its employees for the purchase of dwellings or land for residential purposes and for the construction of dwellings on land which is the property of the employees of the Board; and
  - (b) provide security in respect of the loans described in paragraph (a), by the deposit of securities in which the Board is hereby authorized to invest moneys and, additionally, to transfer any reserves as it considers necessary for the purpose:

Provided that no guarantee for any individual loan shall exceed thirty *per centum* of the loan made to any employee of the Board.
14. For the purposes of developing outside markets, to buy tobacco grown in Zimbabwe for exhibition within or outside Zimbabwe.
15. To do all things which are necessary in its opinion to promote, protect and maintain, having regard to trade interests and the stability of existing outside markets, the sale outside Zimbabwe of tobacco grown in Zimbabwe.
16. To do anything which by this Act is required or permitted to be done or fixed by the Board.
17. To prescribe the matters which by this Act are required or permitted to be prescribed by the Board.
18. (1) To prescribe—
  - (a) the form and the manner in which applications for the issue by the Board of authorities, licences and permits;
  - (b) the form and the manner in which and the periods within which returns referred to in this Schedule; shall be made or furnished.(2) To prescribe the information and documents to be supplied to the Board in connection with applications to the Board referred to in subparagraph (a) of subparagraph (i) and the information to be contained in returns referred to in subparagraph (b) of subparagraph (1).
19. To prescribe—
  - (a) the form of and the conditions to be contained in authorities, licences and permits issued by the Board;
  - (b) the circumstances in which and the conditions subject to which authorities, licences and permits shall be issued by the Board;
  - (c) the period of validity of authorities and permits issued by the Board.
20. To prescribe the fees, approved by the Minister, which shall be paid to the Board in connection with applications for the issue and the issue by the Board of authorities, licences and permits.
21. To prescribe—

- (a) the returns to be furnished to the Board by registered growers, licensed buyers, holders of auction floor licences and persons who handle, prepare or process tobacco for the purposes of sale or export after its sale;
  - (b) the form and manner in which and the date by which or period within which the returns referred to in subparagraph (a) shall be furnished;
  - (c) the information to be contained in returns referred to in subparagraph (a):  
Provided that the Board shall not require any person to furnish returns showing the prices paid by any particular licensed buyer of tobacco on an auction floor.
22. To issue permits to registered growers and other producers of tobacco authorizing the retention and storage of tobacco which—
- (a) they have in their possession or under their control in Zimbabwe; and
  - (b) has not been sold by the last day of the selling season fixed by the Board before or during which the tobacco was grown.
23. To fix the days and hours of the days in the selling season fixed by the Board on or during which tobacco may, subject to this Act, be sold.
24. (1) To determine the basic delivery quota of each registered grower and his delivery quota for any particular delivery quota period.  
(2) To determine a different basic delivery quota for a registered grower who has wilfully or negligently made in a return for the purpose of determining his basic delivery quota an inaccurate estimate of the quantity of tobacco that he would sell in the selling season.
25. To order, in the case of a registered grower who delivers or causes to be delivered for sale tobacco in excess of his delivery quota, the removal at the risk and expense of that registered grower to a place specified by the Board of all tobacco of that registered grower in excess of his delivery quota which has not been sold and so much of any other unsold tobacco of that registered grower delivered to an auction floor as is equal to the amount in excess of his delivery quota which has been sold on the auction floor.
26. To require a registered grower to cause any of his tobacco which has been graded and prepared for delivery to a licensed auction floor by a licensed grader to be delivered to a licensed auction floor before any of his tobacco which has been graded otherwise than by a licensed grader.
27. To give directions to and prescribe the duties of licensed graders in connection with—
- (a) the handling and storing of tobacco received for grading;
  - (b) the grading of tobacco;
  - (c) the conditioning or treating of tobacco;
  - (d) the supervision to be exercised over the handling, grading, storing or dispatch of tobacco;
  - (e) the manner in which tobacco is to be dispatched after it has been graded;
  - (f) the receipts and documents to be furnished to the Board and to registered growers.
28. To prescribe conditions as to buildings, plant and equipment to be used by licensed graders for or in connection with the handling, grading, storing and dispatch of tobacco.
29. To fix the date in each selling season on which the Board deems it expedient to begin controlling and to stop controlling the rate of delivery of tobacco for sale and to determine the delivery quota periods and basic delivery quota periods.
30. To prohibit for any period in a selling season fixed by the Board the sale of tobacco.
31. To classify in grades prescribed by the Board tobacco which is accepted for sale on licensed auction floors before or after or before and after its sale and to mark the classification in such manner as the Board considers expedient.
32. To prohibit the sale of tobacco which is ungraded or is not graded or packed in accordance with the rules of the Board.
33. To order the destruction or disposal of tobacco which is delivered to licensed auction floors in a condition unsuitable for sale, whether by reason of its being pest-infested or otherwise.
34. To postpone the sale on licensed auction floors of tobacco which is suspected to have been reaped from tobacco plants which have been treated with a remedy in contravention of section *sixty-five* until the Board is satisfied that the tobacco is in a condition suitable for sale.
35. To postpone the sale on licensed auction floors of tobacco which is suspected to be of a variety not prescribed by the Board for the purposes of section *sixty-four* until—
- (a) the Board is satisfied that the tobacco is—
    - (i) of a variety prescribed for the purposes of that section; or
    - (ii) a type or variety to which the provisions of that section do not apply;as the case may be; or

- (b) a permit issued in terms of subsection (1) of section *sixty-eight* has been produced which authorizes the sale of the tobacco.
36. To require holders of auction floor licences to furnish to the Board in the form and manner required information relating to the expenses of operating their auction floors.
37. To prescribe the duties of holders of auction floor licences and managers of licensed auction floors in connection with—
- (a) tobacco which is received, accepted for sale, stored, offered for sale and sold;
  - (b) the keeping of records and the furnishing of returns to sales supervisors relating to tobacco which is received, accepted for sale, stored, offered for sale and sold;
  - (c) the purchase and resale of tobacco which is bought by holders of auction floor licences;
  - (d) the presentation and payment of accounts;
  - (e) the disposal of hessian and other packing materials;
  - (f) such other matters as, in the opinion of the Board, are necessary to be prescribed in order to enable the Board to ascertain whether or not compliance has been made with the provisions of this Act relating to the sale of tobacco.
38. To prescribe the duties of sellers on licensed auction floors in connection with the packing, marking and condition of tobacco, the removal of tobacco which is unsaleable and the disposal of hessian and other packing materials.
39. To prescribe the duties of licensed and registered buyers on licensed auction floors in connection with the removal of tobacco which is bought by them and the handling and disposal of hessian and other packing materials.
40. To prescribe the conditions in which a seller or buyer may repudiate or cancel the sale on a licensed auction floor of tobacco, the fees to be paid in connection with the examination of tobacco the sale or purchase of which repudiation is sought and the manner in which tobacco, the sale of which has been repudiated or cancelled, shall be disposed of.
41. To prescribe the liabilities of holders of auction floor licences in connection with losses, whether caused by errors in weighing or otherwise, and the making good of such losses.
42. To inspect books, accounts and other documents relating to—
- (a) the acceptance for sale and sale on licensed auction floors of tobacco; and
  - (b) the making by holders of auction floor licences of charges referred to in section *fifty*.
43. To supply instructions to and to prescribe the duties of sales supervisors.
44. To require the display of copies of the rules of the Board on the premises of licensed graders and on licensed auction floors.
45. To give directions to and to prescribe the duties of sellers and buyers in connection with—
- (a) the places at which tobacco, other than auction tobacco, shall be sold;
  - (b) the sale of tobacco other than auction tobacco;
  - (c) tobacco, other than auction tobacco, which is stored, offered for sale and sold;
  - (d) the keeping of records and the furnishing of returns to sales supervisors relating to tobacco, other than auction tobacco, which is stored, offered for sale and sold;
  - (e) the packing, marking and condition of tobacco, other than auction tobacco, and the disposal of hessian and other packing materials.
46. To provide such services as the Board, with the approval of the Minister and—
- (a) if the service is for growers, of the recognized Growers Association; or
  - (b) if the service is for buyers, of the recognized Buyers Association;
- considers could properly be provided by the Board and to charge for such services such fees as the Board, with the approval of the Minister, may from time to time determine.
47. For the purpose of recovering any penalty for which provision is made in the rules of the Board, to impound on any licensed auction floor and sell the tobacco of a registered grower who is convicted by a court of contravening the rules of the Board.
48. For the better exercise of the powers of the Board, to make such rules and notices as the Board may consider to be necessary or desirable and, without derogation from the generality thereof, to make rules and notices providing for all or any of the matters referred to in paragraphs 10, 11 and 12 and 16 to 44, and in so doing to make, with the approval of the Minister, provision for penalties not exceeding—
- (a) an amount equal to a fine of level five in the case of a contravention of the rules of the Board relating to delivery quotas or the packing of tobacco in such a way as to deceive buyers as to the nature and quality of the tobacco;
- [Subparagraph amended by section 4 of Act 22 of 2001]
- (b) an amount equal to a fine of level four in the case of any other contravention;
- [Subparagraph amended by section 4 of Act 22 of 2001]

which may be recovered by the Board by action in a court of competent jurisdiction on the conviction of a person for contravening the rules of the Board:

Provided that a registered grower shall not be liable to be prosecuted under this Act on a charge of wilfully or negligently making in a return, for the purpose of determining his basic delivery quota, an inaccurate estimate of the quantity of auction tobacco that he would sell in any selling season if a penalty in connection with his delivery quota in the next following selling season is fixed in accordance with subparagraph (2) of paragraph 24.

49. At any time to cancel or alter a direction or instruction given or supplied by the Board, to cancel or alter a duty, condition or procedure prescribed by the Board, to alter a period or days or hours fixed by the Board or to make different provision for any other matter for which provision has been made by the Board in the exercise of the powers conferred upon the Board by this Act:

Provided that it shall not be competent for the Board to cancel or alter a direction, instruction, duty, condition or procedure, or to alter a period or days or hours or to make different provision for any other matter which is given, supplied, prescribed, fixed or provided in a rule or notice made by the Board in the exercise of the power conferred upon it by paragraph 48 except by repealing the rule or notice or, as the case may be, amending or repealing and re-enacting the rule or notice or repealing the rule or notice and giving, supplying, prescribing, fixing or making the altered direction, instruction, duty, condition, procedure, period, days, hours or different provision otherwise than by way of a rule or notice.

50. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Board or the exercise of its powers in terms of this Act or any other enactment.