

CHAPTER 109 - PRODUCE INSPECTION

A LAW TO PROVIDE FOR THE INSPECTION OF PRODUCE INTENDED FOR EXPORT FROM NIGERIA

[4 *September* 1970]

1. This Law may be cited as the Produce Inspection Law.

2. —(1) This Law shall apply to the produce described in the First Schedule, being produce intended for export, and the word "produce" in this Law shall be construed accordingly except where the context otherwise requires.

(2) The Commissioner may by order add to or delete from the First Schedule any description of produce.

3. In this Law, unless the context otherwise requires:—

"adulterate" has the meaning assigned to it by regulations made under section 7;

"assistant produce officer" means an officer of that rank in the Produce Inspection Section;

"the Board" means the Produce Inspection Board established under section 4;

"to buy" includes to exchange or barter, whether for goods or services, and to agree or contract to buy, exchange or barter;

"to clean" means to free produce from any foreign, superfluous or inferior matter by picking, boiling or other means, and includes the extraction of excessive moisture from produce;

"the Commissioner" means the Commissioner charged with responsibility for produce inspection in the State;

"this Law" includes any regulations made or deemed to have been made under this Law;

"examiner" includes any rank of produce inspector or produce examiner of the Produce Inspection Service and any person appointed as an examiner in accordance with the provisions of this Law;

"to export" means to take or cause to be taken out of Nigeria;

"exportable standard" means a standard which is not lower than that prescribed for produce under the provisions of the Export of Nigerian Produce Act, or of any other law made or having effect as if made in accordance with subsection (1) of section 77 of the Constitution of the Federation;

"the Federal Board" means the Produce Inspection Board established under section 4 of the Produce (Enforcement of Export Standards) Act;

"to grade" means to grade according to grades prescribed under the provisions of the Export of Nigerian Produce Act, or of any other law made or having effect as if made in accordance with subsection (1) of section 77 of the Constitution of the Federation;

"to pass" means to pass as being of exportable standard;

"pest" means any vermin, insect, parasite, fungus, bacterium or disease harmful to produce;

"Produce Inspection Service" means the Produce Inspection of the Agricultural Services Division of the Ministry of Natural Resources of the State;

"produce officer" means any officer of the Produce Inspection Section of or above the rank of produce officer or pest control officer;

"receptacle" includes any motor vehicle or vessel;

"to sell" includes to exchange or barter, whether for goods or service, and to agree or contract to sell, exchange or barter;

"the State" means the Gongola State of Nigeria.

PART II.—GONGOLA STATE PRODUCE INSPECTION BOARD

4. With effect from the coming into operation of this Law there shall be established a State Produce Inspection Board constituted as hereinafter mentioned.

5. (1) The provisions of the Second Schedule shall apply in relation to the composition, constitution and proceedings of the Board.

(2) The Commissioner may by order vary the provisions of the seconds Schedule.

6. The functions of the Board shall be as follows:—

- (a) to advise the Commissioner upon the making of regulations under section 7 and the amendment or revocation thereof, and upon the making of any order under subsection (2) of section 2;
- (b) to advise the Commissioner upon any matter concerning the provisions of this Law or its application or concerning produce inspection generally or upon any matter referred to it by the Commissioner;
- (c) To advise the Commissioner as to what places should be appointed as inspection stations for produce.

PART III.—REGULATIONS

7.—(1) The Commissioner, after consultation with the Board and, if he considers it necessary, with the Federal Board, may make regulations prescribing or providing for:—

- (a) the precautions which shall be taken to prevent the occurrence and spread of pest infestation in produce, and the powers and duties of produce officers in relation to pest control;
- (b) the conditions under which the sale and purchase of produce may be carried out;
- (c) the inspection and grading of produce according to its quality and purity in relation to grades and standards prescribed under the provisions of the Export of Nigerian Produce Act, or of any other law made or having effect as if made in accordance with subsection (1) of section 77 of the Constitution of the Federation, and the prohibition or regulation of dealings with any produce which has not been so inspected and graded or which has been adulterated;
- (d) what shall be deemed to constitute adulteration in respect of any description of produce
- (e) the type of containers to be used for produce and the packing, closing, marking, or sealing of such containers;
- (f) the types of marking appliances, seals, presses or punch dies to be used by examiners, and the designs or numbers to be placed on such marking appliances, seals, presses or punch dies;
- (g) the powers and duties of produce officers, assistant produce officers and examiners in relation to the cleaning of any produce and the removal and destruction of any extraneous

matter or siftings separated from produce;

(h) the appointment of markets and other places as inspection stations at which produce may be inspected and graded;

(i) the structural conditions to which stores, buildings, markets, plinths, bagging yards and premises used or partly used for the inspection, grading and storage of produce must conform, the registration, classification and numbering of such premises and the conditions under which produce shall be stored;

(j) The prohibition of the inspection or grading of produce on any premises which do not conform to the conditions prescribed by regulations under paragraph (i), or which have not been registered;

(k) the enforcement of necessary precautions against fire in markets, produce stores, plinths, bagging yards, ginneries and ginnery dumps;

(l) the licensing of persons having charge of any premises referred to in paragraph (i) and of persons employed in the purchasing and storing of seed cotton;

(m) the form and place in which registers shall be kept by persons licensed under paragraph (l), and the inspection of such registers;

(n) the appointment of licensing authorities for the purposes of regulations made hereunder, the grant, renewal, form and duration of any licenses which may be prescribed, and the conditions which may be attached thereto;

(o) the fees to be paid including those for inspection or re-inspection or overtime, and the collection, disposition, allocation, reimbursement or waiver of such fees;

(p) conditions for the working of overtime by assistant produce officers or examiners, and the issue of permits for overtime work;

(q) generally for the better carrying into effect of the provisions of this Law.

(r) the penalties for offences against any regulations made hereunder, not exceeding a fine of one thousand naira or imprisonment for six months or both such fine and imprisonment.

(2) In relation to the making of regulations the Commissioner shall not be bound to act upon

the advice of the Board.

(3) The Commissioner may make regulations without first consulting the Board in any case in which the matter is, in his judgment, too urgent to admit of the Board giving its advice in the time within which it is necessary to make the regulations.

(4) Until regulations are made under the provisions of this section the regulations made under the Produce Inspection (Northern Nigeria) Law, and in force on the date of the coming into operation of this Law shall, in so far as they do not conflict with the provisions of this Law, remain in full force and effect in the State with such modifications as may be necessary to make them applicable to the provisions of this Law, and shall be deemed to have been made under this Law, and may be amended, varied modified and revoked as though they had been so made.

PART IV.—POWERS IN RELATION TO INSPECTION OF PRODUCE

8. The inspection, passing and grading of produce shall be carried out by examiners and by offices of the Produce Inspection Service in accordance with regulations made under section 7.

9.—(1) A produce officer, assistant produce officer or examiner may re-examine any produce which has been inspected and passed, and for such purpose may take all such steps, including the opening of packages as he may deem necessary.

(2) If upon re-examination the produce officer, assistant produce officer or examiner finds that the produce has not been properly passed or graded, or has deteriorated to such an extent as no longer to conform to the quality or grade assigned to it on its previous examination, such produce may be detained until it has been properly graded or passed.

Provided that the Commissioner or any officer deputed by him in writing may, if satisfied that the produce has deteriorated or been damaged without the fault of the owner, grant a written permit authorizing the release of the produce upon such conditions and for such purposes as may be specified in the permit.

(3) If upon re-examination the produce officer, assistant produce officer or examiner finds that the produce has been adulterated, or that any offence has been committed in respect of the produce, he shall deal with the produce in accordance with the provisions of sections 12, 13 and 14.

(4) If upon re-examination the produce officer, assistant produce officer or examiner finds that

the produce has been properly passed or graded, he shall cause it to be re-packed and properly marked.

10. The person in charge of any produce which is to be examined or re-examined in accordance with the provisions of this Law shall provide such labor as may be necessary for the purposes of the examinations or re-examination.

11.—(1) Where any produce, including for the purposes of this section:—

(a) foreign produce in transit through the State;

(b) local crops and commodities stored in the vicinity of any produce, is found or suspected to be infested with any pest, a produce officer may make such order as he deems necessary for the treatment of such pest.

(2) Upon the failure of the owner or person in charge of such produce to comply with an order made under subsection (1), a produce officer or other person authorized by him in writing may enter upon any land or premises upon which such produce is placed and carry out at the expense of the owner such measures as he deems necessary to prevent the spread of the pest.

12. For the purpose of carrying out his duties under this Law, any produce officer, assistant produce officer or examiner shall have power:—

(a) to enter all times that are reasonable, having regard to, among other things, the religious beliefs and social customs prevailing in the area concerned, any building or place in which he has reason to suppose that any produce is stored, and inspect and take samples of any produce stored therein, whether or not it has previously been inspected or graded;

(b) to stop any person carrying or believed to be carrying any produce and to examine the produce, and to stop and search any vehicle, boat, canoe or animal carrying or believed to be carrying produce and to call upon the person in charge of such vehicle, boat, canoe, or animal and the person or persons in charge of the produce to unload it for examination;

(c) to seize and detain any produce which he reasonably suspects to have been adulterated, or in respects of which an offence against this Law appears to have been committed, together with any receptacle in which such produce is contained, and to seize and detain any article, register or document connected with the offence;

(d) to direct the removal of any produce and receptacle seized under the provisions of paragraph (c) to the nearest suitable place for the purpose of depositing such produce and receptacle;

(e) in cases in which he is satisfied that the owner of any produce which has been seized and detained under the provisions of paragraph (c) did not know that the produce was adulterated, to permit the owner to clean the produce, and, when it has been cleaned, to release the produce and any receptacle in which the produce was contained

(f) to call upon any person to furnish him with any information he may reasonably require for the purpose of investigating any offence against this Law.

13.—(1) Where any produce which has been seized and detained under the provisions of section 12 is not already packed in receptacles, a produce officer, assistant produce officer or examiner may order that it shall be so packed, and the owner of the produce and the person in charge thereof at the time of seizure shall be responsible for the provision of suitable receptacles and the labor necessary to carry out the order.

(2) A produce officer may order that any produce which has been seized and detained in any premises shall be removed and kept under detention in other premises approved by him.

(3) Any produce which has been seized and detained shall be sealed in receptacles to the satisfaction of a produce officer, assistant produce officer or examiner, and shall not be removed or cleaned, except upon the order or with the written permission of a produce officer, until any charge or complaint in respect of the produce has been determined;

Provided that:—

(i) unless a charge or complaint is made within three months of its being seized the produce shall be released from detention;

(ii) notwithstanding anything contained in chapter XXX of the Criminal Procedure Code, where a person charged with an offence against the Law in respect of any produce has been acquitted or discharged, the court shall not order the release of the produce until fourteen days have elapsed from the date of the judgment of acquittal or discharge, or until a produce officer has notified the court in writing of his intention not to institute further proceedings in respect of the produce, whichever date is the earlier;

(iii) if a produce officer has notified the court in writing within the said period of fourteen days of his intention to institute further proceedings in respect of the produce or to appeal against the judgment of acquittal or discharge, the court shall not order the release of the produce pending the determination of such proceedings or appeal.

14.—(1) If the owner or person in charge of any produce which has been seized and detained considers that the condition of the produce is such that the storage thereof in that condition will result in further damage or deterioration, he may apply in writing to a produce officer for permission to clean the produce.

(2) Upon application being made as provided in subsection (1), the produce officer may permit the owner or person in charge of the produce to clean it, and when the produce has been cleaned it shall be dealt with in accordance with the provisions of subsection (3) of section 13.

(3) If a produce officer or assistant produce officer considers that any produce which has been seized and detained is in such condition that its storage in that condition will result in further damage or deterioration he may, whether or not an application under subsection (1) has been made, order the owner or person in charge of the produce to clean it, and may permit the temporary release of the produce for that purpose.

(4) Before any produce is cleaned in pursuance of the provisions of subsection (2) or subsection (3), there shall be prepared in the presence of the applicant and the produce officer or an officer deputed by him in that behalf a document showing the net weight of the produce, the number of receptacles in which it is packed and the gross weight of any samples taken, and such document when signed by both the applicant and the produce officer or his deputy shall be conclusive evidence of the particulars therein contained.

15. Upon the conviction of any person for an offence under this Law in respect of any produce of which he is the owner, the court may order, in addition to any penalty which may be imposed, that the produce together with the receptacles in which it is contained shall be destroyed or forfeited or that the produce shall be cleaned by the owner to the satisfaction of a produce officer, assistant produce officer or examiner and thereafter be released.

16.—(1) Where any produce has been seized and detained under the provisions of sections 12 and 13 and:—

(a) the owner is unknown or cannot be found; or

(b) the produce is adulterated or of such inferior quality that either:—

(i) it cannot be cleaned to an exportable standard; or

(ii) its retention is liable to endanger the quality of any other produce with which it may come into contact; or

(iii) a produce expert considers that by reason of its inferiority it should be destroyed.

a complaint shall, as soon as may be after the expiry of seven days from the date on which the produce was seized, be laid before a magistrate for the purposes of enforcing forfeiture or destruction of the produce and of the receptacles in which it is contained, and the magistrate shall cause notice to be given in such manner as he may think proper, stating that unless cause is shown to the contrary at the time and place stated in the notice the produce and receptacles may be forfeited or destroyed.

(2) At the time and place stated in the notice the magistrate may, unless cause is shown to the contrary, order that the produce and receptacles shall be destroyed or forfeited and disposed of in such manner as may be directed by the head of the Produce Inspection Service.

PART V.—OFFENCES AND PROCEEDINGS

17.—(1) Any person who adulterates, or causes to be adulterated, or by negligence or otherwise permits the adulteration of any produce shall be guilty of an offence.

(2) Subject to the provisions of subsection (3) any person who:—

(a) buys or receives; or

(b) sells or offers or exposes for sale; or

(c) tenders in satisfaction of a claim or demand; or

(d) possesses or has in his custody or under his control, whether for sale or for any other purpose, and whether for the use or benefit of himself or of any other person, and whether or not as agent or servant of another person;

any adulterated produce shall be guilty of an offence.

(3) A person shall not be convicted of an offence under subsection (2) if he proves to the

satisfaction of the court.:-

(a) that he did not know and could not with reasonable diligence have known that the produce was adulterated; and

(b) that he had taken all reasonable precautions against the commission of the offence; and

(c) that on demand being made by a produce officer, assistant produce officer or examiner he gave all the information in his knowledge with respect to the person from whom he obtained the produce and the person who conveyed or delivered the produce to him or any other person on his behalf.

18. Any person who:-

(a) makes unauthorized use of any prescribed type of seal, press, punch-die or other sealing or marking appliance used for sealing produce or for marking containers, or of any apparatus for sampling or testing produce, or for extracting any of the contents of bags of produce; or

(b) without lawful excuse (the onus of proving which shall be upon him) is found in possession of any such appliance or apparatus or of any article so closely resembling such appliance or apparatus as reasonably to be mistaken therefor,

shall be guilty of an offence.

19.(1) Any person who without lawful excuse:-

(a) hinders or molests any produce officer, assistant produce officer, examiner or other person charged with any duties or powers under this Law in the exercise of any such duties or powers;

(b) fails to comply with any order lawfully given under the provisions of this Law;

(c) removes, cleans or in any way tampers with any produce or any receptacle which has been seized or detained by a produce officer, assistant produce officer or examiner in accordance with the provisions of this Law;

(d) breaks or removes any seal or any twine, wire or other fastening placed upon a receptacle containing produce by a produce officer, assistant produce officer or examiner, whether after the grading of the produce contained therein or after the seizure and detention of such produce and receptacle in accordance with the provisions of sections 12 and 13;

(e) substitutes for any produce which has been inspected and passed or graded any other produce, or adds extraneous matter or any uninspected produce to any produce which has been inspected and passed or graded;

(f) fails to furnish any information lawfully demanded under the provisions of this Law or furnish information which he knows to be false in a material particular or does not believe to be true;

(g) has in his possession or custody or under his control, whether for sale or for any other purpose, and whether for the use or benefit of himself or of any other persons, and whether as agent or servant of any other person:—

(i) any produce which has been inspected and passed or graded, and of which the receptacles have been tampered with as described in this section; or

(ii) any produce which has been substituted for produce which has been passed or graded; or

(h) consigns, transports, carries or takes out, or attempts to consign, transport, carry or take out of the State any produce which has not been inspected, passed and graded in accordance with the provisions of this Law.

shall be guilty of an offence.

(2) In any prosecution for an offence against this section the onus of proving the existence of a lawful excuse shall lie on the person charged.

(3) No person shall be convicted of an offence under paragraph (g) of subsection (1) if he proves to the satisfaction of the court:—

(a) that he did not know and could not with reasonable diligence have known that the produce or receptacles thereof had been tampered with or suffered substitution as aforesaid,

(b) that he had taken all reasonable precautions against the commission of the offence;

(c) that as soon as he discovered or became aware that an offence had been or was being committed he made immediate report in writing to a produce officer; and

(d) that on demand being made by a produce officer, assistant produce officer or examiner he gave all the information in his knowledge with respect to the produce and the receptacles

thereof, the person from whom he obtained the produce and the person who conveyed or delivered it to him or any other person on his behalf.

20.—(1) A produce officer, assistant produce officer or examiner who knowingly passes or grades produce which is not of jading, exportable standard shall be guilty of an offence.

(2) Where in any prosecution under this section the person charged alleges that without his consent unauthorized use was made of any seal, press, punch-die or other sealing or marking appliance used for sealing produce, the onus of proving such unauthorized use shall be upon him.

(3) In any prosecution under this section it shall be sufficient for the prosecution to prove the person charged to be a produce officer, assistant produce officer or examiner, and that he passed or graded the produce in question for export and that such produce was not of exportable standard, and thereupon the onus proving that he did not act knowingly shall be upon the person charged.

(4) The provisions of subsection (1) of section 24 shall not apply to a prosecution brought for an offence against this section.

21. Any person authorized to take samples of produce under the provisions of this Law who uses or disposes of such samples or to any part thereof for his own gain or for any other unlawful purpose shall be guilty of an offence.

22.—(1) Any produce officer, assistant produce officer or examiner who without lawful excuse, the onus of proving which shall be upon him, delays, detains or refuses to inspect, pass or grade any produce shall be guilty of an offence.

(2) The provisions of subsection (1) of section 24 shall not apply to a prosecution brought for an offence against this section.

23.—(1) Any person who is guilty of an offence under paragraph (h) of subsection (1) of section 19 of this Law shall be liable on conviction to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) Any person who is guilty of any other offence under this Law shall be liable on conviction to a fine not exceeding five thousand naira or to imprisonment for a term not exceeding one

year or to both such fine and imprisonment.

(3) Upon the conviction of any person for an offence under paragraph (h) of subsection (1) of section 19 of this Law in respect of any produce of which he is the owner or the person in charge of the produce, the Court may order, in addition to any penalty which may be imposed, that the produce together with the receptacles in which it is contained shall be forfeited.

(4) Where any produce has been seized and detained under the provision of paragraph (h) of subsection (1) of section 19 and the owner or the person in charge of the produce is unknown or cannot be found a complaint shall, as soon as may, after the expiration of seven days from the date on which the produce was seized, be laid before a magistrate for the purpose of enforcing forfeiture of the produce and of the receptacles in which it is contained, and the magistrate shall cause notice to be given in such manner as he may think proper, stating that unless cause is shown to the contrary at the time and place stated in the notice the produce may be forfeited.

(5) At the time and place stated in the notice the magistrate may, unless cause is shown to the contrary, order that the produce and receptacles shall be forfeited and sold in the open market and the proceeds paid into the general revenue.

24.—(1) No prosecution for any offence under this Law (other than an offence under section 20 or section 22) shall be commenced except with the consent of an officer of the Produce Inspection Service not below the rank of produce officer or pest control officer:

Provided that no such consent shall be necessary in the case of a prosecution instituted by or upon the instruction of the Attorney-General.

(2) A prosecution for an offence under this Law may be brought in the name of the head of the Produce Inspection Service and may be conducted by him or by a produce officer or assistant produce officer, and any prosecution so instituted shall be deemed *prima facie* to have been commenced with due consent.

25. In any proceedings against any person for an offence under this Law it shall not be necessary to prove that the produce the subject of the charge was intended for export, and such produce shall be presumed to have been intended for export unless the contrary be proved.

26. In any proceedings relating to the quality or purity of any produce inspected and passed or graded under the provisions of this Law, the inspection, passing or grading of such produce

shall not be conclusive as to its quality or purity.

27. —(1) The Commissioner may by notice in the State Gazette declare suitably experienced persons to be produce experts for the purposes of this Law in respect of any kind of produce.

(2) In any proceedings for an offence under this Law in which the quality or condition of any produce is a fact in issue, the court may, if it thinks fit, direct a produce expert to examine such produce, or samples thereof, and to report in writing on its quality or condition, and the written report of such produce expert shall be sufficient evidence of the facts stated therein, unless the person charged requires the produce expert to be called as a witness.

28. Any fees due under the provisions of this Law may be recovered as a civil debt by the head of the Produce Inspection Service, and shall be paid into the general revenue of the State.

29. An officer upon whom powers are conferred or duties are imposed by this Law shall not be liable for any act or thing done in good faith for the purposes of executing such powers and duties.

Provided that nothing herein contained shall exempt any person from any proceeding by way of *mandamus*, injunction, prohibition or similar order.

FIRST SCHEDULE

PRODUCE TO WHICH THE EDICT APPLIES

Beniseed Groundnuts

Capsicums Groundnut Cake

Cassava Starch Groundnut oil

Castor Seed Gum Arabic

Cocoa Palm kernel

Coffee Palm oil

Cotton Seed Seed cottons

Cotton Lint Shea nuts

Ginger Soya Beans

SECOND SCHEDULE

COMPOSITION, CONSTITUTION AND PROCEEDINGS OF THE STATE PRODUCE INSPECTION BOARD

1. The Board shall consist of a Chairman and eight other members.
2. The Head of the Produce Inspection Section shall be the Chairman of the Board.
3. The members of the Board shall be as follows:—

A—OFFICIAL MEMBERS

The Chief Agricultural Officer, Ministry of Natural Resources, Gongola State of Nigeria or his representative.

B—NOMINATED MEMBERS

Five members nominated by the Commissioner to represent respectively:—

- (a) the groundnut producers;
 - (b) the cotton producers;
 - (c) the producers of other commodities;
 - (d) the local authorities;
 - (e) the licensed buying agents.
4. The principal produce officer of the Produce Inspection Service shall be Secretary of the Board.
 5. Subject to the sub-paragraphs (2) and (3), a nominated member shall hold office for three years from the date of his appointment.
- (2) A nominated member may by notice in writing addressed to the chairman resign from membership of the Board.

(3) The Commissioner may declare vacant the seat of any nominated member who—

(a) has been absent from two consecutive meetings of the Board without the chairman's permission; or

(b) is incapacitated by physical or mental illness; or

(c) is otherwise unable or unfit to discharge the functions of a member.

6. Where a member is temporarily incapacitated or is temporarily absent from the State, the Commissioner may appoint any person to be a temporary member of the Board during such incapacity or absence.

7. A member of the Board shall not be deemed by virtue only of his membership of the Board to be the holder of an office of emolument under the State.

8. (1) Ordinary meetings of the Board shall be convened by the chairman.

(2) Any three members may by notice in writing signed by them request the chairman to convene a special meeting of the Board for the purposes specified in the notice, and, upon receipt of such notice, the chairman shall convene a special meeting for such purposes at the earliest convenient date.

9. Where upon any special occasion the Board desires to obtain the advice of any person upon any matter, the Board may co-opt such person to be a member for such meeting or meetings as may be required, and such person shall whilst so co-opted have all the rights and privileges of a member of the Board, save that he shall not be entitled to vote on any question.

10.—(1) All questions proposed for decision shall be determined by a majority of the votes of the members present and voting.

(2) The Chairman shall have an original vote and also, if upon any question the votes are equally divided, a casting vote.

11. At any meeting of the Board, the Chairman and four other members, two of whom shall be members other than public officers, shall form a quorum.

12. The Board shall not be disqualified for the transaction of business by reason only of any vacancy among the members, and, in case of the absence of the Chairman from any meeting, the Board may appoint a temporary Chairman from amongst the members present at the meeting.

13. The Board may, with the approval of the Commissioner, make Standing Orders for the proper conduct of its business.