

## CHAPTER 18:11

### FARMERS STOP-ORDER ACT

Act 53/1963, 41/1977, 24/1982; 22/2001 (s. 4) R.G.Ns. 214/1964, 217/1970.

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**AN ACT to provide for the registration by farmers of stop-orders and special stop orders binding their crops and the proceeds thereof; and for matters incidental thereto.**

[Date of commencement: 2nd March, 1964.]

#### **1 Short title**

This Act may be cited as the Farmers Stop-order Act [*Chapter 18:11*].

#### **2 Interpretation**

In this Act—

“addressee” means the person instructed by a registered stop-order or a special stop-order to make payment in terms thereof;

“addressee's fees” means the fees referred to in section *nineteen*;

“Agricultural Finance Corporation” means the Corporation established by section 3 of the Agricultural Finance Corporation Act [*Chapter 18:02*];

“certificate” means a certificate of registration issued by the Registrar in terms of section *seven*;

“crop” means any vegetable product of the soil;

“farmer” means any person who grows or produces a crop;

“holder” means—

(a) the payee of a registered stop-order or of a special stop order; or

(b) the cessionary of a registered stop-order;

“prescribed costs” means such costs and charges as may be prescribed, connected with the insurance, grading, sorting, marketing, including transporting, processing and treatment incidental thereto, and sale of a crop;

“Register” means the Register of Stop-orders kept by the Registrar in terms of this Act;

“registered” means registered in terms of this Act;

“Registrar” means the Registrar of Farmers Stop-orders referred to in section *three* and, subject to subsection (2) of that section, includes an assistant registrar;

“special stop-order” means an unregistered stop-order—

- (a) which has been executed by a farmer who farms within Communal Land or within such other area as may be prescribed; and
- (b) of which the payee is the Agricultural Finance Corporation;

“stop-order” means any written agreement or undertaking executed by a farmer whereunder he—

- (a) purports to give to the holder any right, title or interest in or over the whole or part of any crop which has been, is being or is to be grown or produced in Zimbabwe or the proceeds thereof; and
- (b) authorizes any person to pay to the holder the whole or part of the proceeds of such crop.

### **3 Registrar and assistant registrars**

(1) There shall be a Registrar of Farmers Stop-orders and such assistant registrars as may be required, whose offices shall be public offices and form part of the Public Service.

(2) An assistant registrar shall, when performing any of the functions of the Registrar in terms of this Act, be subject to the direction of the Registrar.

### **4 Register**

(1) The Registrar shall keep and maintain a Register of Stop-orders.

(2) The Registrar may, not later than three days after the receipt of any document submitted to him under this Act, reject such document if in his opinion it does not substantially comply with the requirements of this Act.

(3) The Register shall be open to inspection by any person during the prescribed hours and on payment of the prescribed fee.

### **5 Registration does not cure invalid stop-order**

The registration of a stop-order shall not cure any defect therein or confer on it any effect of validity which it would not otherwise have had except in so far as is provided by this Act.

### **6 Requirements of stop-orders**

(1) In this section—

“year” means calendar year or such other period of twelve months as may be prescribed in respect of any class of crop.

(2) No stop-order, other than a special stop-order, shall bind a crop intended to be delivered in more than one year for marketing.

(3) Every stop-order, other than a special stop-order, shall specify the year in which the crop is to be delivered for marketing:

Provided that no such stop-order shall specify a year other than the year during which the stop-order is submitted for registration or the year immediately following.

(4) Subject to section *seventeen*, no stop-order shall be addressed to more than one addressee.

(5) Every stop-order shall state the amount in respect of which it is given, by specifying a fixed sum or a fixed percentage of the proceeds of the crop, with or without provision for interest.

(6) Every stop-order executed by a farmer who farms within—

- (a) Communal Land; or
- (b) any area prescribed for the purpose of paragraph (a) of the definition of “special stop-order” in section *two*;

other than a stop-order of which the Agricultural Finance Corporation is the payee, shall bear or have attached thereto a certificate, signed by or on behalf of the Agricultural Finance Corporation, stating whether or not the farmer who executed the stop-order concerned has executed any special stop-orders which have not been wholly paid or otherwise discharged and, if the farmer has executed any such special stop-orders, the amounts that are still outstanding in respect of them.

### **7 Registration**

(1) Any person wishing to register a stop-order shall submit the stop-order to the Registrar on the form and in the manner prescribed.

(2) Subject to this Act, the Registrar shall, as soon as may be, register such stop-order and shall endorse the date of registration on the stop-order in the Register and on any certificate of registration.

(3) Stop-orders shall be registered in the order in which they are received by the Registrar.

(4) Not later than three days after the registration of a stop-order the Registrar shall in the manner prescribed forward a certificate of registration to the addressee, the holder and the farmer. Such certificates shall be in the form prescribed and shall include particulars of all prior registered stop-orders binding the same crop.

## **8 Register of special stop-orders**

(1) The Agricultural Finance Corporation shall keep and maintain, in such manner as it thinks appropriate, a register of special stop-orders showing the persons who have executed special stop-orders and the amounts in respect of which the special stop-orders have been given.

(2) The register kept in terms of subsection (1) shall be open to inspection by any person upon payment of the prescribed fee, if any, at any time during the business hours of the Agricultural Finance Corporation.

## **9 Receipt of certificate by addressee**

Upon the receipt of a certificate the addressee shall be bound by its terms and he shall, not later than seven days thereafter, acknowledge such receipt to the holder and the farmer in the manner prescribed, and if the addressee has been declared to be the agent of the farmer for the purpose of the payment of tax on behalf of the farmer in terms of the Income Tax Act [*Chapter 23:06*], he shall, within the aforesaid period and in the manner prescribed, inform the holder and the Registrar of the amount of tax he is so required to pay at the time of the receipt of such certificate. The Registrar shall enter such amount in the Register.

## **10 Receipt of special stop-order by addressee**

Upon the receipt of a special stop-order the addressee shall be bound by its terms and he shall, not later than seven days thereafter, acknowledge such receipt to the Agricultural Finance Corporation, and, if the addressee has been declared to be the agent of the farmer for the purposes of the payment of tax in terms of the Income Tax Act [*Chapter 23:06*], he shall, within the aforesaid period, inform the Agricultural Finance Corporation of the amount of tax he is required to pay at the time of the receipt of such special stop-order.

## **11 Cancellation or reduction of stop-order**

(1) No registered stop-order shall be capable of revocation, cancellation or reduction except in accordance with this section.

(2) The Registrar shall cancel a registered stop-order or reduce the amount payable under a registered stop-order if—

- (a) he receives from the holder a written request for such cancellation or reduction, as the case may be, together with his certificate; or
- (b) he receives such a request from any other person and, after calling for objections from the holder in the manner prescribed and after hearing any such objections, he is satisfied that the stop-order has been wholly or partly paid or otherwise discharged.

(3) The Registrar shall give the addressee, the holder and the farmer written notification of any such cancellation or reduction not later than three days thereafter.

(4) No special stop-order shall be capable of revocation, cancellation or reduction except by the Agricultural Finance Corporation.

(5) The Agricultural Finance Corporation shall, within three days of revoking, cancelling or reducing a special stop-order, give notice thereof to the Registrar, the addressee and the farmer concerned.

## **12 Priority of stop-orders**

(1) Subject to subsections (2) and (3)—

- (a) registered stop-orders binding the same crop shall, as between themselves, be entitled to priority in the order in which they are registered;
- (b) the priority between a registered stop-order and a special stop-order binding the same crop shall be determined by the dates on which the registered stop-order was registered and the special stop-order was transmitted by the Agricultural Finance Corporation to the addressee, the earlier date conferring priority.

(2) Any person may apply to the Registrar for the alteration of the priority of any stop-orders, and shall submit with his application—

- (a) a notice in the prescribed form of the consent of holders of all registered stop-orders and special stop-orders whose priority is to be adversely affected by the alteration; and
- (b) the certificates issued in respect of all registered stop-orders whose priority is to be improved or adversely affected by the application; and
- (c) all special stop-orders whose priority is to be improved or adversely affected by the application.

(3) Upon receipt of an application in terms of subsection (2), the Registrar shall endorse on the certificates and special stop-orders concerned the alteration in priority applied for, and thereupon the priority as between the stop-orders concerned shall for all purposes be determined accordingly.

(4) The Registrar shall, not later than three days after altering the priority of any stop-orders in terms of subsection (3), give written notice of the alteration to the addressees of all the stop-orders concerned.

## **13 Stop-orders prior to any other agreement**

Save as otherwise provided in any enactment or this Act, but notwithstanding anything to the contrary contained in the Companies Act [*Chapter 24:03*] or the Co-operative Societies Act [*Chapter 24:05*], no proceeds of any crop or part thereof delivered by or on behalf of a farmer or his legal representative for marketing shall be

applied towards the settlement of any debt, including set-off, or in accordance with any agreement, express or implied, or any arrangement or instructions of any kind whatsoever, or paid to the farmer or any other person, until all prescribed costs, addressee's fees, registered stop-orders and special stop-orders payable in respect of such crop or part thereof have been paid in full.

#### **14 Cession of stop-order**

(1) No cession or transfer of a registered stop-order shall be valid unless and until it is registered as a cession in terms of this section.

(2) No registered stop-order shall be ceded in part.

(3) No cession of a registered stop-order shall affect the order of priority of the stop-order.

(4) Every cession of a registered stop-order shall state the *causa* thereof.

(5) An application for registration of a cession of a registered stop-order shall be made on the form and in the manner prescribed and shall be accompanied by the certificate of the holder of the stop-order. Upon receipt thereof the Registrar shall register the cession as soon as may be and, not later than three days after such registration, forward a notice of cession to the addressee, the farmer and the parties to the cession on the form and in the manner prescribed.

(6) No special stop-order shall be capable of being ceded or transferred.

#### **15 Prior claims by co-operatives**

(1) In this section—

“co-operative” means a co-operative company or co-operative society registered in terms of any enactment relating thereto;

“prior claim” means a claim relating to any existing or future debt owed or to be owed by a farmer to a co-operative under any agreement or arrangement made—

(a) before the registration of the first stop-order relating to any crop addressed to such co-operative by such farmer; or

(b) if no stop-order has previously been registered over such crop, before the first special stop-order relating to any crop of such farmer, has been transmitted by the Agricultural Finance Corporation to such co-operative.

(2) Notwithstanding anything to the contrary contained in any enactment relating to co-operatives or any by-laws, memorandum, articles of association, rules or conditions of membership of any co-operative, a registered stop-order or special stop-order addressed to any co-operative shall not, subject to the provisions of this section, be invalid or inoperative by reason only of the fact that the addressee is a co-operative.

(3) No stop-order addressed to a co-operative shall be registered until the co-operative has endorsed upon it whether or not the co-operative has a prior claim and, if so, the amount of such claim.

(4) Within fourteen days after receiving a special stop-order, a co-operative shall notify the Agricultural Finance Corporation in writing whether or not the co-operative has a prior claim and, if so, the amount of such claim.

(5) The Registrar shall, on registering a stop-order that has been endorsed with the amount of a prior claim in terms of subsection (3), enter the amount of such prior claim in the Register and on the certificates issued in respect of the stop-order.

(6) The amount of any prior claim—

(a) endorsed upon a stop-order in terms of subsection (3); or

(b) notified to the Agricultural Finance Corporation in terms of subsection (4),

shall, up to the amount specified in such endorsement or notification, as the case may be, be deemed for the purposes of this Act to be a registered stop-order in favour of the co-operative concerned ranking prior to all stop-orders addressed to such co-operative by the farmer and binding the crop concerned.

(7) The provisions of this section shall not apply to any stop-order binding a crop of tobacco which is auction tobacco as defined in subsection (1) of section 2 of the Tobacco Marketing and Levy Act [*Chapter 18:20*].

#### **16 Prescribed costs**

(1) Any prescribed costs reasonably and necessarily incurred by a farmer in respect of any crop shall for all purposes rank in priority to any addressee's fees, registered stop-orders and special stop-orders relating to such crop.

(2) Where the Minister so specifies in respect of any particular prescribed cost, such cost shall not be payable until the payee and the farmer certify to the addressee in the manner prescribed that the sum to be paid constitutes such prescribed cost. The addressee shall retain every such certificate and produce it to the Registrar on demand.

#### **17 Special provisions relating to certain tobacco crops**

(1) In this section—

“auction floor” means an auction floor licensed as such in terms of the Tobacco Marketing and Levy Act [*Chapter 18:20*];

“tobacco” means tobacco which is auction tobacco as defined in subsection (1) of section 2 of the Tobacco Marketing and Levy Act [*Chapter 18:21*].

(2) For the purposes of this Act, every registered stop-order and special stop-order binding a tobacco crop shall be deemed to have such number of addressees as there are auction floors and insurers against hail carrying on business in Zimbabwe.

(3) Any payment made by one addressee in terms of such a stop-order shall reduce the amount so payable by all the other addressees.

(4) Where a tobacco crop has been insured against hail, any amount payable by the insurer in terms of the insurance agreement shall for all purposes be deemed to be proceeds of the crop and shall be paid accordingly.

### **18 Payment of insurance moneys**

(1) If a crop has been insured against any risk, otherwise than in the case mentioned in subsection (4) of section *seventeen*, and a claim or claims in pursuance of the insurance agreement become due and payable by the insurer, and if there are any registered stop-orders or special stop-orders binding such crop, then, notwithstanding anything to the contrary contained in the agreement, any moneys in excess of a total amount of seven hundred dollars payable in settlement of such claim or claims shall be paid by the insurer direct to the Registrar.

(2) The Registrar shall pay such moneys to the holders of such stop-orders as are unpaid and the residue, if any, to the farmer, and shall notify the addressees of such payment, which shall accordingly reduce any amount payable by the addressees:

Provided that in the event of the insolvency or, as the case may be, liquidation of the farmer the Registrar shall, on the application of the trustee, assignee or liquidator, as the case may be, pay to such applicant the whole amount of such moneys, and such moneys shall for all purposes be deemed to be proceeds of the crop.

### **19 Addressee’s fees**

The addressee of any registered stop-order or special stop-order may charge fees not exceeding such maximum limits as may be prescribed for his services in connection with the acceptance and payment of such stop-order and for matters incidental thereto. Such fees shall for all purposes rank in priority to such stop-order.

### **20 Addressee to supply information**

So long as any registered stop-order, special stop-order or prescribed costs have not been satisfied in full the addressee shall, not later than seven days after receipt of a written request from the holder or the payee, as the case may be, supply him with all available information relating to the disposal of the crop bound by such stop-order and the proceeds thereof.

### **21 Liability of addressees**

(1) Any addressee who wilfully or negligently fails to pay in accordance with the provisions of this Act any proceeds of any crop or part thereof dealt with by him shall be liable to make good such failure.

(2) Nothing in subsection (1) shall be construed as depriving any person of any other lawful remedy.

### **22 Registrar indemnified**

No act or omission of the Registrar shall render the State or the Registrar liable for any loss or damage sustained by any person in consequence of such act or omission:

Provided that—

- (i) if such act or omission is wilful or negligent the State shall be liable for such loss or damage;
- (ii) if such act or omission is wilful the Registrar shall be liable to make good any loss or damage resulting therefrom to the State.

### **23 Effect of stop-orders, etc., on sale of crop in execution**

(1) If any crop of a farmer is sold in execution of a judgment of a court of law, no proceeds of such sale shall be paid to any execution creditor who is an unsecured creditor until all prescribed costs, addressee’s fees, registered stop-orders and special stop-orders have been paid in full.

(2) Where any such crop is sold with the farm as a standing crop the purchaser and the officer charged with the sale shall agree upon a figure to represent the value of the crop, and such amount shall be deemed to be the proceeds of the crop for the purposes of subsection (1).

### **24 Offences and penalties**

(1) Any farmer who wilfully—

(a) sells the whole or any part of a crop bound by a registered stop-order or a special stop-order—

(i) otherwise than to or through the addressee; or

(ii) under a name or registered number other than that under which he executed such stop-order; or

(b) deals with the whole or part of any crop or any proceeds thereof in such a manner as to avoid or to be likely to avoid the due payment of any prescribed costs, addressee’s fees, registered stop-orders or special stop-orders relating to such crop;

without first having obtained the written consent of all persons having an interest in such crop or its proceeds by virtue of any prescribed costs, addressee’s fees, registered stop-orders or special stop-orders relating to such crop,

shall be guilty of an offence and liable to a fine not exceeding treble the amount of the stop order or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment:

[Subsection as amended by section 4 of Act No. 22 of 2001]

Provided that he shall not be convicted if he satisfies the court that such consent was unreasonably withheld or that he was, after exercising reasonable diligence, unable to ascertain the whereabouts of the person concerned.

(2) Any person who makes any false entry or statement on any document referred to in this Act, knowing it to be false or not reasonably believing it to be true, 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 as amended by section 4 of Act No. 22 of 2001]

(3) .....

[Subsection repealed by section 4 of Act No. 22 of 2001]

(4) On the conviction of any person of an offence in terms of this section the court convicting the accused may, on the application of the injured party or the prosecutor acting on his instruction, and in addition to any other penalty which it may impose, give summary judgment in favour of the injured party for an amount not exceeding the amount of any loss caused to such injured party by the commission of the offence, and such judgment shall have the same force and effect and may be executed in the same manner as if it had been given in civil proceedings duly instituted in the said court:

Provided that nothing in this subsection shall be deemed to affect the jurisdiction of the said court conferred by any other law.

On the hearing of any application made under this subsection, the court may refer to the proceedings and evidence at the trial and may hear such further evidence as may be tendered by the prosecutor and the accused.

## 25 Regulations

(1) The Minister may make regulations providing for—

- (a) such matters as in terms of this Act are required or permitted to be prescribed;
- (b) the fees of office to be charged in respect of any act, matter or thing required or permitted to be done by the Registrar in terms of this Act;
- (c) the form of any document referred to in this Act, the manner in which it shall be prepared and executed and the particulars it shall contain;
- (d) the manner in which the Register shall be kept and in which any records shall be destroyed;
- (e) the maximum limit of any prescribed costs;
- (f) the order of priority as between different prescribed costs;
- (g) the specification of prescribed costs for the purposes of subsection (2) of section *sixteen*;
- (h) the issue of copies of documents referred to in this Act in the event of loss;
- (i) the circumstances in which documents referred to in this Act may be detached from the Register for judicial purposes;

and generally for the better carrying out of the objects of this Act.

(1a) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, 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.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

(2) Parliament may, not later than thirty days after any regulation made in terms of this section has been laid before it in terms of section 30 of the Interpretation Act [*Chapter 1:01*], pass a resolution annulling such regulation, whereupon such regulation shall become void, but without prejudice to the validity of anything done thereunder or the making of any new regulation.