



JAMAICA DAIRY DEVELOPMENT BOARD ACT

A BILL ENTITLED

An act to Establish a body to be called the Jamaica Dairy Development Board to develop policies for the regulation of the dairy sector and for connected matters.

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the

same, as follows: -

PART I. Preliminary

PART II. Jamaica Dairy Development Board Establishment and Functions

PART III. Application, Grant, Refusal, Renewal, Suspension and Revocation of Licences

PART IV. Appeal

PART V. Enforcement

PART VI. Offences and Penalties

PART VII. Forfeiture

PART VIII. General

PART I. Preliminary

This Act may be cited as the Jamaica Dairy Development Board Act, 2002 and shall come into operation on a day to be appointed by the Minister by notice published in the Gazette.

(2) In this Act -

"Board" means the Jamaica Dairy Development Board established under section 3;

"dairy products" means milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice cream, malted milk and any other product manufactured wholly or mainly from milk and includes products that have more than 50% milk solids on a dry weight basis (excluding sugar);

"dairy sector" means activities concerning -

(a) the production (including the breeding, feeding, health and management of cattle) and consumption of milk; and

(b) the consumption, manufacture, processing, importation, exportation, marketing

and use of dairy products generally;

"*dealer*" means a person who, as a principal, purchases imported dairy products or receives locally produced milk for the purpose of processing, selling or reselling of dairy products;

"*the Federation*" means the Jamaica Dairy Farmers Federation;

"*functions*" includes powers and duties;

"*inspector*" means a person appointed pursuant to section 28(1);

"*milk*" means milk from cows;

"*place*" includes any vehicle, vessel, railway car or aircraft;

"*producer*" means a person who produces and sells or supplies milk from his own herd to a processor;

"*trade in dairy products*" means the carrying out, on a commercial basis, of any one or more of the following activities in relation to dairy products -

- (a) importing or exporting;
- (b) producing;
- (c) handling;
- (d) processing;
- (e) pasteurizing;
- (f) homogenizing;
- (g) bottling;
- (h) marketing;
- (i) transporting; and
- (j) sale;

"*transporter*" means a person who collects milk from a farm and delivers it to a processing plant;

"*vendor*" means a person who, as a principal, purchases or receives dairy products from a dealer for resale or distribution to consumers.

PART II. Jamaica Dairy Development Board Establishment and Functions

3. (1) There is hereby established, for the purposes of this Act, a body to be called the Jamaica Dairy Development Board which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

(2) The provisions of the Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

4. The objects of the Board shall be to promote the interests of the dairy sector and foster its development and, in particular, to promote local milk production and the achievement of efficiency in the production, processing, marketing and other trade in dairy products.

5. - (1) The Board shall -

(a) formulate appropriate policies for the dairy sector and monitor the growth of that sector;

(b) supervise, and where necessary, arbitrate milk contractual agreements between

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(i) producers and processors;

(ii) the Federation and

(iii) the Federation and processors;

(c) regulate the trade in dairy products;

(d) disseminate information and reliable statistics on all aspects of the trade in dairy products;

(e) advise the Minister on matters of general policy relating to the trade in dairy products in Jamaica; and

(f) perform such other functions pertaining to the dairy sector as may be assigned to it by the Minister.

(2) In performing the functions specified in subsection (1), the Board may -

(a) introduce cost recovery methods for services provided by or on behalf of the Board;

(b) formulate standards, guidelines and codes of practices relating to the dairy sector and monitor compliance with those standards, guidelines and codes;

(c) investigate, on its own initiative or at the request of any person and, with the written consent of the parties, arbitrate, adjudicate upon or otherwise settle any dispute involving dairy producers, dealers, transporters, distributors or vendors;

(d) investigate -

(i) the cost of producing, processing, distributing and transporting dairy products;

(ii) prices, price spreads, trade practices, methods of financing and the management of the dairy sector; and

(iii) other matters relating to the trade in dairy products;

(e) establish farm gate prices for milk;

(f) determine the minimum specifications for equipment used in the dairy sector and the handling practices employed in that sector;

(g) require persons engaged in the trade in dairy products to furnish such information relating to those activities and make such returns to the Board as it may specify;

(h) establish classifications for dairy products; and

(i) do all acts and things necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act.

6. The Minister may, after consultation with the Chairman, give to the Board such directions of a general character as to the policy to be followed by the Board in the performance of its functions as appear to the Minister to be necessary in the public interest and the Board shall give effect thereto.

Administration

7. (1) The Board shall appoint and employ, at such remuneration and on such terms and conditions as it thinks fit, a Chief Executive Officer and such other officers and employees as the Board deems necessary for the proper carrying out of its functions:

Provided that ?

(a) no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister; and

(b) no appointment shall be made to any post to which salary in excess of the prescribed rate is assigned without the prior approval of the Minister.

(2) For the purposes of subsection (1) the "prescribed rate" means such rate as the Minister may, by order, prescribe.

(3) The Governor General may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of the Government to any office within the Board, and any public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Government.

8. The Board may, with the approval of the Minister

(a) enter into arrangements respecting schemes, whether by way of insurance policies or otherwise; and

(b) make regulations,

For medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits, relating to employees of the Board and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such employees.

9. (1) Every person having an official duty or being as to employed in the administration of this Act shall -

(a) regard and deal with as secret and confidential all documents, information and records relating to the performance of the functions of the Board; and

(b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person referred to in subsection (1) having possession of or control over any document, information or record relating to the performance of the functions of the Board, who at any time communicates or attempts to communicate anything contained in such document, information or record to any person -

(a) other than a person to whom he is authorized by the Minister to communicate it pursuant to any law;

(b) without the consent in writing of the person or body which provided the information; or

(c) otherwise than for the purposes of this Act,

commits an offence and is liable on summary conviction in a Resident Magistrates Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) Every person to whom information is communicated pursuant to an authority of the Minister in that behalf shall regard and deal with such information as secret and confidential and shall make and subscribe a declaration to that effect before a Justice of the Peace.

(4) Any person referred to in subsection (3) who at any time communicates or attempts to communicate any information referred to in that subsection to any person, otherwise than for the purposes of this Act, commits an offence and is liable on summary conviction in a Resident Magistrates Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Financial Provisions, Accounts and Reports

10. (1) The funds and resources of the Board shall consist of -

(a) such sums as may from time to time be placed at the disposal of the Board by Parliament;

(b) sums derived from the imposition of the cess under section 18;

(c) all other sums and other property which may in any manner become payable to or vested in the Board in respect of any matter incidental to its functions.

(2) The expenses of the Board, including the remuneration of members and employees, shall be paid out of the funds of the Board.

11. All moneys of the Board not immediately required to be invest expended for the purpose of meeting any of the obligations moneys.or discharging any of the functions of the Board may be invested in such securities as may be approved by the Minister after consultation with the Minister responsible for finance and the Board may, with the approval of the Minister, sell all or any of such securities.

12. - (1) The Board shall keep proper accounts and other records in relation to its functions and shall prepare annually a statement of accounts in a form satisfactory to

the Minister and conforming with generally accepted accounting standards.

(2) The accounts of the Board shall be audited annually by an auditor appointed in each year by the Board with the approval of the Minister.

(3) The Auditor-General shall be entitled at all times to examine the accounts of the Board.

13. - (1) The Board shall, within six months after the end of each financial year or within such longer period as the Minister may in special circumstances approve, cause to be made and transmitted to the Minister, a report dealing generally with the activities of the Board and matters relating to the growth and development of the dairy sector during the preceding financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon to be laid in the House of Representatives and the Senate.

(3) The Board shall, in each financial year, before a date specified by the Minister, submit to the Minister for his approval, estimates of income and expenditure for the ensuing financial year.

14. (1) The Board shall establish a reserve fund to be as the Capital Reserve Fund into which shall be placed all income derived from investments made under section 11.

(2) The Capital Reserve Fund shall be used for -

(a) off-setting expenditure on capital goods;

(b) facilitating the training of officers and employees of the Board;

(c) financing surveys relating to the dairy sector which may, from time to time, be undertaken by or on behalf of the Board;

(d) contributing to the funding of research on matters concerning the dairy sector; and

(e) such other purpose as may be approved by the Minister, after consultation with the Board.

15. The Board shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Board, and shall afford him facilities for verifying such information in such manner and at such times as he may reasonably require.

Exemption

16. (1) The Board shall be exempt from liability to stamp duty in respect of any instrument executed by it or on its duty and behalf.

(2) Any transfer by the Board of any property belonging to it or of any right or interest created in, over or otherwise with respect to, any such property shall be exempt from transfer tax.

17. Without prejudice to any other method of recovery, all debts due to the Board may be recovered, without limit of amount, in a Resident Magistrate's Court as a civil debt.

18. (1) Subject to subsection (2), the Board may impose a cess on trade in dairy products.

(2) No cess imposed under subsection (1) shall have any effect unless and until approved by the Minister by order.

(3) The Board may, with the approval of the Minister, by order specify the rate and method of payment of the cess.

PART III. Application, Grant, Refusal, Renewal, Suspension and Revocation of Licences

19. No person shall engage in any trade in dairy products unless he is the holder of the appropriate licence granted under section 21 as follows -

- (a)** a producer's licence;
- (b)** a dealer's licence; or
- (c)** a vendor's licence.

20. - (1) Every person who proposes to engage in any trade in dairy products shall apply in the prescribed form and manner to the Board for the appropriate licence.

(2) An application under subsection (1) shall be accompanied by the prescribed application fee.

(3) Where the Board thinks necessary, it may, by notice in writing, require an applicant for a licence to provide, within such period as may be specified in the notice, such information or document as it may specify.

21. (1) Upon receipt of an application under section 20, the Board shall cause an inspector to carry out an inspection of the operation to which the application relates.

(2) The inspector shall submit to the Board a report of an inspection carried out under subsection (1).

(3) On receipt of the report referred to in subsection (2), the Board may -

- (a)** grant a licence upon payment of the prescribed licence fee; or
- (b)** refuse to grant a licence.

(4) A licence granted under this section shall be subject to such terms and conditions as may be specified therein.

(5) Where the Board refuses to grant a licence under this Act, it shall so inform the applicant in writing stating the reasons therefor.

22. A licence granted under this Act shall not be ferability transferable and shall be

valid for such period not exceeding three years as is specified therein.

23. (1) The Board may refuse to issue a licence under this Act ?

(a) where, in the opinion of the Board, the issuance of the licence would not be in the public interest, having regard to such factors as the Board considers relevant;

(b) where an application contains or is based on a false or misleading representation or information which is false in a material particular;

(c) to an individual whom -

(i) is under the age of eighteen years;

(ii) is an undischarged bankrupt; or

(iii) has been convicted during the period of five years immediately preceding the application of an offence specified in subsection (2); or

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(i) in respect of which a resolution has been passed for voluntary winding up or an order has been made by a court of competent jurisdiction for its winding up;

(ii) if a receiver has been appointed to manage any of its assets;

(iii) if any of its directors has been convicted of an offence specified in subsection (2) during the period of five years immediately preceding the application; or

(iv) which has been convicted during the period of five years immediately preceding the application of an offence under this Act.

(2) The offence referred to in subsection (1) is -

(a) an offence against this Act or any regulations made hereunder; or

(b) an offence involving fraud or dishonesty.

24. (1) A licence granted pursuant to this Act may be renewed by the Board if -

(a) an application for renewal is made not later than thirty days before the date of expiry or within such longer period as the Board may allow;

(b) the Board is satisfied that the licensee is operating in compliance with the provisions of this Act or any regulations made hereunder;

(c) the applicant has paid all fees payable to the Board under this Act or any regulations made hereunder;

(d) there has been no material change in the circumstances which existed at the time the licence was granted which would justify the application being treated as a new application in the manner specified in subsection (2);

(e) the applicant or his servant or agent has not been convicted of an offence specified in section 23(2).

(2) Where the Board -

(a) receives an application for the renewal of a licence after the period specified in subsection (1)(a); or

(b) is satisfied that a material change of circumstances has occurred since the licence had been granted, it shall treat the application as a new application, and accordingly, the provisions of sections 20 and 21 shall apply in relation to that application.

25. - (1) Subject to subsection (2), the Board may suspend a licence if -

(a) the licensee has failed to pay any fees or other charges required by this Act or any regulations made hereunder;

(b) the licensee is in breach of -

(i) any provision of this Act or any regulations made hereunder; or

(ii) any term or condition subject to which the licence is granted;

(c) it is satisfied that it is not possible to carry out a proper inspection of the licensed operation;

(d) a licensee notifies the Board in writing that he intends to cease the operation for which he is licensed for the period stated in the notice.

(2) Before suspending a licence under subsection (1)(a),(b) or (C) the Board shall notify the licensee in writing of the proposed suspension -

(a) stating the reason therefor;

(b) requiring the licensee, in the case of a breach, to remedy the breach within the time specified in the notice.

(3) A licensee who is served with a notice under subsection **(2)** shall, after remedying the breach which gave rise to the suspension, notify the Board in writing that the breach has been remedied.

(4) The Board shall, upon receipt of a notice referred to in subsection (3), cause an inspection to be carried out within 10 days of the receipt of the notice and if on inspection, the inspector is satisfied that the breach has been remedied, he shall report in writing to the Board which shall withdraw the notice of suspension.

26. (1) The Board may revoke a licence if it is satisfied that -

(a) a licensee has ceased to comply with the provisions of this Act or any regulations made hereunder in relation to the licensed operation;

(b) the application for the licence contained any false or misleading representation or information which is false in a material particular;

(c) the licensee has failed to remedy the breach which gave rise to the suspension of the licence under section 25, within the time specified in a notice under subsection

(2) of that section;

(d) where any fee or other charge payable by the licensee remains unpaid for a period of ninety days after the suspension of the licence.

(2) Where a licence is revoked pursuant to this section the licence shall be returned within fourteen days of the date of revocation to the Board.

(3) Every person who, without reasonable or lawful excuse, fails to return a licence to the Board within the time specified in subsection (2) commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

PART IV. Appeal

Appeal. 27. - (1) A person who is aggrieved by the decision of the Board not to grant a licence or to suspend or revoke such licence may appeal to the Minister by way of a notice of appeal within twenty-eight days of the date of the decision or within such further period as the Minister may, in any special circumstance, allow.

(2) The notice of appeal shall set out clearly the grounds of the appeal and there shall be attached to such notice, copies of any correspondence, document or statement relevant to the appeal.

(3) A copy of the notice of appeal together with copies of any correspondence, document or statement shall be served on the Board.

(4) The Minister shall, within seven days of the receipt of a notice of appeal under subsection (1), request the Board to furnish him, within seven days, with a statement in writing setting out the reasons for its decision.

(5) The Minister may order that any books, papers, documents or statements, relating to the appeal which are in the possession of the person aggrieved or the Board be produced at the hearing of the appeal.

(6) The Minister shall cause all parties to the appeal to be informed -

(a) of the date of the hearing of the appeal;

(b) that they may appear themselves or by their attorney-at-law; and

(c) that they may summon witnesses in their cause.

(7) On hearing an appeal under this section, the Minister may -

(a) dismiss the appeal and confirm the decision of the Board;

(b) allow the appeal and set aside the decision;

(c) vary the decision; or

(d) allow the appeal and direct that the matter be determined afresh by the Board.

PART V. Enforcement

28. - (1) The Board shall appoint as inspectors for the purpose of this Act persons who by training and experience are, in its opinion, qualified to be so appointed.

(2) The Board shall issue each inspector with a certificate of appointment in the prescribed form and the inspector shall, on entering any place for purpose of carrying into effect any of the functions specified in section 29 produce the certificate, on request, to the operator or other person in charge thereof.

(3) The appointment of any person as an inspector pursuant to subsection (1) shall be published in the Gazette.

29. Every inspector shall -

(a) carry out such inspections as the Board may require in order to ensure compliance with -

(i) the provisions of this Act or any regulations made hereunder; or

(ii) any condition subject to which a licence is granted;

(b) keep such records as may be prescribed;

(c) submit reports generally to the Board, at such times as the Board may determine;

(d) forthwith report to the Board any contravention of this Act or any regulations made hereunder; and

(e) perform such other functions as may be prescribed.

30. (1) Subject to subsection (2), an inspector may, for purpose of the execution of this Act or any regulations, made hereunder, enter at all reasonable times the premises of any person engaged in or suspected of engaging in trade in dairy products or any other place in which such trade is conducted or suspected of engaging interested in dairy products or any other place in which such trade is conducted and inspect any book, document, licence, record, vehicle, storage facility, dairy product, equipment or other article or thing relating thereto (hereinafter referred to as "specified goods and equipment").

(2) An inspector may, during the course of an inspection under subsection (1) -

(a) seize and detain any specified goods or equipment; or

(b) take samples of any dairy product found therein, which the inspector reasonably believes is being used in contravention of any provision of this Act or any regulations made hereunder.

PART VI. Offences and Penalties

31. Every person who engages in any trade in dairy products without a licence

issued under section 21 commits an offence and is liable -

(a) on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;

(b) on conviction on indictment in a Circuit Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

32. Every person who -

(a) for the purposes of obtaining, whether for himself or for any other person, the grant or renewal of any licence under this Act, makes any declaration or statement which is false or misleading in any material particular;

(b) knowingly furnishes to an inspector or other person performing any duty in relation to this Act, a document that to the knowledge of the first-mentioned person contains information which is false or misleading in any material particular;

(c) knowingly utters, produces, or makes use of any such declaration or statement or any document containing any false declaration or statement; or

(d) falsifies or amends any information contained in a licence, commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

33. Any person who -

(a) wilfully hinders or obstructs an inspector acting in the execution of his duties under this Act;

(b) without lawful excuse, fails within a reasonable time to comply with any requirement of an inspector exercising the powers conferred on him under this Act;

(c) after being required to disclose his true name and place of residence by an inspector acting pursuant to the powers conferred on him under this Act -

(i) refuses to disclose his true name and place of residence; or

(ii) gives a false name or place of residence;

(d) impersonates or pretends to be an inspector; or

(e) assaults, threatens, or intimidates, or uses threatening language or behaves in a threatening manner to any inspector while he is acting in the exercise of his powers or the discharge of his duties under this Act, commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding twelve months.

34. Every person who -

(a) fails to keep any records or other documents required to be kept under this Act or any regulation made hereunder;

(b) fails without reasonable excuse, to produce such books, records or other documents to an inspector upon being requested to do so, commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding thirty thousand dollars, or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

35. Every person who commits an offence under this Act or any regulations hereunder in respect of which no special penalty is provided is liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

PART VII. Forfeiture

36. Where a person is convicted of an offence under this Act in which any specified goods and equipment seized and detained under section 30(2) was used in committing the offence the Court may, on an application by the Board, order that the specified goods and equipment be forfeited to the Crown.

37. (1) Where the Board proposes to apply to the Court for an order of forfeiture under section 36 it shall, subject to subsection (4), give written notice to the owner of, and any person, if known, having an interest in or claim to, the specified goods and equipment that it proposes to apply for such an order.

(2) The owner or other person notified under subsection (1) shall, within thirty days of the date of the notice, show cause why the specified goods and equipment should not be forfeited.

(3) Where the Board is unable to ascertain the owner of or any person having an interest in any specified goods and equipment to which this section applies, the Board shall publish a notice in a daily newspaper circulating in Jamaica regarding the intention of the Board to apply to a Resident Magistrate for an order for forfeiture, not less than thirty days prior to the application.

(4) Notice shall not be required under subsection (1) if the seizure and detention was made in the presence of the owner or person having an interest in the specified goods and equipment.

(5) Any person having an interest in or a claim to any specified goods and equipment seized under this Act may appear at the hearing of the application for forfeiture and show cause why the order should not be made.

(6) If, upon the application of a person prejudiced by an order made under this section, the Court is satisfied that it is just in the circumstances of the case to revoke such order, the Court may revoke such order upon such terms and conditions, if any, as it deems appropriate, and without prejudice to the generality of the foregoing, may require such person to pay in respect of storage, maintenance, administrative expenses, security and insurance of the specified goods and equipment, such amount as may be charged by the person in whose custody the specified goods and

equipment were kept.

(7) An application to the Court under subsection (6) for the revocation of a forfeiture order shall be made within thirty days of the date of the making of such an order or such longer period as the Court may allow, not exceeding six months.

PART VIII. General

38. - (1) The Board, after consultation with the Minister, may make regulations for the purposes of giving effect to the provisions and purposes of this Act.

(2) Notwithstanding section 29 of the Interpretation Act, regulations made under subsection (1) may provide for the imposition of penalties on summary conviction before a Resident Magistrate not exceeding a fine of five hundred thousand dollars or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

39. This Act binds the Crown.

Memorandum of Objects and Reason

Jamaica's potential to be self-sufficient in milk production has not been realized due to a lack of proper institutional structures for development of the dairy sector. In an effort to improve the situation, of Government caused an in-depth review of the sector to be undertaken. The aim of the review was to identify constraints and determine comprehensive rehabilitative measures. The establishment of the Board represents the implementation of one such measure.

This Bill, therefore, seeks to provide for the establishment of a statutory authority to be known as the Jamaica Dairy Development Board. Subject to the general directions of the Minister, the primary responsibility of the Board is to develop policy and coordinate Government's milk production enhancement programme. Major objectives of the Board include promoting efficiency in the production of milk and other dairy products and mobilizing resources for and on behalf of the dairy sector. Provision is also made for the Board, with the approval of the Minister, to impose a cess on trade in dairy products. The membership of the Board is broad based comprising ex officio and appointed members.

The income of the Board is not exempt from income tax. The Board is exempt from liability to stamp duty in respect of instruments executed by it or on its behalf. Transfers by the Board are also exempt from income tax. The Board will be required to pay duty on imports as prescribed under the Customs Tariff (Revision) Resolution, 1972. As in the case of similar statutory bodies not fully funded from the Budget, the Board shall pay duty on motor vehicles at the prescribed rate also.

The Bill confers power on the Board after consultation with the Minister, to make regulations.

The Board is authorized to grant, refuse, renew, modify, suspend and revoke dairy licences.

ROGER CLARKE,
Minister of Agriculture.