

# PROJET DE LOI

ENTITLED

## **The Tomato Marketing (Guernsey) Law, 1952 \***

[CONSOLIDATED TEXT]

### NOTE

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Ordres en Conseil Vol. XV, p. 341; as amended by the Tomato Marketing (Guernsey) (Amendment) Law, 1955 (Ordres en Conseil Vol. XVI, p. 273); the Tomato Marketing (Amendment) (Guernsey) Law, 1960 (Ordres en Conseil Vol. XVIII, p. 262); the Tomato Marketing (Amendment) (Guernsey) Law, 1968 (Ordres en Conseil Vol. XXI, p. 295); the Tomato Marketing (Amendment) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 457); the Tomato Marketing (Removal of Compulsion) (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 144); the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Tomato Marketing (Distribution of Monies) (Guernsey) Law, 1973 (Ordres en Conseil Vol. XXIV, p. 137); the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264). This Law has been repealed by the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016 (No. XXI of 2016).

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## **The Tomato Marketing (Guernsey) Law, 1952**

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# PROJET DE LOI

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## **The Tomato Marketing (Guernsey) Law, 1952**

**THE STATES**, in pursuance of their Resolutions of the 22<sup>nd</sup> day of March, 1950, and the 18<sup>th</sup> day of June, 1952, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

### PART I

#### *The Guernsey Tomato Marketing Board*

#### **The Guernsey Tomato Marketing Board.**

1. (1) As from the constitution of a Board to be called "The Guernsey Tomato Marketing Board" (in this Law referred to as "**the Board**") [any tomatoes for export from Guernsey may be delivered to the Board] for export and marketing by the Board and, subject to the provisions of this Law, [the Board shall export and market any tomatoes so delivered] in such manner and subject to such conditions as are from time to time in the opinion of the Board to the best advantage of producers:

PROVIDED that the Board may, with a view to the avoidance of loss to producers, discontinue temporarily, either wholly or partially, the export of tomatoes.

(2) The provisions of the First Schedule to this Law shall have effect with respect to the Board.

(3) The provisions of the Second Schedule to this Law shall have

effect with respect to the election of members of the Board and to registered producers.

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**NOTES**

*In section 1, the words in the first and second pairs of square brackets in subsection (1) were substituted by the Tomato Marketing (Removal of Compulsion) (Guernsey) Law, 1986, respectively section 2(1)(a)(i) and section 2(1)(a)(ii), with effect from 8th April, 1986.*

*The following Ordinance has been made under this Law:*

*Guernsey Tomato Marketing Board (Elections) Ordinance, 1968.*

*The following Regulations have been made under this Law:*

*Export of Tomatoes Regulations, 1953.*

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**Additional functions of the Board and Method of Export.**

2. (1) Subject to the provisions of this Law, the Board –
- (a) may regulate the delivery of tomatoes to the Board,
  - [(b) may engage in the packing of tomatoes by way of trade or business,]
  - [(c)] may do such things as may be necessary or desirable to encourage and promote the sale of tomatoes by the adoption of trade marks, advertising, setting up of marketing research, and conducting experiments in packaging, grading and marketing, and take all other measures necessary or expedient for facilitating and encouraging the marketing and sale of tomatoes outside Guernsey,

[(d)] shall receive on behalf of producers and distribute the proceeds from the sale of tomatoes [delivered to the Board].

(2) Notwithstanding the provisions of subsection (1) of section one of this Law, the Board shall not put into operation a method of export and marketing whereby, whether or not registered producers assent thereto, all tomatoes delivered to the Board are bulked and are consigned to such destinations and persons as are selected by the Board in its absolute discretion and whereby the amount attributable to a producer in respect of his tomatoes of a particular grade exported by the Board on a particular date or during a particular period is determined by reference to the average price realised in respect of all tomatoes of that grade exported by the Board on that date or during that period, unless, as respects the period of operation of that method, hereinafter referred to as "**the compulsory bulk method of export**", on a poll of registered producers taken by postal ballot, a majority of the registered producers voting on the poll have voted in favour of the compulsory bulk method of export and a majority of the votes cast in the poll have been cast in favour of that method.

[(2A) Tomatoes shall be graded in such manner as the States [Committee for Economic Development] may from time to time by order prescribe for the purposes of putting into operation a method of export and marketing whereby the amount attributable to a producer in respect of his tomatoes of a particular grade exported by the Board on a particular date or during a particular period is determined by reference to the average price realised in respect of tomatoes of that grade exported by the Board on that date or during that period.]

(3) A poll taken by postal ballot for the purpose of determining whether or not the compulsory bulk method of export shall be operated by the Board, such poll being a poll taken, whether or not this Law is then in force, between the fifteenth day of January, 1953, and the fifteenth day of February, 1953, by a

committee appointed in that behalf by the States whether before or after the coming into force of this Law upon the basis of the register of producers referred to in subparagraph (2) of paragraph 13 of the Second Schedule to this Law and conducted in accordance with the provisions of this Law concerning the conduct of polls by postal ballot, shall be an effective poll for the purposes of this section save that, in relation thereto, the reference in subsection (5) of this section to the period commencing on the first day of March next following the taking of a poll shall be construed as a reference to the period commencing on such date after the commencement of this Law as the Board by notice in the "Gazette Officielle" appoints.

(4) Thereafter, a poll by postal ballot to determine whether or not the compulsory bulk method of export shall be operated by the Board shall be taken by the Board only during the month of November in any year.

(5) The result of any such poll by postal ballot as aforesaid shall determine whether or not the compulsory bulk method of export shall be operated during the period commencing on the first day of March next following the taking of that poll and ending on the last day of February next following the publication of the result of a subsequent poll by postal ballot held to determine the like matter and which reverses the result of the previous poll.

(6) During the month of November in any year the Board may and at the request in writing of at least fifty registered producers representing not less than one quarter of the total number of votes exercisable by all the registered producers delivered to the Board by the last preceding tenth day of October shall take a poll by postal ballot of the registered producers to determine whether or not as from the next succeeding first day of March the compulsory bulk method of export shall be operated. The Board shall publish forthwith the result of any such poll in the "Gazette Officielle".

(7) If, in respect of any period, the Board is of the opinion and

records, in the minutes of its proceedings and, so soon thereafter as may be, publishes in the "Gazette Officielle" a notice that it is impracticable, without incurring a serious diminution or the risk of a serious diminution in the amounts realised from the marketing of tomatoes, to export and market tomatoes otherwise than in accordance with such emergency arrangements as are prescribed by the Board as being most likely, in the opinion of the Board, to avoid, or to avoid as far as possible, such diminution or the risk thereof the Board shall be entitled to export and market tomatoes accordingly notwithstanding the result of any poll by postal ballot to the contrary effect then operative.

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## NOTES

*In section 2,*

*paragraph (b) of subsection (1) was inserted, and paragraphs (b) and (c) thereof were re-lettered as, respectively, paragraph (c) and paragraph (d), by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, section 2(a), with effect from 22nd October, 1968;*

*the words in square brackets in paragraph (d) of subsection (1) were inserted by the Tomato Marketing (Removal of Compulsion) (Guernsey) Law, 1986, section 2(1)(b), with effect from 8th April, 1986;*

*subsection (2A) was inserted by the Tomato Marketing (Amendment) (Guernsey) Law, 1960, section 1, with effect from 22nd November, 1960;*

*the words in square brackets in subsection (2A) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.<sup>1</sup>*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>2</sup>*

*The following Order has been made under section 2:*

*Tomato Marketing (Guernsey) Order, 1980.*

*In accordance with the provisions of the Tomato Marketing (Distribution of Monies) (Guernsey) Law, 1973, section 1, with effect from 1st October, 1973, the States may, from time to time, by Ordinance suspend the operation of subsection (2A) of this section in relation to such date or during such period as may be specified in any such Ordinance if, in the opinion of the States, the operation of the said subsection on any such date or during any such period would be inequitable to the producers.*

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**Restrictions on the powers of the Board.**

[3. Nothing in this Law contained shall be deemed to authorise the Board to regulate the packing and grading of tomatoes.]

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**NOTE**

*Section 3 was substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, section 2(b), with effect from 22nd October, 1968.*

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**Levies on tomatoes exported by the Board.**

4. The Board may, subject to the provisions of section six of this Law, raise a levy in respect of all tomatoes exported by the Board.

**Compensation payable out of levy.**

5. [ (1)] The Board shall, out of the proceeds of a levy raised by virtue of this Law, compensate any producer –

- (a) whose tomatoes are damaged or lost or which deteriorate, otherwise than through his default or negligence, during the period between their acceptance by the Board and their delivery to the consignee, where the pecuniary loss arising from such damage, loss or deterioration would otherwise fall upon such producer,
- (b) for loss sustained by him as a result of the insolvency

of a person to whom tomatoes were consigned[:

Provided that nothing in the preceding provisions of this subsection shall be taken to require the Board, out of the proceeds of a levy raised as aforesaid, to compensate any producer whose tomatoes are damaged or lost or which deteriorate as a result of a strike or industrial action short of a strike during the period between their acceptance by the Board and their delivery to the consignee, whether such strike or such industrial action takes place in this Island or elsewhere.

(2) In this section the following expressions have the meanings hereby respectively assigned to them, that is to say –

**"contract of employment"** means a contract of service or of apprenticeship, whether it is express or implied, and (if it is express) whether it is oral or in writing,

**"employee"** means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment,

**"employer"** means the person by whom an employee is (or, in a case where the employment has ceased, was) employed,

**"industrial dispute"** means a dispute between one or more employers or organizations of employers and one or more workers or organizations of workers, where the dispute relates wholly or mainly to any one or more of the following, that is to say –

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work,

- (b) engagement or non-engagement, or termination or suspension of employment, of one or more workers,
- (c) allocation of work as between workers or groups of workers,

**"industrial action short of a strike"** means any concerted course of conduct (other than a strike) which, in contemplation or furtherance of an industrial dispute –

- (a) is carried on by a group of workers with the intention of preventing, reducing or otherwise interfering with the production of goods or the provision of services, and
- (b) in the case of some or all of them, is carried on in breach of their contracts of employment or (where they are not employees) in breach of their terms and conditions of service,

**"strike"** means a concerted stoppage of work by a group of workers in contemplation or furtherance of an industrial dispute, whether they are parties to the dispute or not, whether (in the case of all or any of those workers) a stoppage is or is not in breach of their terms and conditions of employment, and whether it is carried out during, or on the termination of, their employment,

**"terms and conditions of employment"** means the terms and conditions on which one or more workers are, or are to be, required to work for their employers,

**"worker"** means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work –

- (a) under a contract of employment, or
- (b) under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to perform personally any work or services for another party to the contract who is not a professional client of his.]

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**NOTE**

*In section 5, first, subsection (1) was renumbered, second, the punctuation immediately after subsection (1) was substituted, third, the proviso to subsection (1) was inserted and, fourth, subsection (2) was inserted by the Tomato Marketing (Amendment) (Guernsey) Law, 1978, section 1(a), with effect from 25th July, 1978.*

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**Provisions as to expenses of the Board.**

6. (1) At every annual general meeting of registered producers the Board shall present for the approval of the registered producers an estimate of the expenditure likely to be incurred by the Board in the current financial year, a statement of the provision proposed by the Board for contingencies in respect of that year and a proposal as to the amount [per six kilograms or part of six kilograms] of tomatoes [delivered to the Board] to be levied by the Board accordingly.

[(1A) Every such proposal as to the amount per package of twelve pounds of tomatoes to be levied by the Board shall specify the several amounts comprised in that amount in respect of the following, that is to say –

- (a) freight and carriage charges,
- (b) compensation under section five of this Law, and
- (c) the other expenses of the Board.

[(1B) Where, after the approval by an annual general meeting of registered producers for any financial year of the amount per package of twelve pounds of tomatoes to be levied by the Board under the foregoing provisions of this Law, it appears to the Board that such amount is or may be insufficient to meet any expenses incurred or to be incurred by the Board in or in relation to that financial year, the Board may from time to time increase the levy by such amount and in respect of tomatoes exported during such period as appears to the Board to be necessary to meet those expenses.]]

(2) The Board may recover any sum due by any producer under any levy [or any increased levy under this Law] –

- (a) by deducting that sum from any proceeds of the sale of any tomatoes exported on behalf of that producer by the Board, or
- (b) as a civil debt due by that producer to the Board.

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**NOTES**

*In section 6,*

*the words in the first pair of square brackets in subsection (1) were substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1978, section 1(b), with effect from 25th July, 1978;*

*the words in the second pair of square brackets in subsection (1) were inserted by the Tomato Marketing (Removal of Compulsion) (Guernsey)*

*Law, 1986, section 2(1)(c), with effect from 8th April, 1986;*

*subsection (1A) was inserted by the Tomato Marketing (Guernsey) (Amendment) Law, 1955, section 2(a), with effect from 8th February, 1955;*

*subsection (1B) (which was originally inserted by the Tomato Marketing (Guernsey) (Amendment) Law, 1955, section 2(a), with effect from 8th February, 1955) was substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, section 2(c), with effect from 22nd October, 1968;*

*the words in square brackets in subsection (2) were substituted by the Tomato Marketing (Guernsey) (Amendment) Law, 1955, section 2(b), with effect from 8th February, 1955.*

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### **Borrowing powers of the Board.**

7. The Board is hereby authorised to borrow such moneys as may be required to enable it to meet its obligations or discharge its functions under this Law during any period when the proceeds of any levy raised under the provisions of this Law are not available or sufficient for those purposes and to repay moneys so borrowed out of the proceeds of any such levy.

### **Accounts and audit.**

8. The Board shall keep proper accounts which shall be audited by a qualified accountant appointed annually by the registered producers in general meeting.

## PART II

### *Meetings of registered producers*

### **Notice of and quorum at the annual general meeting.**

9. (1) An annual general meeting of registered producers shall be held as soon as may be after the first day of February in each year. The quorum for such meeting shall be fifty persons present and entitled to vote.

(2) The Board shall give at least fourteen days notice in writing of an annual general meeting to all registered producers and shall make all other arrangements necessary for the holding thereof.

The notice shall be accompanied by an agenda, a copy of the estimate, statement and proposal referred to in section six of this Law, a copy of the audited accounts (including the balance sheet and the income and expenditure account) of the Board in respect of the last preceding financial year and a copy of the report by the Board on its activities during that year.

PROVIDED that the accidental omission to give notice, in accordance with the provisions of this subsection, of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

**Reports etc. to be laid before the annual general meeting.**

**10.** (1) At every annual general meeting the Board shall present for the approval of the registered producers the said accounts and report.

(2) The Board shall make proposals in the said report for the disposal of any surplus shown by the said accounts for consideration and determination by the annual general meeting.

**First general meeting.**

**11.** (1) The Board shall as soon as may be after it has been constituted convene a first meeting of registered producers (hereafter in this Law referred to as the "**first general meeting**").

(2) For the purposes of section six of this Law (which relates to the expenses of the Board) the first general meeting shall be deemed to be an annual general meeting.

(3) The provisions of section nine of this Law (which relates to notice of, and the quorum at, annual general meetings) shall apply in relation to the first general meeting as though that meeting were an annual general meeting save that the provisions with respect to the accounts and the report of the Board shall not apply.

**Extraordinary general meetings.**

**12.** (1) The Board may at any time and shall upon a request in writing by not less than thirty registered producers convene a meeting of registered producers (hereinafter referred to as "**an extraordinary general meeting**"). The quorum for such a meeting shall be fifty persons present and entitled to vote.

(2) A request as aforesaid shall state the objects of the proposed meeting, shall be signed by the registered producers requesting the convening of the meeting and shall be deposited at the office of the Board; such a request may consist of several documents each signed by one or more registered producers.

(3) If the Board does not within fourteen days from the date of the deposit of the request or, if the request be made in a number of documents as aforesaid, within fourteen days of the date when thirty registered producers have so deposited their requests, convene an extraordinary general meeting to take place not more than twenty-one days from the date of the convening notice, the registered producers so requesting or not less than half of them, may themselves convene a meeting.

(4) Notice of any meeting convened in accordance with the provisions of this section shall be sufficiently given by publication at least twice in the "Gazette Officielle" not less than seven days before the date of the holding of such meeting, of the day and hour and the place of such meeting and particulars of the business to be discussed thereat.

**Interpretation of provisions relating to meetings.**

**13.** In the succeeding sections of this Part of this Law, the expression "**meeting**" includes the first general meeting, an annual general meeting and an extraordinary general meeting.

**Business of meetings.**

**14.** No business shall be transacted at any meeting other than business of which notice has been given in the notice convening that meeting.

**Voting at meetings.**

**15.** (1) Any decision of a meeting shall, subject to the provisions of the next succeeding subsection, be taken by a majority of persons entitled to vote present and voting thereat and each such person shall have only one vote.

(2) At any meeting a question put to the meeting may in the discretion of the chairman, exercised before the question is put, be decided by a show of hands or a poll and shall be decided by a poll if a demand in that behalf by any ten or more persons present and entitled to vote is made before or on the declaration of the result of a show of hands.

**Proxies and powers of attorney.**

**16.** (1) Any registered producer entitled to attend and vote at any meeting shall be entitled to appoint another person (whether a registered producer or not) as his proxy to attend and vote instead of him:

PROVIDED that –

- (a) a registered producer shall not be entitled to appoint more than one proxy to attend on the same occasion, and

(b) a proxy shall not be entitled to vote except on a poll.

(2) The instrument appointing a proxy to vote at a meeting shall be deemed also to confer authority to demand or join in demanding a poll.

(3) Subject to the provisions of subsection (2) of this section, a proxy, not being a registered producer, shall not have the right to speak at a meeting.

(4) In every notice convening a meeting there shall appear with reasonable prominence a statement that a registered producer entitled to attend and vote is entitled to appoint a proxy and that a proxy need not be a registered producer.

(5) The instrument appointing a proxy shall be in such form as may from time to time be prescribed by the Board.

(6) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the office of the Board not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument is authorised to vote and in default the instrument of proxy shall not be treated as valid.

(7) A person authorised by a general or special power of attorney to attend and vote at a meeting in the place of a registered producer may, subject to the succeeding provisions of this section, attend and vote as aforesaid.

(8) The said person may vote on a show of hands and on a poll and the said power shall be deemed also to confer authority to demand or join in demanding a poll.

(9) Subject to the provisions of subsection (8) of this section, the

said person, not being a registered producer, shall not have the right to speak at a meeting.

(10) The said power shall be deposited at the office of the Board not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the said person is authorised to vote and in default the said power shall not be treated as valid for the purposes of this section.

**Procedure at meetings.**

**17.** (1) The chairman, or in his absence the vice-chairman, of the Board, or, in the absence of both of them, such person being a registered producer as shall be appointed by the meeting concerned, shall preside at and be responsible for the conduct of that meeting and shall cause proper minutes of the proceedings to be kept.

(2) The declaration by the chairman of a meeting of the result of any vote whether on a show of hands or on a poll at that meeting shall be conclusive evidence thereof, and in the event of an equality of votes the chairman shall in addition to his other votes (if any) have a casting vote.

**PART III**

*Compensation to tomato export agents*

**Compensation to tomato export agents.**

**18.** (1) Subject to the provisions of this section, compensation in respect of deprivation of the business of tomato export agent by reason of the operation of this Law shall be payable by the Board to those persons (each of whom is hereafter in this section referred to as a "**tomato export agent**") to whom compensation in respect of deprivation of that business during 1949 was paid in pursuance of the Export of Tomatoes Law, 1949, or to their legal personal representatives.

(2) Compensation payable to a tomato export agent under the provisions of this section shall be at the rate of five pence for each twelve pounds weight of tomatoes on the first two million four hundred thousand pounds weight of tomatoes exported by or through that agent in the year nineteen hundred and thirty-nine, and three and one-third pence for each twelve pounds weight of tomatoes so exported in excess of two million four hundred thousand pounds weight of tomatoes, together with interest thereon at the rate of four per centum per annum from the first day of January, nineteen hundred and fifty-two until the date of payment thereof.

(3) The provisions of this subsection shall have effect in relation to the provision, out of moneys received from the export of tomatoes, of moneys necessary to pay and the payment of compensation and interest thereon under the foregoing provisions of this section, that is to say –

- (a) the Tomato Shipping Board shall retain out of moneys in their hands on the thirty-first day of December, nineteen hundred and fifty-two, being moneys which but for this enactment would be distributed to the producers of tomatoes exported in that year, such sum as the States [Committee for Economic Development] may determine,
- (b) the said sum shall, on the constitution of the Board under the provisions of this Law, be transferred to the Board by the Tomato Shipping Board,
- (c) the Board shall as soon as may be apply the said sum in payment to the tomato export agents to whom this section applies of interest payable to the said agents, being interest in respect of the period commencing on

the first day of January, nineteen hundred and fifty-two and ending on the date of payment of such interest and the balance of the said sum shall be applied by the Board in payment on account of compensation payable under the provisions of this section,

- (d) the Board shall raise a special levy, in respect of tomatoes exported by the Board up to and including the thirty-first day of October, nineteen hundred and fifty-three, of such an amount as will provide moneys sufficient to meet the unpaid balance of compensation, together with interest thereon to the date of payment thereof, and the said moneys shall be applied by the Board as soon as may be in payment of the said balance of compensation and interest thereon to the date of payment thereof,
- (e) the Board shall have the same power in relation to the recovery of any sum due by a producer under the said special levy as it has in relation to the recovery of any sum due in respect of any other levy raised under this Law.

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**NOTES**

*In section 18, the words in square brackets in paragraph (a) of subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.<sup>3</sup>*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016,*

*section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*<sup>4</sup>

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## PART IV

### *General*

#### **Offences and penalties.**

**19.** (1) ...

(2) Any person who makes any wilful misrepresentation in relation to the acquisition, allocation, transfer or exercise of any vote shall be guilty of an offence under this Law and shall be liable on conviction to a fine not exceeding [level 1 on the uniform scale] or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(3) Any person who fraudulently uses or attempts to use or causes to be used any paper other than a ballot paper provided by the Board or the committee conducting the first election of members of the Board, as the case may be, shall be guilty of an offence under this Law and shall be liable, on conviction, to a fine not exceeding [level 1 on the uniform scale] or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

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#### **NOTES**

*In section 19,*

*subsection (1) was repealed by the Tomato Marketing (Removal of Compulsion) (Guernsey) Law, 1986, section 2(1)(d), with effect from 8th April, 1986;*

*the words and figures in square brackets in subsection (2) and subsection (3) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.*

**Polls taken by postal ballot.**

20. On a poll of registered producers taken by postal ballot whether in respect of an election or otherwise, the Board or the committee conducting the first election of members of the Board, as the case may be, shall cause the result of that poll to be certified by an independent person and the result of that poll as certified by him shall be conclusive evidence thereof.

**Board not to be exempt from taxation.**

21. Nothing in this Law shall be deemed to exempt the Board from liability for any tax, duty, rate, levy or other charge whatsoever.

**Power of the States.**

22. The States may by Ordinance from time to time make such provision as they deem necessary for the carrying out of this Law.

**Service of documents on registered producers.**

23. Any notice or other document required or authorised by or under this Law to be served on any registered producer may be served by delivery to that registered producer or by sending it by post to that registered producer at the address last recorded in the register of producers.

PART V

*Winding up of the Board*

**Winding up of the Board.**

24. (1) The Board may in any financial year and at the request in writing of not less than fifty registered producers representing not less than one quarter of the total number of votes exercisable by all the registered producers delivered to the Board not later than the fifteenth day of August in that financial year shall forthwith take a poll by postal ballot of the registered producers to decide whether or not the operation of this Law shall cease.

(2) The result of any poll taken under the provisions of this section shall be published forthwith in the "Gazette Officielle" by the Board.

(3) Where, on a poll taken as aforesaid, a majority of the registered producers voting on the poll have voted and a majority of the votes cast in that poll have been cast in favour of the cessation of the operation of this Law, the provisions of subsections (4) to (11) inclusive of this section shall have effect.

(4) The Board shall forthwith apply to the Royal Court for registration of the certificate as to the result of the poll.

(5) On the first day of November next following the publication as aforesaid of the result of the said poll, the provisions of this Law shall cease to have effect except so far as may be necessary for the winding up of the Board, and the Board shall proceed forthwith to wind up its affairs and to realise its assets and distribute the proceeds thereof and all other moneys remaining in the hands of the Board in manner hereinafter provided.

(6) For the purpose of the last preceding subsection the corporate

state and corporate powers of the Board shall continue until the Board is dissolved.

(7) The members of the Board in office immediately before the taking of the said poll shall continue to hold office until the winding up of the Board has been completed and the Board as constituted under this subsection may act notwithstanding that it may consist of less than six members and may from time to time fix a quorum for any meeting thereof:

PROVIDED that a member of the Board constituted as aforesaid shall cease to hold office if he –

- (a) becomes insolvent or makes any arrangement or composition with his creditors, or
- (b) becomes subject to some legal disability.

(8) In the succeeding subsections of this section the expression "**current producer**" means a producer who in the financial year next preceding the said first day of November delivered tomatoes to the Board for export.

- (9) (a) In the event of the Board being wound up all the current producers shall be liable to contribute to the assets of the Board an amount sufficient for payment of its debts and liabilities and the costs of winding up, and the liability of each current producer to pay the same shall bear the same proportion to the liability in respect thereof of all the current producers as the weight of tomatoes delivered by that current producer to the Board for export in the said financial year bears to the total weight of the tomatoes so delivered by all the current producers in that year.

- (b) The Board shall have the same power in relation to the recovery of any sum due as aforesaid as it has in relation to the recovery of any sum due in respect of any levy raised under this Law.

(10) All moneys remaining in the hands of the Board after payment of the Board's debts and liabilities and the costs of the winding up shall be distributed by the Board amongst the current producers and as respects each current producer in the same proportion as the weight of tomatoes delivered by him to the Board for export in the said financial year bears to the total weight of the tomatoes so delivered by all the current producers in that year.

(11) As soon as the affairs of the Board are fully wound up the Board shall forthwith –

- (a) send to the current producers a copy of the audited accounts for the last financial year and a copy of the audited account of the winding up, and
- (b) lodge with Her Majesty's Greffier a certificate to the effect that the affairs of the Board have been fully wound up,

and thereupon the Board shall be dissolved and this Law shall cease to have effect.

## PART VI

### *Interpretation*

#### **Interpretation.**

25. In this Law, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them –

**"export"** means export by way of trade,

**"financial year"** means a period of twelve consecutive months ending on the thirty-first day of October,

**"legal disability"** means certification as a person of unsound mind; subsection, in the case of a person of full age, to guardianship; being an inmate for reasons of mental illness of any hospital or other institution; or undergoing imprisonment for felony,

**"producer"** means a person owning tomatoes at the time of their export from Guernsey [by the Board],

**"register of producers"** means the register of producers compiled under and in accordance with the provisions of the Second Schedule to this Law,

**"registered producer"** means a producer whose name is entered on the current register of producers,

**"the Court"** means the Royal Court sitting as an Ordinary Court,

**"the Tomato Shipping Board"** means the Guernsey Tomato Shipping Board constituted under the Export of Tomatoes Law, 1949, as extended by the Export of Tomatoes Law, 1949 (Continuance) Law, 1951,

**"tomatoes"** means fresh tomatoes grown in Guernsey.

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**NOTES**

*In section 25, the words in square brackets in the definition of the expression "producer" were inserted by the Tomato Marketing (Removal of Compulsion) (Guernsey) Law, 1986, section 2(1)(e), with effect from 8th April, 1986.*

*The Law received Royal Sanction on 15th December, 1952 and was registered on the Records of the Island of Guernsey and came into force on 3rd January, 1953.*

*In accordance with the provisions of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1) and section 1(2), with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, a person shall attain full age on attaining the age of eighteen instead of on attaining the age of twenty and the reference in this section to a person of "full age" shall be construed accordingly.*

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FIRST SCHEDULE

Section 1

*Provisions as to the Guernsey Tomato Marketing Board*

1. The Board shall be a body corporate and shall have a common seal and in relation to the exercise of its functions under this Law shall have all such powers as if it were a limited liability company deriving the same under Article VI of the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" and registered on the 21<sup>st</sup> day of March, 1908.

2. (1) The Board shall, as soon as may be after it has been constituted, establish and shall thereafter maintain in this Island a registered office at which all instruments for service upon the Board shall be served.

(2) Notice of the situation of the registered office, and any change thereof, shall be given in writing within seven days after the establishment thereof or of the change, as the case may be, to Her Majesty's Greffier by the Board.

3. The Board shall consist of ten members.

4. The Board shall from time to time appoint a chairman and a vice-chairman from among its members and may revoke any such appointment.

5. If the chairman or vice-chairman of the Board ceases to be a member of the Board, he shall cease to be chairman or vice-chairman as the case may be.

6. Each member of the Board other than the member presiding at a meeting thereof shall have one vote and the member so presiding shall in the case of an equality of votes have a casting vote; the decision of a majority of the members of the Board present at a meeting shall be a decision of the Board.

7. The quorum for a meeting of the Board shall be six members and subject as aforesaid the Board shall regulate its own procedure.

8. A meeting of the Board shall, in the absence of the chairman and vice-chairman, be presided over by one of the members appointed for that meeting by the members present thereat.

[9. (1) Subject to the provisions of this paragraph, the members of the Board shall hold office from the first day of March next following their election for a period of four years.

(2) The five members of the Board elected in February, nineteen hundred and sixty-seven, shall retire on the twenty-eighth day of February, nineteen hundred and sixty-nine, and the five members of the Board elected in February, nineteen hundred and sixty-eight, shall retire on the twenty-eighth day of February, nineteen hundred and seventy.

(3) The five members of the Board elected in February, nineteen hundred and sixty-nine, shall hold office from the first day of March of that year for a period of three years.]

10. A member of the Board shall cease to hold office if he –

- (a) becomes insolvent or makes any arrangement or composition with his creditors, or
- (b) becomes subject to some legal disability, or
- (c) resigns his office by notice in writing to the Board, or
- (d) shall for more than four months have been absent

without permission of the Board from meetings of the Board held during that period.

11. (1) If a member of the Board ceases to hold office otherwise than by effluxion of time, an election shall be held to replace him, unless the vacancy occurs within the sixty days next preceding the date on which he would have retired by effluxion of time, and the replacing member shall, for the purposes of paragraph nine of this Schedule, be deemed to have been elected at the same time as the ceasing member.

(2) An election held under the provisions of this paragraph shall be conducted on the basis of the register of producers compiled under, and in accordance with, the provisions of the Second Schedule to this Law and the Board shall as soon as may be after the holding of any election give notice in the "Gazette Officielle" of the result thereof.

12. A member of the Board who ceases to be a member shall be eligible for re-election.

13. A member of the Board shall not vote in respect of any contract in which he has an interest, whether direct or indirect, opposed to the interest of the Board, and if he shall do so his vote shall not be counted.

14. The remuneration (if any) of the members of the Board shall be such as may be fixed from time to time by resolution at a general meeting.

15. The application of the seal of the Board shall be authenticated by any member of the Board thereunto authorised by the Board.

16. Any document purporting to be an instrument issued by the Board and to be sealed as aforesaid shall be received in evidence and be deemed to be such an

instrument without further proof unless the contrary is shown.

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**NOTES**

*In the First Schedule, paragraph 9 was substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, section 2(d), with effect from 22nd October, 1968.*

*The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1908 has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law. The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.*

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SECOND SCHEDULE

Section 1

*Provisions as to election of members of the Guernsey Tomato Marketing Board and  
as to registered producers*

[1. The members of the Board shall be elected by registered producers in accordance with the provisions of this Schedule.]

[2. (1) An election to replace the members of the Board retiring by virtue of the provisions of paragraph nine of the First Schedule to this Law on the last day of February in any year shall be held in accordance with the provisions of this Schedule in the month of February of that year.

(2) The Board shall as soon as may be after the holding of any election give notice in the "Gazette Officielle" of the result thereof.]

[3. Every nomination of a candidate for election to the Board shall be in writing and signed by at least five registered producers.]

4. At any election where the number of candidates is not greater than the number of vacancies, the chairman of the Board shall, after the time fixed for the delivery of nominations has elapsed, declare such candidate or candidates elected, and shall thereupon give notice of such election by means of a notice published in the "Gazette Officielle".

5. (1) A producer who, in the financial year next preceding the compilation of a register of producers, delivered to the Tomato Shipping Board or the Board, as the case may be, for export [two thousand seven hundred or more kilograms] by weight of tomatoes, shall be entitled to be entered on that register of producers and on entry as aforesaid shall, subject to the provisions of this Schedule, be a registered producer for the purposes of this Law during the period of validity of

that register.

(2) A registered producer shall have one vote for each [two thousand seven hundred kilograms] by weight of tomatoes delivered by him for export as aforesaid.

(3) ...

(4) ...

6. On a poll taken at a meeting and on a poll, other than a poll in respect of an election, taken by postal ballot, a registered producer shall be entitled to exercise the total number of votes to which he is entitled by sub-paragraph (2) of the last preceding paragraph.

7. (1) A register of producers shall be compiled by the Board not later than the third day of January in each year and shall, subject to the provisions of this Schedule, constitute the register of producers on and after that day until the second day of January of the year next following.

[(2) Each register of producers as aforesaid shall contain the name and address of every registered producer and the number of votes which he is entitled to cast.]

(3) A copy of each register of producers (but omitting therefrom references to the number of votes) shall be available for inspection by any producer throughout the period of validity of that register, during normal business hours at the office of the Board.

(4) The Board shall as soon as practicable, and not later than seven days from the compilation of a register of producers, inform each registered producer

whose name appears thereon of the particulars of his voting rights referred to in subparagraph (2) of this paragraph.

(5) Any producer claiming that he is entitled to have his name entered on the current register of producers and that it is omitted therefrom or that some material error in his name, address or voting rights appears thereon, may at any time deliver to the Board an application in writing to have his name, address and voting rights entered thereon or for the rectification of the error alleged, and the Board shall, if it is satisfied of the existence of an omission or error forthwith cause the current register of producers to be amended and notify that producer in writing accordingly.

8. Notwithstanding anything in this Schedule contained, no alteration to or amendment of the current register of producers shall be made during any of the following periods that is to say –

- (a) from the date of the publication of notice of an election to the latest date fixed for the return of the voting papers in connexion therewith, both dates inclusive,
- (b) from the date of issue of a notice convening a meeting of registered producers to the date of that meeting, both dates inclusive,
- (c) from the date of issue of the voting papers relating to a poll, other than a poll in respect of an election, taken by postal ballot, to the latest date for the return of those voting papers, both dates inclusive.

9. (1) Where tomatoes are at the time of their export from Guernsey owned by two or more persons those persons shall be treated as one producer for the

purpose of compiling the register of producers.

(2) The rights of such persons as aforesaid may only be exercised by such one of them as shall be agreed between them:

PROVIDED that unless and until each such person has in writing notified the Board of the identity of the person so agreed upon, no such rights shall be exercised in respect of those persons.

10. (1) Where a registered producer transfers by sale or otherwise the whole or part of the business by reason of the operation of which he has voting rights under this Law or the premises in which that business or that part thereof was carried on, the Board shall on the written application of the transferee and on being satisfied that a transfer has taken place and that the business is being or will be carried on by the transferee, allocate such voting rights, in whole or in such part as may appear to the Board to be equitable, to the transferee, and where voting rights are allocated as aforesaid the Board shall cause the current register of producers to be rectified accordingly, and shall forthwith notify the parties in writing of such rectification.

(2) Where, by reason of a registered producer dying or becoming subject to some legal disability or becoming insolvent or being declared bankrupt or entering into a composition or scheme of arrangement with his creditors, any property in, or control of, a business by reason of the operation of which such registered producer had or has voting rights under this Law becomes vested in a personal representative, trustee, guardian or other person (hereafter in this sub-paragraph referred to as "**the transferee**"), the Board shall, on the written application of the transferee and on being satisfied of the vesting as aforesaid, allocate the said registered producer's voting rights in respect of that business to the transferee, cause the current register of producers to be rectified accordingly and shall forthwith notify the transferee in writing of such rectification.

(3) Where the Board is satisfied that a registered producer has ceased to operate the business by reason of the operation of which he has voting rights under this Law, the Board shall revoke such voting rights and rectify the current register of producers accordingly and upon notification given in writing by the Board of such revocation to that registered producer, the said voting rights shall no longer be exercisable by him.

[11. Subject to the provisions of this Law, the Board shall be responsible for holding all elections.]

12. (1) Elections shall be by postal ballot.

(2) Subject to the provisions of this Law, the States may from time to time by Ordinance regulate the procedure and practice relating to elections.

13. ...

14. ...

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## NOTES

*In the Second Schedule,*

*paragraph 1, paragraph 2 and paragraph 3 were substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, respectively section 2(e)(i), section 2(e)(ii) and section 2(e)(iii), with effect from 22nd October, 1968;*

*the words in square brackets in sub-paragraph (1) and sub-paragraph (2) of paragraph 5 were substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1978, respectively section 1(c) and section 1(d), with effect from 25th July, 1978;*

*sub-paragraph (3) and sub-paragraph (4) of paragraph 5 were repealed by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, section 2(e)(iv), with effect from 22nd October, 1968;*

*sub-paragraph (2) of paragraph 7, and paragraph 11, were substituted by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, respectively section 2(e)(v) and section 2(e)(vi), with effect from 22nd October, 1968;*

*paragraph 13 and paragraph 14 were repealed by the Tomato Marketing (Amendment) (Guernsey) Law, 1968, section 2(e)(vii), with effect from 22nd October, 1968.*

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**1** These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 10, with effect from 6th May, 2004.

**2** The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Committee for Horticulture and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 10, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

**3** These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 10, with effect from 6th May, 2004.

**4** The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Committee for Horticulture and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 10, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.