

REPUBLIC OF SOUTH AFRICA

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**PRESERVATION AND  
DEVELOPMENT OF  
AGRICULTURAL LAND BILL**

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*(Portfolio Committee on Agriculture, Land Reform and Rural Development)*  
*(The English text is the official text of the Bill.)*

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(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

**[B 8B—2021]**

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## GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

To provide that the Act applies to all agricultural land within the Republic; to provide principles for the management of agricultural land; to provide for agricultural land evaluation and classification; to provide for the preparation, purpose and content of provincial agricultural sector plans; to provide for the declaration of protected agricultural areas; to provide for the general objectives of agro-ecosystem management, agro-ecosystem authorisations, the listing and delisting of activities or areas within agro-ecosystems and the identification of competent authorities; to provide for the establishment of committees and the appointment of technical and other advisers to advise the Minister, MECs and competent authorities; to provide for a performance assessment framework; to provide for the establishment and management of the national agro-eco information system; to provide for appeal procedures; to provide for the appointment and functions of inspectors; to provide for contravention directives and the investigation and gathering of data on property; to provide for the delegation of powers; to enable the Minister to make regulations and determine norms and standards; to provide for offences and penalties; to provide for the amendment of the Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998); and to provide for matters connected therewith.

## PREAMBLE

**RECOGNISING** that it is in the national interest to preserve and promote the sustainable development of agricultural land for the production of food and other agricultural products for the primary purpose of sustaining and enhancing human life for the benefit of present and future generations;

**RECOGNISING FURTHER** the need for a national regulatory framework to coordinate the preservation and development of agricultural land in a proactive manner, to prevent the fragmentation of agricultural land, to minimise the loss of agricultural land, to promote viable farming units, to encourage the optimal use of agricultural land and to provide for food security;

**ACKNOWLEDGING** that high value agricultural land is a scarce and non-renewable resource and that the pressures exerted on agricultural land make it increasingly difficult to effectively and sustainably produce sufficient food; and

**FURTHER ACKNOWLEDGING** that it is the State's obligation to realise the constitutional imperatives in—

- section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that will secure the sustainable development of natural resources; and
- section 27(1)(b) of the Constitution, to ensure that everyone in the Republic has access to sufficient food by taking measures aimed at enhancing the preservation and optimal use of agricultural land for agricultural purposes,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,  
as follows:—

## ARRANGEMENT OF SECTIONS

### CHAPTER 1

#### INTERPRETATION AND OBJECTS 5

*Sections*

1. Definitions
  2. Objects of Act
  3. Application of Act
- 10

### CHAPTER 2

#### AGRICULTURAL LAND MANAGEMENT

*Part 1*

*Principles*

4. Principles
- 15

*Part 2*

*Agricultural land evaluation and classification*

5. Agricultural land evaluation and classification

*Part 3* 20

*Provincial agricultural sector plans*

6. Preparation of provincial agricultural sector plans
  7. Purpose of provincial agricultural sector plans
  8. Content of provincial agricultural sector plans
  9. Status of provincial agricultural sector plans
  10. Compliance with provincial agricultural sector plans
- 25

*Part 4*

*Protected agricultural areas*

11. Declaration of protected agricultural areas
  12. Procedure to declare protected agricultural areas
  13. Review, withdrawal and amendment of protected agricultural areas
- 30

### CHAPTER 3

#### AGRO-ECOSYSTEM MANAGEMENT 35

14. General objectives of agro-ecosystem management
  15. Agro-ecosystem authorisations
  16. Listing of activity and agricultural area
  17. Procedure for listing an activity and agricultural area
  18. Procedure for delisting or amending an activity or agricultural area
  19. Identification of competent authority
  20. Consideration of application by competent authority
- 40

**CHAPTER 4**

**INSTITUTIONAL FRAMEWORK**

- 21. Establishment of committees
- 22. Appointment of technical and other advisers
- 23. Performance assessment framework 5

**CHAPTER 5**

**NATIONAL AGRO-ECO INFORMATION SYSTEM**

- 24. Establishment of national agro-eco information system
- 25. Objectives of national agro-eco information system 10
- 26. Content of national agro-eco information system

**CHAPTER 6**

**APPEALS, COMPLIANCE AND CONTRAVENTIONS**

*Part 1*

*Appeal procedures* 15

- 27. Right to appeal
- 28. Appointment of advisory appeal panel
- 29. Investigation and consideration by advisory appeal panel
- 30. Consideration of appeal by Minister

*Part 2*

20

*Compliance inspections and contravention directives*

- 31. Compliance inspections
- 32. Contravention directives
- 33. Investigation and gathering of data on agricultural land

**CHAPTER 7**

25

**GENERAL AND MISCELLANEOUS PROVISIONS**

- 34. Delegations
- 35. Regulations
- 36. Offences
- 37. Penalties 30
- 38. Repeal and amendment of laws
- 39. Short title and commencement

**Schedule**

**Repeal and amendment of laws** 35

## CHAPTER 1

### INTERPRETATION AND OBJECTS

#### Definitions

1. In this Act, unless the context indicates otherwise—
- “**advisory appeal panel**” means an advisory appeal panel appointed by the Minister in terms of section 28; 5
- “**agricultural area**” means a cartographically delineated area, with shared agricultural characteristics, based on—
- (a) agricultural land capability;
  - (b) agricultural conservation status; 10
  - (c) agricultural potential;
  - (d) agricultural suitability;
  - (e) geographic location; or
  - (f) agricultural use;
- “**agricultural land**” means all land in the jurisdiction of the Republic, excluding land— 15
- (a) in a township as defined in the Deeds Registries Act, or land for which a township register, separate subdivision register or sectional title register, as defined in the Sectional Titles Act, 1986 (Act No. 95 of 1986), has been opened; 20
  - (b) which, immediately prior to the date of commencement of this Act, was lawfully zoned for non-agricultural purposes by an organ of state subject to the conditions of the zoning;
  - (c) which has been excluded in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), by means of a notice in the *Gazette*; or 25
  - (d) which the Minister excludes in terms of section 5(2);
- “**agricultural land capability**” means the most intensive long-term use of land for purposes of rain fed farming, determined by the interaction of climate, soil and terrain;
- “**agricultural potential**” means a measure of potential productivity per unit area and unit time achieved with specified management inputs which, for a given crop or veld type and level of management, is largely determined by the interaction of climate, soil and terrain; 30
- “**agricultural purposes**” means practices associated with the use of agricultural land for crop and animal production, keeping of animals, including wild animals, forestry and logging, fishing and aquaculture, including the use of land for structures, buildings and dwelling units reasonably necessary for, or related to, the agricultural use of land; 35
- “**agriculture**” means the science, practice, occupation or economic activity in all its aspects concerned with the keeping or active production of useful plants, fungi or animals for— 40
- (a) bio-fuel;
  - (b) fibre;
  - (c) food; or
  - (d) other agricultural goods or services, 45
- and includes, in varying degrees, the preparation or marketing of the resulting products;
- “**agro-ecosystem**” means a spatially and functionally coherent unit of agricultural activity, that can be defined on varying spatial scales, and includes the interactions between the living and non-living components of the unit as contained within larger landscapes; 50
- “**agro-ecosystem authorisation**” means the authorisation contemplated in section 15;
- “**agro-ecosystem report**” means a report quantifying and qualifying site specific and cumulative impact of land use changes on the productivity, stability, viability, adaptability, resiliency and equitability of an agro-ecosystem; 55
- “**competent authority**” means the competent authority identified by the Minister in terms of section 19;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;

**“Deeds Registries Act”** means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

**“Department”** means the national department responsible for agriculture;

**“Director-General”** means the Director-General of the Department;

**“farmer”** means a person or entity who uses agricultural land for agricultural purposes, and excludes a person employed by the farmer; 5

**“farming unit”** means an institutional unit, in its capacity as a producer of agricultural goods and services, with—

(a) autonomy in respect of financial and investment decision-making; and

(b) authority and responsibility for allocating resources for the production of agricultural goods and services; 10

**“food security”** means physical, social and economic access by all people in the Republic, at all times, to sufficient, safe and nutritious food, which meets their dietary needs for an active and healthy life;

**“HoD”** means the head of the provincial department responsible for agriculture; 15

**“land owner”** means a natural or juristic person, or a community, who holds a right in land, registered or unregistered, over which such person or community enjoys protection under any law;

**“land suitability assessment”** means the assessment of the fitness of a given piece of land for a defined agricultural purpose, determined by the interaction of climate, soil and terrain, the availability of water and the natural fauna and flora, excluding weeds and invasive species; 20

**“land use”** means a series of human activities which are directly related to the land, making use of its resources, or having an impact on it, and “land user” has a corresponding meaning; 25

**“listed activity”** means an activity contemplated in section 16;

**“MEC”** means a member of the Executive Council of a Province responsible for agriculture;

**“Minister”** means the Minister responsible for agriculture, unless stated otherwise; 30

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“municipality”**, when referred to as—

(a) an entity, means a municipality as described in section 2 of the Municipal Systems Act, and includes the municipal council; and 35

(b) a geographical area, means a municipal area determined in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

**“national agro-eco information system”** means the national agro-ecology information system established in terms of section 24;

**“optimal agricultural use”** means the maximum productivity per unit area and unit time achievable by the best suited or adapted farming practices in a sustainable manner, with minimum negative impacts on the natural agricultural resources upon which the agricultural economy depends, including soil, water, climate, terrain, natural fauna and flora, but excluding weeds and invasive species; 40

**“prescribe”** means prescribe by regulation; 45

**“preserve”** means to protect agricultural land from anything that would cause its current agricultural potential, capability, suitability and use to change or deteriorate or cause it to be lost for agricultural production;

**“protected agricultural area”** means a national or provincial protected agricultural area, contemplated in Part 4 of Chapter 2, which is a cartographically delineated area of agricultural land— 50

(a) which is preserved for purposes of ensuring that agricultural land is protected against non-agricultural land uses in order to promote long-term agricultural production and food security; and

(b) which includes all areas demarcated as such in accordance with section 11; 55

**“provincial agricultural sector plan”** means a provincial agricultural sector plan contemplated in Part 3 of Chapter 2;

**“provincial department”** means the provincial department responsible for agriculture;

**“registrar of deeds”** means a registrar as defined in the Deeds Registries Act; 60

**“Spatial Data Infrastructure Act”** means the Spatial Data Infrastructure Act, 2003 (Act No. 54 of 2003);

**“Spatial Planning and Land Use Management Act”** means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

**“sustainable agriculture”** means—

- (a) farming practices that—
  - (i) conserve land, water, plant and animal genetic resources; and 5
  - (ii) are environmentally non-degrading, technically appropriate, economically viable and socially acceptable; and
- (b) an integrated system of plant and animal production practices having a site-specific application that complements ecological and biodiversity conservation and meets present needs without compromising the ability to meet a future need to—
  - (i) satisfy human needs for food and other agricultural products;
  - (ii) enhance environmental quality and the natural resource base upon which the agricultural economy depends;
  - (iii) make the most efficient use of non-renewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls; 15
  - (iv) sustain the viability of a farming unit; and
  - (v) enhance the quality of life for farmers and society as a whole;

**“this Act”** includes any regulation made under this Act; and 20

**“viable farming unit”** means the minimum area of agricultural land required for a farming unit practising sustainable agriculture that is economically viable and generates sufficient revenue from its agricultural production operations in order to cover—

- (a) all variable and fixed costs of production; 25
- (b) all appropriate family living expenses; and
- (c) capital replacement costs,

with an adequate buffer to cater for risks related to climate variability within the specific agro-ecosystem, but excluding declared disasters.

## **Objects of Act** 30

2. The objects of this Act are to—

- (a) promote the preservation and sustainable development of agricultural land;
- (b) establish evaluation and classification systems for agricultural land;
- (c) demarcate protected agricultural areas to ensure that agricultural land is preserved and protected against non-agricultural uses in order to promote long-term agricultural production; 35
- (d) implement a coordinated national framework, including norms, standards and authorisations for the use of agricultural land to—
  - (i) promote and encourage viable farming units from a long-term economic, environmental and social perspective; 40
  - (ii) discourage land use changes from agricultural to non-agricultural uses to prevent the fragmentation of the agro-ecosystems; and
  - (iii) facilitate concurrent land uses on agricultural land without jeopardising long term food security;
- (e) provide for mitigating measures to counteract the loss of agricultural land and the impact of non-agricultural developments on agricultural production capacity; and 45
- (f) establish a national agro-eco information system with geo-referenced information to support the objects of this Act.

## **Application of Act** 50

3. (1) This Act applies to all agricultural land within the Republic.

(2) This Act binds all organs of state in the—

- (a) national and local spheres of government; and
- (b) provincial sphere of government, subject to section 146 of the Constitution.

(3) This Act applies in conjunction with the application of any other law, including national and provincial legislation, but not limited to, the Spatial Planning and Land Use Management Act. 55

## CHAPTER 2

### AGRICULTURAL LAND MANAGEMENT

#### *Part 1*

#### *Principles*

- Principles** 5
4. (1) The following principles apply to all agricultural land within the Republic:
- (a) The principle of agro-ecosystem management, where—
    - (i) an agro-ecosystem is a function of its natural environment and farming system;
    - (ii) activities that affect agricultural land must be assessed in the context of an agro-ecosystem; and 10
    - (iii) the site specific and the cumulative impact of activities on the living and non-living components within an agro-ecosystem must be assessed;
  - (b) the principle of productivity, where—
    - (i) the quantity of food and other agricultural goods and services delivered per unit area and unit time is directly related to agricultural productivity, determined by the interaction between climate, soil and terrain variables, spatial location and management; 15
    - (ii) land with high agricultural productivity is severely limited within the country; and 20
    - (iii) all developmental frameworks and policies must address the preservation of land, with a high agricultural productivity, for agricultural use;
  - (c) the principle of stability, where—
    - (i) food insecurity adversely affects the stability of society and sustained food production depends on stable agro-ecosystems; 25
    - (ii) land development procedures must prevent destructive land use changes and include provisions to secure and maintain the long-term optimal functioning of agro-ecosystems; and
    - (iii) actual or potential conflicts between organs of state should be resolved through conflict resolution procedures; 30
  - (d) the principle of resiliency, where—
    - (i) agro-ecosystem resiliency is determined by its capacity to recover its functionality, structure and feedback mechanisms after a disturbance; and
    - (ii) activities or events with a significant disturbance on agro-ecosystems and agricultural productivity must be avoided, or where they cannot be avoided, minimised, mitigated and remedied; 35
  - (e) the principle of viability, where—
    - (i) the long term survival, profitability and growth of the agricultural sector is a function of viable farming units, farming systems and farming enterprises; and 40
    - (ii) the impact of activities on the viability of farming units, farming systems and farming enterprises must be considered, assessed and evaluated and decisions must be appropriated according to such consideration, assessment and evaluation; and 45
  - (f) the principle of equitability, where—
    - (i) all activities on agricultural land are subjected to a fair, equal and just assessment and treatment;
    - (ii) decisions take into account the interests, needs and values of all interested and affected parties; and 50
    - (iii) all farmers have the opportunity to develop the skills and capacity required for the emergence of productive, viable and resilient farming units, and the participation by vulnerable and disadvantaged farmers or potential farmers are ensured.
- (2) The principles in subsection (1) must be applied when— 55
- (a) assessing applications for agro-ecosystem authorisations;
  - (b) determining norms and standards;
  - (c) developing provincial agricultural sector plans;

- (d) declaring protected agricultural areas; and
- (e) all actions and decisions made in respect of agricultural land.

## *Part 2*

### *Agricultural land evaluation and classification*

#### **Agricultural land evaluation and classification** 5

5. (1) The Minister, after consultation with the MECs, may—
- (a) establish evaluation and classification systems to appraise the agricultural land capability, suitability, potential and use of agricultural land at national, provincial and local levels, to promote the preservation and sustainable development of agricultural land; and 10
  - (b) spatially delineate agricultural areas according to shared characteristics in agricultural land capability, suitability, potential, use, location or any combination thereof.
- (2) The Minister may exclude land from agricultural land, after consultation with any other Minister or MEC with jurisdiction over the land concerned, by means of a notice in the *Gazette* and other media. 15

## *Part 3*

### *Provincial agricultural sector plans*

#### **Preparation of provincial agricultural sector plans**

6. (1) The Minister must prescribe criteria for the compilation of a provincial agricultural sector plan to ensure that it—
- (a) is based on agricultural science;
  - (b) promotes sustainable agriculture;
  - (c) promotes food security;
  - (d) preserves agricultural land; 25
  - (e) promotes synergy between provincial agricultural sector plans; and
  - (f) is compiled in a participatory manner.
- (2) The MEC, with the concurrence of the Minister and after consulting the public, must publish a provincial agricultural sector plan in the *Gazette* and other media within five years of the commencement of this Act and at intervals of not more than five years thereafter. 30
- (3) Before publishing a provincial agricultural sector plan, the MEC must—
- (a) give notice of the proposed provincial agricultural sector plan in the *Gazette* and other media;
  - (b) invite the public to submit written representations thereon within a period of at least 30 days of such notice; and 35
  - (c) consider all such written representations received.
- (4) The MEC must, in compiling a provincial agricultural sector plan, take into consideration any provincial agricultural sector plans of adjacent provinces and any development plans of other organs of state which may impact on the agricultural sector in the province. 40
- (5) The Minister may, on written request from the MEC, extend the period contemplated in subsection (2) for publishing a provincial agricultural sector plan for a period not exceeding 12 months and must publish the extension in the *Gazette* and other media. 45

#### **Purpose of provincial agricultural sector plans**

7. The purposes of a provincial agricultural sector plan are to—
- (a) coordinate and harmonise agricultural land use policies, plans, programmes and decisions of organs of state aimed at promoting, achieving and preserving a sustainable agricultural environment, in order to— 50
    - (i) minimise the duplication of procedures and functions; and
    - (ii) promote consistency in the exercise of functions that may affect the agricultural sector;

- (b) give effect to the principle of cooperative government in accordance with Chapter 3 of the Constitution;
- (c) contribute to securing the preservation and development of agricultural land across the country as a whole; and
- (d) enable the Minister to monitor achievements in the preservation and development of agricultural land. 5

#### **Content of provincial agricultural sector plans**

- 8.** A provincial agricultural sector plan must include—
- (a) the spatial demarcation of agricultural areas, per municipality, according to shared characteristics in agricultural land capability, suitability, potential, use and location, or any combination thereof; 10
  - (b) a description of agricultural opportunities and planned interventions to enable the optimal agricultural use of an agricultural area;
  - (c) such planning measures, controls, performance criteria and other matters as may be prescribed; and 15
  - (d) a programme for the implementation of the plan and its costing.

#### **Status of provincial agricultural sector plans**

- 9.** (1) A provincial agricultural sector plan comes into effect on the date of its publication in the *Gazette* and other media.
- (2) A provincial agricultural sector plan must be taken into consideration by the Department and provincial department in the allocation of financial and other resources for purposes of preserving and developing agricultural land. 20
- (3) A municipality must take into consideration the content of any applicable provincial agricultural sector plan when preparing, reviewing or amending its—
- (a) municipal spatial development framework, as contemplated in section 20 of the Spatial Planning and Land Use Management Act; 25
  - (b) integrated development plan, as contemplated in Chapter 5 of the Municipal Systems Act; and
  - (c) land use scheme, as contemplated in Chapter 5 of the Spatial Planning and Land Use Management Act. 30
- (4) The content of any applicable provincial agricultural sector plan must be taken into consideration when preparing, reviewing or amending a national, provincial or regional spatial development framework as contemplated in Chapter 4 of the Spatial Planning and Land Use Management Act.

#### **Compliance with provincial agricultural sector plans 35**

- 10.** (1) The MEC must monitor compliance with the provincial agricultural sector plan by the province and by municipalities within the province and must report thereon on an annual basis to the Minister and by publication in the *Gazette* and other media.
- (2) The MEC may promote compliance with the provincial agricultural sector plan by implementing training programmes, publishing manuals and guidelines and coordinating procedures for compliance. 40

### ***Part 4***

#### ***Protected agricultural areas***

#### **Declaration of protected agricultural areas**

- 11.** (1) The Minister, by notice in the *Gazette* and other media, may— 45
- (a) declare as a national protected agricultural area, the geographic area specified in the notice; and
  - (b) assign a name to such national protected agricultural area.
- (2) A declaration under subsection (1)(a) may only be issued to—
- (a) protect high value agricultural land capable of producing significantly higher levels of agricultural goods or best suited to produce acceptable levels of high value agricultural goods within a defined geographical area, in a sustainable manner, and includes— 50

- (i) an agricultural land capability rating of above moderate;
  - (ii) agricultural land with an agricultural potential of above moderate;
  - (iii) unique agricultural land; and
  - (iv) irrigated agricultural land; and
  - (b) preserve the area primarily for food and other agricultural production. 5
- (3) The MEC, with the approval of the Minister and by notice in the *Gazette* and other media, may—
- (a) declare as a provincial protected agricultural area, the geographic area specified in the notice; and
  - (b) assign a name to a provincial protected agricultural area. 10
- (4) A declaration under subsection (3)(a) may only be issued to—
- (a) protect an area of significant agricultural importance in a province that falls outside of national protected agricultural areas; and
  - (b) preserve the area primarily for agricultural purposes.

**Procedure to declare protected agricultural areas** 15

- 12.** (1) Before the Minister or the MEC declares a protected agricultural area in terms of section 11—
- (a) the Minister or the MEC must—
    - (i) give notice of the intention to declare the protected agricultural area in the *Gazette*, other media and in at least two national newspapers distributed in the affected area; 20
    - (ii) invite the public to submit written representations or objections to the intended declaration within a period of at least 30 days of the publication of such notice;
    - (iii) consider all such written representations received; and 25
    - (iv) consult with the municipality or municipalities in which the provincial protected agricultural area falls;
  - (b) the Minister must consult the MEC of the province or provinces in which the national protected agricultural area falls; and
  - (c) the MEC must consult with the Minister and obtain his or her approval. 30
- (2) After the Minister or the MEC declares a protected agricultural area in terms of section 11, the Minister or the MEC must—
- (a) compile and maintain a register listing all agricultural land included in the protected agricultural areas;
  - (b) compile and publish in the *Gazette* and other media a map indicating the geographic area of the protected agricultural area; and 35
  - (c) notify the relevant registrar of deeds in writing.
- (3) On receipt of the notification referred to in subsection (2), the relevant registrar of deeds must record the declared protected agricultural area, or any amendment thereto, in the relevant registers and documents in terms of section 3(1)(v) of the Deeds Registries Act. 40

**Review, withdrawal and amendment of protected agricultural areas**

- 13.** (1) The Minister or the MEC must review a protected agricultural area at least every five years.
- (2) The Minister, or the MEC with the approval of the Minister, may by notice in the *Gazette* and other media— 45
- (a) withdraw the declaration of a protected agricultural area;
  - (b) add any area or exclude any area from the protected agricultural area; and
  - (c) assign a different name to the protected agricultural area.
- (3) Before the Minister or the MEC withdraws or amends the declaration of a protected agricultural area in terms of subsection (2), the Minister or the MEC must follow the procedures prescribed in section 12, with the changes required by the context. 50

### CHAPTER 3

#### AGRO-ECOSYSTEM MANAGEMENT

##### General objectives of agro-ecosystem management

14. (1) The general objectives of agro-ecosystem management are to—
- (a) promote the integration of the principle of agro-ecosystem management set out in section 4, into decisions which may have a significant effect on an agro-ecosystem; 5
  - (b) identify, predict and evaluate the actual and potential impact of activities on the agro-ecosystem, the risks, consequences, alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits and promoting compliance with the principle of agro-ecosystem management set out in section 4; 10
  - (c) ensure that the effects of activities on the agro-ecosystem receive adequate consideration before actions are taken in connection with them;
  - (d) ensure public participation in decisions that may affect the agro-ecosystem; 15
  - (e) ensure the consideration of agro-ecosystem attributes in management and decision making which may have a significant effect on the agro-ecosystem; and
  - (f) promote methods of agro-ecosystem management which ensure that particular activities are pursued in accordance with the principle of agro-ecosystem management set out in section 4. 20
- (2) The Director-General must coordinate the activities of organs of state referred to in this Act and may assist them in giving effect to the objectives of this Chapter, and such assistance may include training, the publication of manuals and guidelines and the coordination of processes required by this Act. 25

##### Agro-ecosystem authorisations

15. (1) Subject to section 16(1)(d), a person who wishes to commence with a listed activity, as contemplated in section 16(1)(a), on agricultural land, including agricultural land in a protected agricultural area, must apply to the competent authority, in the prescribed manner, for an agro-ecosystem authorisation. 30
- (2) The competent authority may grant an agro-ecosystem authorisation for the commencement of a listed activity on agricultural land, subject to subsections (3) to (6).
- (3) In order to give effect to the general objectives of agro-ecosystem management laid down in this Chapter, the potential consequences for or impacts on the agro-ecosystem of listed activities must be considered, investigated and assessed by the competent authority, who must report thereon to the Minister, except in respect of those activities contemplated in section 16(1)(d), that may commence without having to obtain an agro-ecosystem authorisation. 35
- (4) Every applicant for an agro-ecosystem authorisation must comply with the requirements prescribed in terms of this Act in relation to— 40
- (a) any action to be taken before submitting an application;
  - (b) the content of any prescribed report required to be submitted with the application;
  - (c) any procedure relating to public consultation and information gathering;
  - (d) any applicable provincial agricultural sector plan; 45
  - (e) the submission of an application for an agro-ecosystem authorisation and any other information required by the competent authority; and
  - (f) the undertaking of any agro-ecosystem report where required.
- (5) Compliance with the procedures prescribed in terms of this Act does not absolve a person from complying with any other statutory requirement to obtain authorisation from any organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity in question. 50
- (6) Authorisations obtained under any other law for an activity listed in terms of this Act does not absolve the applicant from obtaining an agro-ecosystem authorisation in terms of this section. 55

### **Listing of activity and agricultural area**

- 16.** (1) The Minister may, by notice in the *Gazette* and other media, list—
- (a) activities which may not commence on agricultural land, including agricultural land in national and provincial protected agricultural areas, without an agro-ecosystem authorisation from the competent authority; 5
  - (b) agricultural areas in which listed activities may not commence without an agro-ecosystem authorisation from the competent authority;
  - (c) agricultural areas in which listed activities may be excluded from agro-ecosystem authorisation by the competent authority; and
  - (d) activities which may commence without an agro-ecosystem authorisation, and such activities must also comply with prescribed norms and standards. 10
- (2) For the purpose of subsection (1), the Minister may only identify activities which may have a permanent negative impact on the agricultural potential, capability, suitability or use of agricultural land.
- (3) Where a listed activity falls under the jurisdiction of another minister, a decision 15 in respect of subsection (1) must be taken by the Minister in consultation with the relevant minister.
- (4) The Minister must compile information and maps that specify the attributes of agricultural areas and agro-ecosystems, including the interrelationship between productivity, stability, resiliency, viability and equitability which must be taken into 20 account by every competent authority.

### **Procedure for listing an activity and agricultural area**

- 17.** Before listing any activity or agricultural area in terms of section 16, the Minister must—
- (a) publish a notice in the *Gazette* and other media— 25
    - (i) specifying the activity or agricultural area that is proposed to be listed; and
    - (ii) inviting interested parties to submit written comments on the proposed listing within a period of at least 30 days of such notice;
  - (b) consider all written comments received from interested parties in terms of 30 paragraph (a)(ii);
  - (c) in respect of listing an activity in a provincial protected agricultural area, consult the relevant MEC of the province in which the provincial protected agricultural area falls; and
  - (d) in respect of the listing of an agricultural area— 35
    - (i) consult the relevant MEC of the province or provinces in which the area falls; and
    - (ii) consult the municipality or municipalities in which the agricultural area falls.

### **Procedure for delisting or amending an activity or agricultural area** 40

- 18.** (1) The Minister may delist or amend an activity or agricultural area identified in terms of section 16.
- (2) The Minister must comply with section 17, with the changes required by the context, before delisting or amending an activity or agricultural area in terms of this section. 45

### **Identification of competent authority**

- 19.** (1) When listing activities in terms of section 16, the Minister must identify the competent authority responsible for granting agro-ecosystem authorisations in respect of those activities.
- (2) The Director-General is the competent authority in terms of subsection (1) if the 50 activity is within a national protected agricultural area.
- (3) The HoD is the competent authority in terms of subsection (1) if the activity is within an area of the province falling outside a national protected agricultural area.

### Consideration of application by competent authority

20. (1) The competent authority, when considering an application for an agro-ecosystem authorisation, must ensure—
- (a) with respect to every such application—
    - (i) coordination and cooperation between organs of state in the consideration of assessments where a listed activity falls under the jurisdiction of or impacts one or more organs of state; 5
    - (ii) the investigation of the potential impacts of a listed activity on the agro-ecosystem and the assessment of the significance of such potential impacts; 10
    - (iii) that the findings and recommendations flowing from an investigation in terms of subparagraph (ii), the general objectives of agro-ecosystem management laid down in this Act and the principle of agro-ecosystem management set out in section 4 are taken into account;
    - (iv) public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the listed activity, with a reasonable opportunity to participate in those information and participation procedures; and 15
    - (v) any information and maps compiled in terms of section 16(4) are taken into account; and 20
  - (b) that every agro-ecosystem report, where required, includes—
    - (i) an investigation of the potential consequences and impacts of the listed activity and alternatives to the listed activity on the agro-ecosystem and assessment of the significance of those potential consequences and impacts, including the option of not performing the activity; 25
    - (ii) an investigation of mitigation measures to keep adverse consequences or impacts to a minimum;
    - (iii) reporting on gaps in knowledge regarding the potential consequences and impacts of the listed activity and alternatives to the listed activity, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information; 30
    - (iv) an investigation and formulation of arrangements for the monitoring and management of consequences for and impacts on the agro-ecosystem, and the assessment of the effectiveness of such arrangements after their implementation; and 35
    - (v) consideration of agro-ecosystem attributes identified in the information and maps contemplated in section 16(4).
- (2) (a) The competent authority must consider an application for an agro-ecosystem authorisation and provide the applicant with a decision in respect of such application within 30 days of receipt of the application, or within a reasonable time as may be prescribed for certain specified agro-ecosystem authorisations and must, in the case of a refusal, provide written reasons for such refusal. 40
- (b) The competent authority must keep and maintain a written record of all applications submitted for agro-ecosystem authorisations and the reasons for his or her decisions in respect of such applications. 45
- (3) The written record referred to in subsection (2)(b) must be accessible to members of the public during normal office hours at a publicly accessible office of the competent authority.

## CHAPTER 4 50

### INSTITUTIONAL FRAMEWORK

#### Establishment of committees

21. (1) The Minister may, by notice in the *Gazette* and other media, establish an advisory committee to advise the Minister, on request or of its own accord, on—
- (a) achieving the objects of this Act; and 55
  - (b) any other matter concerning the preservation and sustainable development of agricultural land.

- (2) The advisory committee consists of not more than 10 members appointed by the Minister for a period not exceeding five years from the date of nominations received in terms of subsection (3), which must include—
- (a) not more than two members from nominations received from farmers' organisations; 5
  - (b) not more than five members, each with knowledge and expertise in one of the following fields: agricultural development, agricultural economics, environmental management, spatial information or law;
  - (c) not more than two members with knowledge and experience in agriculture at provincial government level; and 10
  - (d) a member with knowledge and experience in local government.
- (3) The Minister must invite nominations for members of the advisory committee by notice in the *Gazette*, other media and in at least two nationally distributed newspapers, specifying the period within which nominations must be submitted.
- (4) The Minister must appoint the chairperson of the advisory committee from the members referred to in subsection (2). 15
- (5) The Minister may, by notice in the *Gazette* and other media, establish technical committees to advise the Minister, the MECs or competent authorities on—
- (a) agro-ecosystem reports;
  - (b) provincial agricultural sector plans; 20
  - (c) protected agricultural areas; and
  - (d) guidelines, norms and standards.
- (6) The notice referred to in subsection (5) must—
- (a) stipulate the advisory mandate of the technical committee within the context of this Act; and 25
  - (b) determine the duration and composition of the technical committee, which may consist of officials of the Department and independent technical advisers appointed in terms of section 22.
- (7) A person may not be appointed as a member of the advisory or technical committee if such person— 30
- (a) is not a South African citizen;
  - (b) does not permanently reside in the Republic;
  - (c) is a member of Parliament, any provincial legislature or any municipal council;
  - (d) is an unrehabilitated insolvent; 35
  - (e) has been declared of unsound mind by a court in the Republic;
  - (f) has been convicted of an offence after the date of commencement of the Constitution and sentenced to imprisonment without the option of a fine; or
  - (g) is disqualified from serving as a director of a company in terms of section 69 of the Companies Act, 2008 (Act No. 71 of 2008). 40
- (8) If any member of the advisory committee or a technical committee, or his or her spouse, partner or associate, has or may have a direct or indirect interest in any matter before the advisory or a technical committee, he or she must disclose such interest and must not participate in any discussion or decision regarding such matter.
- (9) The Minister must determine, in consultation with the Minister of Finance, the remuneration payable to any member of the advisory committee or a technical committee who is not in the full-time employ of an organ of state. 45

#### **Appointment of technical and other advisers**

- 22.** (1) The Minister may appoint technical or other advisers to advise the Minister or a competent authority on the performance of their functions under this Act. 50
- (2) An adviser referred to in subsection (1) is not a decision-making authority in terms of this Act.
- (3) The Minister must determine, in consultation with the Minister of Finance, the remuneration payable to any adviser who is not in the full-time employ of an organ of state. 55

#### **Performance assessment framework**

- 23.** (1) The Minister must, by notice in the *Gazette* and other media, after consultation with the relevant MECs, publish a monitoring, evaluation and assessment framework on

the effective and efficient administration of the Act, to ensure that all competent authorities—

- (a) exercise their powers;
- (b) perform their functions; and
- (c) carry out their duties,

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in terms of this Act.

(2) The framework referred to in subsection (1) must include performance indicators that facilitate the assessment of achievements in the preservation and sustainable development of agricultural land as contemplated in this Act.

(3) The competent authority must, where such competent authority is the Director-General, within a period not exceeding three months after the end of each financial year, report in writing to the Minister on compliance with the monitoring, evaluation and assessment frameworks referred to in subsections (1) and (2) during the year in question. 10

(4) The competent authority must, where such competent authority is an HoD, within a period not exceeding three months after the end of each financial year, report in writing to the relevant MEC on compliance with the monitoring, evaluation and assessment frameworks referred to in subsections (1) and (2) during the year in question, and the relevant MEC must deliver such report to the Minister. 15

(5) The Minister must publish a national report based on the reports referred to in subsections (3) and (4) within a period not exceeding six months after the end of each financial year. 20

## CHAPTER 5

### NATIONAL AGRO-ECO INFORMATION SYSTEM

#### Establishment of national agro-eco information system

**24.** (1) The Minister must, by notice in the *Gazette* and other media, establish the national agro-eco information system to facilitate the capture, management, maintenance, integration, distribution and use of information on agricultural land in the Republic. 25

(2) The Director-General is responsible for administering the national agro-eco information system and must provide the personnel and resources necessary to establish, operate, maintain and update the national agro-eco information system. 30

(3) The Director-General must—

- (a) ensure that the national agro-eco information system is maintained and up to date;
- (b) on an annual basis, review the functionalities and requirements of the national agro-eco information system and ensure the updating of required functionalities, hardware, software and the incorporation of relevant new or updated spatial data sets; and 35
- (c) ensure that the national agro-eco information system is accessible to the public. 40

(4) A data custodian appointed under the Spatial Data Infrastructure Act and any other organ of state in possession of spatial data sets and other information related to agricultural land must, on the written request of the Minister and in the form requested, make such information available to the Department for incorporation into the national agro-eco information system. 45

(5) The Minister must pay such fees, costs or charges as are applicable under the Spatial Data Infrastructure Act for the spatial data sets and other information referred to in subsection (4).

#### Objectives of national agro-eco information system

**25.** The objectives of the national agro-eco information system are to— 50

- (a) store and provide geo-referenced data and information on the preservation, development, use and management of agricultural land;
- (b) provide information for the implementation, management and administration of this Act;
- (c) provide electronic document management functionalities and data applications to enhance service delivery; and 55
- (d) provide information to government, land owners and the public—

- (i) for research and development purposes;
- (ii) for provincial agricultural sector planning, agro-ecosystem reports or other related reports;
- (iii) on the agricultural potential, capability, suitability, the conservation status and use of agricultural land; 5
- (iv) on the preservation and development of agricultural land; and
- (v) on the loss of agricultural land over time.

### **Content of national agro-eco information system**

- 26.** The national agro-eco information system may contain the following information:
- (a) A record of all agricultural land; 10
  - (c) a record of all agricultural areas;
  - (d) a record of all protected agricultural areas;
  - (e) data sets on the agricultural potential, capability, suitability, conservation status and use of agricultural land;
  - (f) spatial information on agricultural land, including— 15
    - (i) agricultural potential, capability, suitability, conservation status and use; and
    - (ii) socio-economic information;
  - (g) per farming unit— 20
    - (i) the use of agricultural land; and
    - (ii) subject to the provisions of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), information on the land owner and land user and where such land owner or land user is a natural person, the nationality and gender of such land owner or land user; and
  - (h) any other information as may be prescribed. 25

## **CHAPTER 6**

### **APPEALS, COMPLIANCE AND CONTRAVENTIONS**

#### *Part 1*

#### *Appeal procedures*

### **Right to appeal 30**

**27.** (1) Any person who is aggrieved by any decision of a competent authority, in respect of an application for an agro-ecosystem authorisation, may lodge an appeal with the Minister against such decision in the prescribed manner.

(2) An appeal lodged in terms of subsection (1) suspends any agro-ecosystem authorisation which is the subject of the appeal, pending the finalisation of the appeal. 35

### **Appointment of advisory appeal panel**

**28.** (1) The Minister may appoint an advisory appeal panel to investigate and consider any appeal contemplated in section 27.

(2) An advisory appeal panel must consist of at least three members appointed by the Minister, of whom— 40

(a) one person must be appointed on account of his or her knowledge in the relevant fields of law; and

(b) two or more persons must have expert knowledge in respect of agriculture and the potential impact of listed activities on agro-ecosystems.

(3) The person referred to in subsection (2)(a) must be designated as the chairperson 45 of the advisory appeal panel.

(4) The remuneration of a member of an advisory appeal panel must be determined by the Minister in consultation with the Minister of Finance.

(5) Any person appointed in terms of subsection (2) must recuse himself or herself as member of an advisory appeal panel if he or she has any direct or indirect personal 50 interest in the outcome of an appeal.

### **Investigation and consideration by advisory appeal panel**

- 29.** (1) The Minister may refer an appeal lodged in terms of section 27 to an advisory appeal panel.
- (2) Where the Minister has referred an appeal to an advisory appeal panel to investigate and consider an appeal lodged in terms of section 27, the appeal must be heard by the advisory appeal panel in the prescribed manner. 5
- (3) The chairperson of an advisory appeal panel, for the purpose of the hearing of an appeal, may—
- (a) summon any person who may have material information concerning the subject of the hearing, or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the advisory appeal panel at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain, for examination, any document so produced; and 10
  - (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing. 15
- (4) A person who lodges an appeal in terms of section 27, as well as the relevant competent authority, may have legal representation.
- (5) If a member of an advisory appeal panel—
- (a) dies during the investigation of the appeal, or soon before the commencement of the investigation, and the vacancy cannot be filled in time; 20
  - (b) is unable to act and another person cannot be appointed in time; or
  - (c) is, after the investigation has commenced, unable to continue therewith,
- the parties may agree that the investigation be continued by the remaining members of the advisory appeal panel. 25
- (6) Where the member of an advisory appeal panel who has died or has become incapacitated as envisaged in subsection (5) was or is the chairperson of the advisory appeal panel, the Minister must designate one of the remaining members of the advisory appeal panel to act as chairperson.
- (7) An advisory appeal panel must provide the Minister with a written report setting out its findings and recommendations in respect of an appeal lodged in terms of section 27. 30

### **Consideration of appeal by Minister**

- 30.** (1) The Minister must consider an appeal lodged in terms of section 27 and he or she may— 35
- (a) confirm, set aside or vary the decision of the competent authority; and
  - (b) order the competent authority to execute the decision in connection therewith.
- (2) Where the Minister has referred an appeal to an advisory appeal panel, the Minister must regard the findings and recommendations of the advisory appeal panel before making a decision in terms of subsection (1). 40
- (3) The decision of the Minister, together with the reasons for such decision, must be in writing and a copy thereof must be furnished to the competent authority and the appellant.
- (4) If the Minister—
- (a) sets aside any decision by the competent authority, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or 45
  - (b) varies any decision by the competent authority, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.

## ***Part 2***

### ***Compliance inspections and contravention directives*** 50

#### **Compliance inspections**

- 31.** (1) A competent authority—
- (a) may designate an official in the Department or an officer in a provincial administration, or appoint any other person, as an inspector to investigate any non-compliance with this Act; and 55

- (b) must issue each inspector with a written designation or appointment in the prescribed form, stating that the person has been appointed in terms of this Act.
- (2) When an inspector contemplated in subsection (1) performs any function of an inspector in terms of this Act, the inspector— 5
- (a) must on request, produce his or her written designation or appointment; and
- (b) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.
- (3) An inspector contemplated in subsection (1), subject to subsection (6), may— 10
- (a) enter any agricultural land at any reasonable time without prior notice for the purpose of ascertaining an issue required to ensure compliance with this Act;
- (b) question any person who is or was on such agricultural land, either alone or in the presence of any other person, on any matter to which this Act relates;
- (c) require from any person who has control over or custody of a book, record or other document on such agricultural land, to produce to the inspector 15  
forthwith, or at such time and place as may be determined by the inspector, such book, record or other document;
- (d) examine any such book, record or other document or make a copy thereof or an extract therefrom;
- (e) require from such a person an explanation of any entry in such book, record or 20  
other document;
- (f) inspect any article, substance, plant or machinery which is or was on the agricultural land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof; 25
- (g) seize any book, record or other document or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure; and 30
- (h) direct any person to appear before him or her at such time and place as may be determined by the inspector and question such person either alone or in the presence of any other person on any matter to which this Act relates.
- (4) When an inspector enters any agricultural land in terms of subsection (3), the owner or person in control of the land must at all times provide such facilities as are reasonably required by the inspector to enable him or her to perform his or her functions effectively. 35
- (5) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (3)(f) or (g), he or she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.
- (6) An inspection of a private dwelling may only be carried out by an inspector when authorised in terms of a warrant issued by a judge of the High Court or a magistrate who has jurisdiction over the agricultural land on which the private dwelling is situated. 45
- (7) An inspector may, where necessary, be accompanied by a police official or any other person reasonably required to assist him or her in conducting the inspection.
- (8) An inspector who enters and searches any agricultural land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and 50  
privacy.

### Contravention directives

- 32.** (1) If a competent authority considers that a person is contravening or is about to contravene a provision of this Act or an agro-ecosystem authorisation issued under this Act, the competent authority may issue a directive. 55
- (2) A directive issued in terms of subsection (1) may provide that any requirements imposed therein must be complied with in the manner or within the period specified in the directive.
- (3) A directive issued in terms of subsection (1) must be contained in a written notice and served upon the person concerned, by— 60
- (a) delivering the notice to that person personally;

- (b) delivering the notice to the owner or person in control of the agricultural land mentioned in the directive;
  - (c) affixing the notice to the entrance of the concerned agricultural land mentioned in the directive; or
  - (d) any other prescribed manner. 5
- (4) Any directive which has been served—
- (a) is binding upon the person specified therein and his or her successor in title in relation to the land mentioned in the directive; and
  - (b) may be withdrawn or amended by the competent authority by the serving of a written notice on the person concerned or his or her successor in title. 10
- (5) A directive issued in terms of subsection (1) may direct the owner or person in control of the agricultural land, in relation to which the contravention occurs, to take any action specified in the directive to rectify the contravention within a period as specified in the directive.
- (6) The competent authority may, upon receipt of a written request from the owner or person in control of the concerned agricultural land, extend the period specified in a directive issued in terms of subsection (1) to rectify a contravention. 15
- (7) If the action is not taken within the time specified in the directive, or within the extended period referred to in subsection (6), the competent authority may—
- (a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person upon whom the notice was served; or 20
  - (b) apply to a competent court for appropriate relief.

### **Investigation and gathering of data on agricultural land**

33. A competent authority may, in writing, authorise a person or persons with the necessary skills or experience to— 25
- (a) enter or cross a particular portion of agricultural land at any reasonable time with the prior consent of the owner or occupier of the land; and
  - (b) carry out surveys and investigations to gather data on the agricultural land's capability, suitability, potential, current infrastructure and use thereof. 30

## **CHAPTER 7**

### **GENERAL AND MISCELLANEOUS PROVISIONS**

#### **Delegations**

34. (1) The Minister may delegate any power or duty vested in him or her in terms of this Act, other than a power or duty referred to in subsection (5), and the performance of any duties of the Minister, to— 35
- (a) the Director-General;
  - (b) an MEC; or
  - (c) any organ of state.
- (2) A delegation referred to in subsection (1)— 40
- (a) must be in writing;
  - (b) may be made subject to conditions;
  - (c) does not prevent the exercise of the power or the performance of the duty by the Minister;
  - (d) may include the power to sub-delegate; and 45
  - (e) may be withdrawn by the Minister.
- (3) The Minister must give notice in the *Gazette* and other media of any delegation of a power or duty to an MEC or an organ of state.
- (4) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision. 50
- (5) The Minister may not delegate a power or duty vested in the Minister in terms of this Act to—
- (a) make regulations and develop policies;
  - (b) publish notices in the *Gazette* and other media; or 55
  - (c) appoint a member of an advisory appeal panel, or a member of an advisory or technical committee.

- (6) The Director-General may delegate a power or duty vested in him or her by or under this Act to—
- (a) an official in the Department; or
  - (b) an officer in a provincial administration, by agreement with the HoD.
- (7) A delegation referred to in subsection (6)—
- (a) must be in writing; 5
  - (b) may be subject to conditions;
  - (c) does not prevent the exercise of the power or the performance of the duty by the Director-General;
  - (d) may include the power to sub-delegate; and 10
  - (e) may be withdrawn by the Director-General.

## Regulations

35. (1) The Minister, after consultation with the MECs, may make regulations—
- (a) dealing with any matter which under this Act may or must be dealt with by regulation; 15
  - (b) for the procedure to be followed in applying for, the issuing of, and monitoring compliance with, agro-ecosystem authorisations, including the reasonable time within which a competent authority may consider and respond to applications for certain specified agro-ecosystem authorisations;
  - (c) for the procedure to be followed in respect of— 20
    - (i) the efficient administration and processing of agro-ecosystem authorisations;
    - (ii) fair decision-making and conflict management in the consideration and processing of applications for agro-ecosystem authorisations; and
    - (iii) consultation with land owners, lawful occupiers and other interested or affected parties; 25
  - (d) specifying the functions in relation to the administration and processing of agro-ecosystem authorisations that may be performed only by an agricultural professional and the procedures to be followed by such agricultural professional; 30
  - (e) for the procedures to be followed for the preparation, evaluation and adoption of—
    - (i) provincial agricultural sector plans;
    - (ii) agricultural areas;
    - (iii) protected agricultural areas; 35
    - (iv) agro-ecosystem reports; and
    - (v) norms and standards;
  - (f) prescribing the contents of the national agro-eco information system;
  - (g) for the procedures concerning the lodging of any appeals and the consideration and decision of such appeals in terms of this Act; 40
  - (h) prescribing fees, after consultation with the Minister of Finance, to be paid for—
    - (i) the consideration and processing of applications for agro-ecosystem authorisations;
    - (ii) the review of documents, processes and procedures by specialists on behalf of the competent authority; and 45
    - (iii) the consideration and processing of appeals;
  - (i) prescribing minimum criteria for agro-ecosystem reports in order to ensure a consistent quality and to facilitate efficient evaluation of agro-ecosystem reports; 50
  - (j) dealing with the appointment, remuneration and terms of reference of advisory committees;
  - (k) dealing with the appointment, remuneration and functions of technical and other experts; and
  - (l) any ancillary or incidental administrative procedural matter that it is necessary to prescribe for the proper implementation and administration of this Act. 55
- (2) Any regulations made under subsection (1) may provide that any person who contravenes or fails to comply with a provision thereof is guilty of a criminal offence and liable on conviction to a fine not exceeding R250 000, or to a term of imprisonment for a period not exceeding two years, or to both such fine and such imprisonment. 60

- (3) The norms and standards referred to in subsection (1)(e)(v) must, amongst others, be informed by—
- (a) soil surveys;
  - (b) rangeland surveys;
  - (c) land use surveys; 5
  - (d) land capability assessments;
  - (e) land suitability assessments;
  - (f) agricultural potential assessments; and
  - (g) impact assessments.
- (4) (a) The Minister, after consulting the MECs, may— 10
- (i) determine norms and standards for listing activities, in terms of section 16, or for any part of an activity or for a combination of activities;
  - (ii) prescribe norms and standards to achieve and measure compliance with the objects of this Act;
  - (iii) prescribe reporting and monitoring requirements; and 15
  - (iv) prescribe procedures and criteria to be used by the competent authority for the monitoring of listed activities in order to determine compliance with the prescribed norms and standards.
- (b) The norms and standards referred to in subsection (1)(e)(v) must provide for rules, guidelines or characteristics— 20
- (i) that may commonly and repeatedly be used; and
  - (ii) against which the performance of listed activities or the results of such listed activities may be measured for the purposes of achieving the objects of this Act.
- (c) The norms and standards referred to in subsection (1)(e)(v) may apply— 25
- (i) nationwide;
  - (ii) in a specific province; or
  - (iii) in a specific demarcated geographical area only.
- (d) The process of developing and adopting norms and standards referred to in subsection (1)(e)(v) must include the— 30
- (i) publication of the draft norms and standards for comment in the *Gazette* and other media;
  - (ii) consideration of comments received; and
  - (iii) publication of the norms and standards in the *Gazette* and other media.
- (5) Before making any regulations under this Act, the Minister must— 35
- (a) publish a notice in the *Gazette* and other media—
    - (i) setting out the draft regulations; and
    - (ii) inviting written comments to be submitted on the proposed regulations within a specified period mentioned in the notice; and  - (b) consider all such comments received. 40
- (6) Regulations made in terms of this Act must be published in the *Gazette* and other media for public comment.

## Offences

- 36.** A person is guilty of an offence if that person—
- (a) contravenes the restrictions imposed on the use of agricultural land within a protected agricultural area in terms of section 11; 45
  - (b) commences with an activity listed in terms of section 16 without an agro-eco system authorisation from a competent authority;
  - (c) fails to comply with or contravenes a condition of an agro-eco system authorisation granted by a competent authority in terms of section 15; 50
  - (d) refuses or fails to comply with a directive issued by a competent authority in terms of section 32;
  - (e) hinders or obstructs an inspector in the performance of any function in terms of this Act;
  - (f) pretends to be an inspector or an assistant to an inspector; 55
  - (g) furnishes false or misleading information when complying with a request by an inspector;
  - (h) fails to comply with a request by an inspector;
  - (i) unlawfully and intentionally or negligently commits an act or omission which detrimentally affects agricultural land; or 60
  - (j) makes a false disclosure on any matter required in terms of this Act.

### **Penalties**

- 37.** (1) Any person convicted of an offence referred to in section 36 is liable to a fine or imprisonment, subject to subsection (3) and (4), as determined by a court of law.
- (2) A court, in an appropriate case, may—
- (a) order that the land be rehabilitated or restored to its previous agricultural state or potential, whichever is the most achievable; or
  - (b) in the absence of full disclosure of the information required in terms of this Act, order the person concerned to comply with the prescripts of this Act.
- (3) A person convicted of an offence in terms of subsection (1) may be sentenced to a fine not exceeding R10 million or a term of imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.
- (4) A person convicted of an offence under this Act who, after conviction, continues with the conduct for which he or she was so convicted, is guilty of a continuing offence and liable on conviction to a fine not exceeding R250 000 or to a term of imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

### **Repeal and amendment of laws**

- 38.** The Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998), is hereby amended to the extent reflected in the Schedule.

### **Short title and commencement**

- 39.** This Act is called the Preservation and Development of Agricultural Land Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE**

**REPEAL AND AMENDMENT OF LAWS: SECTION 38**

<b>Act no.</b>	<b>Year</b>	<b>Title</b>	<b>Extent of amendment or repeal</b>
64	1998	Subdivision of Agricultural Land Repeal Act	<p><b>1.</b> The Subdivision of Agricultural Land Repeal Act is hereby amended by the insertion after section 1 of the following section:</p> <p><b>“Transitional arrangements</b></p> <p><b>1A.</b> (1) Any application or other process in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), that at the commencement of this Act has not been decided or otherwise disposed of, must be continued and disposed of as if the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), had not been repealed.</p> <p>(2) Any consent granted or deemed to have been granted in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), remains valid for the specified period or if not specified, for a period of five years from the date of the commencement of this Act.”.</p>

## **MEMORANDUM ON THE OBJECTS OF THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND BILL**

### **1. BACKGROUND AND PURPOSE**

- 1.1 Agricultural land is changing rapidly in South Africa and some of the changes are stimulated by government policies while other changes appear to be spontaneous. The consequences of agricultural land changes that are now in progress and changes that may take place in the future inspired the Department of Agriculture, Forestry and Fisheries (“Department”) to consider its policies and legislation on agricultural land and to ensure that it is consistent with the Constitution of the Republic of South Africa, 1996 (“Constitution”). South Africa only consists of approximately 13.4 million hectares under cultivation. The 13.4 million hectares include marginal agricultural land, and it is important to conserve agricultural land for agricultural production purposes.
- 1.2 The Preservation and Development of Agricultural Land Bill, 2021 (“Bill”), seeks to address constitutional gaps in the current legislation and aims to support the Government’s objectives and priorities in respect of the sustainable management and use of natural resources, the provision of effective national regulatory framework mechanisms and risk management systems, as well as an increased contribution to the economic growth and development of the country’s agricultural sector.
- 1.3 The Bill will protect and preserve agricultural land and its productive use to ensure that agricultural land is available and viable for the development of the agricultural sector. The Bill will promote sustainable farming practice to support the object of the National Development Plan 2030 to revitalise uncultivated agricultural land and to increase the contribution of agriculture to the Gross Domestic Product.
- 1.4 In accordance with the National Development Plan 2030, the agricultural sector has been identified as one of the important sectors which contribute toward job creation and employment. The Bill will support South Africa’s efforts to ensure that agricultural land is actively used to its optimal potential to support long-term food production, which will have a positive impact on the South African economy.
- 1.5 The Bill will provide a country-wide policy and regulatory framework for the preservation and development of agricultural land, which—
  - encourages food production and farming activities on agricultural land in collaboration with other role-players;
  - encourages provincial and local spheres of government to enable and promote the use of agricultural land farming purposes and compatible uses in their policies, legislation and other relevant administrative and planning frameworks and procedures;
  - through the establishment of a national framework, will promote and encourage viable farming units from a long-term economic, environmental and social perspective;
  - discourages and prohibits the subdivision of especially high potential cropping and grazing land that results in the fragmentation of such land, a reduction in agricultural productivity and land degradation;
  - encourages, where permanent impacts do arise from approved development, mitigation measures to address the lost agricultural productive capacity; and
  - promotes and encourages long-term, viable farming units from an economic, environmental and social perspective.

### **2. SUMMARY OF BILL**

The Bill consists of seven chapters with 39 clauses.

## 2.1 CHAPTER 1

### 2.1.1 **Clause 1: Definitions**

This clause sets out the key definitions for the Bill, including definitions which pertain to agricultural areas, agricultural land, food security and the national agro-eco information system.

### 2.1.2 **Clause 2: Objects of Act**

This clause sets out the objects of the Bill which includes the promotion, preservation and sustainable development of agricultural land.

### 2.1.3 **Clause 3: Application of Act**

This clause provides that the Bill will be applicable to all agricultural land in the Republic and that it binds all organs of state in all spheres of government.

## 2.2 CHAPTER 2

### 2.2.1 **Clause 4: Principles**

This clause provides for the principles underpinning the Bill which will apply to all agricultural land within the Republic.

### 2.2.2 **Clause 5: Agricultural land evaluation and classification**

This clause authorises the Minister to establish evaluation and classification systems to appraise agricultural land and to spatially delineate agricultural areas.

### 2.2.3 **Clause 6: Preparation of provincial agricultural sector plans**

This clause sets the national criteria and guidelines for compiling and preparing provincial agricultural sector plans.

### 2.2.4 **Clause 7: Purpose of provincial agricultural sector plans**

This clause sets out the purpose of provincial agricultural sector plans which includes the coordination and harmonising of agricultural land use policies, plans, programmes and decisions of organs of state aimed at promoting, achieving and preserving a sustainable agricultural environment.

### 2.2.5 **Clause 8: Content of provincial agricultural sector plans**

This clause prescribes the information that must be contained in provincial agricultural sector plans.

### 2.2.6 **Clause 9: Status of provincial agricultural sector plans**

This clause provides the status of provincial agricultural sector plans.

### 2.2.7 **Clause 10: Compliance with provincial agricultural sector plans**

This clause provides for the MECs to monitor compliance with provincial agricultural sector plans.

### 2.2.8 **Clause 11: Declaration of protected agricultural areas**

This clause provides for the declaration of national and provincial protected agricultural areas by both the Minister and the MEC.

### 2.2.9 **Clause 12: Procedure to declare protected agricultural areas**

This clause outlines the procedure for the declaration of protected agricultural areas by the Minister or MEC.

### 2.2.10 **Clause 13: Review, withdrawal and amendment of protected agricultural areas**

This clause empowers the Minister and the MEC to review, withdraw and amend the protected agricultural areas every five years, where necessary.

### 2.3 CHAPTER 3

- 2.3.1 **Clause 14: General objectives of agro-ecosystem management**  
This clause provides the general objectives of agro-ecosystem management.
- 2.3.2 **Clause 15: Agro-ecosystem authorisations**  
This clause provides for applications for agro-eco-system authorisations.
- 2.3.3 **Clause 16: Listing of activity and agricultural area**  
This clause provides for the listing of activities which may not commence without an agro-ecosystem authorisation and agricultural areas in which listed activities may not commence without an agro-ecosystem authorisation.
- 2.3.4 **Clause 17: Procedure for listing an activity and agricultural area**  
This clause provides the procedure which must be followed before an activity or agricultural area may be listed in terms of clause 16.
- 2.3.5 **Clause 18: Procedure for delisting or amending an activity or agricultural area**  
This clause prescribes the procedure for delisting or amending an activity or agricultural area.
- 2.3.6 **Clause 19: Identification of competent authority**  
This clause provides for the identification of the competent authority responsible for granting agro-ecosystem authorisations.
- 2.3.7 **Clause 20: Consideration of application by competent authority**  
This clause provides for the consideration of agro-ecosystem authorisation applications by competent authorities.

### 2.4 CHAPTER 4

- 2.4.1 **Clause 21: Establishment of committees**  
This clause provides for the establishment of an advisory committee and technical committees.
- 2.4.2 **Clause 22: Appointment of technical and other advisers**  
This clause provides for the appointment of technical and other advisers to advise the Minister or a competent authority on the performance of their functions under the envisaged Act.
- 2.4.3 **Clause 23: Performance assessment framework**  
This clause provides that the Minister must, after consultation with the relevant MECs, publish a monitoring, evaluation and assessment framework on the administration of the envisaged Act.

### 2.5 CHAPTER 5

- 2.5.1 **Clause 24: Establishment of national agro-eco information system**  
This clause provides for the establishment, operation and maintenance of a national agro-eco information system.
- 2.5.2 **Clause 25: Objectives of national agro-eco information system**  
This clause provides for the objectives of the national agro-eco Information system.
- 2.5.3 **Clause 26: Content of national agro-eco information system**  
This clause provides for the scope of the national agro-eco information system.

## 2.6 CHAPTER 6

### 2.6.1 **Clause 27: Right to appeal**

This clause provides for an appeal process for any person aggrieved by the decision of a competent authority in respect of an application for an agro-ecosystem authorisation. The clause further provides that a lodged appeal suspends any agro-ecosystem authorisation, which is the subject of the appeal, pending the finalisation of the appeal.

### 2.6.2 **Clause 28: Appointment of advisory appeal panel**

This clause provides for the appointment and composition of an advisory appeal panel.

### 2.6.3 **Clause 29: Investigation and consideration by advisory appeal panel**

This clause provides for the investigation and consideration of appeals by an advisory appeal panel.

### 2.6.4 **Clause 30: Consideration of appeal by Minister**

This clause gives the Minister authority to consider an appeal and to make a decision.

### 2.6.5 **Clause 31: Compliance inspections**

This clause makes provision for the appointment of an official or any other person as an inspector to investigate any non-compliance with the envisaged Act.

### 2.6.6 **Clause 32: Contravention directives**

This clause provides for the issuing of contravention directives by a competent authority to persons who contravene the envisaged Act.

### 2.6.7 **Clause 33: Investigation and gathering of data on agricultural land**

This clause provides for a competent authority to authorise the investigation and gathering of data on agricultural land.

## 2.7 CHAPTER 7

### 2.7.1 **Clause 34: Delegations**

This clause authorises the Minister and the Director-General to delegate certain powers or duties vested in them under the envisaged Act.

### 2.7.2 **Clause 35: Regulations**

This clause authorises the Minister to make regulations which may provide that any person who contravenes or fails to comply with a provision thereof is guilty of a criminal offence and liable on conviction to a fine or imprisonment, or to both such fine and imprisonment.

### 2.7.3 **Clause 36: Offences**

This clause provides a list of criminal offences which a person may be guilty of under the envisaged Act.

### 2.7.4 **Clause 37: Penalties**

This clause prescribes penalties for the offences listed in clause 36.

### 2.7.5 **Clause 38: Amendment of laws**

This clause amends the Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998) (“SALRA”), to the extent reflected in the Schedule.

**2.7.6 Clause 39: Short title and commencement**

This clause provides for the short title and commencement of the envisaged Act.

**2.8 SCHEDULE**

The Schedule provides for the insertion of a section in the SALRA, which makes provision for transitional arrangements in respect of any application, appeal or other process in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) (“SALA”), to be continued as if the SALA had not been repealed. Furthermore, it provides that any consent granted or deemed to have been granted in terms of the SALA remains valid for the specified period, or if not specified then for a period of five years from the date of the commencement of the SALRA.

**3. CONSULTATION**

3.1 At the initial stage, stakeholders (e.g. National Departments, Provincial Departments, local government, individual farmers and the industry bodies) were consulted.

3.2. The Bill was published in the *Gazette* for public comment.

3.3. Public consultations were held in the Provinces, and the following stakeholders attended:

- Agri South Africa (AGRI SA);
- AngloGold Ashanti;
- Biowatch South Africa;
- Centre for Environmental Rights;
- Chamber of Mines;
- City of Cape Town;
- Environmental Wild Trust;
- ESKOM;
- eThekweni Municipality;
- Ezemvelo KwaZulu-Natal Wildlife;
- Henk Wolmarans of LSB Land Surveyors and Town Planners Group;
- Kwanalu Grainco;
- KwaZulu-Natal Department of Cooperative Governance and Traditional Affairs;
- Overstrand Municipality;
- PE CLAASSEN TRP(SA);
- Plankonsult KwaZulu-Natal;
- South African Association of Consulting Professional Planners;
- South African Geomatics Institute;
- South African National Biodiversity Institute;
- South African Planning Institute (SAPI) KwaZulu-Natal;
- South African Property Owners Association;
- South African Sugar Association;
- South African Wind Energy Association;
- Stellenbosch Municipality;
- Subsolar Energy;
- Surveyor General Western Cape;
- The Banking Association South Africa;
- Theewaterskloof Municipality;
- Tongaat Hulett;
- Transvaal Agricultural Union of South Africa;
- Tshwane Municipality; and
- University of the Free State.

**4. IMPLICATIONS FOR NATIONAL GOVERNMENT**

The Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998), will be promulgated. The Bill has been drafted in alignment with other national legislation.

The Bill creates a more effective and efficient tool for the Department to ensure the preservation and maintenance of agricultural land within the Republic.

## 5. IMPLICATIONS FOR PROVINCIAL GOVERNMENT

5.1 Every entity within the provincial sphere of government must consider the prescribed norms and standards to achieve and measure compliance in terms of the envisaged Act to support the Department's mandate.

5.2 Provincial Departments must provide the necessary resources required by the formal structures established at provincial level, for the exercise of their powers and the performance of their functions in terms of the envisaged Act, including but not limited to financial resources, administrative capacity, infrastructure and the necessary training.

## 6. IMPLICATIONS FOR LOCAL GOVERNMENT

Every entity within the local sphere of government must consider the prescribed norms and standards to achieve and measure compliance in terms of the envisaged Act to support the Department's mandate.

## 7. FINANCIAL IMPLICATIONS

The envisaged Act will have financial implications for the State, in that it will require the appointment of nine additional scientists and nine administrative staff to the current post establishment. The envisaged Act will also require a one-off cost for the development of norms, standards, criteria, regulations, manuals and training materials and the national agro-eco information system. The financial implications are outlined below:

Item	Cost
Additional annual Administrative cost	
Additional personnel capacity: Scientific and administrative support	R12 500 000
Additional goods and services to conduct field surveys	R5 000 000
One-off cost	
For developing norms, standards, criteria, regulations, manuals and training materials, national agro-eco information system	R50 000 000
These funds will have to be secured in addition to the existing MTEF allocation.	

## 8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution.

8.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

8.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa In Re: Constitutionality of the Liquor Bill*<sup>1</sup> ("Liquor Bill judgment"), Cameron AJ held the following:

1. (CCT/12/99) [1999] ZACC 15.

“[27] It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in . . . Schedule 4 be dealt with under section 76.

[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure . . .”.

- 8.4 Following the Liquor Bill judgment, the Constitutional Court in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*<sup>2</sup> (“*Tongoane* judgment”) confirmed the following:

“[59] . . . the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.”.

- 8.5 Furthermore, the Constitutional Court held that:

“[66] . . . procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting themáthey are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of governmentá”.

- 8.6 As the Court held in the **Tongoane** judgment, a Bill must be tagged as a section 76 Bill if its provisions in substantial measure deal with a Schedule 4 functional area. We are therefore of the view that the Bill should be classified as a section 76 Bill, which is an ordinary Bill affecting province, as its provisions in a substantial measure fall within a functional area listed in Schedule 4 to the Constitution, namely “Agriculture”.
- 8.7 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), as it does not contain any provisions which may have an impact upon customary law or customs of traditional communities.

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2. 2010 (8) BCLR 741 (CC).

