

DRAFT SUSTAINABLE UTILISATION OF AGRICULTURAL RESOURCES BILL, 2003

BILL

To provide for the sustainable utilisation of natural agricultural resources, including control over the subdivision and change of use of agricultural land and prime- and unique agricultural land, in support of biodiversity and for that purpose to provide for the designation and functions of an executive officer, the establishment of land care committees, the prescribing of standards and control measures, the establishment of schemes and trusts, control over the spreading of weeds and invader plants and to provide for incidental matters thereto.

PREAMBLE

RECOGNISING THAT racially discriminatory practices and laws of the past and apartheid deprived historically disadvantaged people of land, resulting in their exclusion from the agricultural sector and racially skewed patterns of utilisation of agricultural land in South Africa;

IN ORDER TO enable the land users to effect a change in the patterns of natural agricultural resources utilisation and an increase in land care awareness through the provision of appropriate incentive schemes and technical support services;

IN ORDER TO promote sustainable utilisation and development of natural agricultural resources;

IN ORDER TO control the subdivision and change of agricultural land use, including prime and unique agricultural land;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

Arrangement of sections

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SCHEDULE

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Chapter 1

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates-

"advertise" for the purposes of Chapter 8, means to distribute to members of the public or bring, to their notice in any other manner any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference;

"agricultural land" means any land which is or may be used for agricultural purposes excluding land which the Minister, after consultation with the Ministers referred to in section 7(1) and the relevant MEC's has excluded by notice in the *Gazette* from the provisions of this Act;

"authorised person" means a natural person other than an officer or a chairperson authorised under section 5(1)(b);

"building" means any building erected or, used for any purpose whatsoever, and includes any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, so erected or used;

"conservation", in relation to the utilisation of natural agricultural resources, also means-

- (a) the protection, recovery and reclamation of those resources; and
- (b) management practises which ensure the protection, recovery and reclamation of those resources;

"control measure" means a control measure referred to in section 7;

"degraded", in relation to land, also means it has lost its agricultural production potential or has been eroded, waterlogged, salinised, denuded of vegetation, disturbed or damaged;

"department" means the Department of Agriculture of the national government;

"directive" means a directive referred to in section 8 or 11;

"erosion" means the loss of soil through the action of water, wind, ice or other agents, including the subsidence of soil;

"executive council" means the executive council of a province;

"executive officer" means the officer of the department who is in terms of section 4 designated as such;

"land care committee" means a local, provincial or national land care committee contemplated in section 6;

"MEC" means the member of the Executive Council of a province who is responsible for the agriculture portfolio in that province:

"Minister" means the Minister responsible for Agriculture;

"natural agricultural resources" means the soil and the water sources and vegetation occurring on agricultural land, excluding weeds and invader plants;

"officer" means an officer as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No.108 of 1994), and includes an employee so defined and a provincial officer;

"person" includes any natural or legal person, whether incorporated or not, the trustee of a trust, the curator of an insolvent or deceased estate, the guardian of a minor or an incapable person or any person deemed to be a minor as a result of the marital custom of such a person;

"prescribe" means prescribed by regulation under section 26;

"prime agricultural land" means the best available agricultural land that is best suited to, and capable of, consistently producing acceptable yields of a wide range of crops such as food, feed forage, fibre and oilseed, with acceptable expenditure of energy and economic resources, and minimal damage to the environment;

"right", for the purposes of Chapter 8, in relation to agricultural land, does not include

any right to minerals or a prospecting or mining right;

"sale" for the purposes of Chapter 8, includes a sale subject to a suspensive condition; and "sold" shall have a corresponding meaning;

"scheme" means a scheme established under section 10 or deemed to have been established under section 27(2);

"statutory body" for the purposes of Chapter 8 means –

(a) any board or body which has been established by or under any law and whose funds consist wholly or partly of moneys appropriated by Parliament in aid of such board or body;

(b) any municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) or

(c) any other board or body, or any board or body belonging to a class of boards or bodies, which the Minister may by notice in the Gazette declare to be a statutory board or body or statutory boards or bodies for the purposes of Chapter 8.

"standard" means a standard referred to in section 7;

"sustainable utilisation" means the utilisation of natural agricultural resources for the production of food and other produce to enhance food security in an environmentally sound way, without compromising the ability of future generations to meet their own needs;

"this Act" includes regulations

"trust" means a trust established under section 10;

"unique agricultural land" means agricultural land that can be used for high value produce and is important to agriculture due to a specific combination of location, climate or natural resource properties, that make it highly suited for production when managed with sound farming or conservation methods, including agricultural land of local importance where it is useful and environmentally sound to encourage continued agricultural production, even if it is not used for producing specific high-value produce; and wetlands;

"user" means any person who uses agricultural land or impacts on its uses in any manner whatsoever;

"water course" means water course as defined in the National Water Act, 1998 (Act No. 36 of 1998);

"weed or invader plant" means any plant that has been so declared by regulation under section 26(d);

"wetland" means wetland as defined in the National Water Act, 1998 (Act No. 36 of 1998).

Application of Act

2. The provisions of this Act which relate to-

(a) the sustainable utilisation of natural agricultural resources, shall apply to all agricultural land in the Republic;

(b) the control of weeds or invader plants, shall apply anywhere in the Republic;

and

(c) the control over the subdivision and change of utilisation of agricultural land,

shall apply to all agricultural land in the Republic of South Africa, excluding land of which the State is the owner or which is held in trust by the Minister for any person.

Objects of Act

3. The objects of this Act are to provide for-

(a) the optimum productivity and sustainable utilisation of natural agricultural resources;

(b) the control of weeds or invader plants; and

(c) the control over the subdivision and change of utilisation of agricultural land.

Chapter 2

EXECUTIVE OFFICER

Designation and functions of executive officer

4. (1) The Minister shall designate an officer of the department as executive officer for the purposes of this Act.

(2) The executive officer shall exercise the powers and perform the duties conferred or imposed upon the executive officer by or under this Act, by promoting a general duty of care on all users of agricultural land.

(3) The executive officer may, when exercising the powers and performing the duties conferred or imposed upon him or her in terms of this Act -

(a) monitor the condition of the natural agricultural resources and obtain such additional information, including expert opinion, as may be required in order to come to a decision;

(b) make or order any investigation or inquiry which may be deemed necessary;

(c) initiate the development and promotion of systems of sustainable utilisation of natural agricultural resources; and

(d) support the activities of land care committees and education and training of users of agricultural land.

(4) When considering an application, request or claim lodged with or directed to him or her in terms of this Act, the executive officer may, taking into consideration the objects of this Act and the nature and purpose of the relevant application, request or claim, refuse such application, request or claim, or grant it.

(5) When an application, request or claim is refused, the executive officer shall notify the applicant or claimant concerned in writing of it and of the grounds on which the refusal is based.

(6) The executive officer shall issue a written authority, consent or proof of assent to a person whose application, request or claim has been approved.

(7) Unless expressly provided otherwise in this Act, any document referred to in this section and any directive or other document issued by the executive officer in terms of this Act, may be issued subject to such conditions as the executive officer may in each case determine.

(8) (a) If the executive officer becomes aware of circumstances which would have resulted in the refusal of an application, request or claim, or in the issuing of it subject to additional or other conditions, if they were known to him or her at the time when first considering that application or request, he or she may-

(i) by written notice to the person concerned revoke the written authority, consent or other proof of assent issued to the applicant or claimant; or

(ii) issue a substituting authority, consent or other proof of assent to the person concerned.

(b) The executive officer may, at the request of the person to whom the relevant document has originally been issued, issue a substituting authority, consent or other proof of assent on satisfactory proof that the

original is lost, stolen or destroyed.

(9) Whenever a regulation specifies a period within which anything relating to the powers and duties of the executive officer is to be done or performed by a person, the executive officer may on written application by that person extend the period concerned, but not more than the period stipulated in the regulations, before such period has expired.

Delegations and assignments by executive officer

5. (1) Subject to the provisions of this Act, the executive officer may in writing delegate or assign any of his or her powers, duties or functions or any power, duty or function assigned to him or her -

(a) to an officer;

(b) to a natural person who is not an officer; or

(c) to the chairperson of a land care committee.

(2) (a) The executive officer shall issue to each officer, authorised person or chairperson of a land care committee referred to in subsection (1), written authority stating that the person mentioned in it is authorised to exercise the powers and perform the duties or functions specified in it, either in general or in cases of a particular nature, or in respect of a particular national standard or on specified agricultural land or in a particular area.

(b) Any person authorised under subsection (1) shall have, to the extent that it is necessary or expedient, and subject to subsection (3), all the functions of the executive officer set out in section 4(3) to (9).

(3) Any decision by an officer, authorised person or chairperson of a land care committee by virtue of a delegation or assignment may be amended or withdrawn by the executive officer and shall, until it has been so amended or withdrawn, be deemed to have been made or given by the executive officer.

Chapter 3

LAND CARE COMMITTEES

Land care committees

6. (1) The executive officer may, by notice in the *Gazette*, establish criteria and requirements for the establishment and operation of local and provincial land care committees for the sustainable utilisation of natural agricultural resources.

(2) Criteria and requirements under subsection (1) may relate to –

(a) the objectives of land care committees;

(b) the composition of the committees;

(c) the powers, duties and functions of such committees;

(d) the procedures to be followed at their meetings;

(e) the funding of such committees; and

(f) the auditing and reporting measures to be instituted and employed by the committees;

(3) Any group of persons complying with the criteria and requirements contemplated in subsection (2) may apply to the executive officer to be recognised and sanctioned as a local land care committee or provincial land care committee, and the executive officer shall cause a list of committees so sanctioned to be published in the *Gazette*.

(4) The executive officer may delete a local or provincial land care committee from the list referred to in subsection (3) if he or she, after consultation with that committee, is of the opinion that such a committee does not achieve or promote the objectives for which it was originally established, and such committee shall cease to exist from the date that the deletion is published in the *Gazette*.

(5) The Minister may establish a national land care committee to advise him or her on the sustainable utilisation of natural agricultural resources in a national context.

(6) Any land care committee established under this section shall be a legal person.

(7) A land care committee which may incur expenditure against national government funds may only be established with the concurrence of the Minister of Finance.

Chapter 4

STANDARDS AND CONTROL MEASURES

Standards and control measures

7. (1) The Minister may, after consultation with the Ministers responsible for Land Affairs, Water Affairs, Mineral Affairs and Environmental Affairs and the relevant MEC's of the various provinces, prescribe standards and within the ambit of such standards, control measures to regulate the sustainable utilisation of natural agricultural resources.

(2) Standards and control measures may relate to-

(a) the cultivation, utilisation and conservation of natural agricultural resources of agricultural land including State owned land;

(b) the irrigation of agricultural land;

(c) the prevention or control of the waterlogging or salinisation of agricultural land;

(d) the utilisation and conservation of wetlands, water sources and water courses;

(e) the regulation of the flow pattern of run-off water;

- (f) the utilisation and conservation of vegetation;
- (g) the restoration or reclamation of agricultural land;
- (h) the protection of natural agricultural resources against pollution;
- (i) the planning, design, construction, maintenance, alteration or removal of soil conservation works or other structures on agricultural land and
- (j) the control of weeds and invader plants and bush encroachments.

(3) In a standard or control measure the Minister -

(a) shall, where applicable, set out the functions of the executive officer in respect of it;

(b) may impose a prohibition, restriction or obligation with regard to any matter mentioned in subsection (2) upon users of agricultural land or upon such other category of persons to whom such standards apply; and

(c) may provide that a person on application and by means of a written consent may be exempted by the executive officer from the relevant prohibition, restriction or obligation.

(4) Different standards or control measures may be prescribed in respect of different classes of users or land characteristics, or different provinces or areas, or in such other respects as the Minister, after consultation with the Ministers referred to in section 7(1) and the relevant MEC's, may determine.

(5) The Minister may delegate the power to prescribe standards and control measures in respect of a province to the relevant MEC of the province.

Directives by executive officer

8. (1) The executive officer may direct a user of agricultural land-

(a) to comply with a particular standard or control measure which applies to him or her or to the agricultural land of which he or she is the user;

(b) to perform an act specified in such directive, which is essential to achieve or promote the objects of this Act; or

(c) to abstain from performing an act specified in the directive which is detrimental to the objects of this Act.

(2) In a directive the executive officer may provide that a requirement imposed by him or her shall be complied with by the person or persons, in the manner and within the period, specified in it.

(3) A directive shall-

(a) be contained in a written notice which is served in the prescribed manner on the user concerned, or which is published in the prescribed manner; and

(b) after having been so served or published, be binding on the user, owner or person having control

over the agricultural land or other person specified in it as well as his or her successor in title.

(4) (a) If, after such inspection or investigation as he or she may deem necessary, the executive officer is satisfied that the provisions of a directive have been properly complied with and that the objects of it have been achieved, he or she may amend or withdraw the directive but the amendment or withdrawal shall not exempt a user from compliance with any other control measure which applies to him or her or the agricultural land in respect of which he or she is the user.

(b) An amendment or withdrawal of a directive contemplated in paragraph (a) shall be served or published in the manner referred to in subsection (3) (a).

(5) A directive which has been published in terms of section 7 of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983), or has been served or deemed to have been served in terms of the said section, and which is in force at the commencement of this section, shall be deemed to be a directive which has been published, or served on the user specified in it, in terms of this section.

(6) A directive published or served under this section shall be enforceable against any person mentioned in it.

Performance of certain acts by executive officer

9. (1) The executive officer may, in order to assist in giving effect to a standard, control measure or directive in the public interest, and after having notified the user of the agricultural land concerned-

(a) establish a camp together with the necessary accessories and equipment at any suitable place on that land, and construct a road giving access to it;

(b) dig out and take or remove any sand, soil, clay, gravel, stone, water, bush, wood or other material which may be required from any place on that land, or on nearby land where it is available;

(c) distribute on that land any insect or the eggs of it or any other organism which is injurious to weeds or invader plants occurring on the land, or remove from that land any plant or portion of a plant upon which such insect, eggs or organism is present; and

(d) combat, destroy or remove from that land any weeds or invader plants which occur on the land.

(2) (a) The executive officer may pay to a user of agricultural land reasonable compensation in respect of a camp which is erected on that land under subsection (1)(a), or in respect of anything which is dug out and taken or removed under subsection (1)(b).

(b) The payment of compensation under paragraph (a) may only be considered if —

(i) an application in this regard is lodged with the executive officer in writing within 90 days of the date on which that officer informed the user that the camp concerned has been removed from the relevant land, or the sand, soil, clay, gravel, stone, water, bush, wood or other material concerned has been dug out and taken or removed; and

(ii) the relevant act referred to in subsection (1) does not have or is not likely to have a beneficial effect on that land.

(c) Compensation paid under subsection 2(a) shall form part of the cost of the performance of the act concerned.

(3) (a) The costs attached to an act which is performed under subsection (1), or such portion of it as the executive officer may determine, shall subject to paragraph (b) be payable by the user of the agricultural land on, or for the benefit of, which that act was performed.

(b) Where an act, by virtue of an agreement between the executive officer and a user of agricultural land, is performed for the purpose of public demonstration or for research on any matter relating to veld, soil or water conservation or the combating of weeds or invader plants, no portion of such costs shall be payable by the user concerned.

Chapter 5

SCHEMES AND TRUSTS

Schemes and trusts

10. (1) The Minister may by notice in the *Gazette* establish any scheme or trust to enable users to comply with or achieve any standard or control measure or to assist land care committees with their activities.

(2) A scheme or trust established under subsection (1) may provide for financial or other assistance, such as grants or loans, in order to give effect to the objects of the scheme or trust.

(3) Different schemes or trusts may be established in respect of different provinces or areas, and the provisions of different schemes may differ in such respects as the Minister, after consultation with the relevant MEC's concerned, may deem necessary.

(4) In a notice referred to in subsection (1) the Minister shall -

(a) set out the objects of the scheme or trust;

(b) mention the areas in which and the periods during which the scheme or trust shall apply;

(c) mention the acts in respect of which assistance may be rendered under the scheme or trust;

(d) mention the basis for the determination of incentives which may be paid under the scheme or from trust funds;

(e) determine the requirements and conditions which have to be complied with in order to qualify for assistance under the scheme or trust;

(f) determine the body which shall be responsible for the administration or implementation of the notice, and provide the name, address and other particulars of the body;

(g) determine the procedure with regard to the lodging of any application in terms of the scheme or trust; and

(h) require that particular reports with regard to the progress and completion of an act referred to in paragraph (c) shall be submitted at specified times;

(5) A scheme or trust which may result in the expenditure against national government funds may only be established with the concurrence of the Minister of Finance.

Chapter 6

WEEDS OR INVADER PLANTS

Control of spreading of weeds or invader plants

11. (1) The Minister may after consultation with the Ministers referred to in section 7(1) and the relevant MEC's by regulation declare any plant to be a weed or invader plant.

(2) No person shall -

(a) sell or agree to sell or offer, advertise, keep, exhibit, transmit, send, convey or deliver for sale, or exchange for anything or dispose of to any person in any manner for a consideration, any weed or invader plant; or

(b) in any other manner spread or cause or permit the spreading of any weed or invader plant, from any place to any other place, whether on the same agricultural land or on some other land.

(3) (a) If seed, grain, hay or any other agricultural product contains any weed or invader plant, the executive officer may serve a directive on any person who has control of it -

(i) to return it to its place of origin;

(ii) to take it to a specified place in order to have the weed or invader plant removed from it; or

(iii) to destroy it in such a manner as the executive officer may determine.

(b) If the person who has the control of such seed, grain, hay or other agricultural product is not the owner of it, a copy of the directive shall be served on the owner concerned.

(c) Any directive shall be executed by the owner or person on whom it has been served within the period specified in it, failing which the executive officer may take such steps for the execution of it as he or she may deem necessary.

(d) The expenses incurred by the executive officer in connection with the execution of such directive shall be recovered from the owner of the seed, grain, hay or other agricultural product concerned.

(4) (a) If any weed or invader plant adheres to an animal which is driven on a public road, conveyed in a vehicle or offered for sale, the executive officer may direct the person who has control of the animal to remove the weed or invader plant from it.

(b) The provisions of paragraphs (b), (c) and (d) of subsection (3) shall with the necessary changes apply to a directive referred to in paragraph (a) of this subsection.

(5) The provisions of subsections (2) and (3) shall not apply in respect of weeds or invader plants or their seeds which occur in seed which is conveyed or sold to, or is present on the premises of, an establishment which is registered in terms of the Plant Improvement Act, 1976 (Act No. 53 of 1976), in respect of the business of the cleansing of propagating material for sale, provided the words "uncleansed

seed" or "onskoongemaakte saad" appear on the containers of such seed or on labels attached to them.

(6) Any person who removes any weed or invader plant or seeds thereof from seed, grain, hay or any other agricultural product or from an animal, either in terms of a directive under subsection (3) or that subsection as applied by subsection (4) or otherwise, shall deal with it in such manner as will ensure that the weed or invader plant concerned will not be able to reproduce itself.

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Chapter 7 UTILISATION OF AGRICULTURAL LAND

Prime and unique agricultural land

12. (1) (a) Notwithstanding the provisions of any other law, no prime agricultural land or unique agricultural land may be sold by any person and no lease for the rental of prime agricultural land or unique agricultural land for a period longer than 10 years may be entered into, as contemplated in subsection (4), unless the executive officer on application-

(i) has declared in writing that he or she is satisfied that the natural agricultural resources concerned will continue to be utilised in a sustainable manner in accordance with the standards, control measures or directives which apply to them; or

(ii) has subject to subsection (3) authorised that the land may be utilised for purposes other than for agricultural purposes.

(b) An application for a declaration under paragraph (a)(i) or an authorisation under paragraph (a)(ii) shall be done in the prescribed manner and shall be accompanied by the prescribed fee.

(2) A Registrar of Deeds

(a) shall register any lease for prime or unique agricultural land longer than 10 years against the title deed of the property concerned; and

(b) may not register any transfer of ownership of prime or unique agricultural land or any lease longer than 10 years, unless the request for such registration is accompanied by a declaration or authorisation referred to in subsection (1).

(3) An authorisation under subsection (1)(a)(ii) shall

(a) be given in accordance with the criteria prescribed by the Minister in terms of section 13; and

(b) have the effect that the land in question shall be deemed not to be land utilised for agricultural purposes.

(4) For the purposes of subsection (1)

(a) "sold" includes-

(i) the sale of all or the majority of shares in a company or shareblock or timeshare, which has as its

objective the ownership of prime or unique agricultural land or the utilisation of such land;

(ii) the sale of the members' interest or the majority of the members' interest in a close corporation which has as its objective or its main business the ownership of prime or unique agricultural land or the utilisation of such land;

(iii) the sale of such percentage of the shareholding or members' interest contemplated in subparagraph (i) or (ii) as to result in effective control in the hands of an outside party;

(iv) the substitution or change of a majority of trustees or the disbandment of a trust in terms of a deed of trust which owns or otherwise has control over prime or unique agricultural land;

(v) the donation or disposal of prime or unique agricultural land other than in terms of a sales agreement, or a disposal of such land for consideration other than money;

(vi) the transfer of prime or unique agricultural land from an insolvent or deceased estate; and

(vii) any other practice declared by the Minister by notice in the *Gazette* to be a sale of prime or unique agricultural land; and

(b) "lease" includes

(i) any transaction which has the result that a person other than the owner of the land has a right to utilise the prime or unique agricultural land in return for any form of compensation, but excluding the use of communal land;

(ii) any usufruct, life-right or servitude which enables somebody else other than the owner to utilise prime or unique agricultural land; and

(iii) any right to prospect or mine which authorises the holder of that right to limit the utilisation of prime or unique agricultural land.

Criteria for change of agricultural land utilisation

13. (1) The Minister shall, with the concurrence of the Ministers referred to in section 7(1) and the relevant MEC's and for the purposes of section 12(3), prescribe criteria in terms of which prime agricultural land and unique agricultural land may be utilised for purposes other than agriculture.

(2) Criteria determined under subsection (1) shall relate to-

(a) the importance of the continued utilisation of natural agricultural resources for agricultural purposes in general, particularly taking into consideration the utilisation of prime agricultural land or unique agricultural land or its agricultural importance relative to a particular province or area; and

(b) the probable future agricultural utilisation of those resources with regard to past, present and future developmental objectives of that province or area.

(3) Different criteria may be prescribed under subsection (1) from time to time and such criteria may differ from province to province and area to area.

(4) The provisions of this section do not apply in respect of land of which the state is the owner or which is held in trust by the state or a Minister for any person.

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Chapter 8 SUBDIVISION OF AGRICULTURAL LAND

14. Actions which are excluded from application of this Chapter

The provisions of this Chapter shall not apply in respect of -

(a) (i) any subdivision of land for the purpose of transferring a portion thereof to the State or a statutory body;

(ii) the transfer of an undivided share in land to the State or a statutory body; or

(iii) the sale or grant of any right to any portion of agricultural land to the State or a statutory body;

(b) any subdivision of, or the passing of an undivided share in, any land in accordance with a testamentary disposition or intestate succession, if the testator died before 2 January 1971;

(c) the passing of an undivided share in any land in accordance with a contract entered into prior to 2 January 1971;

(d) any subdivision of any land in connection with which a surveyor has completed the relevant survey and has submitted the relevant subdivisional diagram and survey records for examination and approval to the surveyor-general concerned prior to 2 January 1971;

(e) the registration of a lease referred to in section 15 (d) in respect of a portion of agricultural land, concluded in writing prior to 13 March 1974; or

(f) land of which the state is the owner or which is held in trust by the state or a Minister for any person.

15. Prohibition of certain actions regarding agricultural land

Subject to the provisions of section 14, unless the Minister has consented in writing-

(a) agricultural land shall not be subdivided;

(b) no undivided share in agricultural land not already held by any person, shall vest in any person;

(c) no part of any undivided share in agricultural land shall vest in any person, if such part is not already held by any person;

(d) no lease in respect of a portion of agricultural land of which the period is 10 years or longer, or is the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee, either by the continuation of the original lease or by entering into a new lease, indefinitely or for periods which together with the first period of the lease amount in all to not less than 10 years, shall be entered into;

(e) (i) no portion of agricultural land, whether surveyed or not, and whether there is any building thereon

or not, shall be sold or advertised for sale, except for the purposes of a mine as defined in section 1 of the Minerals Act, 1991 (Act No. 50 of 1991); and

(ii) no right to such portion shall be sold or granted for a period of more than 10 years or for the natural life of any person or to the same person for periods aggregating more than 10 years, or advertised for sale or with a view to any such granting, except for the purposes of a mine as defined in section 1 of the Minerals Act, 1991; and

(f) no public notice to the effect that a town planning scheme relating to agricultural land or any portion thereof has been prepared or submitted under the law in question, shall be given.

16. Application for consent of Minister, and imposition, enforcement or withdrawal of conditions by him or her

(1) (a) Any application for the consent of the Minister for the purposes of section 15 shall -

(i) in the case where any act referred to in paragraphs (a) to (e) of that section is contemplated, be made by the owner of the land concerned; and

(ii) be lodged in such place and be in such form and be accompanied by such plans, documents and information as may be determined by the Minister.

(b) For the purposes of paragraph (a) "owner" shall have the meaning assigned to it in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(2) The Minister may in his or her discretion refuse or -

(a) on such conditions, including conditions as to the purpose for or manner in which the land in question may be used, as he or she deems fit, grant any such application; and

(b) if he or she is satisfied that the land in question is not to be used for agricultural purposes and after consultation with the relevant MEC of the province in which such land is situated, on such conditions as such MEC may determine in regard to the purpose for or manner in which such land may be used, grant any such application.

(3) The Minister or the MEC in the case of a condition referred to in subsection (2) (b), may enforce any such condition.

(4) The Minister or the MEC in the case of a condition referred to in subsection (2) (b), consultation with the Minister may vary or withdraw any such condition and, if it has been registered against the title deed of the land, the Minister may direct that it be varied or cancelled.

17 Succession

(1) If the Minister does not in terms of section 16 consent to the subdivision of any particular agricultural land in accordance with any testamentary disposition or intestate succession or to the vesting of any undivided share in such land in accordance therewith, and no agreement is reached as to a subdivision or vesting in respect of which the Minister grants his or her consent in terms of the said section 16, the

executor of the estate concerned shall realize the land or undivided share concerned, as the case may be, and dispose of the nett proceeds thereof in accordance with the said testamentary disposition or intestate succession, as the case may be.

(2) The provisions of section 12 of the Expropriation Act, 1965 (Act No. 55 of 1965), shall *mutatis mutandis* apply in respect of any such proceeds of land or an undivided share in any land, and in such application of the said section a reference therein to a Minister shall be deemed to be a reference to an executor referred to in subsection (1) of this section.

18 Duties of Surveyor-General and Registrar of Deeds in application of Chapters 7 and 8

(1) Subject to the provisions of section 14, a Surveyor-General shall only approve a general plan or diagram relating to a subdivision of agricultural land, and a Registrar of Deeds shall only register the vesting of an undivided share in agricultural land referred to in section 15 (b), or a part of any such share referred to in section 15 (c), or, a lease referred to in section 15 (d) or, if applicable, a right referred to in section 15 (e) in respect of a portion of agricultural land, if the written consent of the Minister in terms of this Act has been submitted to him or her.

(2) If such consent has been granted subject to a registerable condition, such condition shall, on such approval or registration, be endorsed on the title deed of the land concerned.

19. Registration of servitudes

(1) Subject to the provisions of the National Water Act, 1998 (Act No. 36 of 1998), a servitude in respect of agricultural land shall not be registered by a Registrar of Deeds without the written consent of the Minister, unless it is-

(a) a right of way, aqueduct, pipeline or conducting of electricity with a width not exceeding 15 metres;

(b) a servitude which is supplementary to a servitude referred to in paragraph (a), and which has a servitude area not exceeding 225 square metres which adjoins the area of the last-mentioned servitude; or

(c) a usufruct over the whole of agricultural land in favour of one person or in favour of such person and his or her spouse or the survivor of them if they are married in community of property.

(2) The provisions of sections 16 and 18(2) shall with the necessary changes apply in respect of the granting of consent for the purposes of subsection (1) of this section, and in respect of such consent.

20. Entry upon and investigation on land

The Executive Officer may authorize any person to enter upon any land at all reasonable times and to carry out thereon such investigations or to perform thereon such other acts as are necessary or expedient for achieving the objects of this Chapter.

21. Delegation of powers

{1) The Minister may delegate to any officer any power conferred upon him or her by this Act, but shall

not be divested of any power delegated by him or her, and may vary or withdraw any decision of any such officer if he or she deems fit or upon application by any person affected and feeling aggrieved by a such decision.

(2) The Minister may under subsection (1) delegate the same power to more than one officer or different powers to different officers or in respect of different areas the same or different powers to different officers.

(3) (a) An application referred to in subsection (1) shall be made within the period and in the manner prescribed, and shall be accompanied by the prescribed fee.

(b) If the Minister withdraws any decision of the officer concerned, the prescribed fee paid by the applicant shall be refunded to him or her, or if the Minister varies any such decision, he may in his or her discretion direct that the whole or any part of such fee be refunded to the applicant.

22 Payment of duties or fees

No duties or fees of office shall be payable in respect of any document drawn up for the purposes of this Chapter and lodged in a registration office for registration or filing.

Chapter 9

ENFORCEMENT

23. Powers of entry and investigation

(1) The executive officer may, whenever it is necessary in the exercise of his or her powers or the performance of his or her duties under this Act, enter on the authority of a warrant upon any agricultural land in order -

(a) to determine whether and to what extent that land has degraded;

(b) to determine whether weeds or invader plants occur on that land;

(c) to determine the condition of grazing on that land;

(d) to determine whether and to what extent the natural vegetation is deteriorating or has been destroyed on that land;

(e) to determine whether and to what extent the natural agricultural resources on that land are polluted;

(f) to ascertain whether a soil conservation work should be constructed on that land, or whether a soil conservation work which has been constructed on that land is being maintained or has been altered, removed or destroyed;

(g) to demarcate an area on that land which is required to be demarcated for the purposes of this Act, and for the purposes of such demarcation to make the necessary surveys and erect or effect beacons or marks;

(h) to make such other surveys, take soil or plant samples and undertake such other investigations as he or she may deem necessary on that land in order to make an assessment of the national agricultural resources, and for the purposes of such assessment, to take such photographs as may be deemed

necessary;

(i) to determine whether sand, soil, clay, gravel, stone or other material which is required for the performance of an act referred to in section 9, is present on that land;

(j) to determine whether the user of the land concerned is complying with the criteria for resource use, a control measure, the provisions of a scheme or the requirements specified in a directive, or is otherwise utilising the natural agricultural resources in a manner which will ensure that the objects of this Act are achieved on or with regard to that land;

(k) to inspect the effect of an act referred to in section 9 which has been performed on that land;

(l) to determine the number and kind of animals on that land; or

(m) to carry out any other investigation on that land which relates to a matter regulated by this Act or a scheme or trust.

(2) The executive officer may on the authority of a warrant-

(a) stop any animal which is driven on a public road, or any vehicle in which an animal, seed, grain, hay or other agricultural product is conveyed, and carry out the necessary inspections in order to determine whether weeds adhere to such animal or are present in such seed, grain, hay or other agricultural product;

(b) enter upon any land, building or premises on or in which there is or is suspected to be present any weed, or any seed, grain, hay or other agricultural product which contains or is suspected to contain weeds; and

(c) attend any livestock sale and examine the animals offered for sale in order to ascertain whether any weeds adhere to such animals.

(3) When acting under subsection (1) or (2), the executive officer may-

(a) proceed over any land in order to reach land or a building, premises, vehicle or animal referred to in the said subsections;

(b) take along such officers, assistants, conveyances, implements, equipment, instruments, chemicals and other aids as may be required in order to exercise the powers and perform the duties concerned;

(c) demand from the user of the land concerned, or the owner or person in charge of the land, building, premises, vehicle or animal concerned, or his or her employee, agent or manager, all reasonable assistance;

(d) take on the authority of a warrant such specimens or samples as may be deemed necessary of any plant, seed, grain, hay or other agricultural product, and for such purpose open any container in which that plant, seed, grain hay or other agricultural product is contained and identify, test, examine or analyse such samples or cause it to be identified, tested, examined or analysed;

(e) seize on authority of a warrant any quantity of such plant, seed, grain, hay or other agricultural product which may serve as proof of any offence under this Act, and remove from or leave on or in such land, building, premises or vehicle such quantity of it as he or she may determine, and, if it is deemed

necessary, affix any identification mark or seal on it or on the containers of it;

(f) examine any register, book or other document in the possession or custody of the user of the land concerned or his or her employee, agent or manager, and which on reasonable grounds is suspected to relate to a matter regulated by this Act or a scheme or trust and make copies of it or extracts from it; and

(g) demand an explanation from a person referred to in paragraph (c), of any relevant entry in a book or document referred to in that paragraph (f), or of anything observed by him or her in connection with a matter referred to in subsection (1) or (2).

(4) No compensation shall be payable to a user of land in respect of the rendering of assistance as contemplated in subsection (3)(c).

24 Offences and penalties

(1) Any person who –

(a) refuses or fails to comply with a prohibition, restriction or obligation contained in a standard or a control measure which applies to him or her, or the agricultural land in respect of which he or she is the user;

(b) refuses or fails to comply with a directive ;

(c) contravenes or fails to comply with a provision of section 11(2) or (6);

(d) fails to obtain a declaration of sustainable resource use or authorisation for changing of resource use under section 12, or causes or assists land to be transferred or let without such declaration or authorisation;

(e) in any applications for the purposes of Chapter 8, makes any statement which is false in any material respect, knowing it is to be false, or fails to disclose any information with intent to deceive;

(f) hinders or obstructs any person acting under an authority in terms of section 20 in the performance of his or her functions;

(g) contravenes or fails to comply with a condition imposed in terms of section 16 (2);

(h) contravenes the provisions of section 15 (d) with regard to the entering into of a lease; or

(i) contravenes a provision of section 15 (e);

shall be guilty of an offence.

(2) Any person who is convicted of an offence under this section shall -

(a) in the case of a first conviction of an offence referred to in subsection (1), be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; and

(b) in the case of a second or subsequent conviction of an offence referred to in subsection (1), whether for the same or any other offence mentioned in that subsection, be liable to a fine or to imprisonment for

a period not exceeding 10 years or to both such fine and such imprisonment.

Chapter 10 FINAL PROVISIONS

25. Defects in form

A defect in the form of any document which in terms of any law is required to be executed in a particular manner, or in a document issued in terms of this Act, shall if the document substantially complies with the applicable legal requirements, not render invalid any act performed in terms of this Act in respect of the matter to which such document relates, and shall not be a ground for exception in any legal proceedings which may be taken in respect of such matter.

26. Regulations

(1) The Minister may after consultation with the Ministers referred to in section 7(1) and the relevant MEC's make regulations in respect of —

(a) standards and control measures referred to in section 7;

(b) criteria in terms of which agricultural land may be used for purposes other than agriculture as contemplated in section 13;

(c) the manner in which and the periods within which particular applications have to be submitted, the documents which have to accompany such applications, and the fees that are payable in respect of such applications; and

(d) declaration of any plant to be a weed or invader plant

(e) any other matter that may or shall be prescribed in terms of this Act.

(2) Regulations which differ in such respects as the Minister may deem necessary, may, subject to the provisions of this Act, be made in respect of different areas of the Republic.

(3) A regulation may prescribe a penalty not exceeding the penalties provided for in section 24 for any contravention of that regulation or failure to comply with the provisions of that regulation.

(4) Any regulation which relates to state revenue or expenditure shall be made after consultation with the Minister of Finance.

27. Repeal of laws and savings

(1) The laws specified in the Schedule are hereby repealed to the extent indicated in the second column.

(2) A scheme established under section 8 of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983), and a regulation made under section 29 of that Act shall, despite the repeal of that Act, remain in force and be deemed to have been established and made under sections 10 and 26 of this Act, respectively.

28. Short title

This Act shall be called the Sustainable Utilisation of Agricultural Resources Act, 2003, and comes into

operation on a date to be fixed by the President by proclamation in the Gazette.

SCHEDULE

LAWS REPEALED EXTENT OF REPEAL

Conservation of Agricultural Resources The whole Act, 1983 (Act No. 43 of 1983)

Abolition of Racially Based Land Measures Section 41 Act, 1991 (Act No.108 of 1991)