

CONSERVATION OF AGRICULTURAL RESOURCES ACT 43 OF 1983

[ASSENTED TO 21 APRIL 1983]

[DATE OF COMMENCEMENT: 1 JUNE 1984]

(Afrikaans text signed by the State President)

as amended by

Agricultural Laws Amendment Proclamation R116 of 1994
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

also amended by

Abolition of Racially Based Land Measures Act 108 of 1991
[with effect from a date to be proclaimed]

Regulations under this Act

BUSH CONTROL SCHEME - ESTABLISHMENT

REGULATIONS IN TERMS OF CONSERVATION OF AGRICULTURAL RESOURCES ACT 43 OF 1983

PERMISSION TO BURN VELD AND TO GRAZE BURNED VELD IN THE MAGISTERIAL DISTRICTS OF THE
SUMMER CROPPING-HIGH RAINFALL SOURVELD AREA OF TRANSVAAL AS INDICATED ON THE
ACCOMPANYING MAP IN FIGURE 1

SOIL CONSERVATION SCHEME - ESTABLISHMENT

WEED CONTROL SCHEME - ESTABLISHMENT

ACT

To provide for control over the utilization of the natural agricultural resources of the Republic in order to promote the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants; and for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates -

'**advisory board**' means the Conservation Advisory Board established by section 17;

'**authorized person**' means a person authorized in terms of section 4 (5);

'**conservation**', in relation to the natural agricultural resources, includes the protection, recovery and reclamation of those resources;

'**conservation committee**' means a conservation committee established under section 15;

'**control measure**' means a control measure referred to section 6;

'**cultivation**', in relation to land, means any act by means of which the topsoil is disturbed mechanically; and '**cultivate**' has a corresponding meaning;

'**department**' means the Department of Agriculture;

'**direction**' means a direction referred to in section 7;

'**Director-General**' means the Director-General: Agriculture;

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

'executive officer' means the executive officer referred to in section 4;

'grazing capacity', in relation to veld, means the production capacity over the long term of that veld to meet the feed requirements of animals in such a manner that the natural vegetation thereon does not deteriorate or is not destroyed;

'invader plant' means a kind of plant which has under section 2 (3) been declared an invader plant, and includes the seed of such plant and any vegetative part of such plant which reproduces itself sexually;

'land user' means the owner of land, and includes-

- (a) any person who has a personal or real right in respect of any land in his capacity as fiduciary, fideicommissary, servitude holder, possessor, lessee or occupier, irrespective of whether he resides thereon;
- (b) any person who has the right to cut trees or wood on land or to remove trees, wood or other organic material from land; and
- (c) in relation to land under the control of a local authority, that local authority,

but not a person who carries on prospecting or mining activities;

'large stock unit' means a unit which consists of the prescribed number of animals of a prescribed kind, type, breed, age or sex, or which is in a prescribed phase of production or is of a prescribed approximate live mass;

'local authority' means any institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act 32 of 1961);

'Minister' means the Minister of Agriculture;

'natural agricultural resources' means the soil, the water sources and the vegetation, excluding weeds and invader plants;

'officer' means an officer or employee as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957);

'owner', in relation to land-

- (a) means the person in whom the ownership in that land is vested or in whose name that land is registered, or if that person is absent from the Republic or his whereabouts are unknown, his authorized representative in the Republic;
- (b) which in the opinion of the executive officer has been purchased by any person but has not yet been registered in his name, means such purchaser;
- (c) which in the opinion of the executive officer is subject to a usufruct, means the usufructuary;

'prescribe' means prescribe by regulation; and **'prescribed'** has a corresponding meaning;

'prospecting or mining activities' means activities which are controlled in terms of the Mines and Works Act, 1956 (Act 27 of 1956), and includes the use of land for the purposes of a quarry as defined in section 1 of the Physical Planning Act, 1967 (Act 88 of 1967);

'regional conservation committee' means a regional conservation committee established under section 16;

'regional director' means an officer who is in charge of the activities of the department within a particular region

determined by the Minister in terms of section 16 (1);

'regulation' means a regulation made under this Act;

'scheme' means a scheme established in terms of section 8;

'soil conservation work' means any work which is constructed on land for-

- (a) the prevention of erosion or the conservation of land which is subject to erosion;
- (b) the conservation or improvement of the vegetation or the surface of the soil;
- (c) the drainage of superfluous surface or subterranean water;
- (d) the conservation or reclamation of any water source; or
- (e) the prevention of the silting of dams and the pollution of water,

but not a work which is constructed on land in the course of prospecting or mining activities;

'this Act' includes the regulations;

'urban area' means land which-

- (a) is under the control of a local authority, but excluding any commonage or any other land under such control which in the opinion of the executive officer is utilized for agricultural purposes; or
- (b) is subdivided into erven or lots and public open spaces and streets which are bounded by such erven or lots and public open spaces;

'virgin soil' means land which in the opinion of the executive officer has at no time during the preceding ten years been cultivated;

'water course' means a natural flow path in which run-off water is concentrated and along which it is carried away;

'weed' means any kind of plant which has under section 2 (3) been declared a weed, and includes the seed of such plant and any vegetative part of such plant which reproduces itself asexually;

'weed killer' means any substance or remedy or any mixture or combination of any substance or remedy which is registered in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act 36 of 1947), as an agricultural remedy for use in connection with the combating of weeds or invader plants.

2 Application of Act

(1) Subject to the provisions of subsection (2) this Act shall not apply-

- (a) to any land which is situated in an urban area;
- (b)

[Para. (b) deleted by s. 41 (1) of Act 108 of 1991 (date of commencement not proclaimed) and by Proclamation R116 of 24 June 1994.]

- (c) to any land situated within any area declared under section 2 of the Mountain Catchment Areas Act, 1970 (Act 63 of 1970), to be a mountain catchment area.

(2) (a) The provisions of this Act relating to weeds and invader plants shall also apply to land which is situated

within an urban area.

(b) The provisions of this Act relating to the burning of veld shall not apply to a private forest as defined in section 1 of the Forest Act, 1968 (Act 72 of 1968), to which any provision of that Act which relates solely to State forests has been applied under section 2 (2) of that Act.

(3) The Minister may by regulation declare any plant to be a weed or an invader plant for the purposes of this Act, either throughout the Republic or in one or more areas therein.

3 Objects of Act

The objects of this Act are to provide for the conservation of the natural agricultural resources of the Republic by the maintenance of the production potential of land, by the combating and prevention of erosion and weakening or destruction of the water sources, and by the protection of the vegetation and the combating of weeds and invader plants.

4 Executive officer and authorized person

(1) An officer of the department designated as executive officer by the Minister shall exercise the powers and perform the duties conferred or imposed upon the executive officer by or under this Act or a scheme.

(2) The executive officer shall exercise his powers and perform his duties with due regard to any instructions issued by the Minister.

(3) (a) Any power conferred or duty imposed upon the executive officer may be exercised or performed by the executive officer personally or by an officer under a delegation or direction or under the control of the executive officer.

(b) Any decision made or order given by such officer may be withdrawn or amended by the executive officer and shall, until it has been so withdrawn or amended, except for the purposes of this paragraph, be deemed to have been made or given by the executive officer.

(4) (a) Notwithstanding the provisions of subsection (3) (a) the executive officer may in writing authorize an employee of a local authority, or an employee of an irrigation board established by section 79 of the Water Act, 1956 (Act 54 of 1956), for a particular irrigation district as defined in that Act, to exercise such powers or perform such duties of the executive officer in terms of this Act as may be specified in such authority, in relation to the combating of weeds and invader plants in the area of jurisdiction of the local authority concerned, or in the irrigation district concerned, as the case may be.

(b) An authority under the definition of 'officer' in section 13 of the Weeds Act, 1937 (Act 42 of 1937), which has prior to the commencement of this section been granted to an employee of a local authority or an irrigation board mentioned in paragraph (a) of this subsection and is at the said commencement still in force, shall be deemed to be an authorization granted in terms of that paragraph.

(c) The provisions of subsection (3) (b) shall *mutatis mutandis* apply to any decision made or order given by any person who is authorized in terms of paragraph (a) of this subsection or is deemed in terms of paragraph (b) of this subsection to be so authorized.

(5) If the Minister deems it expedient for the purposes of the exercise of a power or the performance of a duty conferred or imposed upon himself or the executive officer by or under this Act or a scheme, he may authorize any person who is not an officer to exercise such powers or to perform such duties as the Minister or the executive officer, as the case may be, may grant to or impose upon that person.

5 Prohibition of the spreading of weeds

(1) No person shall-

(a) sell, 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

(b) in any other manner whatsoever disperse or cause or permit the dispersal of any weed from any place in the Republic to any place in the Republic.

(2) (a) If seed, grain, hay or any other agricultural product contains any weed the executive officer may issue an order that the seed, grain, hay or other agricultural product concerned-

- (i) be returned to the place of origin thereof;
- (ii) be forwarded to a specified place in order to have the weed concerned removed therefrom; or
- (iii) be destroyed in such manner as he may determine.

(b) A copy of any such order shall be served on the owner of the seed, grain, hay or other agricultural product concerned: Provided that a copy of an order referred to in subparagraph (i) of paragraph (a) may be served on the person who has the control of that seed, grain, hay or other agricultural product instead of on the owner thereof.

(c) Any such order shall be executed by the person on whom it has been served within the period specified therein, failing which the executive officer may take such steps for the execution thereof as he may deem necessary.

(d) The costs incurred in connection with the execution thus of such order shall be borne by the owner of the seed, grain, hay or other agricultural product concerned, and may be recovered from him by the executive officer.

(3) (a) If any weed adheres to an animal which is driven on a public road, conveyed in a vehicle or offered for sale at a livestock auction, the executive officer may issue an order that the weed concerned be removed from that animal.

(b) A copy of any such order shall be served on the owner or on the person who has the control of the animal concerned.

(c) The provisions of subsection (2) (c) and (d) shall *mutatis mutandis* apply to an order referred to in paragraph (a) of this subsection.

(4) The provisions of subsections (1) and (2) shall not apply with regard to weed which occurs 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 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 thereto.

(5) Any person who removes any weed from seed, grain, hay or any other agricultural product or from an animal in terms of any order under subsection (2) or (3) shall deal with it in such manner as will ensure that it will not be able to reproduce itself.

(6) Any person who contravenes any provision of subsection (1) or (5) or fails to execute any order served on him under subsection (2) or (3) shall be guilty of an offence.

6 Control measures

Cases

(1) In order to achieve the objects of this Act the Minister may prescribe control measures which shall be complied with by land users to whom they apply.

(2) Such control measures may relate to-

- (a) the cultivation of virgin soil;
- (b) the utilization and protection of land which is cultivated;
- (c) the irrigation of land;
- (d) the prevention or control of waterlogging or salination of land;

- (e) the utilization and protection of vleis, marshes, water sponges, water courses and water sources;
- (f) the regulating of the flow pattern of run-off water;
- (g) the utilization and protection of the vegetation;
- (h) the grazing capacity of veld, expressed as an area of veld per large stock unit;
- (i) the maximum number and the kind of animals which may be kept on veld;
- (j) the prevention and control of veld fires;
- (k) the utilization and protection of veld which has burned;
- (l) the control of weeds and invader plants;
- (m) the restoration or reclamation of eroded land or land which is otherwise disturbed or denuded;
- (n) the protection of water sources against pollution on account of farming practices;
- (o) the construction, maintenance, alteration or removal of soil conservation works or other structures on land; and
- (p) any other matter which the Minister may deem necessary or expedient in order that the objects of this Act may be achieved, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(3) A control measure may-

- (a) contain a prohibition or an obligation with regard to any matter referred to in subsection (2);
- (b) provide that the executive officer may exempt a person from such prohibition or obligation by means of a written consent;
- (c) prescribe the procedure with regard to the lodging of an application for such written consent.

(4) Different control measures may be prescribed in respect of different classes of land users or different areas or in such other respects as the Minister may determine.

(5) Any land user who refuses or fails to comply with any control measure which is binding on him, shall be guilty of an offence.

7 Directions

(1) The executive officer may by means of a direction order a land user to comply with a particular control measure which is binding on him on or with regard to the land specified in such direction, or if it is in the opinion of the executive officer essential in order to achieve the objects of this Act, to perform or not to perform any other specified act on or with regard to such land.

(2) Any such direction may provide that any requirement imposed therein shall be complied with in the manner or within the period specified in the direction.

(3) Any such direction-

- (a) shall be published by the executive officer by notice in the *Gazette*; or
- (b) shall be contained in a written notice served in the prescribed manner on the land user concerned.

(4) Any direction which has been published or served in terms of subsection (3)-

- (a) shall be binding upon the land user specified therein and his successor in title in relation to the land mentioned in the direction; and
- (b) may be withdrawn or amended by the executive officer by the service of a written notice on the land user concerned or his successor in title or the publication of a notice in the *Gazette*.

(5) (a) Any direction which has been declared applicable with regard to land under section 3, 4 or 7 of the Soil Conservation Act, 1969 (Act 76 of 1969), and is in force at the commencement of this section, shall be deemed to be a direction which has been served in terms of this section on the land user in respect of the land mentioned therein.

(b) Any notice given under section 2 of the Weeds Act, 1937 (Act 42 of 1937), or any order issued in terms of section 5bis of that Act which is in force at the commencement of this section, shall be deemed to be a direction served in terms of this section on the land user in respect of the land mentioned therein.

(6) Any land user who-

- (a) refuses to receive a direction served on him in the prescribed manner; or
- (b) refuses or fails to comply with a direction binding on him,

shall be guilty of an offence.

8 Schemes

(1) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* establish a scheme in terms of which assistance, out of moneys appropriated by Parliament for this purpose, may be granted to land users by means of-

- (a) the payment of subsidies in respect of-
 - (i) the construction of soil conservation works;
 - (ii) the reparation of damage to the natural agricultural resources or soil conservation works which has been caused by a flood or any other disaster caused by natural forces;
 - (iii) the reduction of the number of animals being kept on land in order to restrict the detrimental effect of a drought on that land;
 - (iv) the restoration or reclamation of eroded, disturbed, denuded or damaged land;
 - (v) the planting and cultivation of particular crops which improve soil fertility or counteract the vulnerability of soil to erosion;
 - (vi) the combating of weeds or invader plants;
 - (vii) the performance or omission of anything else which the Minister may deem necessary or expedient in order to achieve the objects of this Act; and
- (b) the supplying of weed killers in order to combat weeds or invader plants, and the rendering of services by the department, including the utilization of weed killers, in order to combat weeds or invader plants on the land of land users.

(2) Different schemes may be so established in respect of different areas, and the provisions of a scheme may differ in respect of different areas in such respects as the Minister may determine.

9 Provisions of schemes

(1) The Minister may in a notice by which a scheme is established-

- (a) set out the objects of the scheme;
- (b) mention the areas in which and the periods during which the scheme shall apply;
- (c) mention the acts in respect of which assistance may be rendered under the scheme;
- (d) mention the basis for the determination of subsidies which may be paid under the scheme;
- (e) determine the requirements which have to be complied with in order to qualify for assistance under the scheme;
- (f) determine the procedure with regard to the lodging of an application in terms of the scheme;
- (g) require that particular reports with regard to the progress and completion of the act concerned shall be submitted at specified times;
- (h) mention the conditions on which assistance may be rendered under the scheme;
- (i) provide that-
 - (i) any subsidy or grant paid or made under section 6 of the Soil Conservation Act, 1969 (Act 76 of 1969), and the conditions, determined or prescribed under that section, upon which it was so paid or made; or
 - (ii) any financial or other assistance rendered under section 5 (1) (b) of the Weeds Act, 1937 (Act 42 of 1937), and the conditions, determined under that section, upon which it was so rendered,

shall be deemed to be assistance rendered under the scheme, and the conditions on which such assistance has been so rendered; and
- (j) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to promote or achieve the objects of the scheme, and the generality of this provision shall not be limited by the preceding paragraph of this subsection.

(2) Any person who-

- (a) after his application for participation in a scheme has been approved, refuses or fails to comply with the provisions of the scheme; or
- (b) refuses or fails to satisfy the conditions on which assistance has been rendered in terms of a scheme or are in terms of a scheme deemed to have been so rendered,

shall be guilty of an offence.

10 Rendering of advice

(1) (a) The executive officer, any other officer of the department, a member of a conservation committee or an authorized person may at any reasonable time enter upon land with a view to rendering advice, relating to the utilization and conservation of the natural agricultural resources or the control of weeds and invader plants in accordance with the objects of this Act, to the land user of the land concerned.

(b) The executive officer, such other officer or such authorized person shall produce proof of his identity on being so requested by the land user of the land so entered upon.

(2) A person entering upon land under subsection (1) may-

- (a) carry out such investigations and make such surveys as is deemed necessary for the rendering of the advice concerned;
- (b) provide the land user concerned with plans and specifications which he may use in connection with the utilization and conservation of the natural agricultural resources or the control of weeds or invader plants; and
- (c) erect or effect such beacons and marks on that land as are necessary for the application of the advice rendered in terms of subsection (1), or to indicate the site where a soil conservation work should be constructed.

11 Minister may perform certain acts

(1) The Minister may out of moneys appropriated by Parliament for this purpose perform or cause to be performed on or in respect of any land, any act in relation to any matter mentioned in paragraphs (a) to (p) of subsection (2) of section 6 which he may deem necessary in order to achieve the objects of this Act.

(2) (a) Subject to the provisions of paragraph (b) of this subsection the costs of the performance of any act referred to in subsection (1) or such part of those costs as the Minister may determine, shall be repayable by the owner of the land on or in respect of which the act was performed.

(b) If an act which has been performed on or in respect of any land in terms of subsection (1), has or is likely to have, in the opinion of the Minister, a beneficial effect on the land of another owner, such portion of the costs mentioned in paragraph (a) as the Minister may determine, shall be repayable by such other owner.

(3) (a) Any amount which is repayable in terms of subsection (2) shall for the purposes of the recovery thereof be deemed to be assistance as defined in section 1 of the Agricultural Credit Act, 1966 (Act 28 of 1966), which has been rendered by the Minister to the owner concerned on condition that-

- (i) if the amount due is repaid within 60 days of the date on which the executive officer has ordered that owner in writing to do so, no interest shall be payable thereon; and
- (ii) if the amount due is not so repaid, interest thereon shall be charged at the rate mentioned in section 15 (1) of the Agricultural Credit Act, 1966, as from the date on which the executive officer has ordered the repayment concerned in writing.

(b) Notwithstanding the provisions of paragraph (a) (i) the Minister may after consideration of a written application by any owner of land, approve on such terms and conditions as he may in each case determine, including the right to require that a mortgage bond be registered in terms of section 34 of the Agricultural Credit Act, 1966, that-

- (i) repayment of the amount due, including interest, be postponed for a specified period; or
- (ii) the amount due, including interest, be repaid in specified instalments at specified times.

(c) Notwithstanding anything to the contrary contained in any law, any amount accruing to the Agricultural Credit Account referred to in section 20A of the Agricultural Credit Act, 1966, by virtue of this subsection, shall be transferred to the State Revenue Fund.

(4) (a) The Minister may with the concurrence of the owner of any land and subject to such conditions as may be agreed upon between the Minister and that owner, perform any act referred to in subsection (1) on or in respect of the land of that owner for the purpose of public demonstration or for research in any matter relating to veld, soil or water conservation or the combating of weeds or invader plants.

(b) Notwithstanding the provisions of subsection (2), no portion of the costs of the performance of any act in terms of paragraph (a) of this subsection shall be repayable by the owner of the land concerned.

(5) (a) The Minister, any officer of the department or an authorized person may at any reasonable time-

- (i) enter upon any land in order to perform an act referred to in subsection (1) on or in respect of that land or any other land; and
- (ii) proceed over any land in order to reach land on or in respect of which any act referred to in subsection (1) is to be performed.

(b) Any person referred to in paragraph (a) may, after notice to the land user of the land so entered upon-

- (i) take with him such assistants, labourers, animals, vehicles, implements, equipment, instruments, appliances, chemicals and other aids as he may require for the purposes of an act referred to in subsection (1) whenever he enters upon that land;
- (ii) erect a temporary camp on that land;
- (iii) dig out or take any sand, soil, clay, gravel, stone, water, bush, wood or other material on that land which he may require for use in connection with the said purposes;
- (iv) distribute on or remove from that land any insect or the eggs thereof or any other organism which is injurious to weeds or invader plants occurring on that land, or remove from that land any plant or portion of a plant upon which such insect, eggs or organism is present; and
- (v) destroy on or remove from that land any weeds or invader plants which are present thereon.

(c) Any officer or authorized person referred to in paragraph (a) shall produce proof of his identity on being so requested by the land user of the land so entered upon.

(6) (a) The Minister may with the concurrence of the Minister of Finance pay to a land user out of moneys appropriated by Parliament for this purpose such compensation as he may deem reasonable in respect of a temporary camp which is erected on land in terms of subsection (5) (b) (ii), or in respect of sand, soil, clay, gravel, stone, water, bush, wood or other material which is dug out or taken in terms of subsection (5) (b) (iii).

(b) The payment of compensation in terms of paragraph (a) shall only be considered if-

- (i) an application in this connection is submitted to the executive officer by the land user concerned in writing within 90 days of the date on which the camp concerned is removed from the land concerned, or the sand, soil, clay, gravel, stone, water, bush, wood or other material concerned is dug out or taken; and
- (ii) the act concerned referred to in subsection (5) (a) was not performed on land of the land user concerned or does not have or is not likely to have a beneficial effect on such land.

(c) Compensation paid in terms of paragraph (a) shall form part of the costs referred to in subsection (2) (a).

12 Maintenance of soil conservation works and maintenance of certain states of affairs

(1) (a) A soil conservation work shall, except where otherwise provided in this Act or a scheme, be maintained by every land user of the land concerned and his successor in title at his own expense in a manner which, in the opinion of the executive officer, will ensure the continued efficiency thereof.

(b) The state of affairs arising on any land after any act has been performed thereon or in respect thereof in order to achieve the objects of this Act, shall be maintained in such manner as in the opinion of the executive officer will obviate the necessity of a repetition of that act.

(c) Notwithstanding the provisions of paragraph (a) the executive officer may order a land user in writing, or on application grant written consent to a land user, to alter, remove or destroy a particular soil conservation work.

(2) (a) If a land user or his successor in title refuses or fails to comply with the provisions of subsection (1) in

respect of-

- (i) a soil conservation work or an act for which assistance has been rendered under a scheme or is deemed to have been so rendered, or which has been constructed or performed in terms of section 11 of this Act or section 4 (4), 7, 8 or 19 of the Soil Conservation Act, 1969 (Act 76 of 1969); or
- (ii) an act which has been performed in terms of section 4 or 5 of the Weeds Act, 1937 (Act 42 of 1937),

an amount equal to the monetary value of such assistance, or the actual costs less any contribution already paid by a land user, of such construction or performance, or such portion of such amount or actual costs as the executive officer may in each case determine, shall be repayable.

(b) An amount which is repayable in terms of paragraph (a)-

- (i) shall be paid by the person who is the land user of the land concerned on the date on which the executive officer becomes aware of such refusal or failure, unless the person concerned proves, in the case of a soil conservation work which has been altered, removed or destroyed, to the satisfaction of the executive officer that it was altered, removed or destroyed before he became the land user of the land concerned; and
- (ii) shall be paid to the executive officer within 60 days of the date on which he ordered the land user concerned in writing to pay the amount due.

(c) If a land user fails to pay the amount repayable by him in terms of paragraph (b) within the period referred to in subparagraph (ii) of that paragraph, interest at a rate equal to the rate determined in terms of section 26 (1) of the Exchequer and Audit Act, 1975 (Act 66 of 1975), and which is applicable on the date on which the executive officer ordered the repayment concerned in writing, shall be payable in respect of the amount due.

(3) If the executive officer becomes aware of any refusal or failure to comply with the provisions of subsection (1), he may order a land user to repair or reconstruct the soil conservation work concerned or to repeat the act concerned.

(4) The land user concerned shall not be discharged from prosecution for a contravention of the provisions of subsection (1) on account of the payment of an amount due in terms of subsection (2), or the repair or reconstruction of a soil conservation work or the repetition of an act in terms of subsection (3) or otherwise.

(5) Any person who contravenes any provision of subsection (1) or refuses or fails to comply with an order contemplated in subsection (3) shall be guilty of an offence.

13 Minister may order payment of certain amounts

(1) (a) The Minister may order any owner of land in writing to pay an amount determined by the Minister, to a land user in respect of the increase or likely increase in the value of the land of such owner as a result of the beneficial effect on that land of a soil conservation work which has been constructed by such land user.

(b) Any such order shall only be issued by the Minister if-

- (i) the construction of the soil conservation work concerned has been required in terms of a direction; and
- (ii) the land user by whom the soil conservation work concerned has been constructed, has requested the Minister in writing to so order the owner of the land concerned.

(c) In determining the amount which is payable by an owner of land in terms of paragraph (a), the Minister shall, in addition to any other relevant circumstance, also take into consideration-

- (i) the actual cost of the construction of the soil conservation work concerned; and
- (ii) which portion of such cost has been paid to the land user concerned by way of a subsidy in terms of a scheme.

(d) If any owner of land fails to pay the amount owing by him in terms of paragraph (a), to the other owner concerned within 90 days of the date on which the Minister ordered the payment of that amount in writing, such land user may recover the amount due from such owner by way of a civil action in any competent court.

(2) (a) The Minister may order any owner of land in writing to pay an amount determined by the Minister, to an owner of other land in respect of the decrease or likely decrease in the value of the land of such other owner as a result of the detrimental effect on that land of a soil conservation work which has been constructed by the first-mentioned owner on his land.

(b) Any such order shall only be issued by the Minister if-

- (i) the construction of the soil conservation work concerned has been required in terms of a direction; and
- (ii) the owner of the land the value of which has decreased or is likely to decrease as a result of the alleged detrimental effect of the soil conservation work concerned, has requested the Minister in writing to so order the owner of the land on which that soil conservation work has been constructed.

(c) In determining the amount which is payable by an owner of land in terms of paragraph (a), the Minister shall, in addition to any other relevant circumstance, also take into consideration-

- (i) the actual cost of the construction of the soil conservation work concerned; and
- (ii) which portion of such cost has by way of a subsidy in terms of a scheme been paid to the owner by whom the soil conservation work concerned has been constructed.

(d) If any owner of land fails to pay the amount owing by him in terms of paragraph (a), to the other owner concerned within 90 days of the date on which the Minister ordered the payment of that amount in writing, such other owner may recover the amount due from the first-mentioned owner by way of a civil action in any competent court.

14 Expropriation of land for purposes of restoration or reclamation

(1) If the Minister is of opinion that it is necessary for the restoration or reclamation of the natural agricultural resources of any land in order to achieve the objects of this Act, he may expropriate that land.

(2) The provisions of the Expropriation Act, 1975 (Act 63 of 1975), shall *mutatis mutandis* apply with reference to the expropriation of land under subsection (1) of this section.

15 Conservation committees

(1) The Minister may establish a committee, to be known as a conservation committee, in respect of any area determined by the Minister.

(2) A conservation committee so established for any area-

- (a) shall promote the conservation of the natural agricultural resources in the area concerned in order to achieve the objects of this Act on or with regard to the land in that area;
- (b) shall advise the department on any matter as to the application of this Act or a scheme in the area concerned, or which it may deem necessary in order that the objects of this Act may be achieved in the area concerned; and
- (c) may exercise such other powers and shall perform such other duties as may be conferred or imposed upon it by or in terms of this Act or by the Minister.

(3) (a) The members of a conservation committee shall be appointed by the Minister by virtue of their knowledge of and interest in the conservation of the natural agricultural resources of the Republic, and shall consist of-

- (i) two land users designated by the Minister; and
- (ii) so many additional persons, not being less than three, as the Minister may from time to time determine, who are land users.

(b) A member referred to in paragraph (a) (ii) shall be nominated by the farmers' association, farmers' union or district agricultural union, as the case may be, for the area concerned, to serve on the conservation committee concerned.

(c) Whenever the appointment of a member referred to in paragraph (a) (ii) becomes necessary, the regional director of the region within which the area concerned is situated, shall request the farmers' association, farmers' union or district agricultural union concerned, as the case may be, in writing to submit its nomination to him in writing within a specified period.

(d) If the farmers' association, farmers' union or district agricultural union concerned, as the case may be, fails to comply with such request within the specified period, the said regional director may nominate such land users as he may deem fit for appointment as members of the conservation committee concerned in the place of the land users required to be nominated.

(e) A member of a conservation committee shall be a land user in the area in respect of which the conservation committee has been established.

(f) Any area determined under section 9 of the Soil Conservation Act, 1969 (Act 76 of 1969), in respect of which a soil conservation committee has been established under that section, shall be deemed to have been determined under subsection (1) of this section.

(g) Notwithstanding the provisions of paragraph (a) the persons who, at the commencement of this section, are the members of a soil conservation committee which has been established in respect of any such area under section 9 of the Soil Conservation Act, 1969, shall constitute the conservation committee in respect of that area for the remainder of their period of office.

(4) (a) A member of a conservation committee shall hold office for such period, not being more than five years, as the Minister may determine at the time of the appointment of that member, and such member may, at the expiry of his period of office by effluxion of time, be reappointed as a member of the conservation committee.

(b) A member of a conservation committee shall vacate his office if-

- (i) he has absented himself from two consecutive meetings of the conservation committee without the leave of the committee;
- (ii) he ceases to be a land user in the area in respect of which the conservation committee has been established;
- (iii) he tenders his resignation in writing to the chairman of the conservation committee;
- (iv) he has been convicted of an offence under this Act;
- (v) he has been convicted of any other offence in respect of which he was sentenced to imprisonment without the option of a fine, and such sentence has not been suspended; or
- (iv) the Minister, if in his opinion sufficient reasons exist therefor, terminates his membership of the conservation committee.

(c) A vacancy on a conservation committee arising in terms of paragraph (b) or as a result of the death of a member, shall be filled by appointment in the manner in which the member who vacated his office or died, was required to be appointed.

(d) A member who is appointed by virtue of paragraph (c) shall hold office for the unexpired portion of the period for which the member who vacated his office or died, was appointed.

(5) (a) The person who at the commencement of this section is the chairman of a soil conservation committee which has been established in respect of a particular area in terms of section 9 of the Soil Conservation Act, 1969, shall be the chairman of the conservation committee in respect of the area concerned until a chairman is elected in terms of paragraph (b) (ii) of this subsection.

(b) The members of a conservation committee shall elect a chairman from among themselves -

- (i) at the first meeting after the establishment of that conservation committee; and
- (ii) at the first meeting of that conservation committee after the office of chairman thereof has become vacant for any reason whatsoever, or as soon thereafter as may be convenient.

(c) The chairman elected in terms of paragraph (b) (ii) shall hold office for the unexpired portion of the period for which he has been appointed as a member of the conservation committee concerned.

(d) The chairman of a conservation committee may vacate his office as such without terminating his membership of the conservation committee.

(6) (a) The calling and attendance of and the quorum for a meeting of a conservation committee shall be as prescribed.

(b) Except in so far as may be prescribed, the person who presides at a meeting of a soil conservation committee shall determine the procedure at that meeting.

(7) The decision of a majority of the members of a conservation committee present at any meeting thereof shall constitute the decision of that committee: Provided that in the event of an equality of votes the member presiding at that meeting shall have a casting vote in addition to his deliberative vote.

(8) No decision taken by a conservation committee or act performed under the authority of a conservation committee shall be invalid by reason only of an interim vacancy on the committee or by reason of the fact that a person who is not entitled to sit as a member of the committee sat as a member of the committee at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the committee who were present at the time and entitled to sit as members.

(9) A conservation committee may from time to time appoint from its own members the sub-committees which it may deem necessary, to exercise the powers and perform the duties which the conservation committee may confer upon, delegate to or impose upon it.

(10) (a) Each conservation committee shall appoint one of its members or any other person as secretary of the conservation committee.

(b) Any person so appointed shall in the prescribed manner dispose of any documents relating to the functions of the conservation committee.

(11) (a) Members of a conservation committee who are not in the full-time service of the State may in respect of their services as such members be paid out of moneys appropriated by Parliament for this purpose, such allowances as the Minister may with the concurrence of the Minister of Finance determine.

(b) Any person appointed in terms of subsection (10) as secretary of a conservation committee may in respect of the performance of his functions as such be paid out of moneys appropriated by Parliament for this purpose, such remuneration and allowances as the Minister may with the concurrence of the Minister of Finance determine.

16 Regional conservation committees

(1) The Minister may establish in respect of any region determined by him, a committee to be known as a regional conservation committee.

(2) A regional conservation committee so established in respect of a particular region shall-

- (a) advise every conservation committee in the region concerned on matters regarding the conservation of the natural agricultural resources;
- (b) advise the department and the advisory board on any matter arising from the application of this Act or a scheme in the region concerned, or which it may deem necessary in order that the objects of this Act may be achieved in that region; and
- (c) perform such other duties as may be imposed upon it by the Minister.

(3) (a) The members of a regional conservation committee shall be appointed by the Minister and shall consist-

- (i) of the regional director of the region concerned and an officer of the department under the control of that regional director;
- (ii) subject to the provisions of paragraph (b), of two representatives of each particular area within the region concerned which the department considers to be a subregion of that region; and
- (iii) one representative of each provincial agricultural union the area of which forms part of the region concerned.

(b) For the purposes of paragraph (a) (ii) the Minister may, if he deems it expedient, appoint one additional representative of any particular subregion as a member of a regional conservation committee.

(c) The members referred to in paragraphs (a) (ii) and (b) shall be appointed by the Minister from a list of names consisting of the names of at least four members of the conservation committees within each subregion, and who are recommended for such appointment by the regional director concerned after consultation with the provincial agricultural union concerned.

(d) A member referred to in paragraph (a) (iii) shall be nominated by the provincial agricultural union concerned to serve on the regional conservation committee concerned.

(e) Whenever the appointment of a member referred to in paragraph (a) (iii) becomes necessary, the regional director concerned shall request the provincial agricultural union concerned in writing to submit its nomination to him within a specified period.

(f) If a provincial agricultural union fails to comply with such request within the specified period, the said regional director may nominate any person whom he deems fit in the place of the person required to be nominated, for appointment as a member of the regional conservation committee concerned.

(4) (a) A member referred to in subsection (3) (a) (ii) or (b) shall hold office for the unexpired portion of the period for which he has been appointed as a member of a conservation committee.

(b) A member referred to in subsection (3) (a) (iii) shall hold office for such period, not being more than five years, as the Minister may determine at the time of the appointment of the member.

(c) A member referred to in subsection (3) (a) (ii) or (iii) or (b) may at the expiration of his term of office by effluxion of time be reappointed.

(d) A member of a regional conservation committee shall vacate his office if-

- (i) he has absented himself from two consecutive meetings of the regional conservation committee without the leave of the committee;
- (ii) in the case of a member referred to in subsection (3) (a) (i), he ceases to be regional director of the region concerned or officer under his control;

- (iii) in the case of a member referred to in subsection (3) (a) (ii) or (b), he ceases to be a member of a conservation committee;
- (iv) he tenders his resignation in writing to the chairman of the regional conservation committee; or
- (v) the Minister, if in his opinion sufficient reasons exist therefor, terminates his membership of the regional conservation committee.

(e) A vacancy on a regional conservation committee arising in terms of paragraph (d) or as a result of the death of a member, shall be filled by appointment in the manner in which the member who vacated his office or died, was required to be appointed.

(f) A member who is appointed by virtue of paragraph (e) shall hold office for the unexpired portion of the period for which the member who vacated his office or died, was appointed.

(5) The officers referred to in subsection (3) (a) (i) shall be the chairman and vice-chairman, respectively, of the regional conservation committee to which they have been appointed.

(6) (a) A regional conservation committee shall meet as often and at such times and places as the chairman may determine.

(b) The majority of the members of a regional conservation committee shall constitute a quorum for a meeting of that regional conservation committee.

(c) The chairman or in his absence the vice-chairman of a regional conservation committee shall preside at all meetings of that regional conservation committee at which he is present.

(d) The person presiding at a meeting of a regional conservation committee shall determine the procedure at that meeting.

(7) The provisions of section 15 (7) and (8) shall *mutatis mutandis* apply to a regional conservation committee.

(8) The secretarial and administrative work incidental to the performance of its functions by a regional conservation committee shall be performed by an officer of the department under the control of the regional director concerned.

(9) Members of a regional conservation committee who are not in the full-time service of the State may in respect of their services as such members be paid out of moneys appropriated by Parliament for this purpose, such allowances as the Minister may with the concurrence of the Minister of Finance determine.

17 Conservation Advisory Board

(1) There is hereby established an advisory board to be known as the Conservation Advisory Board.

(2) The advisory board shall advise the Minister on matters concerning-

- (a) the desirability of prescribing specific control measures with regard to a particular area;
- (b) the desirability of establishing a specified scheme, and the provisions of any such scheme; and
- (c) any other matter arising from the application of this Act or a scheme, or which it may deem necessary in order to achieve the objects of this Act or which the Minister may refer to it for advice.

(3) (a) The members of the advisory board shall be appointed by the Minister and shall consist of-

- (i) the executive officer and another officer of the department;
- (ii) one officer of the Department of Environment Affairs who has been nominated by the Minister of

Environment Affairs and Fisheries;

- (iii) one person from among the members of each regional conservation committee; and
- (iv) one person nominated by the South African Agricultural Union.

(b) For the purposes of paragraph (a) (iii)-

- (i) a member of any regional conservation committee who is an officer shall not be appointed as a member of the advisory board; and
- (ii) the Minister may, if he deems it expedient, appoint one additional person from among the members of any particular regional conservation committee as a member of the advisory board.

(4) (a) A member referred to in subsection (3) (a) (iii) shall hold office for the unexpired portion of the period for which he has been appointed as a member of a regional conservation committee.

(b) A member referred to in subsection (3) (a) (iv) shall hold office for such period, not being more than five years, as the Minister may determine at the time of appointment of that member.

(c) A member referred to in subsection (3) (a) (iii) or (iv) may at the expiration of his term of office by effluxion of time be reappointed.

(d) A member of the advisory board shall vacate his office if-

- (i) he has absented himself from two consecutive meetings of the advisory board without the leave of the board;
- (ii) in the case of a member referred to in subsection (3) (a) (i) or (ii), he vacates the office held at the time of his appointment;
- (iii) in the case of a member referred to in subsection (3) (a) (iii), he ceases to be a member of a regional conservation committee;
- (iv) he tenders his resignation in writing to the chairman of the advisory board; or
- (v) the Minister, if in his opinion sufficient reasons exist therefor, terminates his membership of the advisory board.

(e) A vacancy on the advisory board arising in terms of paragraph (d) or as a result of the death of a member, shall be filled by appointment in the manner in which the member who vacated his office or died, was required to be appointed.

(f) A member who is appointed by virtue of paragraph (e) shall hold office for the unexpired portion of the period for which the member who vacated his office or died, was appointed.

(5) The officers referred to in subsection (3) (a) (i) shall be the vice-chairman and chairman, respectively, of the advisory board.

(6) The provisions of sections 15 (7) and (8) and 16 (6), (8) and (9) shall *mutatis mutandis* apply to the advisory board.

18 Powers of investigation

(1) The executive officer, any other officer of the department, a member of a soil conservation committee or an authorized person may at any reasonable time enter upon any land in order-

- (a) to determine whether and to what extent erosion or other damage occurs on that land;

- (b) to determine whether weeds or invader plants occur on that land;
 - (c) to determine the condition of the 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 water sources on that land are polluted on account of farming methods or have become weaker or have ceased to exist;
 - (f) to ascertain whether a soil conservation work should be constructed on that land, and whether a direction should be served on the land user of that land;
 - (g) to demarcate an area on that land which is required to be demarcated for the purposes of this Act or a scheme, and for the purposes of such demarcation to make the necessary surveys and erect or effect beacons or marks;
 - (h) make such other surveys, take soil or plant samples and undertake such other investigations as he may deem necessary on that land in order to make an assessment of the condition of the soil, the water sources and the vegetation, and may for the purposes of such assessment take such photographs as he may deem 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 11, is present on that land;
 - (j) to determine whether the land user concerned-
 - (i) is complying with a control measure;
 - (ii) is complying with the requirements of a direction;
 - (iii) is complying with the provisions of a scheme; or
 - (iv) is otherwise utilizing 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 11 which has been performed on that land;
 - (l) to determine the number and kind of animals on that land;
 - (m) to carry out any other investigation connected with any matter referred to in this Act or a scheme, on or in respect of that land; and
 - (n) to proceed over that land for the purpose of reaching land on or in respect of which any other duty or function referred to in this subsection is to be performed.
- (2) Any person entering upon land under subsection (1) may-
- (a) examine any book or document in the possession or custody of the land user concerned or his employee, agent or manager, and which on reasonable grounds is suspected to have a bearing on a matter referred to in this Act or a scheme, and make copies of or extracts from such book or document;
 - (b) demand an explanation from the land user concerned or his employee, agent or manager, of any relevant entry in a book or document referred to in paragraph (a), or of anything observed by him in connection with a matter referred to in subsection (1);
 - (c) demand that the land user concerned or his employee, agent or manager on that land render all reasonable assistance, including the transport of such person on the land concerned, which such person may desire in

order to enable him to perform the functions or duties referred to in subsection (1) on or in connection with the land concerned; and

- (d) take with him when he enters upon the land concerned such assistants, labourers, animals, vehicles, implements, equipment, instruments, appliances, chemicals and other aids as he may need to perform the duties referred to in subsection (1) on or in relation to that land.

(3) No compensation shall be payable to a land user in respect of the rendering of assistance in terms of subsection (2) (c).

(4) Any person referred to in subsection (1) may at any reasonable time-

- (a) (i) enter upon and inspect any land, building or vehicle on or in which there is any seed, grain, hay or other agricultural product present which contains or is suspected to contain weeds;
- (ii) inspect or test such seed, grain, hay or other agricultural product or take a sample thereof for inspection or testing in order to determine whether it contains weeds; and
- (iii) seize any quantity of such 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 or vehicle such quantity thereof as he may determine, and, if he deems it necessary, affix any identification mark to such seed, grain, hay or other agricultural product or the containers thereof; or
- (b) examine an animal which is driven on a public road, conveyed in a vehicle or offered for sale at a livestock auction, in order to ascertain whether any weed adheres to such animals.

(5) The executive officer, other officer or authorized person shall produce proof of his identity on being so requested by the land user of the land or the person in charge of the building or vehicle which is entered upon in terms of this section or the person in charge of an animal which is examined in terms of subsection (4).

(6) Any person who-

- (a) obstructs or hinders any officer, member of a conservation committee or authorized person in the exercise of his powers or the performance of his duties in terms of this section or a scheme;
- (b) whenever any person demands from him any statement or explanation in terms of this section or a scheme, refuses or fails to furnish that statement or explanation or furnishes a statement or explanation which is false or misleading, knowing that it is false or misleading; or
- (c) refuses or fails to render to any officer, any member of a conservation committee or any authorized person the reasonable assistance which he demands in the performance of his functions in terms of this section or a scheme,

shall be guilty of an offence.

19 Erection and maintenance of beacons and marks

(1) Any beacon or mark which is erected or effected on any land in terms of this Act or a scheme shall comply with the requirements prescribed in respect thereof.

(2) (a) Every land user of any land on which any such beacon or mark has been erected or effected and any successor in title of his shall maintain the beacon or mark.

(b) No person shall without the written consent of the executive officer damage, destroy, remove, alter or otherwise tamper with any such beacon or mark.

(3) Any person who contravenes or fails to comply with any provision of subsection (2) shall be guilty of an offence.

20 Powers of executive officer

(1) The executive officer may consider any application or request made in terms of this Act or a scheme, and may make any investigation or inquiry in connection therewith which he may deem necessary, and may for the purposes of such investigation or inquiry demand that such documents or information as he may determine, be submitted to him.

(2) Whenever by or in terms of this Act or a scheme any period is specified within which any act is to be performed or anything is to be done, the executive officer may, save where it is provided otherwise, extend the period, either before or after its expiry.

(3) An approval, authorization or a consent by the executive officer in terms of this Act or a scheme may-

- (a) be made subject to such conditions as the executive officer may in each case determine; and
- (b) be amended or withdrawn by the executive officer in any particular case if he deems it expedient.

(4) If the executive officer, by virtue of a power vested in him by or under this Act or a scheme-

- (a) refuses to approve an application or a request which has been submitted to him in writing; or
- (b) amends or withdraws an approval, authorization or a consent in terms of subsection (3) (b),

he shall notify the applicant concerned in writing of his decision and of the grounds on which it is based.

(5) Any person who refuses or fails to comply with the conditions on which any approval, authorization or consent has been granted in terms of this Act or a scheme shall be guilty of an offence.

21 Appeal against decisions or action

(1) Any person who considers himself aggrieved by any decision or action in terms of this Act or a scheme by the executive officer or any other officer to whom powers have been delegated under section 26, may appeal to the Minister against the decision or action concerned.

(2) Such appeal shall be lodged with the Director-General within the prescribed time and in the prescribed manner, and shall be accompanied by the prescribed amount.

(3) The Director-General shall refer the appeal for inquiry and report thereon to an officer of the department other than the executive officer or an officer concerned in the decision or action against which the appeal is brought, and thereupon the Director-General shall submit the documents concerned, the said report and the Director-General's recommendation with reference to the appeal, to the Minister.

(4) An appellant may request or be requested to appear before the officer concerned at an inquiry referred to in subsection (3), to be heard and questioned, and he may be assisted or represented by any other person.

(5) (a) The Minister may after consideration of the documents submitted to him in terms of subsection (3), confirm or set aside or alter the decision or action against which the appeal is brought, or issue such order in connection therewith as he may deem necessary.

(b) The Director-General shall notify an appellant in writing of the decision of the Minister as to the appeal.

(c) If the Minister alters or sets aside the decision or action by the executive officer or other officer concerned, the amount referred to in subsection (2), or such portion thereof as the Minister may determine, shall be repayable to the appellant concerned.

(d)

[Para. (d) deleted by s. 95 of Act 88 of 1996.]

(6) Any person who, after being requested thereto in terms of subsection (4), refuses or fails to appear at an inquiry referred to in subsection (3) or, having appeared, to answer fully and in a satisfactory manner every question lawfully put to him, shall be guilty of an offence.

22 Secrecy

(1) No person shall, except for the purpose of the performance of his functions or duties under this Act or a scheme, or for the purpose of legal proceedings under this Act, or when required to do so by any court or under any law, disclose to any other person any information acquired by him in the performance of his functions or duties under this Act or a scheme, and which relates to the business or affairs of any other person.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

23 Penalties

Cases

(1) Any person is on-

- (a) a first conviction of an offence under section 5 (6), 6 (5), 7 (6) (b), 9 (2) (b), 12 (5) or 18 (6) (b), liable to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (b) a second or subsequent conviction of an offence mentioned in paragraph (a), whether the same or any other offence mentioned in that paragraph, liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment; or
- (c) conviction of an offence under section 7 (6) (a), 9 (2) (a), 18 (6) (a), 18 (6) (c), 19 (3), 20 (5), 21 (6) or 22 (2), liable to a fine not exceeding R500 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(2) A magistrate's court shall be competent to impose any penalty provided for in this section.

24 Presumptions and evidence

In any prosecution under this Act-

- (a) it shall be presumed, unless the contrary is proved, that the applicable provisions of this Act apply to the land on or in respect of which the offence concerned has allegedly been committed;
- (b) in which a particular direction is involved, a document which purports to be certified by the executive officer as a true copy of that direction shall be admitted in evidence in any court without further proof or production of the original;
- (c) it shall be presumed, unless the contrary is proved, that, if the copy referred to in paragraph (b) of a direction purports to be endorsed by the executive officer to the effect that he published the direction of which that copy purports to be a copy, by notice in the *Gazette* or that that direction was served by written notice on a person mentioned in such endorsement, that the executive officer published the said direction by notice in the *Gazette* or that it was served on the said person by written notice, as the case may be;
- (d) it shall be presumed, unless the contrary is proved, that a soil conservation work which has been altered, removed or destroyed, was so altered, removed or destroyed-
 - (i) without the executive officer having issued an order or granted a consent referred to in section 12 (1) (c) in respect thereof; and
 - (ii) by the person who was the land user in respect of the land concerned on the date on which the executive officer became aware of such alteration, removal or destruction; and

- (e) it shall be presumed, unless the contrary is proved, that a beacon or mark which has been damaged, destroyed, removed, shifted, altered or otherwise tampered with after having been erected or effected in terms of this Act or a scheme, was so damaged, destroyed, removed, shifted, altered or otherwise tampered with-
- (i) without the executive officer having granted a consent in terms of section 19 (2) (b) therefor; and
 - (ii) by the person who was the land user of the land concerned on the date on which the executive officer became aware of such damage, destruction, removal, shifting, alteration or tampering.

25 Liability of employer or principal

(1) Any act or omission of any employee, agent or manager which constitutes an offence under this Act, shall be deemed to be the act or omission of his employer or principal, and such employer or principal may be convicted and sentenced in respect thereof unless he proves -

- (a) that that act or omission was not permitted or connived at by him; and
- (b) that he took all reasonable steps to prevent an act or omission of the nature concerned; and
- (c) that an act or omission, whether lawful or unlawful, of the nature concerned did not under any condition or circumstances fall within the course of the employment or the scope of the authority of the employee, agent or manager concerned.

(2) For the purposes of subsection (1) (b) the fact that an employer or a principal forbade an act or omission of the nature concerned, shall not by itself be regarded as sufficient proof that he took all reasonable steps to prevent such act or omission.

(3) The provisions of subsection (1) do not relieve the employee, agent or manager of any liability of being convicted and sentenced in respect of the act or omission concerned.

26 Delegation of powers of Minister

The Minister may in writing delegate all the powers that this Act grants him, or one or more thereof, except the powers referred to in sections 2 (3), 6, 8, 21 and 29, to one or more officers of the department, but shall not be divested of any power which he has so delegated.

27 Defects in form

A defect in the form of any direction, order, instruction, approval, authorization, consent, application, request, notice, certificate, report or other document which has been issued or furnished in terms of this Act or a scheme shall not render invalid any administrative proceedings to which such direction, order, instruction, approval, authorization, consent, application, request, notice, certificate, report or other document relates, and shall not be a ground for exception in any legal proceedings, provided the requirements for such direction, order, instruction, approval, authorization, consent, application, request, notice, certificate, report or other document have been substantially complied with and the meaning thereof is intelligible.

28 Limitation of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed upon him by or under this Act or a scheme.

29 Regulations

Cases

- (1) The Minister may make regulations-

- (a) as to the categories into which weeds and invader plants are divided;
- (b) as to the documents with reference to a direction and the service thereof which are to be obtained and kept by the executive officer;
- (c) as to the powers and duties of a conservation committee;
- (d) with the concurrence of the Minister of Finance, prescribing the matters in respect of which fees shall be payable, and the tariff of those fees;
- (e) as to any matter which in terms of this Act is required or permitted to be prescribed or done by regulation,

and, generally, with reference to any matter which he considers necessary or expedient to prescribe in order to achieve or to promote the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Different regulations may be made under this section in respect of different areas or in such other respects as the Minister may determine.

(3) Any regulation may prescribe penalties, not exceeding a fine of R500 or imprisonment for a period of three months or both such fine and such imprisonment, for any contravention of or failure to comply with its provisions.

30 Repeal of laws

Subject to the provisions of sections 4 (4), 7 (6), 9 (1) (i), 12 (2) and 15 (3) (f) and (g) and (5) (a), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

31 Short title and commencement

(1) This Act shall be called the Conservation of Agricultural Resources Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

Schedule LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Act 42 of 1937	Weeds Act, 1937	The whole
Act 2 of 1939	Weeds Amendment Act, 1939	The whole
Act 32 of 1964	Weeds Amendment Act, 1964	The whole
Act 74 of 1969	Weeds Amendment Act, 1969	The whole
Act 76 of 1969	Soil Conservation Act, 1969	The whole, except Part IV
Act 4 of 1971	Soil Conservation Amendment Act, 1971	The whole
Act 38 of 1971	Second Soil Conservation Amendment Act, 1971	The whole
Act 11 of 1973	Soil Conservation Amendment Act, 1973	The whole
Act 21 of 1974	Soil Conservation Amendment Act, 1974	The whole

Act 63 of 1975	Expropriation Act, 1975	Section 82
Act 22 of 1977	Soil Conservation Amendment Act, 1977	The whole

AGRICULTURAL RESEARCH ACT 86 OF 1990

[ASSENTED TO 21 JUNE 1990]

[DATE OF COMMENCEMENT: 1 DECEMBER 1990]
(Unless otherwise indicated)

(English text signed by the State President)

as amended by

Agricultural Research Amendment Act 12 of 1993
Agricultural Research Second Amendment Act 174 of 1993
Agricultural Research Amendment Act 16 of 1996
Agricultural Research Amendment Act 27 of 2001

ACT

To establish a juristic person to deal with agricultural research; to determine its objects, functions, powers and duties; to prescribe the manner in which it is to be managed and governed; to regulate its employee matters and financial affairs; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates -

'**agriculture**' means the utilization of the means of production and the utilization by man of the natural agricultural resources for the production of, among other things, sufficient food, fibre and drink of quality;

'**chairman**' means the person appointed in terms of section 11 (1) as the chairman of the Council;

'**Council**' means the Council referred to in section 8 (1);

'**development**' means the activities by which knowledge acquired through research is utilized;

'**Executive Management Committee**' means the Executive Management Committee referred to in section 16;

'**financial year**' means the period from 1 April in any year to 31 March in the next succeeding year;

'**industry**' means any industry involved in the processing of agricultural products in such fields as the Minister may determine by notice in the *Gazette*;

'**invention**' includes the development, in whatever way, of new animal breeds, plant cultivars and other organisms;

'**Minister**' means, subject to the provisions of section 6, the Minister of Agriculture;

'**president**' means the person appointed in terms of section 18 as the chief executive officer of the ARC;

'**regulation**' means a regulation made in terms of this Act;

'**research**' means the furtherance, accumulation and improvement of knowledge in the agricultural and related sciences through original and other investigations and methods of a scientific nature with the advancement of agriculture as its object;

'**technology transfer**' means the transfer of knowledge, and techniques and processes for the application thereof;

'the ARC' means the Agricultural Research Council established by section 2;

'this Act' includes a regulation;

'trust' means a trust as contemplated in the Trust Property Control Act, 1988 (Act 57 of 1988).

[Definition of 'trust' added by s. 1 of Act 174 of 1993.]

2 Establishment of Agricultural Research Council

There is hereby established a juristic person to be known as the Agricultural Research Council.

3 Objects of ARC

The objects of the ARC are, through research, development and technology transfer, to promote agriculture and industry and thereby to contribute to the improvement of the quality of life of the people of the Republic, and having regard to the protection of the environment to perform such other functions as may be assigned to the ARC by or under this Act.

4 Functions, powers and duties of ARC

(1) In order to achieve its objects, the ARC may-

- (a) undertake and promote research, development and technology transfer in connection with-
 - (i) the optimal utilization of the agricultural resources and the improvement of the production capacity of such resources;
 - (ii) the rehabilitation and improvement of the agricultural resources;
 - (iii) the opening of possibilities and the generation of new knowledge to solve particular problems;
 - (iv) the improvement of the nutritional value and quality of agricultural products;
 - (v) the pollution of the environment and the prevention thereof in respect of agriculture;
 - (vi) the improvement of existing techniques and the creation of new techniques for the processing of agricultural products and to improve the keeping quality of perishable agricultural products;
- (b) utilize the technological expertise in its possession and make it generally available;
- (c) publish information concerning its objects and functions, and establish facilities for the collection and dissemination of information in connection with research and development;
- (d) establish and control facilities in those fields of research, development and technology transfer which the Council may from time to time determine;
- (e) promote co-operation between the Republic and other countries with regard to research, development and technology transfer;
- (f) co-operate with persons, institutions and associations undertaking research, development and technology transfer in other countries;
- (g) co-operate with any institution or person to promote research and development, or contract with such institution or person to undertake research and development for the ARC;
- (h) co-operate with educational authorities and scientific or technical societies in the Republic for the promotion of-

- (i) the instruction of potential researchers in schools, technikons, colleges and universities; and
- (ii) the training of researchers and technical experts;
- (i) make grants to any institution for the advancement of research and development by their staff or for the establishment of facilities for such research and development;
- (j) promote the training of research workers by means of the granting of bursaries or grants-in-aid for research, development and technology transfer and the making of monetary contributions for research, development and technology transfer programmes;
- (k) grant study bursaries and educational loans to any person;
- (l) subject to the provisions of section 5, enter into agreements with any person, institution, government or administration, upon such conditions as the ARC and that person, institution, government or administration may agree;
- (lA) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber movable property;

[Para. (lA) inserted by s. 1 (a) of Act 12 of 1993.]

- (m) with the approval of the Minister, acting with the concurrence of the Minister of Finance-
 - (i) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber immovable property;

[Sub-para. (i) amended by s. 1 (b) of Act 12 of 1993.]

- (ii) borrow money from time to time on such conditions as the council may approve, by way of loans from any source and against the security which the Council may deem fit;
- (iii) on its own, or in association with any person, establish a company for the purpose of developing or exploiting in any manner any invention or technological expertise, and for this purpose acquire an interest in or control over a company or statutory body referred to in section 1 of the Exchequer Act, 1975 (Act 66 of 1975); and
- (iv) on its own, or in association with any person, create a trust for the administration of the donations, contributions and amounts referred to in section 20 (5) (c);

[Sub-para. (iv) added by s. 2 of Act 174 of 1993.]

- (n) hire or let services;
- (o) as an end-product of research, development and technology transfer undertaken or caused to be undertaken by the ARC-
 - (i) produce and sell reports, computer programmes and other intellectual property;
 - (ii) manufacture and sell instruments, equipment and similar items;
 - (iii) produce, process and sell products;
 - (iv) conduct or commission market research and sell the results thereof; and
 - (v) provide, against payment, services not directly related to research;
- (p) establish or undertake any research institute, unit or activity or place it under the control of any

university, technikon, college or other educational or scientific institution on such conditions as may be agreed upon;

- (q) do everything which in the opinion of the Council is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance or render profitable the value of the property or rights of the ARC.

(2) The ARC shall, in addition to its functions in terms of this Act or any other law-

- (a) and subject to its objects, undertake the investigations, research, development and technology transfer which the Minister may assign to it;
- (b) advise the Minister on research, development and technology transfer in the field of agriculture; and
- (c) co-ordinate on a voluntary basis information on agricultural research and development in the Republic by implementing and keeping a central register of agricultural research and development projects, and institute such measures as it may deem fit to achieve such goal.

5 Exercise of powers of ARC outside Republic

(1) The ARC may at the request or with the prior approval of the Minister undertake research, development and technology transfer in any territory outside the Republic on behalf of any person (including any institution, government or administration).

(2) Subject to the provisions of subsection (3), the provisions of this Act shall, in so far as they can be applied, apply *mutatis mutandis* to the exercising by the ARC of its powers in terms of this section as if the territory in which it so exercises its powers were within the Republic.

(3) Notwithstanding anything to the contrary in this Act contained, research, development and technology transfer shall under subsection (1) be undertaken on such conditions as may be agreed upon between the ARC and the person (including any institution, government or administration) on whose behalf the research, development and technology transfer are to be undertaken, and as may be approved by the Minister.

(4) The Minister may with the concurrence of the Minister of Finance indemnify the ARC against any losses which it may incur consequent upon any act or omission of the person, institution, government or administration referred to in subsection (1).

6 Administration of Act

The State President may by proclamation in the *Gazette* determine that any power or duty mentioned in the proclamation and which is by this Act conferred or imposed upon the Minister, shall be exercised or performed by the Minister after consultation with one or more other Ministers so mentioned.

7 Transfer of functions and powers

(1) The State President may, after consultation by the Minister with the Council and a council, board or body established by or under any Act of Parliament, transfer any function or power entrusted to or conferred upon any such council, board or body to the ARC to be performed or exercised by the ARC.

(2) The State President may, after consultation by the Minister with the Council and a council, board or body established by or under any Act of Parliament, transfer any function or power entrusted to or conferred upon the Council to such council, board or body to be performed or exercised by it.

(3) The ARC or a council, board or body referred to in subsections (1) and (2) may, with the approval of the Minister concerned, transfer any property, including land and buildings, used in connection with the performance or exercise of a function or power transferred in terms of the said subsections, to a council, board or body concerned or the ARC, as the case may be.

8 Control over, and management of affairs of, ARC

(1) The affairs of the ARC shall be managed by a council, which shall, subject to the provisions of this Act, determine the policy and objectives of the ARC and exercise control generally over the performance of its functions, the exercise of its powers and the execution of its duties.

(2) The Minister may from time to time, to prevent duplication of the functions of the ARC with those of other institutions, and subject to the provisions of subsection (3), reserve any matter relating to research, development and technology transfer provided for in this Act, as a matter in respect of which a decision of the Council shall be subject to the consent of the Minister.

(3) The Minister and the Minister of Finance may jointly from time to time reserve any financial matter provided for in this Act as a matter in respect of which a decision of the Council shall be subject to the consent of the Minister with the concurrence of the Minister of Finance.

9 Constitution of Council

(1) The Council shall consist of-

- (a) the chairperson;
- (b) at least eight but not more than 15 other members appointed by the Minister; and
- (c) the president, who shall serve on the Council by virtue of his or her office.

(2) (a) The members referred to in subsection (1) (a) and (b) shall be appointed by virtue of their knowledge and experience of agriculture, marketing, the training of agriculturists and veterinarians, business and financial management, the law, the environment, rural development, or research, development or technology transfer in the field of agriculture.

(b) In the composition of the Council the interests of each province shall be taken into account.

(3) (a) Whenever a member of the Council has to be appointed, the Minister shall-

- (i) by notice in the *Gazette* and other appropriate media, invite persons, stakeholders, the Premier of each province and the Portfolio and Select Committees of Parliament responsible for agricultural affairs to submit to the Minister, within the period mentioned in the notice, the names of persons who comply with the criteria referred to in paragraph (a) of subsection (2);
- (ii) establish a selection committee consisting of at least three persons, designate a chairperson for the committee and submit to the committee all the nominations received.

(b) The selection committee shall, within 30 days after the signing of the letters of appointment of its members, from the nominations submitted to it by the Minister, compile a short-list of eligible candidates who have knowledge and experience of any matter referred to in subsection (2), and submit it to the Minister.

(c) The Minister shall appoint such number of members as is required from the short-list of candidates recommended by the selection committee.

(d) Within 30 days after making any appointment in terms of paragraph (c), the Minister shall inform the Portfolio and Select Committees of Parliament responsible for agricultural affairs in writing of the appointment made.

[Sub-s. (3) substituted by s. 1 (a) of Act 27 of 2001.]

(4) No political office-bearer as defined in section 190A of the Constitution, as well as a member of a Provincial House of Traditional Leaders, the Council of Traditional Leaders, the Volkstaat Council or a local government, and any official of a political party, shall be appointed as a member of the Council.

(5) A person may not be nominated or appointed as a member of the Council if such person-

- (a) is not a South African citizen or permanently resident in the Republic;
- (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the Council;
- (c) has failed or is unable to comply in full with a judgment or order, including an order as to costs, given against such person by a court of law in civil proceedings;
- (d) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence committed on or after 27 April 1994 to a period of imprisonment without the option of a fine;
- (e) is of unsound mind; or
- (f) has contravened a provision of section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), and it has been so determined by an equality court.

[Sub-s. (5) added by s. 1 (b) of Act 27 of 2001.]

[S. 9 substituted by s. 1 of Act 16 of 1996.]

10 Remuneration, allowances and conditions of service of members of Council

(1) A member of the Council other than a person who is in the full-time employment of the State, shall receive such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance: Provided that the remuneration and allowances of members may differ according to whether they serve in a full-time or part-time capacity.

(2) The conditions of service of a member of the Council who is not an officer as defined in section 1 (1) of the Public Service Act, 1984 (Act 111 of 1984), shall be determined by the Minister with the concurrence of the Minister of Finance.

(3) The remuneration and allowances referred to in subsection (1) and the expenditure connected with the conditions of service referred to in subsection (2), shall be paid out of the funds of the ARC.

11 Chairman and vice-chairman of Council

(1) The Minister shall, after consultation with the Council, appoint a person as chairman and may in his discretion rescind such appointment at any time: Provided that in the case of the first Council such chairman shall be appointed only by the Minister.

(2) (a) The Minister shall after consultation with the chairman appoint one of the members of the Council as vice-chairman, who shall act as chairman whenever the chairman is for any reason absent, or unable to act as chairman, or whenever he is requested thereto by the chairman.

(b) The Minister may in his discretion at any time rescind an appointment made under paragraph (a).

(3) Whenever both the chairman and the vice-chairman of the Council are for any reason absent or unable to act, the Council shall from among its number elect a person to act as chairman.

12 Period of office of members of Council

(1) A member of the Council, other than the president, shall hold office for a period not exceeding three years, but shall be eligible for reappointment.

(2) A member of the Council shall vacate his office if-

- (a) he or she has contravened a provision of section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), and it has been so determined by an equality court;

[Para. (a) deleted by s. 2 (a) of Act 16 of 1996 and inserted by s. 2 (a) of Act 27 of 2001.]

- (b) he is declared insolvent or surrenders his estate for the benefit of his creditors;
- (c) he is found guilty of an offence and sentenced to imprisonment without the option of a fine;
- (e) he resigns as a member;
- (f) he or she is nominated as a candidate for election as a member of Parliament, a Provincial House of Traditional Leaders, the National House of Traditional Leaders, a provincial legislature, or the council or other governing body of a local government body or is appointed as an official of a political party and whose functions as such are incompatible with the functions of a member; or

[Para. (f) substituted by s. 2 (b) of Act 16 of 1996 and by s. 2 (b) of Act 27 of 2001.]

- (g) his term of office is terminated in terms of subsection (3).

(3) The Minister may at any time discharge a member of the Council from office if he is of the opinion that such member is incompetent to fulfil his duties or is guilty of misconduct.

(4) If a member dies or by written notice, directed to the Minister, resigns or in terms of subsection (2) or (3) ceases to be a member, the Minister shall appoint a suitable person in the vacancy for the unexpired period of the relevant term of office.

[Sub-s. (4) substituted by s. 2 (c) of Act 27 of 2001.]

(5) If, at the expiration of the period for which a member was appointed, no new appointment has been made in his or her stead, that member shall remain in office until such an appointment is made: Provided that a member shall so remain in office for a period not exceeding three months.

[Sub-s. (5) added by s. 2 (c) of Act 16 of 1996.]

13 Meetings of Council

(1) The meetings of the Council shall be held at such times and places as the Council may determine: Provided that the first meeting shall be held at such time and place as the chairman may determine.

(2) The chairman, or in his absence the vice-chairman, may at any time convene a special meeting of the Council, which shall be held at such time and place as the chairman or the vice-chairman, as the case may be, may direct: Provided that, when at least five members of the Council submit a written request to the Minister in this respect, a special meeting of the Council shall be held at such time and place as the Minister may direct.

(3) The quorum for a meeting of the Council shall be a majority of its members.

(4) A decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote as a member of the Council.

(5) The chairman may allow any person who in his opinion has an interest in the functions of the ARC to attend the proceedings of the Council, or to nominate a person for such purpose, and to take part in such discussions of the Council as in the opinion of the chairman relate to the interests of the person in question or to the interests represented by such a person, but such person or his nominee may not vote in respect of any decision.

(6) Minutes shall be kept of the proceedings of every meeting of the Council, and shall as soon as possible be confirmed at a subsequent meeting of the Council.

14 Meetings of Council deemed to be duly held

Whenever the minutes of the proceedings of a meeting have been confirmed in terms of section 13 (6), such meeting shall, unless the contrary is proved, be deemed to have been duly convened and held, and all members present at the meeting shall be deemed to have been duly qualified to attend the meeting and to participate in the proceedings.

15 Validity of decisions and acts of Council

No decision or act of the Council or act done under the authority of the Council shall be invalid by reason only of the fact that the Council did not consist of the full number of members referred to in section 9 (1), or by reason only of the fact that a disqualified person was present or acted as a member of the Council, at the time when such decision was taken or act was done.

16 Executive Management Committee

The Council shall designate an executive management committee, which shall consist of the president and so many other members, who shall be employees of the ARC, as the Council may deem necessary and who shall, subject to the directives and control of the Council, be responsible for the management of the affairs of the ARC in accordance with the objects and policy of the ARC.

17 Committees of Council

(1) (a) The Council may nominate one or more committees, called council committees, which shall, subject to the instructions of the Council, perform such functions of the Council as the Council may determine: Provided that the following council committees shall be appointed:

- (i) A council committee which shall, on a continuous basis, evaluate the activities of the ARC against the objects of the ARC; and
- (ii) a council committee to monitor the financial affairs of the ARC.

(b) Such a committee shall consist of one or more persons, as the Council may determine, being members of the Council, employees of the ARC, or other experts.

(c) The Council may at any time dissolve a committee referred to in paragraph (b) or decrease or increase the number of its members.

(d) If a committee referred to in paragraph (a) consists of more than one member, the Council shall designate a member of the committee as the chairman thereof.

(2) (a) The president may nominate one or more committees, called planning committees, which shall-

- (i) outline research areas and determine priorities accordingly;
- (ii) plan the financing of the envisaged research, development and technology transfer, taking into consideration the available expertise and the economic merits thereof;
- (iii) evaluate the progress of research, development and technology transfer projects;
- (iv) subject to the instructions of the president, acting after consultation with the Council, perform such other functions as the president may determine.

(b) A committee referred to in paragraph (a) shall consist of one or more members, appointed by the president in his discretion from employees of the ARC, other experts and persons nominated by interested authorities.

(c) The president may at any time dissolve or reconstitute such a committee.

(d) If such a committee consists of more than one member, the members of the committee shall designate a member of the committee as the chairman thereof.

(e) A committee referred to in paragraph (a) may, subject to the instructions of the president, appoint subcommittees.

(3) The ARC may pay to members of any committee referred to in subsections (1) and (2) who are not in the full-time employment of the State, or are not members of the Council or employees of the ARC, such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(4) The Council or president shall not be absolved from the performance of any function conferred by this section upon any council committee or a planning committee.

18 President of ARC

(1) The Council shall appoint a chief executive officer for the ARC, who shall occupy the post of president of the ARC: Provided that the first president shall be appointed by the Minister.

(2) The president shall be the chairman of the Executive Management Committee, shall, together with the other members thereof, be responsible for the management of the affairs of the ARC, and shall report on such affairs as may be required of him by the Council.

(3) Whenever for any reason the president is absent or unable to carry out his duties, or whenever there is a vacancy in the office of the president, the Council may, subject to such conditions and the payment of such remuneration and allowances as it may determine as contemplated in subsection (4), appoint an employee of the ARC to act as president during such absence or inability, or until a president has been appointed in terms of subsection (1), and that employee shall, while so acting, have all the powers and perform all the duties of the president.

(4) The president shall be appointed for a period not exceeding five years on such conditions, including conditions relating to the payment of remuneration and allowances, as the Council may determine subject to the provisions of section 19 (1) (b), but may, at the expiration of his period of office, with his consent, be reappointed.

19 Staff of ARC and conditions of service

(1) (a) The president may, subject to paragraph (b) and on such conditions as the Council may determine, appoint the employees whom he deems necessary to perform the functions of the ARC.

(b) The ARC shall pay to its employees such remuneration, allowances, subsidies and other benefits as the Council may determine, in accordance with a system approved from time to time by the Minister, with the concurrence of the Minister of Finance.

(c) The ARC may, in addition to the employees referred to in paragraph (a), be assisted in the performance of its functions by officers and employees in the public service who have been placed at the disposal of the ARC in terms of section 14 (3) (a) of the Public Service Act, 1984 (Act 111 of 1984).

(d) Any person who occupies a post in the public service, may with his written consent and the consent of the head of the department in which he is employed, be transferred to the ARC, after which he shall from the date of his transfer be deemed to have been appointed under this section: Provided that-

- (i) his salary or salary scale in respect of the post shall not be less favourable than the salary or salary scale which was applicable to him as a person employed by the State;
- (ii) any sick or vacation leave which stood to the credit of such person immediately prior to his transfer, shall be deemed to be leave credited to him in the employment of the ARC;
- (iii) pensionable service performed or bought back by such person before his transfer shall be deemed to be pensionable service performed by him in the service of the ARC;
- (iv) no person shall as a consequence of such transfer and appointment acquire a retirement age which is higher than that which applied to him in the service of the State; and

(v) such a person may apply-

(aa) to be declared a dormant member in terms of section 15 of the General Pensions Act, 1979 (Act 29 of 1979);

section

(bb) to become in terms of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963), a member of the fund as defined in section 1 of that Act; or

(cc) to become a member of an own pension fund as referred to in the first proviso to paragraph (g).

(e) The salary or salary scale referred to in paragraph (d) (i) may not be altered without the written consent of the person concerned.

(f) The Council may, on such conditions as it may deem fit, second an employee of the ARC, either for a particular service or for a period of time, to the service of a department of State, the government of any other country or territory, an institution or a person in or outside the Republic, provided such an employee's rights, privileges and benefits by virtue of his conditions of service as an employee of the ARC are not adversely affected by such secondment: Provided that an employee shall not be seconded to the service of the government of such other country or territory, or an institution or person outside the Republic, unless the employee consents thereto.

(g) The ARC shall for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963), be deemed to be an associated institution: Provided that the ARC may, under the Pension Funds Act, 1956 (Act 24 of 1956), establish any other pension fund or funds for its employees: Provided that the claim of an employee against such new pension fund on the date on which he becomes a member of the fund, shall not be smaller than the claim which such employee had on the said date in respect of service performed as a member of a pension fund administered by the Department of National Health and Population Development of which he was a member on the date immediately preceding the date on which he joined the new pension fund.

(h) In the case where an employee applies for membership of, and his pension benefits are transferred to, a pension fund referred to in paragraph (g)-

- (i) his membership of the pension fund from which his benefits are transferred shall terminate and he will have no further claim against such pension fund;
- (ii) the pension fund from which an employee's benefits are transferred shall pay to the pension fund of which he becomes a member, an amount equal to the financing percentage of the first-mentioned fund, multiplied by the actuarial liability of that fund in respect of such employee as on the date of the transfer, plus interest calculated at the bank rate from the date of the transfer to the date of payment thereof;
- (iii) the pension fund from which an employee's benefits are transferred shall cede any claim which it may have against the employee to the pension fund of which he becomes a member; and
- (iv) the State shall, in respect of that employee on his becoming a member of a pension fund referred to in paragraph (g) established in terms of the Pension Funds Act, 1956 (Act 24 of 1956), pay to such pension fund an amount equal to the difference between the actuarial liability of the pension fund from which the employee's benefits are transferred and the amount paid in terms of subparagraph (ii), plus interest calculated at the bank rate from the date of the transfer to the date of payment.

(i) The provisions of paragraph (h) shall *mutatis mutandis* apply if an employee who on the date of his transfer under paragraph (d) (v) (aa) elected to be a dormant member, at a later stage under section 15 of the General Pensions Act, 1979 (Act 29 of 1979), elects to have his accrued pension benefits transferred to another pension fund.

(j) For the purposes of this section-

- (i) the actuarial liability of a pension fund in respect of a specific member or group of members of the fund, means the actuarial liability, as determined by an actuary instructed by the Minister of National Health and Population Development, with regard to the said member or group of members of the fund;

- (ii) the financing percentage of a pension fund means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced with the amount of the liability of the fund towards all its pensioners, as determined at the time of the most recent actuarial assessment of the fund or any reappraisal thereof done on the instructions of the Minister of National Health and Population Development; and
- (iii) bank rate means the rate determined from time to time under section 10 (2) of the South African Reserve Bank Act, 1989 (Act 90 of 1989).

(2) The ARC may from time to time on such conditions and against such security as it may deem fit -

- (a) provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee by that financial institution, to enable the employee to acquire, improve or enlarge immovable property for residential purposes;
- (b) build, cause to be built, purchase or rent houses, flats or flat buildings for occupation by employees, and may sell or let those houses or flats to employees, or otherwise dispose of, let or otherwise deal with those houses, flats or flat buildings; and
- (c) establish, institute, erect or maintain sports or recreational societies, social clubs, social and health services, restaurants, hostels, bursary schemes for purposes of study or other similar undertakings or schemes which in its opinion may be beneficial to its employees.

(3) If a person who is employed in any capacity by or on behalf of the ARC suffers an injury or contracts a disease while engaged in, and which is directly attributable to, any activity in the course of such employment, the ARC may with the consent of the Minister, granted with the concurrence of the Minister of Finance, in its discretion pay compensation to such person or, in the event of his death, to his dependants.

(4) The provisions of subsection (3) shall not affect the right of any person to claim damages in respect of any injury or disease referred to in that subsection.

20 Financing of ARC

(1) The funds of the ARC shall consist of-

- (a) money appropriated by Parliament to finance the functions of the ARC;
- (b) money paid to the ARC in terms of subsection (4);
- (c) money received by virtue of contracts and the functions performed by the ARC;
- (d) money borrowed by the ARC in terms of section 4 (1) (m) (ii);
- (e) fees or royalties referred to in section 24 (2) which are paid to the ARC;
- (f) the proceeds from the sale of shares, and from dividends on shares held by the ARC, in any company referred to in section 4 (1) (m) (iii);
- (g) donations or contributions which the ARC may receive from any person, institution, government, administration or any other source;
- (h) interest on investments by the ARC.

(2) (a) The ARC shall utilize its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers.

(b) The ARC shall utilize any money contemplated in subsection (1) (a) in accordance with the statement of its

estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to the provisions of paragraph (a), the ARC may utilize any amount or portion of any amount required to be so utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with that matter: Provided further that the ARC may, with the concurrence of the Minister, utilize any balance of the money remaining at the end of the ARC's financial year in question, for any expenses in connection with the exercise of its powers or the performance of its functions.

(c) The ARC shall utilize any donations or contributions contemplated in subsection (1) (g) in accordance with the conditions, if any, imposed by the donor or contributor concerned.

(3) (a) The ARC -

- (i) shall in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure during the following financial year; and
- (ii) may in any financial year at any time submit supplementary statements of its estimated expenditure for that financial year, to the Minister for his approval, granted with the concurrence of the Minister of Finance.

(b) The ARC shall not incur any expenditure which exceeds the total amount approved under paragraph (a).

(4) The ARC may, in respect of any work performed or services rendered by it under this Act, or for the use of its facilities or rights consequent upon any discoveries, inventions or improvements, charge such fee or make such other financial arrangement as it may deem fit.

(5) (a) The ARC may invest any unexpended portion of its funds with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984), or, subject to the approval of the Minister acting with the concurrence of the Minister of Finance, dispose thereof in any other manner.

(b) The ARC may establish such reserve funds and deposit therein such amounts as the Minister, acting with the concurrence of the Minister of Finance, may approve.

(c) The ARC may pay over to a trust contemplated in section 4 (1) (m) (iv) only -

- (i) donations or contributions contemplated in subsection (1) (g) that are subject to conditions; and
- (ii) amounts in reserve funds established under section 27 (3) (b).

[Para. (c) added by s. 3 of Act 174 of 1993.]

21 Accounting officer

(1) The president shall be the accounting officer charged with the responsibility of accounting for all money received, the utilization thereof and the use and care of the property of the ARC.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the ARC and to explain the transactions and financial position of the business of the ARC.

22 Accounting, auditing and annual report

(1) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the ARC and shall submit a copy of his report on the audit of the said statements to the Council.

(2) The keeping, compilation and publication of annual financial statements of a company referred to in section (1) (m) (iii) shall be done in accordance with the provisions of the Companies Act, 1973 (Act 61 of 1973): Provided that the Auditor-General shall, notwithstanding the provisions of Chapter X of the Companies Act, 1973, audit the annual financial statements of such a company, and shall submit, within six months after the end of the financial year concerned, copies of such annual statements to the Minister.

(3) The Council shall furnish the Minister with such information as he may call for from time to time in connection with the activities and financial position of the ARC and shall as soon as practicable after the end of each financial year submit to the Minister an annual report on the ARC's affairs and functions in respect of that financial year, which shall, *inter alia*, include-

- (a) an audited balance sheet, including notes thereon or a document annexed thereto providing information required by this Act;
- (b) an audited income statement, including any similar financial statement where such form is appropriate, and including any notes thereon or a document annexed thereto providing information required by this Act;
- (c) a statement of cash flow information;
- (d) the report of the auditors.

(4) The financial statements referred to in subsection (3) (a), (b) and (c) shall-

- (a) be in conformity with generally accepted accounting practice;
- (b) fairly reflect the state of affairs and functions of the ARC and the results thereof; and
- (c) refer to any relevant matter not specifically prescribed by this Act which affects or is likely to affect the affairs of the ARC, both by way of figures and by a descriptive report, amplifying and explaining, where necessary, figures in the financial statements.

(5) A report referred to in subsection (3) shall be printed in both official languages.

(6) As soon as practicable after a report has been submitted to the Minister in terms of subsection (3), he shall table it in Parliament.

23 Recovery of loss and damage

(1) If a person who is or was in the employment of the ARC caused the ARC any loss or damage because he-

- (a) failed to collect money due to the ARC and for the collection of which he is or was responsible;
- (b) is or was responsible for an irregular payment of money of the ARC or for a payment of such money not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of money of the ARC owing to failure to carry out his duties;
- (d) is or was responsible for a deficiency in, the destruction of or any damage to the ARC's money, stamps, face value documents and forms having potential value, securities, equipment, stores or any other property of the ARC; and
- (e) is or was responsible for a claim against the ARC owing to failure to carry out his duties,

the accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the ARC, within 30 days from the date of such notice, the whole or any part of the amount so determined.

(2) If a person who is in the employment of the ARC and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (5) and (6), be deducted from his monthly salary: Provided that such deduction shall not in any month exceed a fourth of his monthly salary.

(3) If a person who was in the employment of the ARC and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the accounting officer shall, subject to the provisions of subsections (4), (5) and (6), recover the amount from the person concerned by legal process.

(4) If a person who has in terms of subsection (1) been ordered to pay an amount, offers, within the period stipulated in the notice in question, to pay the amount in instalments, the accounting officer may allow payment in such instalments as the accounting officer may consider reasonable.

(5) A person who has in terms of subsection (1) been ordered to pay an amount may within a period of 30 days from the date of such order appeal in writing against such order to the Council, stating the grounds for his appeal, and the Council may, after such investigation as it may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or partly, as the Council may deem fair and reasonable, from the payment of such amount.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the Council under subsection (5), apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer on the merits of the case that the order was rightly made or that the amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

24 Discoveries, inventions and improvements by employees of ARC and other persons

(1) Subject to the provisions of subsections (5) and (6) the rights in all discoveries and inventions and in all improvements in respect of processes, apparatus and machinery made by-

- (a) employees of the ARC or officers and employees in the public service who have been placed at the disposal of the ARC under section 19 (1) (c);
- (b) persons assisting the ARC with any investigation or research; or
- (c) persons to whom bursaries or grants-in-aid have been granted by the ARC,

shall vest in the ARC.

(2) The ARC may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to such conditions and the payment of such fees or royalties as the ARC may determine.

(3) If the rights in any discovery, invention or improvement are vested in the ARC in terms of subsection (1), the Council may award to the person responsible for the discovery, invention or improvement such bonus as it deems fit, or make provision for financial participation by such person in the profits derived from the discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance.

(4) The ARC may apply for a patent in respect of any discovery, invention or improvement referred to in subsection (1), and shall for the purposes of the Patents Act, 1978 (Act 57 of 1978), and the Plant Breeders' Rights Act, 1976 (Act 15 of 1976), be regarded as the assignee of the discoverer or inventor in question.

(5) Unless it is otherwise agreed, the rights in respect of any discovery, invention or improvement made by the ARC in the course of an investigation for or on behalf of another person, institution, government or administration shall vest in the ARC.

(6) The provisions of this section shall not apply in respect of any discovery, invention or improvement referred to in subsection (1) which, in the opinion of the Minister, was made by the person concerned other than-

- (a) in the course of his employment as an employee of the ARC;
- (b) during the performance of functions in respect of which he has been placed at the disposal of the ARC in terms of section 19 (1) (c);

- (c) in the course of any investigation or research while assisting the ARC; or
- (d) in the course of any research in respect of which he receives a bursary or grant-in-aid from the ARC,

and which is not connected with such employment, investigation or research.

25 Regulations

(1) The Minister may, after consultation with the Council, make regulations as to-

- (a) the procedure for the submission of names to the Minister for appointment as members of the Council;
- (aA) the publication and contents of the notice referred to in section 9 (3);

[Para. (aA) inserted by s. 3 of Act 16 of 1996.]

- (aB) the manner in which the Council must submit to the Minister its needs in relation to expertise in the Council;

[Para. (aB) inserted by s. 3 of Act 16 of 1996.]

- (b) the filling of casual vacancies on the Council and the appointment of persons to act on behalf of absent members;
- (c) the procedure at meetings of the Council;
- (d) the preservation of secrecy in respect of the affairs of the ARC;
- (e) the matters in respect of which fees shall be payable to the ARC, the amount of such fees and the persons who shall be liable for the payment thereof and the circumstances in which any fees so paid shall be refunded;
- (f) the procedure in respect of grievances and requests by employees,

and, generally, as to any matter in respect of which the Minister, after consultation with the Council, deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation made under subsection (1) may provide that any person who contravenes or fails to comply with a provision thereof shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months.

26 Delegations

(1) The Council may-

- (a) delegate to the chairman or any other member of the Council, the president or any other employee of, or holder of an office with, the ARC or to a committee established under section 17 (1), any power conferred upon the Council by or under this Act; or
- (b) authorize the chairman or any other member of the Council, the president or any other employee of, or holder of an office with, the ARC or a committee established under section 17 (1), to perform any duty assigned to the Council by or under this Act.

(2) The president may-

- (a) delegate to an employee of, or the holder of an office with the ARC, any power conferred upon the president by or under this Act in his capacity as president or accounting officer; or

(b) authorize that employee or holder of an office to perform any duty assigned to the president by or under this Act in the said capacities.

(3) Any delegation under subsections (1) and (2) may be made subject to such conditions and restrictions as may be determined by the Council or the president, as the case may be, and may be withdrawn by the Council or the president, as the case may be.

(4) The Council and the president shall not be divested of any power delegated under subsections (1) and (2) by it or him, and may amend or withdraw any decision made in the exercise of such delegated power.

27 Transfer of assets and funds to ARC

(1) The Minister may, with the concurrence of the Minister of Finance, transfer any movable or immovable property belonging to the State to the ARC to enable it to perform its functions or to achieve any of its objects.

(2) No immovable property transferred to the ARC in terms of subsection (1), may without the approval of the Minister, granted with the concurrence of the Minister of Finance, be alienated, mortgaged or disposed of in any other manner.

(3) (a) All amounts or unspent portions of amounts and the interest thereon, being in the Agricultural Research Account established under section 2 of the Agricultural Research Account Act, 1964 (Act 37 of 1964), and the Tobacco Research Account and the Wine Research Account established under section 2 of the Tobacco and Wine Research Accounts Act, 1960 (Act 60 of 1960), on a date determined by the Minister by notice in the *Gazette*, shall with effect from such date be transferred to the ARC.

(b) Any condition attached to any amount in the research accounts referred to in paragraph (a), remains in force and shall be honoured by the ARC, and a reserve fund contemplated in section 20 (5) (b), shall be established in respect of each such amount.

(c) In respect of the amounts in the Agricultural Research Account referred to in paragraph (a) to which no condition is attached as referred to in paragraph (b), one reserve fund as contemplated in section 20 (5) (b) shall be established.

(4) A registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), shall, upon submission to him of a certificate by the Minister that a real right in respect of immovable property described in such certificate has been acquired by the ARC, make such entries or endorsements as he may deem necessary in or on any relevant register or other document in his office or laid before him, in order to register such right in the name of the ARC, and no stamp duty, office or other fee shall be payable in respect of the registration.

28 Strikes

The Minister may by notice in the *Gazette* prohibit strikes by employees of the ARC and impose punishments, and provide for matters relating thereto.

29 Repeal of laws

The Tobacco and Wine Research Accounts Act, 1960 (Act 60 of 1960), the Tobacco and Wine Research Accounts Amendment Act, 1972 (Act 35 of 1972), the Agricultural Research Account Act, 1964 (Act 37 of 1964), and the Agricultural Research Account Amendment Act, 1972 (Act 37 of 1972), are hereby repealed.

[Date of commencement of s. 29: to be proclaimed.]

30 Short title and commencement

(1) This Act shall be called the Agricultural Research Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.

AGRICULTURAL RESEARCH AMENDMENT ACT 12 OF 1993

[ASSENTED TO 26 FEBRUARY 1993]

[DATE OF COMMENCEMENT: 10 MARCH 1993]

*(Afrikaans text signed by the State President)***ACT****To amend the Agricultural Research Act, 1990, so as to extend the functions, powers and duties of the Agricultural Research Council; and to provide for matters connected therewith.**

1 Amends section 4 (1) of the Agricultural Research Act 86 of 1990, as follows: paragraph (a) inserts paragraph (1A); and paragraph (b) substitutes paragraph (m) (i).

2 Short title

This Act shall be called the Agricultural Research Amendment Act, 1993.

**AGRICULTURAL RESEARCH SECOND AMENDMENT ACT
174 OF 1993**

[ASSENTED TO 8 DECEMBER 1993]

[DATE OF COMMENCEMENT: 17 DECEMBER 1993]

*(Afrikaans text signed by the Acting State President)***ACT****To amend the Agricultural Research Act, 1990, so as to define a certain expression; and to authorize the Agricultural Research Council to create trusts for the administration of certain donations, contributions and amounts; to validate the acquisition of certain immovable property; and to provide for matters connected therewith.**

1 Amends section 1 of the Agricultural Research Act 86 of 1990 by adding the definition of 'trust'.

2 Amends section 4 (1) (m) of the Agricultural Research Act 86 of 1990 by deleting the word 'and' at the end of subparagraph (ii), by adding the word 'and' at the end of subparagraph (iii) and by adding subparagraph (iv).

3 Amends section 20 (5) of the Agricultural Research Act 86 of 1990 by adding paragraph (c).

4 Validation of acquisition of certain property by Agricultural Research Council

The acquisition by the Agricultural Research Council of the property known as Remaining Extent of Portion 67 (a portion of Portion 13) of the farm Naauwpoort 335, Registration Division JS Transvaal, held by Deed of Transfer T115057/92, registered in favour of the Agricultural Research Council, is hereby validated, with effect from the date on which the said property was acquired, in so far as it is invalid by reason of the absence of the approval of the Minister of Agriculture, or the concurrence of the Minister of Finance, as required in section 4 (1) (m) of the Agricultural Research Act, 1990 (Act 86 of 1990).

5 Short title

This Act shall be called the Agricultural Research Second Amendment Act, 1993.