

REPUBLIC OF SOUTH AFRICA

PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND BILL, 2018

*(As introduced in the National Assembly (proposed section 76))
(The English text is the official text of the Bill.)*

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B XX - 2018]

BILL

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

PREAMBLE

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

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

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

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

- section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that will secure the sustainable development of natural resources; and

- section 27(1)(b) of the Constitution, to ensure that everyone in the Republic has access to sufficient food by taking measures aimed at enhancing the preservation and optimal use of agricultural land for agricultural purposes.

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

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CHAPTER 1 INTERPRETATION AND OBJECTS

Definitions

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

"agricultural area" means a cartographically delineated area, with shared agricultural characteristics, based on—

- (a) agricultural land capability;
- (b) agricultural conservation status;
- (c) agricultural potential;
- (d) agricultural suitability;
- (e) geographic location; or
- (f) agricultural use;

"agricultural land" means all land in the jurisdiction of the Republic, excluding land—

- (a) in a township as defined in the Deeds Registries Act, or land for which a township register, separate subdivision register or sectional title register, as defined in the Sectional Titles act, 1986 (Act No. 95 of 1986), has been opened;
- (b) which, immediately prior to the date of commencement of this Act, was lawfully zoned for non-agricultural purposes by an organ of state subject to the conditions of the zoning;
- (c) which the Minister excluded in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), by means of a notice in the *Gazette*; or

(d) which the Minister, after consultation with any other Minister or MEC with jurisdiction over the land concerned, excludes by means of a notice in the *Gazette*;

"agricultural land capability" means the most intensive long-term use of land for purposes of rain fed farming, determined by the interaction of climate, soil and terrain;

"agricultural potential" means a measure of potential productivity per unit area and unit time achieved with specified management inputs which, for a given crop or veld type and level of management, is largely determined by the interaction of climate, soil and terrain;

"agricultural purposes" means practices associated with the use of agricultural land for crop and animal production, keeping of animals, including wild animals, forestry and logging, fishing and aquaculture, including the use of land for structures, buildings and dwelling units reasonably necessary for, or related to, the agricultural use of land;

"agriculture" means the science, practice, occupation or economic activity in all its aspects concerned with the keeping or active production of useful plants, fungi or animals for—

- (a) bio-fuel;
- (b) fibre;
- (c) food; or
- (d) other agricultural goods or services,

and includes, in varying degrees, the preparation or marketing of the resulting products;

"agro-ecosystem" means a spatially and functionally coherent unit of agricultural activity, that can be defined on varying spatial scales, and includes the interactions between the living and non-living components of the unit as contained within larger landscapes;

"agro-ecosystem authorisation" means the authorisation contemplated in section 15;

"agro-ecosystem report" means a report quantifying and qualifying site specific and cumulative impact of land use changes on the productivity, stability, viability, adaptability, resiliency and equitability of an agro-ecosystem;

"competent authority" means the competent authority identified by the Minister in terms of section 19;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Deeds Registries Act" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"Department" means the national department responsible for agriculture;

"Director-General" means the Director-General of the Department;

"farmer" means a person or entity who uses agricultural land for agricultural purposes and excludes a person employed by the farmer;

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

- (a) autonomy in respect of financial and investment decision-making; and
- (b) authority and responsibility for allocating resources for the production of agricultural goods and services;

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

"high value agricultural land" means agricultural land, capable of producing significantly higher levels of agricultural goods or, best suited to produce acceptable levels of high value agricultural goods within a defined geographical area, in a sustainable manner and includes—

- (a) agricultural land with a land capability rating of above moderate;
- (b) agricultural land with an agricultural potential of above moderate;
- (c) unique agricultural land; and
- (d) irrigated agricultural land;

"HoD" means the head of the provincial department responsible for agriculture;

"integrated development plan" means the plan referred to in section 25 of the Municipal Systems Act;

"land owner" means the person or entity in whose name land or a right in, or to, land is registered in accordance with the Deeds Registries Act;

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

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

"listed activity" means an activity contemplated in section 16;

"MEC" means a Member of the Executive Council of a Province responsible for agriculture;

"Minister" means the Minister responsible for agriculture, unless stated otherwise;

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

"municipality" when referred to as—

- (a) an entity, means a municipality as described in section 2 of the Municipal Systems Act and includes the municipal council; and
- (b) a geographical area, means a municipal area determined in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"natural agricultural resources" means the natural resource base upon which the agricultural economy depends, including soil, water, climate, terrain, natural fauna and flora, but excluding weeds and invasive species;

"national agro-eco information system" means the national agro-eco information system established in terms of section 24;

"optimal agricultural use" means the maximum productivity per unit area and unit time achievable by the best suited or adapted farming practises in a sustainable manner, with minimum negative impacts on the natural agricultural resources;

"prescribe" means prescribe by regulation;

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

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

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

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

"provincial agricultural sector plan" means a provincial agricultural sector plan contemplated in Part 3 of Chapter 2;

"provincial department" means the provincial department responsible for agriculture;

"registrar of deeds" means a registrar as defined in the Deeds Registries Act;

"Spatial Data Infrastructure Act" means the Spatial Data Infrastructure Act, 2003 (Act No. 54 of 2003);

"spatial development frameworks" means the spatial development frameworks referred to in chapter 4 of the Spatial Planning and Land Use Management Act;

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

"sustainable agriculture" means—

(a) farming practises that—

(i) conserve land, water, plant and animal genetic resources; and

(ii) are environmentally non-degrading, technically appropriate, economically viable, and socially acceptable; and

(b) an integrated system of plant and animal production practices having a site-specific application that complements ecological and biodiversity conservation and meets present needs without compromising the ability to meet future needs to—

(i) satisfy human needs for food and other agricultural products;

- (ii) enhance environmental quality and the natural resource base upon which the agricultural economy depends;
- (iii) make the most efficient use of non-renewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- (iv) sustain the viability of a farming unit; and
- (v) enhance the quality of life for farmers and society as a whole;

"**this Act**" includes any regulation made under this Act; and

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

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

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

Objects of Act

2. The objects of this Act are to—

- (a) promote the preservation and sustainable development of agricultural land;
- (b) establish evaluation and classification systems for agricultural land;

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

Application of Act

- 3. (1) This Act applies to all agricultural land within the Republic.
- (2) This Act binds all organs of state in the—
 - (a) national and local spheres of government; and
 - (b) provincial sphere of government, subject to section 146 of the Constitution.

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

CHAPTER 2

AGRICULTURAL LAND MANAGEMENT

Part 1

Principles

Principles

4. (1) The following principles apply to all agricultural land within the Republic:

- (a) The principle of agro-ecosystem management whereby—
 - (i) an agro-ecosystem is a function of its natural environment and farming system;
 - (ii) activities that affect agricultural land must be assessed in the context of an agro-ecosystem; and
 - (iii) the site specific and the cumulative impacts of activities on the living and non-living components within an agro-ecosystem must be assessed;
- (b) the principle of productivity whereby—
 - (i) the quantity of food and other agricultural goods and services delivered per unit area and unit time is directly related to agricultural productivity,

determined by the interaction between climate, soil and terrain variables, spatial location and management;

- (ii) land with high agricultural productivity is severely limited within the country; and
 - (iii) all developmental frameworks and policies must address the preservation of land, with a high agricultural productivity, for agricultural use;
- (c) the principle of stability whereby—
- (i) food insecurity adversely affects the stability of society and sustained food production depends on stable agro-ecosystems;
 - (ii) land development procedures must prevent destructive land use changes and include provisions to secure and maintain the long-term optimal functioning of agro-ecosystems; and
 - (iii) actual or potential conflicts between organs of state should be resolved through conflict resolution procedures;
- (d) the principle of resiliency whereby—
- (i) agro-ecosystem resiliency is determined by its capacity to recover its functionality, structure and feedback mechanisms after a disturbance; and
 - (ii) activities or events with a significant disturbance on agro-ecosystems and agricultural productivity must be avoided, or where they cannot be avoided, minimised, mitigated and remedied;
- (e) the principle of viability whereby—

- (i) the long term survival, profitability and growth of the agricultural sector is a function of viable farming units, farming systems and farming enterprises; and
 - (ii) the impact of activities on the viability of farming units, farming systems and farming enterprises must be considered, assessed and evaluated and decisions must be appropriated according to such consideration, assessment and evaluation; and
- (f) the principle of equitability whereby—
- (i) all activities on agricultural land are subjected to a fair, equal and just assessment and treatment;
 - (ii) decisions take into account the interests, needs and values of all interested and affected parties; and
 - (iii) all farmers have the opportunity to develop the skills and capacity required for the emergence of productive, viable, and resilient farming units, and the participation by vulnerable and disadvantaged farmers or potential farmers are ensured.
- (2) The principles in subsection (1) must be applied when—
- (a) assessing applications for agro-ecosystem authorisations;
 - (b) determining norms and standards;
 - (c) developing provincial agricultural sector plans; and
 - (d) declaring protected agricultural areas.

Part 2

Agricultural land evaluation and classification

Agricultural land evaluation and classification

5. The Minister, after consultation with the MECs, may—
- (a) establish evaluation and classification systems to appraise the agricultural land capability, suitability, potential and use of agricultural land at national, provincial and local levels, to promote the preservation and sustainable development of agricultural land; and
 - (b) spatially delineate agricultural areas according to shared characteristics in agricultural land capability, suitability, potential, use, location or any combination thereof.

Part 3

Provincial agricultural sector plans

Preparation of provincial agricultural sector plans

6. (1) The Minister must prescribe criteria for the compilation of a provincial agricultural sector plan to ensure that it—
- (a) is based on agricultural science;
 - (b) promotes sustainable agriculture;
 - (c) promotes food security;
 - (d) preserves agricultural land;

- (e) promotes synergy between provincial agricultural sector plans; and
- (f) is compiled in a participatory manner.

(2) The MEC, with the concurrence of the Minister and after consulting the public, must publish a provincial agricultural sector plan in the *Gazette* within five years of the commencement of this Act and at intervals of not more than five years thereafter.

(3) Before publishing a provincial agricultural sector plan the MEC must—

- (a) give notice of the proposed provincial agricultural sector plan in the *Gazette*;
- (b) invite the public to submit written representations thereon within a period of at least 30 days of such notice; and
- (c) consider all such written representations received.

(4) The MEC must, in compiling a provincial agricultural sector plan, take into consideration any provincial agricultural sector plans of adjacent provinces and any development plans of other organs of state which may impact on the agricultural sector in the province.

(5) The Minister may, on written request from the MEC, extend the period contemplated in subsection (2) for publishing a provincial agricultural sector plan for a period not exceeding 12 months and must publish the extension in the *Gazette*.

Purpose of provincial agricultural sector plans

7. The purpose of a provincial agricultural sector plan is to—

- (a) coordinate and harmonise agricultural land use policies, plans, programmes and decisions of organs of state aimed at promoting, achieving and preserving a sustainable agricultural environment, in order to—
 - (i) minimise the duplication of procedures and functions; and
 - (ii) promote consistency in the exercise of functions that may affect the agricultural sector;
- (b) give effect to the principle of cooperative government in accordance with Chapter 3 of the Constitution;
- (c) secure the preservation and development of agricultural land across the country as a whole; and
- (d) enable the Minister to monitor achievements in the preservation and development of agricultural land.

Content of provincial agricultural sector plans

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

Status of provincial agricultural sector plans

9. (1) A provincial agricultural sector plan comes into effect on publication in the *Gazette*.

(2) A provincial agricultural sector plan must be taken into consideration by the national department and provincial department in the allocation of financial and other resources for purposes of preserving and developing agricultural land.

(3) A municipality must take into consideration the content of any applicable provincial agricultural sector plan when preparing, reviewing or amending its—

- (a) municipal spatial development framework, as contemplated in section 20 of the Spatial Planning and Land Use Management Act;
- (b) integrated development plan, as contemplated in Chapter 5 of the Municipal Systems Act; and
- (c) land use scheme, as contemplated in Chapter 5 of the Spatial Planning and Land Use Management Act.

(4) The content of any applicable provincial agricultural sector plan must be taken into consideration when preparing, reviewing or amending a national, provincial or regional spatial development framework as contemplated in Chapter 4 of the Spatial Planning and Land Use Management Act.

Compliance with provincial agricultural sector plans

10. (1) The MEC must monitor compliance with the provincial agricultural sector plan by the province and by municipalities within the province and must report thereon on an annual basis to the Minister and by publication in the *Gazette*.

(2) The MEC may promote compliance with the provincial agricultural sector plan by implementing training programmes, publishing manuals and guidelines, and coordinating procedures for compliance.

Part 4

Protected agricultural areas

Declaration of protected agricultural areas

11. (1) The Minister, by notice in the *Gazette*, may—

- (a) declare as a national protected agricultural area, the geographic area specified in the notice;
- (b) assign a name to such national protected agricultural area; and
- (c) describe the restrictions imposed on the use of agricultural land within the national protected agricultural area.

(2) A declaration under subsection (1)(a) may only be issued to—

- (a) protect high value agricultural land; and
- (b) preserve the area primarily for food production.

(3) The MEC, with the concurrence of the Minister and by notice in the *Gazette*, may—

- (a) declare as a provincial protected agricultural area the geographic area specified in the notice;
- (b) assign a name to a provincial protected agricultural area; and
- (c) describe the restrictions imposed on the use of agricultural land within the provincial protected agricultural area.

(4) A declaration under subsection (3)(a) may only be issued to—

- (a) protect areas of significant agricultural importance in a province that fall outside of national protected agricultural areas; and
- (b) preserve the area primarily for agricultural purposes.

Procedure to declare protected agricultural areas

12. (1) Before the Minister or the MEC declares a protected agricultural area in terms of section 11—

- (a) the Minister or the MEC must—
 - (i) give notice of the intention to declare the protected agricultural area in the *Gazette* and at least two national newspapers distributed in the affected area;
 - (ii) invite the public to submit written representations thereon within a period of at least 30 days of such notice;
 - (iii) consider all such written representations received; and
 - (iv) consult with the municipality or municipalities in which the provincial protected agricultural area falls;

- (b) the Minister must consult the MEC of the province or provinces in which the national protected agricultural area falls; and
- (c) the MEC must consult with the Minister and obtain his or her approval.

(2) After the Minister or the MEC declares a protected agricultural area in terms of section 11, the Minister or the MEC must—

- (a) compile and maintain a register, listing all properties included in the protected agricultural area;
- (b) compile and publish in the *Gazette* a map indicating the geographic area of the protected agricultural area; and
- (c) notify the relevant registrar of deeds in writing.

(3) On receipt of the notification referred to in subsection (2), the relevant registrar of deeds must record the declared protected agricultural area, or any amendment thereto, in the relevant registers and documents in terms of section 3(1)(v) of the Deeds Registries Act.

Review, withdrawal and amendment of protected agricultural areas

13. (1) The Minister or the MEC must review a protected agricultural area at least every five years.

(2) The Minister, or the MEC with the concurrence of the Minister, may by notice in the *Gazette*—

- (a) withdraw the declaration of a protected agricultural area;
- (b) add any area to, or exclude any area from, the protected agricultural area;
- (c) assign a different name to the protected agricultural area; and

(d) amend the restrictions imposed on the use of agricultural land within the protected agricultural area.

(3) Before the Minister or the MEC withdraws or amends the declaration of a protected agricultural area in terms of subsection (2), the Minister or the MEC must follow the procedures prescribed in section 12, with the changes required by the context.

CHAPTER 3

AGRO-ECOSYSTEM MANAGEMENT

General objectives of agro-ecosystem management

- 14.** (1) The general objectives of agro-ecosystem management are to—
- (a) promote the integration of the principles of agro-ecosystem management set out in section 4 into decisions which may have a significant effect on an agro-ecosystem;
 - (b) identify, predict and evaluate the actual and potential impact of activities on the agro-ecosystem, the risks, consequences, alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits and promoting compliance with the principles of agro-ecosystem management set out in section 4;
 - (c) ensure that the effects of activities on the agro-ecosystem receive adequate consideration before actions are taken in connection with them;
 - (d) ensure public participation in decisions that may affect the agro-ecosystem;

- (e) ensure the consideration of agro-ecosystem attributes in management and decision making which may have a significant effect on the agro-ecosystem; and
- (f) promote methods of agro-ecosystem management which ensure that particular activities are pursued in accordance with the principles of agro-ecosystem management set out in section 4.

(2) The Director-General must coordinate the activities of organs of state referred to in this Act and may assist them in giving effect to the objectives of this Chapter and such assistance may include training, the publication of manuals and guidelines and the coordination of procedures.

Agro-ecosystem authorisations

15. (1) A person who wishes to commence with a listed activity on agricultural land must apply to the competent authority, in the prescribed manner, for an agro-ecosystem authorisation.

(2) The competent authority may grant an agro-ecosystem authorisation for the commencement of a listed activity on agricultural land, subject to subsections (3) to (6).

(3) In order to give effect to the general objectives of agro-ecosystem management laid down in this Chapter, the potential consequences for or impacts on the agro-ecosystem of listed activities must be considered, investigated, assessed by the competent authority, who must report thereon to the Minister, except in respect of those activities that may commence without having to obtain an agro-ecosystem authorisation.

(4) Every applicant for an agro-ecosystem authorisation must comply with the requirements prescribed in terms of this Act in relation to—

- (a) any steps to be taken before submitting an application;
- (b) the content of any prescribed report required to be submitted with the application;
- (c) any procedure relating to public consultation and information gathering;
- (d) any applicable provincial agricultural sector plan;
- (e) the submission of an application for an agro-ecosystem authorisation and any other information required by the competent authority; and
- (f) the undertaking of any agro-ecosystem report.

(5) Compliance with the procedures laid down by the Minister does not absolve a person from complying with any other statutory requirement to obtain authorisation from any organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity in question.

(6) Authorisations obtained under any other law for an activity listed in terms of this Act does not absolve the applicant from obtaining an agro-ecosystem authorisation in terms of this section.

Listing of activity and agricultural area

16. (1) The Minister may, by notice in the *Gazette*, list—

- (a) activities which may not commence on agricultural land without an agro-ecosystem authorisation from the competent authority;
- (b) agricultural areas in which listed activities may not commence without an agro-ecosystem authorisation from the competent authority;

- (c) agricultural areas in which listed activities may be excluded from authorisation by the competent authority; and
- (d) activities that may commence without an agro-ecosystem authorisation, but that must comply with prescribed norms and standards.

(2) For the purpose of subsection (1), the Minister may only identify activities which may have a permanent negative impact on the agricultural potential, capability, suitability or use of agricultural land.

(3) Where a listed activity falls under the jurisdiction of another minister, a decision in respect of subsection (1) must be taken after consultation with such other minister.

(4) The Minister may compile information and maps that specify the attributes of agricultural areas and agro-ecosystems, including the interrelationship between productivity, stability, resiliency, viability and equitability which must be taken into account by every competent authority.

Procedure for listing an activity and agricultural area

17. Before listing any activity or agricultural area in terms of section 16, the Minister must—

- (a) publish a notice in the *Gazette*—
 - (i) specifying the activity or agricultural area that is proposed to be listed; and
 - (ii) inviting interested parties to submit written comments on the proposed listing within a period of at least 30 days of such notice;

- (b) consider all written comments received from interested parties in terms of paragraph (a)(ii); and
- (c) in respect of the listing of an agricultural area—
 - (i) consult the MEC of the province or provinces in which the area falls; and
 - (ii) consult the municipality or municipalities in which the agricultural area falls.

Procedure for delisting or amending an activity or agricultural area

18. (1) The Minister may delist or amend an activity or agricultural area identified in terms of section 16.

(2) The Minister must comply with section 17, with the changes required by the context, before delisting or amending an activity or agricultural area in terms of this section.

Identification of competent authority

19. (1) When listing activities in terms of section 16, the Minister must identify the competent authority responsible for granting agro-ecosystem authorisations in respect of those activities.

(2) The Director-General is the competent authority in terms of subsection (1) if the activity is within a national protected agricultural area.

(3) The HoD is the competent authority in terms of subsection (1) if the activity is within an area of the province falling outside a national protected agricultural area.

Consideration of application by competent authority

20. (1) The competent authority, when considering an application for an agro-ecosystem authorisation, must ensure—

(a) with respect to every such application—

- (i) coordination and cooperation between organs of state in the consideration of assessments where a listed activity falls under the jurisdiction of more than one organ of state;
- (ii) the investigation of the potential impacts of a listed activity on the agro-ecosystem and the assessment of the significance of such potential impacts;
- (iii) that the findings and recommendations flowing from an investigation in terms of subparagraph (ii), the general objectives of agro-ecosystem management laid down in this Act, and the principles of agro-ecosystem management set out in section 4 are taken into account;
- (iv) public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the listed activity, with a reasonable opportunity to participate in those information and participation procedures; and

- (v) any maps compiled in terms of section 16(4) are taken into account;
and
- (b) that every agro-ecosystem report, where required, includes—
 - (i) an investigation of the potential consequences or impacts of the alternatives to the listed activity on the agro-ecosystem and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity;
 - (ii) an investigation of mitigation measures to keep adverse consequences or impacts to a minimum;
 - (iii) reporting on gaps in knowledge regarding the potential consequences and impacts of the listed activity and alternatives to the activity, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
 - (iv) an investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the agro-ecosystem, and the assessment of the effectiveness of such arrangements after their implementation; and
 - (v) consideration of agro-ecosystem attributes identified in the information and maps contemplated in section 16(4).

(2) The competent authority must keep and maintain a written record of all applications submitted for agro-ecosystem authorisations and the reasons for decisions in respect of such applications.

(3) The written record referred to in subsection (2) must be accessible to members of the public during normal office hours at a publicly accessible office of the competent authority.

CHAPTER 4

INSTITUTIONAL FRAMEWORK

Establishment of committees

21. (1) The Minister may, by notice in the *Gazette*, establish an advisory committee to advise the Minister, on request or of its own accord, on—

- (a) achieving the objects of this Act; and
- (b) on any other matter concerning the preservation and sustainable development of agricultural land.

(2) The advisory committee consists of not more than 10 members appointed by the Minister for a period not exceeding five years from nominations received in terms of subsection (3) as follows—

- (a) not more than two members from nominations received from farmers' organisations;
- (b) not more than five members each with knowledge and expertise in one of the following fields: agricultural development, agricultural economics, environmental management, spatial information or law;
- (c) not more than two members with knowledge and experience in agriculture at provincial government level; and
- (d) a member with knowledge and experience in local government.

(3) The Minister must invite nominations for members of the advisory committee by notice in the *Gazette* and at least two nationally distributed newspapers, specifying the period within which nominations must be submitted.

(4) The Minister must appoint the chairperson of the advisory committee from the members referred to in subsection (2).

(5) The Minister may, by notice in the *Gazette*, establish technical committees to advise the Minister, the MECs or competent authorities on—

- (a) agro-ecosystem reports;
- (b) provincial agricultural sector plans;
- (c) protected agricultural areas; and
- (d) guidelines, norms and standards.

(6) The notice referred to in subsection (5) must—

- (a) stipulate the advisory mandate of the technical committee within the context of this Act; and
- (b) determine the duration and composition of the technical committee, which may consist of officials of the Department and independent technical advisors appointed in terms of section 22.

(7) A person may not be appointed as a member of the advisory or technical committee if such person—

- (a) is not a South African citizen;
- (b) does not permanently reside in the Republic;
- (c) is a member of Parliament, any provincial legislature or any municipal council;
- (d) is an unrehabilitated insolvent;
- (e) has been declared of unsound mind by a court in the Republic; or
- (f) has been convicted of an offence after the date of commencement of the Constitution and sentenced to imprisonment without the option of a fine.

(8) If any member of the advisory committee or a technical committee, or his or her spouse, partner or associate, has or may have a direct or

indirect interest in any matter before the advisory or a technical committee, he or she must disclose such interest and may not take part in any discussion regarding such matter.

(9) The Minister must determine, in consultation with the Minister of Finance, the remuneration payable to any member of the advisory committee or a technical committee who is not in the full time employment of an organ of state.

Appointment of technical and other advisors

22. (1) The Minister may appoint technical or other advisors to advise the Minister or a competent authority on the performance of their functions under this Act.

(2) An advisor referred to in subsection (1) is not a decision making authority in terms of this Act.

(3) The Minister must determine, in consultation with the Minister of Finance, the remuneration payable to any advisor who is not in the full time employment of an organ of state.

Performance assessment framework

23. (1) The Minister must, by notice in the *Gazette*, publish a monitoring, evaluation and assessment framework on the effective and efficient administration of the Act, to ensure that all competent authorities—

- (a) execute their powers;
- (b) perform their functions; and

(c) carry out their duties,

in terms of this Act.

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

(3) The competent authorities must, within a period not exceeding three months after the end of each financial year, report in writing to the Minister on compliance with the monitoring, evaluation and assessment frameworks referred to in subsection (1) and (2) during the year in question.

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

CHAPTER 5

NATIONAL AGRO-ECO INFORMATION SYSTEM

Establishment of national agro-eco information system

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

(2) The Director-General is responsible for administering the national agro-eco information system and must provide the personnel and resources

necessary to establish, operate, maintain and update the national agro-eco information system.

(3) The Director-General must—

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

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

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

Objectives of national agro-eco information system

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

- (a) store and provide geo-referenced data and information on the preservation, development, use and management of agricultural land;
- (b) provide information for the implementation, management and administration of this Act;

- (c) provide electronic document management functionalities and data applications to enhance service delivery; and
- (d) provide information to government, land owners and the public—
 - (i) for research and development purposes;
 - (ii) for provincial agricultural sector planning, agro-ecosystem reports or other related reports;
 - (iii) on the agricultural potential, capability, suitability, the conservation status and use of agricultural land;
 - (iv) on the preservation and development of agricultural land; and
 - (v) on the loss of agricultural land over time.

Content of national agro-eco information system

26. The national agro-eco information system may contain the following information—

- (a) a record of all agricultural land;
- (c) a record of all agricultural areas;
- (d) a record of all protected agricultural areas;
- (e) data sets on the agricultural potential, capability, suitability, the conservation status and the use of agricultural land;
- (f) spatial information on agricultural land, including—
 - (i) agricultural potential, capability, suitability, conservation status, use; and
 - (ii) socio-economic information;
- (g) per farming unit—

- (i) the use of agricultural land; and
 - (ii) information on the land owner, and on the land user where applicable, concerning nationality and gender; and
- (h) any other information as may be prescribed.

CHAPTER 6

APPEALS, COMPLIANCE AND CONTRAVENTIONS

Part 1

Appeal procedures

Right to appeal

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

Establishment and composition of Appeal Board

28. (1) The Minister may establish a board known as the Appeal Board to investigate and consider any appeal in terms of section 27.

(2) The Appeal Board must consist of at least three members appointed by the Minister, of whom—

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

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

(3) The person referred to in subsection (2)(a) must be designated as the chairperson of the Appeal Board.

(4) The remuneration of a member of the Appeal Board must be determined by the Minister in consultation with the Minister of Finance.

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

Investigation and consideration by Appeal Board

29. (1) The Minister may refer an appeal to the Appeal Board.

(2) An appeal must be heard on the date, time and place determined by the chairperson.

(3) The chairperson, for the purpose of the hearing of an appeal, may—

(a) summon any person who may have material information concerning the subject of the hearing, or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the Appeal Board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain, for examination, any document so produced; and

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing.

(4) A person who lodges an appeal in terms of section 27, as well as the relevant competent authority, may have legal representation.

(5) If a member of the Appeal Board—

(a) dies during the investigation of the appeal, or soon before the commencement of the investigation, and the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members of the Appeal Board.

(6) Where the member of the Appeal Board who has died or has become incapacitated as envisaged in subsection (5) was or is the chairperson of the Appeal Board, the Minister must designate one of the remaining members of the Appeal Board to act as chairperson.

Consideration of appeal by Minister

30. (1) Where the Minister has referred an appeal to the Appeal Board in terms of section 29, he or she may—

(a) confirm, set aside or vary the recommendations of the Appeal Board; and

(b) order the competent authority to execute the decision in connection therewith.

(2) Where the Minister considers an appeal, he or she may—

(a) confirm, set aside or vary the decision of the competent authority; and

(b) order the competent authority to execute the decision in connection therewith.

(3) The decision of the Minister, together with the reasons for such a decision, must be in writing and a copy thereof must be furnished to the competent authority and the appellant.

(4) If the Minister—

- (a) sets aside any decision by the competent authority, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or
- (b) varies any decision by the competent authority, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.

(5) An appeal lodged by a person in terms of section 27 suspends any agro-ecosystem authorisation, which is the subject of the appeal, pending the finalisation of the appeal.

Part 2

Compliance inspections and contravention directives

Compliance inspections

31. (1) A competent authority—

- (a) may designate an official in the Department, an officer in a provincial administration, or appoint any other person, as an inspector to investigate any non-compliance with this Act; and
- (b) must issue each inspector with a written designation or appointment in the prescribed form, stating that the person has been appointed in terms of this Act.

(2) When an inspector contemplated in subsection (1) performs any function of an inspector in terms of this Act, the inspector—

- (a) must on request, produce his or her written designation or appointment; and
- (b) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

(3) An inspector contemplated in subsection (1), subject to subsection (6), may—

- (a) enter any agricultural land at any reasonable time without previous notice for the purpose of ascertaining an issue required to ensure compliance with this Act;
- (b) question any person who is or was on such agricultural land, either alone or in the presence of any other person, on any matter to which this Act relates;
- (c) require from any person who has control over or custody of a book, record or other document on such agricultural land, to produce to the inspector forthwith, or at such time and place as may be determined by the inspector, such book, record or other document;
- (d) examine any such book, record or other document or make a copy thereof or an extract therefrom;
- (e) require from such a person an explanation of any entry in such book, record or other document;
- (f) inspect any article, substance, plant or machinery which is or was on the agricultural land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;

- (g) seize any book, record or other document or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure; and
- (h) direct any person to appear before him or her at such time and place as may be determined by the inspector and question such person either alone or in the presence of any other person on any matter to which this Act relates.

(4) When an inspector enters any agricultural land in terms of subsection (3), the owner or person in control of the land must at all times provide such facilities as are reasonably required by the inspector to enable him or her to perform his or her functions effectively.

(5) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (3)(f) or (g), he or she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

(6) An inspection of a private dwelling may only be carried out by an inspector when authorised in terms of a warrant issued by a judge of the High Court or a magistrate who has jurisdiction over the agricultural land on which the private dwelling is situated.

(7) An inspector may, where necessary, be accompanied by a police official or any other person reasonably required to assist him or her in conducting the inspection.

(8) An inspector who enters and searches any agricultural land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

Contravention directives

32. (1) If a competent authority considers that a person is contravening or is about to contravene a provision of this Act or an agro-ecosystem authorisation issued under this Act, the competent authority may issue a directive.

(2) A directive issued in terms of subsection (1) may provide that any requirements imposed therein must be complied with in the manner or within the period specified in the directive.

(3) A directive issued in terms of subsection (1) must be contained in the written notice and served upon the person concerned, by—

- (a) delivering the notice to that person personally;
- (b) delivering the notice to the owner or person in control of the agricultural land mentioned in the directive;
- (c) affixing the notice to the entrance of the concerned agricultural land mentioned in the directive; or
- (d) any other prescribed manner.

(4) Any directive which has been served—

- (a) is binding upon the person specified therein and his or her successor in title in relation to the land mentioned in the directive; and

(b) may be withdrawn or amended by the competent authority by the serving of a written notice on the person concerned or his or her successor in title.

(5) A directive issued in terms of subsection (1) may direct the owner or person in control of the agricultural land, in relation to which the contravention occurs, to take any action specified in the directive to rectify the contravention within a period as specified in the directive.

(6) The competent authority may, upon receipt of a written request from the owner or person in control of the concerned agricultural land, extend the period specified in a directive issued in terms of subsection (1) to rectify a contravention.

(7) If the action is not taken within the time specified in the directive, or within the extended period referred to in subsection (6), the competent authority may—

- (a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person upon whom the notice was served; or
- (b) apply to a competent court for appropriate relief.

Investigation and gathering of data on agricultural land

33. A competent authority may, in writing, authorise a person or persons with the necessary skills or experience to—

- (a) enter or cross a particular portion of agricultural land at any reasonable time with the prior consent of the owner or occupier of the land; and

- (b) carry out surveys and investigations to gather data on the agricultural land's capability, suitability, potential, current infrastructure and use thereof.

CHAPTER 7

GENERAL AND MISCELLANEOUS PROVISIONS

Delegations

34. (1) The Minister may delegate any power or duty vested in him or her in terms of this Act, other than a power or duty referred to in subsection (5), and the performance of any duties of the Minister, to—

- (a) the Director-General;
- (b) an MEC, by agreement with the MEC; or
- (c) any organ of state, by agreement with that organ of state.

(2) A delegation referred to in subsection (1) —

- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the Minister;
- (d) may include the power to sub-delegate; and
- (e) may be withdrawn by the Minister.

(3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, or an organ of state.

(4) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(5) The Minister may not delegate a power or duty vested in the Minister in terms of this Act to—

- (a) make regulations and develop policies;
- (b) publish notices in the *Gazette*; or
- (c) appoint a member of the Appeal Board, or a member of an advisory or technical committee.

(6) The Director-General may delegate a power or duty vested in him or her by or under this Act to—

- (a) an official in the Department; or
- (b) an officer in a provincial administration, by agreement with an HoD.

(7) A delegation referred to in subsection (6)—

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the Director-General;
- (d) may include the power to sub-delegate; and
- (e) may be withdrawn by the Director-General.

Regulations

35. (1) The Minister, after consulting the MECs, may make regulations—

- (a) dealing with any matter which under this Act may or must be dealt with by regulation;
- (b) laying down the procedure to be followed in applying for, the issuing of, and monitoring compliance with agro-ecosystem authorisations;
- (c) laying down the procedure to be followed in respect of—
 - (i) the efficient administration and processing of agro-ecosystem authorisations;
 - (ii) fair decision-making and conflict management in the consideration and processing of applications for agro-ecosystem authorisations; and
 - (iii) consultation with land owners, lawful occupiers and other interested or affected parties;
- (d) specifying the functions in relation to the administration and processing of agro-ecosystem authorisations that may be performed only by an agricultural professional and the procedures to be followed by such agricultural professional;
- (e) laying down the procedures to be followed for the preparation, evaluation and adoption of—
 - (i) provincial agricultural sector plans;
 - (ii) agricultural areas;
 - (iii) protected agricultural areas;
 - (iv) agro-ecosystem reports; and
 - (v) norms and standards;
- (f) prescribing the contents of the national agro-eco information system;
- (g) laying down the procedures concerning the lodging of any appeals and the consideration and decision of such appeals in terms of this Act;

- (h) prescribing fees, after consultation with the Minister of Finance, to be paid for—
- (i) the consideration and processing of applications for agro-ecosystem authorisations;
 - (ii) the review of documents, processes and procedures by specialists on behalf of the competent authority; and
 - (iii) the consideration and processing of appeals;
- (i) prescribing minimum criteria for agro-ecosystem reports in order to ensure a consistent quality and to facilitate efficient evaluation of agro-ecosystem reports;
- (j) dealing with the appointment, remuneration and terms of reference of advisory committees;
- (k) dealing with the appointment, remuneration and functions of technical and other experts; and
- (l) dealing with any other matter the regulation of which may be necessary or desirable in order to achieve the objects of this Act

(2) Any regulations made under subsection (1) may provide that any person who contravenes or fails to comply with a provision thereof is guilty of a criminal offence and liable on conviction to a fine not exceeding R250 000, or to a period of imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(3) The norms and standards referred to in subsection (1)(e)(v) must, amongst others, be informed by—

- (a) soil surveys;
- (b) rangeland surveys;

- (c) land use surveys;
- (d) land capability assessments;
- (e) land suitability assessments;
- (f) agricultural potential assessments; and
- (g) impact assessments.

(4) (a) The Minister, after consulting the MECs, may—

- (i) determine norms and standards for listing activities, in terms of section 16, or for any part of an activity or for a combination of activities;
- (ii) prescribe norms and standards to achieve and measure compliance with the objects of this Act;
- (iii) prescribe reporting and monitoring requirements; and
- (iv) prescribe procedures and criteria to be used by the competent authority for the monitoring of listed activities in order to determine compliance with the prescribed norms or standards.

(b) The norms and standards referred to in subsection (1)(e)(v) must provide for rules, guidelines or characteristics—

- (i) that may commonly and repeatedly be used; and
- (ii) against which the performance of listed activities or the results of such listed activities may be measured for the purposes of achieving the objects of this Act.

(c) The norms and standards referred to in subsection (1)(e)(v) may apply—

- (i) nationwide;
- (ii) in a specific province; or
- (iii) in a specific demarcated geographical area only.

(d) The process of developing and adopting norms or standards referred to in subsection (1)(e)(v) must include the—

- (i) publication of the draft norms and standards for comment in the *Gazette*;
- (ii) consideration of comments received; and
- (iii) publication of the norms or standards in the *Gazette*.

(5) Before making any regulations under this Act, the Minister must—

- (a) publish a notice in the *Gazette*—
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations within a specified period mentioned in the notice; and
- (b) consider all such comments received.

(6) Regulations made in terms of this Act must be published in the *Gazette* for public comment.

Offences

36. A person is guilty of an offence if that person—

- (a) contravenes the restrictions imposed on the use of agricultural land within a protected agricultural area in terms of section 11;
- (b) commences with an activity listed in terms of section 16 without an agro-eco authorisation from a competent authority;
- (c) fails to comply with or contravenes a condition of an agro-eco authorisation granted by a competent authority in terms of section 15;

- (d) refuses or fails to comply with a directive issued by a competent authority in terms of section 32;
- (e) hinders or obstructs an inspector in the performance of any function in terms of this Act;
- (f) pretends to be an inspector or an assistant to an inspector;
- (g) furnishes false or misleading information when complying with a request by an inspector;
- (h) fails to comply with a request by an inspector;
- (i) unlawfully and intentionally or negligently commits an act or omission which detrimentally affects agricultural land; or
- (j) makes a false disclosure on any matter required in terms of this Act.

Penalties

37. (1) Any person convicted of any offence referred to in section 36 is liable to a fine or imprisonment, subject to subsection (3) and (4), as determined by a court of law.

(2) A court, in an appropriate case, may—

- (a) order that the land be rehabilitated or restored to its previous agricultural state or potential, whichever is the most achievable; or
- (b) in the absence of full disclosure of the information required in terms of this Act, order the person concerned to comply with the prescripts of this Act.

(3) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 10 years or to a fine not exceeding R10 million, or to both such fine and such imprisonment.

(4) A person convicted of an offence under this Act who, after conviction, continues with the conduct for which he or she was so convicted, is guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R250 000 or to both such fine and such imprisonment.

Amendment of laws

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

Short title and commencement

39. This Act is called the Preservation and Development of Agricultural Land Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE**Insertion of section 1A in Act 64 of 1998**

The Subdivision of Agricultural Land Repeal Act, 1998, is hereby amended by the insertion after section 1 of the following section:

"Transitional arrangements

1A. (1) Any application, appeal or other process in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), that at the commencement of this Act has not been decided or otherwise disposed of, must be continued and disposed of as if that Act had not been repealed.

(2) Any consent granted or deemed to have been granted in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), remains valid for the specified period or if not specified, for a period of five years from the date of the commencement of this Act."