

REPUBLIC OF SOUTH AFRICA

CONSERVATION OF AGRICULTURAL RESOURCES AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75))

(The English text is the official text of the Bill)

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B XX—2013]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

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

BILL

To amend the Conservation of Agricultural Resources Act, 1983, so as to provide for a new Long Title; to amend the definition of “assignment”; to provide for public trusteeship of the nation’s agricultural natural resources; to provide for metropolitan and district conservation committees; to provide for provincial conservation committees; to provide for a national conservation committee; to provide for the establishment and functioning of the Agricultural Resources Review Board; to provide for the delegation and sub-delegation of powers and assignment of duties by the Minister to Members of the Executive Council; to provide for assignment between spheres of government; to provide for the repeal of laws; to provide for reporting, monitoring, evaluation and assessment; to provide for performance auditing; to provide for national monitoring of provinces; to provide for inter-governmental relations; to provide for governance and other structures; to provide for the establishment and functioning of the Intergovernmental Forum on Agriculture Resources; to provide for public participation and co-ordination; to provide for administrative justice; to provide for the promotion of access to information; and to provide for matters connected therewith.

Amendment of Long Title of the Conservation of Agricultural Resources Act 43 of 1983

1. The Long Title of the Conservation of Agricultural Resources Act, 1983, (hereinafter referred to as the principal Act), is hereby amended by the substitution for the Long Title of the following Long Title:

“To provide for control over the utilisation of the natural agricultural resources of the Republic in order to promote the conservation of the soil, water sources and vegetation; to provide for the prohibition of the spreading of weeds; to provide for control measures for land users; to provide for the issuance of directions by the executive officer; to provide for the establishment and provisions of schemes; to provide for the rendering of advice to land users; to provide for the Minister to perform certain acts; to provide for the maintenance of soil conservation works and maintenance of certain state of affairs; to provide for the Minister to order payment of certain amounts; to provide for the expropriation of land for purposes of restoration or reclamation; to provide for metropolitan and

district conservation committees; to provide for provincial conservation committees; to provide for a national conservation committee; to provide for powers of investigation; to provide for the erection and maintenance of beacons and marks; to provide for the powers of the executive officer; to provide for the establishment and functioning of the Agricultural Resources Review Board; to provide for the delegation and sub-delegation of powers and assignment of duties by the Minister to Members of the Executive Council to provide for secrecy of information acquired under the Act; to provide for penalties; to provide for presumptions and evidence; to provide for liability of an employer and principal; to provide for the delegation of powers and assignment of duties by the Minister to Members of the Executive Council; to provide for assignment between spheres of government; to provide for defects in form; to provide for the limitation of liability; to provide for regulations; to provide for the repeal of laws; to provide for reporting, monitoring, evaluation and assessment; to provide for performance auditing; to provide for national monitoring of provinces; to provide for inter-governmental relations; to provide for governance and other structures; to provide for the establishment and functioning of the Intergovernmental Forum on Agriculture Resources; to provide for public participation and co-ordination; to provide for administrative justice; to provide for the promotion of access to information; and to provide for matters connected therewith.”.

Amendment of section 1 of Act 43 of 1983

2. Section 1 of Act 43 of 1983 is hereby amended:

- (a) by the insertion after the definition of “advisory board” of the following definitions:
““area” means a part of land described by means of a map on which sufficient information is indicated to identify the area, determined by the MEC for purposes of section 15 of this Act;”;
“assignment” means—
(a) the transfer of a power, duty, role or function from the functional domain of national government to one or more provincial governments, and
(b) of the administration of a matter listed in Schedule 4 (Part A) of the Constitution,
and “assign” has a corresponding meaning;”;
- (b) by the addition to the definition of “conservation committees” of the words “and includes committees which fulfil the same functions but are known as ‘soil conservation committees’ or as ‘land care committees’”;
- (c) by the insertion after the definition of “local authority” of the following definition:
““MEC” means a Member of the Executive Council of a Province responsible for agriculture;”; and
- (d) by the insertion after the definition of “prospecting or mining activities” of the following definition:
““region” means a part of land composing of two or more areas, determined by the Minister for purposes of section 16 of this Act;”.

Insertion of section 1A in Act 43 of 1983

3. The following section is inserted in the principal Act after section 1:

“Public trusteeship of nation's agricultural resources

1A.(1) As the public trustee of the nation's agricultural land and all other agricultural resources the national government, acting through the Minister, must ensure that these resources are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.

(2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that agricultural land and all other agricultural resources are equitably accessed and used beneficially in the public interest, while—

(a) ensuring long term food security;

(b) promoting economic and social development; and

(c) promoting environmental values.”.

Substitution of section 15 of Act 43 of 1983

4. The following section is hereby substituted for section 15 of the principal Act:

“Metropolitan and district conservation committees

15.(1)(a)The Minister must, by notice in the Gazette, within six months after commencement of this Act, determine a framework for—

(i) the establishment of; and

(ii) appointment of members on,

committees to be known as metropolitan conservation committees for each metropolitan municipality as contemplated in section 155(1)(a) of Constitution and for each district municipality as contemplated in section 155(1)(c) of the Constitution..

(b) Every MEC must, within six months after the publication of the framework contemplated in subsection (1)(a), by notice in the Provincial Gazette—

(i) determine areas for the Province concerned;

(ii) establish a metropolitan or district conservation committee, as the case may be, for each such area; and

(iii) appoint the members of such committees in the following manner:

(aa) after consultation with the other Members of the Executive Council concerned;

(bb) within a period not exceeding 6 months after the date of the publication of the framework contemplated in subsection (1)(a); and

(cc) in accordance with the framework determined by the Minister as contemplated in subsection (1)(a).

(2) A metropolitan or district conservation committee, as the case may be, for any area—

(a) must 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) must 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 must perform such other duties as may be conferred or imposed upon it by or in terms of this Act, by the Minister or the MEC.

(3)(a) The members of a metropolitan or district conservation committee, as the case may be, must be appointed by virtue of their knowledge of and expertise in respect of the conservation of the agricultural natural resources of the Republic, and must 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) must 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, must 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 or she 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 must 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 No. 76 of 1969), in respect of which a soil conservation committee has been established under that section, must 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, 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 holds 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 or her term of office, be reappointed as a member of the conservation committee.

(b) A member of a conservation committee must vacate his or her office if—

(i) he or she has absented himself or herself from two consecutive meetings of the conservation committee without the leave of the committee;

(ii) he or she ceases to be a land user in the area in respect of which the conservation committee has been established;

(iii) he or she tenders his or her resignation in writing to the chairperson of the conservation committee;

(iv) he or she has been convicted of an offence under this Act;

(v) he or she has been convicted of any other offence in respect of which he or she was sentenced to imprisonment without the option of a fine, and such sentence has not been suspended; or

(vi) the Minister, if in his or her opinion sufficient reasons exist therefor, terminates his or her membership of the metropolitan or district conservation committee, as the case may be.

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

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

(5)(a) The person who at the commencement of this section is the chairperson 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, must be the chairperson of the metropolitan or district conservation committee, as the case may be, in respect of the area concerned until a chairperson is elected in terms of paragraph (b)(ii) of this subsection.

(b) The members of a local conservation committee must elect a chairperson 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 chairperson thereof has become vacant for any reason whatsoever, or as soon thereafter as may be convenient.

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

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

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

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

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

(8) No decision taken by a metropolitan or district conservation committee, as the case may be, or act performed under the authority of such committee must 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 authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the committee who were present at the time and entitled to sit as members.

(9) A metropolitan or district conservation committee, as the case may be, may from time to time appoint from its own members the subcommittees which it may deem necessary, to exercise the powers and perform the duties which such committee may confer upon, delegate to or impose upon it.

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

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

(11) The Minister—

(a) must, with the concurrence of the Minister of Finance, make available funds for the effective implementation and functioning of metropolitan or district conservation committee, as the case may be, from money appropriated by Parliament for this purpose, and (b) may impose conditions regarding the spending of the funds by notice in the *Gazette*.

(12) MECs must annually submit workplans, financial reports and reports on the functioning of metropolitan or district conservation committee, as the case may be, during the financial year concerned, in respect of areas in their jurisdiction, to the Minister.

(13) The Minister must table the reports contemplated in subsection (12) in Parliament within a period not exceeding three months after the end of the financial year concerned.

(14) The Minister must from time to time, in consultation with the Minister of Finance, determine the remuneration and allowances of members of metropolitan or district conservation committee, as the case may be, who are not employed in terms of the Public Service Act.

(15) A determination under subsection (14) must be published by notice in the *Gazette*.

(16) The Department, in cooperation with provincial Departments, must provide—

(a) the administrative capacity;

(b) financial support;

(c) infrastructural support;

(d) training; and
(e) other forms of resource support,
required by metropolitan or district conservation committee, as the case may be,
and subcommittees for the execution of their powers, the performance of their
functions and the carrying out of their duties as contemplated in this Act on a
continuous basis.”.

Substitution of section 16 of Act 43 of 1983

5. The following section is hereby substituted for section 16 of the principal Act:

“Provincial conservation committees

16.(1)(a)The Minister must, by notice in the Gazette, within six months after
commencement of this Act, determine a framework for—

- (i) the establishment of; and
- (ii) appointment of members on,

committees to be known as provincial conservation committees.

(b) Every MEC must, within six months after the publication of the framework
contemplated in subsection (1)(a), by notice in the Provincial Gazette—

- (i) establish a provincial conservation committee for the province
concerned ; and

(ii) appoint the members of such committee in the following manner:

- (aa) after consultation with the other Members of the Executive
Council concerned;
- (bb) within a period not exceeding 6 months after the publication of
the framework contemplated in subsection (1)(a); and
- (cc) in accordance with the framework determined by the Minister as
contemplated in subsection (1)(a).

(2) A provincial conservation committee so established in respect of a particular
province must—

- (a) advise every metropolitan or district conservation committee, as the
case may be, in the province 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) A provincial conservation committee comprises of—

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

(b) For the purposes of paragraph (a)(ii) the MEC may, if he or she deems it expedient, appoint one additional representative of any particular region as a member of the provincial conservation committee.

(c) The members referred to in paragraphs (a)(ii) and (b) must be appointed by the MEC from a list of names consisting of the names of at least four members of the metropolitan and district conservation committees within each region, and who are recommended for such appointment by the provincial director concerned after consultation with all the provincial agricultural unions concerned.

(d) A member referred to in paragraph (a)(iii) must be nominated by the all the provincial agricultural unions concerned to serve on the provincial conservation committee concerned.

(e) Whenever the appointment of a member referred to in paragraph (a)(iii) becomes necessary, the provincial director concerned must request all the provincial agricultural union concerned in writing to submit their nominations to him or her within a specified period.

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

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

(b) A member referred to in subsection (3)(a)(iii) holds 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 or her term of office be re-appointed.

(d) A member of a provincial conservation committee must vacate his or her office if—

(i) he or she has absented himself or herself from two consecutive meetings of the provincial conservation committee without the leave of the committee;

(ii) in the case of a member referred to in subsection (3)(a)(i), he or she ceases to be provincial director of the province concerned or officer under his/ her control;

(iii) in the case of a member referred to in subsection (3)(a)(ii) or (b), he or she ceases to be a member of a provincial conservation committee;

(iv) he or she tenders his or her resignation in writing to the chairperson of the provincial conservation committee; or

(v) the Minister, if in his/ her opinion sufficient reasons exist therefore, terminates his/ her membership of the provincial conservation committee.

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

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

(5) The officers referred to in subsection (3)(a)(i) are the chairperson and vice-chairperson, respectively, of the provincial conservation committee to which they have been appointed.

(6)(a) A provincial conservation committee must meet as often and at such times and places as the chairperson may determine.

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

(c) The chairperson, or in his or her absence, the vice-chairperson of a provincial conservation committee must preside at all meetings of that provincial conservation committee at which he or she is present.

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

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

(8) The provisions of section 15(7), (8), (14), (15) and (16) with the necessary changes, apply to a provincial conservation committee.”.

Substitution of section 17 of Act 43 of 1983

6. The following section is hereby substituted for section 17 of the principal Act:

“National Conservation Committee

17.(1) There is hereby established the national conservation committee.

(2) The national conservation committee must advise the Minister on matters concerning-

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

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

- (i) the executive officer and another officer of the department;

- (ii) one officer of the Department responsible for environmental affairs who has been nominated by the Minister responsible for environment affairs;
 - (iii) one person from among the members of each provincial conservation committee; and
 - (iv) one person nominated by organised agriculture.
- (b) For the purposes of paragraph (a)(iii)-
- (i) a member of any provincial conservation committee who is an officer may not be appointed as a member of the national conservation committee; and
 - (ii) the Minister may, if he or she deems it expedient, appoint one additional person from among the members of any particular provincial conservation committee as a member of the national conservation committee.
- (4)(a) A member referred to in subsection (3)(a)(iii) holds office for the unexpired portion of the period for which he or she has been appointed as a member of a provincial conservation committee.
- (b) A member referred to in subsection (3)(a)(iv) holds 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 or her term of office, be reappointed.
- (d) A member of the national conservation committee vacates his or her office if-
- (i) he or she has absented himself or herself from two consecutive meetings of the national conservation committee without the leave of the committee;
 - (ii) in the case of a member referred to in subsection (3)(a)(i) or (ii), he or she vacates the office held at the time of his or her appointment;
 - (iii) in the case of a member referred to in subsection (3)(a)(iii), he or she ceases to be a member of a provincial conservation committee;
 - (iv) he or she tenders his or her resignation in writing to the chairperson of the national conservation committee; or
 - (v) the Minister, if in his or her opinion, sufficient reasons exist therefor, terminates his or her membership of the national conservation committee.
- (e) A vacancy on the national conservation committee arising in terms of paragraph (d) or as a result of the death or other permanent incapacitation of a member, must be filled by appointment in the manner in which the member who vacated his or her office, or died, or became permanently incapacitated, as the case may be, was required to be appointed.
- (f) A member who is appointed by virtue of paragraph (e) holds office for the unexpired portion of the period for which the member who vacated his or her office, or died, or became permanently incapacitated, was appointed.
- (5) The officers referred to in subsection (3)(a)(i) are the chairperson and vice-chairperson, respectively, of the national conservation committee.
- (6) The provisions of sections 15(7) and (8) and 16(6) and (8) applies with the necessary changes to the national conservation committee.

Amendment of Section 21 of Act 43 of 1983

7. Section 21 of the principal Act is hereby repealed.

Insertion of Section 21A in Act 43 of 1983

8. The following section is inserted in the principal Act after section 21:

“Establishment of Agricultural Resources Review Board

21A.(1) The Agricultural Resources Review Board is hereby established.

(2) The Agricultural Resources Review Board is an independent body which—

(a) has jurisdiction in all the provinces of the Republic; and

(b) may conduct hearings anywhere in the Republic.

(3) The Agricultural Resources Review Board consists of a chairperson, a deputy chairperson and three other members.

(4) The chairperson of the Agricultural Resources Review Board must have at least—

(a) an LLB degree conferred by a South African University,

(b) 15 years' legal experience as a—

(i) retired judge; or

(ii) senior advocate in private practice; or

(iii) legal academic with professorial status employed at a South African University.

(5) The deputy chairperson and the other three members of the Agricultural Resources Review Board must have at least—

(a) an appropriate Honours degree in agriculture conferred by a South African University; and

(b) 15 years' experience in agriculture, agricultural natural resources management and related fields of knowledge: Provided that the persons contemplated in this subsection may, for the last five years, not have been employed in any or more of the three spheres of government or in an organ of state, excluding a higher education institution.

(6) The Minister appoints the chairperson, the deputy chairperson and the other members of the Agricultural Resources Review Board.

(7) The chairperson and the deputy chairperson of the Agricultural Resources Review Board may be appointed in a full-time or part-time capacity while the other members must be appointed in a part-time capacity.”

(8) If, in the view of the chairperson, the nature of a particular review application requires specialist expertise, he or she may co-opt not more than two persons who have expert knowledge and relevant experience: Provided that such person

or persons are appointed in a non-voting capacity in order to advise the Board in respect of the review application concerned.

(9) The Minister must determine the employment conditions and the remuneration of—

(a) the chairperson, the deputy chairperson and all other members of the Agricultural Resources Review Board; and

(b) a person or persons who may be co-opted as contemplated in subsection (8),

in consultation with the Minister of Finance.”.

Insertion of Section 21B in Act 43 of 1983

9. The following section is inserted in the principal Act after section 21A:

“Operation of Agricultural Resources Review Board

21B.(1) Administrative support for the Agricultural Resources Review Board must be provided by officials of the Department designated by the head of the department, subject to the laws pertaining to the secondment of officers in the Public Service.

(2) The expenditure of the Agricultural Resources Review Board must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

(3) The Agricultural Resources Review Board, the chairperson, the deputy chairperson or any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.”.

Insertion of Section 21C in Act 43 of 1983

10. The following section is inserted in the principal Act after section 21B:

“Submission of review applications to Agricultural Resources Review Board

21C.(1) Following a decision by the Minister or his or her delegatee, or the head of department or his or her delegatee, any person or entity who has a direct interest in such decision, may submit an application in writing in the prescribed format to the Agricultural Resources Review Board to have such matter reviewed.

(2) An application for review must be commenced within 30 days after—

(a) notice of the decision is sent to the appellant; or

(b) reasons for the decision are given,

whichever occurs last.

(3) The chairperson must make rules which—

- (a) govern the procedure of the Agricultural Resources Review Board, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Agricultural Resources Review Board; and
- (b) must be approved and published in the *Gazette* by the Minister.”.

Insertion of Section 21D in Act 43 of 1983

11. The following section is inserted in the principal Act after section 21C:

“Decisions of the Agricultural Resources Review Board

21D. A decision of the Agricultural Resources Review Board—

- (a) is final
- (b) must, together with the reasons for the decision, be communicated in writing to the all the parties involved in the review application as contemplated in section 21C.(1).”.

Insertion of Section 21E in Act 43 of 1983

12. The following section is inserted in the principal Act after section 21D:

“Appeals from decisions of Agricultural Resources Review Board

21E.(1) A party to a matter in which the Agricultural Resources Review Board has given a decision on review under section 21D, may appeal to a High Court against that decision.

(2) The appeal must be noted in writing within 21 days after the decision of the Agricultural Resources Review Board has been communicated in accordance with section 4 to all the parties involved in the review application.

(3) The notice of appeal must—

- (a) set out the grounds for the appeal;
- (b) be lodged with the relevant High Court and with the Agricultural Resources Review Board; and
- (c) be served on every party to the matter.

(4) The appeal must be prosecuted as if it were an appeal from a magistrate's court to a High Court.”.

Amendment of Section 26 of Act 43 of 1983

13. Section 26 of the principal Act is hereby repealed.

Insertion of Section 26A in Act 43 of 1983

14. The following section is inserted in the principal Act after section 26:

“Assignment of administration of agriculture to Members of the Executive Council

26A. The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with an MEC, in writing assign a matter or matters relating to the administration of agriculture to the MEC concerned.”.

Insertion of Section 26B of Act 43 of 1983

15. The following section is inserted in the principal Act after section 26A:

“Delegation of powers and assignment of duties by Minister to MECs

26B.(1) The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with the Members of the Executive Council, in writing delegate any power or assign any duty conferred on him or her by or under this Act, other than—

(a) the power to publish notices contemplated in sections 8(1), 15(11), 15(15), 30(A), 30(E), 30(F) and 30(H); and

(b) the power to make regulations contemplated in section 29,
to the MEC concerned.

(2) The MEC concerned may further delegate to the provincial Head of Department any of the powers or duties referred to in subsection (1).

(3) The provincial Head of Department concerned may further delegate to the holder of a specific post, any of the powers or duties referred to in subsection (5).

(4) Such delegation or assignment, as the case may be, does not prevent the Minister from carrying out the assigned duty.

(5) The Minister may at any time withdraw or amend, in writing, a delegation or assignment as contemplated in subsection (1).

(6) The delegation of any power or the assignment of any duty does not divest the Minister of the accountability concerning the carrying out of the assigned duty.”.

Insertion of Section 26C in Act 43 of 1983

16. The following section is inserted in the principal Act after section 26B:

“Inventory of assignments and delegations

26C.(a) The Minister, and at provincial level, every MEC, must establish and maintain an inventory of all assignments and delegations made in accordance with this Act by the Minister to—

(i) a MEC;

(ii) the head of the Department;

- (iii) an official of the Department;
 - (iv) an official of another Department of the national government or a provincial government, as the case may be; and
 - (v) an entity established as contemplated in this Act.
- (b) The inventories contemplated in this section must also include all sub-delegations.
- (c) The head of the national Department and the head of every provincial Department must publish an updated version of the inventory contemplated in this section on the departmental website concerned on the first day of every financial year.
- (d) The inventories contemplated in this section must be available for inspection and copying by any person, at all reasonable times.”

Insertion of Section 26D in Act 43 of 1983

17. The following section is inserted in the principal Act after section 26C:

“Assignment between spheres of government

26D.(1) Any assignment to an MEC of a matter contemplated this Act must be in accordance with the assignment and delegation framework that must be developed in consultation with all Members of the Executive Council responsible for agriculture, and published in the Gazette within a period not exceeding six months after the commencement of this Act.

(2) Any person or entity effecting an assignment must—

- (a) ensure the availability of sufficient funding and other resources required for the full and effective implementation of such assignment; and**
- (b) monitor and review its implementation.”**

Insertion of Section 26E in Act 43 of 1983

18. The following section is inserted in the principal Act after section 26D:

“Legal effect of delegation of power

26E.(1) The delegation of a power does not prevent a competent authority from exercising that power, subject to sub-section (3).

(2) The delegation of a power does not relieve the competent authority from accountability for the exercise of the power.

(3) When a MEC exercises a power that has been delegated to him or her, the exercise of the power has the same force as if it had been exercised by the competent authority.

(4) Any activity in the exercise of a power by a MEC, which was carried out within the scope of the delegation, remains in force and is not invalid by reason—

(a) of the competent authority electing subsequent to the activity contemplated in this item, to exercise that power; or
(b) a subsequent amendment to, or withdrawal of, the delegation.”.

Insertion of Section 26F in Act 43 of 1983

19. The following section is inserted in the principal Act after section 26E:

“Delegation proceedings in writing

26F.(1) All proceedings relating to any delegation contemplated in this Act, must be in writing.

(2) The record of proceedings contemplated in sub-item (1), must be available for inspection and copying by any person, at all reasonable times.”.

Insertion of Section 30A in Act 43 of 1983

20. The following section is inserted in the principal Act after section 30:

“Reporting, monitoring, evaluation and assessment

30A. The Minister must, by notice in the *Gazette* and within six months after commencement of this Act, taking into account national and provincial norms and standards, publish a framework—

(a) providing for the minimum norms and standards in respect of the procedures for, and the frequency of, monitoring, evaluation and assessment of all matters relating to agriculture; and

(b) establishing the necessary mechanisms, processes, procedures and indicators, to report on, monitor, evaluate, assess, and determine the impact of the exercise of powers, the performance of functions and the execution of duties in terms of this Act and any other law by entities in the public and private agricultural sector.”.

Insertion of Section 30B in Act 43 of 1983

21. The following section is inserted in the principal Act after section 30A:

“Performance auditing

30B.(1) All programmes and projects executed, grants allocated, funds allocated, delegations or assignments effected, service level agreements or public private partnerships entered into, or any other administrative action performed in terms of this Act, are subject to monitoring, evaluation, impact assessment and the submission of a written report by the structures as established in terms of section 30A.

(2) The structures established in terms of section 30A must—

(a) in respect of national and provincial frameworks for monitoring, evaluation and impact assessment—

(i) be guided by such frameworks; and

- (ii) develop structures and systems as required in terms of such frameworks; and
 - (iii) submit reports as required in terms of such frameworks; and
 - (b) take into account any written—
 - (i) report that must be submitted from time to time by an agricultural organisation; and
 - (ii) submission, which relates to the provision of agricultural services by an organisation, made by any interested party.
- (3) On receipt of the written report referred to in subsection (1), every Head of a Department—
- (a) may take whatever steps he or she may deem appropriate;
 - (b) must inform the Minister or the MEC, as the case may be, in writing of the steps he or she has taken, and of the reasons for such steps; and
 - (c) must inform the organisation concerned in writing of the steps he or she has taken, and of the reasons for such steps.”.

Insertion of Section 30C in Act 43 of 1983

22. The following section is inserted in the principal Act after section 30B:

“National monitoring of provinces

30C.(1) The Minister must, in consultation with the Members of the Executive Council responsible for agriculture, establish mechanisms, processes and procedures to monitor provincial governments in respect of their performance of the agricultural function.

(2) In the event of the national Department submitting a report to the Minister in respect of the non-delivery or the insufficient delivery of agricultural services by a provincial Government, the Minister may, after consultation with the MEC:

- (a) issue a directive to the provincial Government concerned describing the extent of its failure to provide the specified agricultural service and stating any steps the provincial Government must follow in order to meet its required obligations; or
- (b) determine that one or more specified provincial agricultural services must be performed by the national Department or an agricultural service provider appointed by the national Department, for such period and subject to such conditions as the Minister may determine.

(3) In the event of the Minister electing to proceed in terms of subsection (2)(b), the Minister must send written notice to the provincial government informing the provincial government of:

- (a) the nature and extent of services to be performed by the national Department or agricultural service provider appointed by the national Department;
- (b) the reason for the taking over of the performance of the specified service; and
- (c) the date on which the service will be taken over.”.

Insertion of Section 30D in Act 43 of 1983

23. The following section is inserted in the principal Act after section 30C:

“Applicability of intergovernmental relations framework policy and legislation

30D. All intergovernmental relations in respect of agricultural matters between the national Department and every MEC are governed by the relevant national policy framework and legislation, as well as provincial transversal policy framework and legislation regulating intergovernmental relations.”.

Insertion of Section 30E in Act 43 of 1983

24. The following section is inserted in the principal Act after section 30D:

“Governance and other structures

30E.(1) The Minister may, at the request of an MEC, a provincial Head of Department, or at the Minister’s own discretion, establish by notice in the *Gazette*, one or more governance and other structures to assist in the promotion of the objects and the realisation of the provisions of this Act.

(2) The notice contemplated in subsection (1) must stipulate—

- (a) the composition of the structure concerned;**
- (b) membership of the structure;**
- (c) the terms of reference;**
- (d) procedural matters;**
- (e) reporting requirements; and**
- (f) any other matter that the Minister may deem appropriate for the effective functioning of such structure.”.**

Insertion of Section 30F in Act 43 of 1983

25. The following section is inserted in the principal Act after section 30E:

“Categories of structures

30F. The structures contemplated in section 30E are—

- (a) governance structures consisting of the national Department, provincial government departments, organs of state, and public entities; and**
- (b) stakeholder consultative forums consisting of the national Department, agricultural service providers and other interest groups, and in the discretion of the Minister, also other provincial government departments, organs of state, and public entities; and**
- (c) any other structures that the Minister may establish by notice in the *Gazette*.”.**

Insertion of Section 30G in Act 43 of 1983

26. The following section is inserted in the principal Act after section 30F:

“Powers, functions and duties of structures

30G. The structures established in terms of section 30E—

(a) must, in respect of their specific functional domain, advise the Minister on—

(i) agricultural policy;

(ii) achieving operational uniformity of agricultural programmes, projects and services;

(iii) any matter related to agriculture or the rendering of agricultural services in relation to which the Minister requests advice;

(iv) any other function related to the objects and other provisions of this Act as determined in the establishment notice of the structure concerned;

(v) any other matter related to the objects and other provisions of this Act as requested by the Minister; and

(vi) the performance of any other function or the execution of any duty imposed on it by this Act or any other law;

(b) must –

(i) liaise with national and provincial organisations concerned with agriculture or the rendering of agricultural services; and

(ii) exercise any power, perform any functions and execute any duty conferred on it by this Act or any other law; and

(c) may generally do everything which is deemed necessary or expedient to achieve the objects of this Act as referred to in subsection (1).”

Insertion of Section 30H in Act 43 of 1983

27. The following section is inserted in the principal Act after section 30G:

“Dissolution and reconstitution of structures

30H. The Minister may, after consultation with the structure concerned, at any time, by notice in the *Gazette*, dissolve or reconstitute any of the structures provided for in section 30E.”

Insertion of Section 30I in Act 43 of 1983

28. The following section is inserted in the principal Act after section 30H:

“Establishment and composition of Intergovernmental Forum on Agricultural Resources

30I.(1) The Intergovernmental Forum on Agricultural Resources is hereby established.

(2) The Intergovernmental Forum on Agricultural Resources consists of the—

(a) Ministers of –

(i) Agriculture, Forestry and Fisheries;

(ii) Environmental Affairs;

- (iii) Finance;
- (iv) Rural Development and Land Reform;
- (v) Trade and Industry; and
- (vi) Water Affairs; and
- (b) Chairperson of the National Planning Commission.”.

Insertion of Section 30J in Act 43 of 1983

29. The following section is inserted in the principal Act after section 30I:

“Powers, functions and duties of Intergovernmental Forum on Agricultural Resources

30J. The Intergovernmental Forum on Agricultural Resources must ensure cooperation between national and provincial government departments responsible for, or involved in, agricultural matters.”.

Insertion of Section 30K in Act 43 of 1983

30. The following section is inserted in the principal Act after section 30J:

“Public participation and coordination

30K.(1) The Minister, in consultation with the Members of the Executive Council responsible for agriculture within each province, must, in respect of the development and coordination of agricultural resources, as regards—

- (a) the formulation of policy;
- (b) the drafting of legislation;
- (c) the determination of priorities; and
- (d) the establishment of structures,

implement systems to provide for consultation and inclusive participation of civil society, communities, individuals, and organs of state.

(2) The Minister, in consultation with the Members of the Executive Council responsible for agriculture within each province, must, in respect of the development and coordination of agricultural resources at national and provincial level, take into consideration—

- (a) the national policy and statutory framework; and
- (b) the transversal provincial policy and statutory framework as applicable in the province concerned.”.

Insertion of Section 30L in Act 43 of 1983

31. The following section is inserted in the principal Act after section 30K:

“Administrative justice

30L. The national Department responsible for agriculture, every provincial department responsible for agriculture and every intergovernmental government structure established as contemplated in this Act, must exercise its powers, perform its functions and carry out its duties in full compliance with the

constitutional, national legislative and common law framework relating to administrative justice.”.

Insertion of Section 30M in Act 43 of 1983

32. The following section is inserted in the principal Act after section 30L:

“Promotion of access to information

30M. The national Department responsible for agriculture, every provincial department responsible for agriculture and every intergovernmental lo structure established as contemplated in this Act, must comply with the constitutional and national legislative framework that promotes access to information.”.

Insertion of Section 30N in Act 43 of 1983

33. The following section is inserted in the principal Act after section 30M:

“Act, Regulations and Notices to be maintained and copies to be made available

30N. The Minister must ensure that an electronic version of this Act and all Regulations made under, and all notices issued in terms of, this Act, are—

(a) maintained and updated on a monthly basis; and

(b) made available to the public at large for their access and perusal, which may be downloaded electronically in digital format free of charge.”.

Short title and commencement

34. This Act is called the Conservation of Agricultural Resources Amendment Act, 2013 and comes into operation on a date fixed by proclamation in the *Gazette*.