

REPUBLIC OF SOUTH AFRICA

MARKETING OF AGRICULTURAL PRODUCTS AMENDMENT BILL

*(As amended by the Portfolio Committee on Agriculture, Water Affairs and Forestry
(National Assembly))*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 76B—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEMARKING VAN LANDBOUPRODUKTE

*(Soos gewysig deur die Portefeuljekomitee oor Landbou, Waterwese en Bosbou (Nasionale
Vergadering))*

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 76B—97]

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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 Marketing of Agricultural Products Act, 1996, so as to amend, delete and insert certain definitions; to emphasise the legal personality of the Council; to provide anew for the staff matters of the Council; to provide anew for the financing of the Council; to provide for regulatory measures other than statutory measures; to provide anew for the determination of the maximum value of levies on a particular agricultural product; to redefine the Minister's powers with regard to pools; to make certain textual alterations; to make fresh provision with regard to the property of control boards or similar bodies; and to provide for the furnishing of information to the Council; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 47 of 1996

1. Section 1 of the Marketing of Agricultural Products Act, 1996 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the substitution for the definition of “agricultural product” of the following definition:
 - b. ‘agricultural product’ means a **[primary]** product declared as an agricultural product in term of subsection (2);”;
 - (b) by the substitution for the definition of “parliamentary committees” of the following definition:

“ ‘parliamentary committees’ means the Select **[or]** and Portfolio Committees of Parliament responsible for agricultural affairs;”;
 - (c) by the insertion after the definition of “producer” of the following definition:

“ ‘regulatory measure’ means any measure relating to the regulation of the marketing of agricultural products;”;
 - (d) by the deletion of the definition of “sell”;

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(e) by the substitution for the definition of “statutory measure” of the following definition:

“ ‘statutory measure’ means a levy contemplated in section 15, and a direction contemplated in sections 16, [17] 18 and 19;”;

(f) by the deletion of the definition of “trust”.

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Substitution of section 3 of Act 47 of 1996

2. The following section is hereby substituted for section 3 of the principal Act:

“Establishment of National Agricultural Marketing Council

3. There is hereby established a [council] juristic person to be known as the National Agricultural Marketing Council.”.

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Substitution of section 8 of Act 47 of 1996

3. The following section is hereby substituted for section 8 of the principal Act:

“Personnel of Council and conditions of service

8. (1) [(a)] Such officers or employees appointed in terms of the Public Service Act, 1994, as may be necessary for the proper performance by the Council of its functions, shall be designated for that purpose on a full-time basis by the Director-General after consultation with the Council.

[(b) The personnel referred to in subsection (a) shall be under the control of the chairperson of the Council.

(2) The Council may with the approval of the Director-General enter into agreements with persons for the performance of specific duties or the provision of specific services.

(3) The Minister shall be responsible for approving the budget for the Council after- consultation with the Minister of Finance, and the expenses of the Council and committees of the Council shall be funded by the Department from money appropriated for that purpose by Parliament or received from other sources approved by the Minister.

(4) The chairperson of the Council shall ensure that proper books and financial records are kept by the Council, which books and records shall be audited by the Auditor-General.]

(2) Any officer or employee of the Department may be selected by the Council, in consultation with the Director-General, for transfer to the Council, and if the selection is accepted by such officer or employee, he or she shall, notwithstanding any provision to the contrary in the Public Service Act, 1994 (Proclamation No. 103 of 1994), as from the fixed date or such later date as may be agreed upon between the Director-General and the Council, cease to be such an officer or employee and, without interruption of his or her service, become an employee of the Council.

(3) Any person so transferred shall, with effect from the date of his or her transfer, be appointed by the Council on the conditions of service determined by it to a post in the Council which is similar to that which such person occupied in the Department immediately prior to such transfer: Provided that—

(a) such person’s salary or salary scale shall not be reduced by such appointment;

(b) such person shall retain all vacation and sick leave standing to his or her credit with the Department immediately preceding his or her transfer, including all monetary benefits attached thereto;

(c) such person shall be compensated by the Council for any loss which he or she may incur as a result of such transfer in respect of unemployment benefit contributions, medical aid contributions or other expenditure on health care that is necessary so as not to place him or her in a less favourable position with regard to such expenditure than that which applied to him or her immediately prior to

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his or her transfer, as well as for any other loss arising from any transfer from his or her present headquarters to new headquarters in accordance with the procedure applicable to officers and employees of the Department; and

(d) such person's conditions of employment in respect of matters not specified in paragraphs (a) to (c) shall not be less favorable to him or her [an those which applied to him or her immediately prior to the transfer.

(4) Any person transferred from the Department in terms of subsection (2) who immediately prior to such transfer was a member of the Government Employees Pension Fund, shall notwithstanding any provision to the contrary in any law or in the rules of that pension fund, upon such transfer remain a member of that pension fund for all purposes and the Council shall contribute [o the said pension fund in respect of that person to the same extent as an employer is required in terms of the laws on and the rules of that pension fund to contribute to that pension fund in respect of an employee who is a member of that fund.

(5) For the purposes of [hc Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be deemed to have taken place when an officer or employee of the Department is transferred to the Council in terms of subsection (2), and the position of such officer or employee in respect of the phasing in of tax levied on a benefit or advantage derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall be deemed to remain unchanged.

(6) Any disciplinary steps instituted or contemplated against any person transferred from the Department in terms of subsection (2) in respect of alleged misconduct committed prior to his or her transfer to the Council, shall be disposed of or instituted, as the case may be, in terms of the laws applicable to him or her immediately before such transfer.

(7) At least one month before the fixed date, the Director-General shall in writing inform every officer and employee concerned either—

(a) that he or she has been selected for transfer to the Council in terms of subsection (2), and of the post that will be occupied by him or her and the date on which the transfer is to take effect; or

(b) that he or she is to remain with the Department and of the post which he or she will occupy.

(8) Notwithstanding any provision to the contrary in the Public Service Act, 1994, any proposed action of which an officer or employee is notified in terms of subsection (7), shall be deemed to be an act which may form the subject of an appeal to the Minister in terms of the said Act.

(9) Any such appeal shall be lodged within 14 days of receipt of such notification by the officer or employee.

(10) Any employee of the Council shall be entitled to the ordinary severance conditions and benefits, excluding special voluntary severance conditions, not less favorable to him or her than those prescribed under the Public Service Act, 1994, in respect of a person to whom that Act applies and whose services are terminated.

(11) The Council may enter into agreements with persons for the performance of specific duties or the provision of specific services, and may employ persons to assist it in the performance of its functions.

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

(1.3) For the purposes of this section, the term "fixed date" shall mean the date determined by the Minister by notice in the *Gazette*.

Insertion of section 8A in Act 47 of 1996

4. The following section is hereby inserted after section 8 of the principal Act:

“Financing of Council

- 8A. (1) The funds of the Council shall consist of monies appropriated by Parliament and interest earned on investments by the Council. 5
- (2) The Council shall utilise its funds for defraying expenses in connection with the performance of its functions.
- (3) The Council -
- (a) shall in each financial year, at the time determined by the Minister submit a budget of its estimated income and expenditure during the following financial year for approval by the Minister obtained with the concurrence of the Minister of Finance; 10
- (b) may in any financial year, at any time submit supplementary budgetary inputs of its estimated expenditure for that financial year, to the Minister for his or her approval in consultation with the Minister of Finance; 15
- (c) shall not incur any expenditure which exceeds the total amount approved under paragraphs (a) and (b);
- (d) may with the approval of the Minister invest any surplus funds of the Council: Provided that any surplus at the end of a financial year shall be carried over to the next financial year and form part of the budget of the Council for that financial year. 20
- (4) (a) The chairperson of the Council shall be the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof. 25
- (b) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs of the Council and to explain the transactions and financial position of the Council.
- (c) The accounting officer shall submit year-end financial statements to the Minister within four months after the end of each financial year. 30
- (5) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the Council and shall submit a copy of the report on the audit of the said statements to the Council.
- (6) The financial year of the Council shall be the period from 1 April in any year to 31 March in the succeeding year.” 35

Amendment of section 9 of Act 47 of 1996

5. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (e) of the following paragraphs, respectively:
- “(a) shall, when requested by the Minister, or of its own accord, investigate, in terms of section 11 (2), the establishment, continuation, amendment or revocation of statutory measures and other regulatory measures affecting the marketing of agricultural products, evaluating the desirability, necessity or efficiency and if necessary, proposing alternatives to the establishment, continuation, amendment or repeal of a statutory measure or other regulatory measure and report to and advise the Minister accordingly;” 40
- “(e) may undertake investigations and advise the Minister regarding—
- (i) agricultural marketing policy and the application thereof;
- (ii) the ordination of agricultural marketing policy in relation to national economic, social and development policies and international trends and developments; **[and]** 45
- (iii) the possibilities for promoting the objectives mentioned in section 2(2); and
- (iv) the effect that the marketing of products has on the objectives mentioned in section 2(2).” 50
- (b) by the deletion of paragraph (g). 55

Amendment of section 15 of Act 47 of 1996

6. Section 15 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) the amount of such levy, or the formula by which such a levy shall be calculated: Provided that the value of the levies on a particular agricultural product shall not exceed, in total, five percent of the guideline price for such agricultural product, which guideline price shall- 5

(i) be based on an average price realised minus the cost incurred up to] al its first point of sale during a preceding period not exceeding three years; and 10

(ii) be determined by the Minister in consultation with the Council by notice in the Gazette;”.

Amendment of section 17 of Act 47 of 1996

7. Section 17 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 15

“(1) The Minister may, apart from any pooling arrangements that may be instituted in terms of section 16, [by **notice in the Gazette direct**] arrange that a pool [shall] be conducted by a particular body, at a particular location for the purchase and sale of a particular agricultural product or a class thereof and publicise such arrangement by notice in the Gazette. 20

(2) A pool conducted in terms of subsection (1) shall be conducted on the basis that any person who sells to, buys from or participates in any way in such a pool, shall not be compelled to sell [exclusively] to or buy [exclusively] from such a pool.”.

Amendment of section 19 of Act 47 of 1996 25

8. The following section is hereby substituted for section 19 of the principal Act:

“Registration

19. The Minister may by notice in the *Gazette*, direct that any [**producer of a particular] person mentioned with regard to an agricultural product or class thereof [or any person who disposes of such an agricultural product or class thereof for a profit, or any person involved in the purchase, sale, processing or production of such agricultural products or a class thereof] to which the notice pertains and which such person has in his or her possession or under his or her control, shall be registered as specified in the notice.”.** 30 35

Amendment of section 20 of Act 47 of 1996

9. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister shall [**annually**] by notice in the *Gazette* and through the news media invite any group of persons which regards itself as a group that is directly affected by this Act or any market intervention in terms thereof and which complies with the criteria determined by the Council and set out in the said notice, to furnish the Council with full particulars regarding the reasons why it regards itself so to be affected or potentially affected, its composition, its address and any other information that may be required.”. 45

Amendment of section 21 of Act 47 of 1996

10. Section 21 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may [**appoint**] designate and authorise a person as an

inspector to **[exercise the powers and]** perform the [duties] functions referred to in subsection (3).”.

Amendment of section 26 of Act 47 of 1996

11. Section 26 of the principal Act is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections, 5 respectively:

“(2) From the date of commencement of this Act any property, whether movable or immovable, and whether corporeal or incorporeal, owned, hired or in which any such control board or similar body established by or under a law mentioned in the Schedule has an interest, 10 shall only be disposed of, alienated, *let*, hypothecated or otherwise dealt with [in order to **discharge the scheme’s or body’s liabilities or**], with the approval of the Minister [be transferred to a trust, the purpose of **which is not inconsistent with this Act**].

(3) On dissolution of any scheme in terms of the Marketing Act, 1968 15 (Act No. 59 of 1968), any surplus or shortfall of assets over liabilities of that scheme shall be dealt with in terms of the applicable scheme [**and, failing any provision which prescribes how such surplus or shortfall is to be dealt with, the Minister shall determine how such surplus or shortfall is to be dealt with**].”;

(b) by the addition of the following subsection:

(4) Any remaining assets or liabilities, rights and obligations acquired or accrued in terms of such a scheme, which have not been dealt with in terms of subsection (3) shall be dealt with in terms of a liquidation process determined by the Minister by notice in the *Gazette*. ”. 25

Amendment of section 27 of Act 47 of 1996

12. Section 27 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) the Minister may, [at the request of] after consultation with a 30 control board and [after consultation with] the parliamentary committees, subject to paragraph (a) and subsection (3), by notice in the *Gazette* amend or repeal any scheme, levy, prohibition, requirement, direction, determination, regulation or notice referred to in paragraph (a); “; and 35

(b) by the addition to subsection (2) of the following paragraphs:

“(d) the Minister may direct any control board to furnish the Council with such information pertaining to a scheme and its functions as the Council, the Minister or the parliamentary committees may require; 40

(e) any person who is dissatisfied with a decision of a control board which affects his or her rights, may **appeal** against such decision to the Minister who may, after consultation with the Council, confirm, set aside or vary such decision or make such order in connection therewith as he or she may deem fit.”. 45

Short title

13. This Act shall be called the Marketing of Agricultural Products Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE MARKETING OF AGRICULTURAL PRODUCTS AMENDMENT BILL, 1997

The Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996), (hereinafter referred to as the 'Act') was approved by Parliament during October 1996 and came into operation on 1 January 1997. The National Agricultural Marketing Council (NAMC), which was established in terms of the Act, met for the first time on 6 January 1997. During the implementation of the Act and especially the establishment of a support structure for the NAMC certain problems were experienced that could only be addressed through amendments to the Act. The proposed amendments to the Act consist of technical amendments that have become necessary as a result of shortcomings that came to light during the implementation of the Act:

1. The amendments proposed to the definitions are included either to remove uncertainty (in the case of the definitions of "agricultural product", "consumer", "sell" and "parliamentary committees") or to effect consequential amendments (in the case of "regulatory measure", "statutory measure" and "trust").
2. The legal personality of the NAMC remained obscured in the Act. It is deemed to be expedient that the fact is stated unequivocally in the Act.
3. The NAMC and the Department experienced practical problems regarding control over personnel and the finances of the NAMC. The personnel only consists of seconded public servants who fall under the Public Service Act, 1994, and it is deemed necessary to state this clearly so as to leave no doubt as to who is responsible for their day to day management and to remove any uncertainty in the minds of the staff in question as to their rights. The legal position of seconded public servants has been clearly set out in numerous court decisions and requires no further elucidation.
4. The Bill seeks to enlarge on the financial provisions for the NAMC so as to regulate the finances in the same way as those of other similar councils. The *new* proposals include provision for the financial autonomy of the NAMC, a statutory advisory council to the Minister of Agriculture. The expenses of the NAMC have thus far been included in the budget of the Department and do not represent additional expenditure.
5. The functions of the NAMC in the Act are not specific enough as to their authority to investigate, report on and advise on any measure relating to the regulation of the marketing of agricultural products. The Bill proposes to specify this function of the NAMC.
6. The so-called statutory "ceiling" which the Act places on any levy that could be introduced in terms thereof, was found to be impractical. The Bill proposes to amend the process through which this "ceiling" is determined, and thereby create a practical yet effective precondition for any levy.
7. The Act provides that the Minister may direct any person to conduct a pool on the basis of voluntary participation. However, the intention never was to authorise the Minister to compel any person or body to conduct a pool but rather that such person or body should agree to take on such responsibility. The Bill proposes to amend the Act to reflect this intention.
8. The Act provides that the Minister may invite directly affected groups to register in respect of certain agricultural products on an annual basis. This is proving to be insufficient and the Bill proposes to make multiple invitations for registration possible in any given year.
9. The provision regarding the authority to appoint inspectors under the Act left doubts as to whether it would enable the Minister to designate and authorise inspectors employed by NGOS. The Bill proposes to clarify this matter by authorizing such designations.
10. The provisions regarding the assets, liabilities and contractual rights and obligations of existing agricultural control boards are deemed to be too

restrictive with regard to the manner of disposal of the property of control boards. The Bill proposes that the Minister be given the discretion to approve the manner of disposal thereof during the course of the business of the control board. The Bill furthermore proposes the addition of a liquidation process for control boards, to be determined by the Minister, in cases where inadequate provision was made therefor in the schemes under which control boards operate.

- 1 I. The provision that the scheme under which a control board operates may only be repealed or amended at the request of the control board concerned is undesirable because it could lead to a deadlock if the Minister and the control board are unable to agree on the matter. In the light of the fact that all the control boards are in the process of dissolution, it is deemed to be essential to authorise the amendment or repeal of these schemes by the Minister after consultation with the control boards. The Bill proposes to give the Minister such authority. It also proposes to authorise the Minister to obtain such information from any control board as the Minister, the NAMC or the parliamentary committees may require. A right of appeal to the Minister against any decision of a control board is also proposed.

The following Departments and bodies were consulted:

National Agricultural Marketing Council
 Department of Finance
 Co-ordinating Committee for Agricultural Control Boards
 Land & Agriculture Policy Centre
 South African Agricultural Union
 Chairperson of the Portfolio Committee on Agriculture, Water Affairs and Forestry.

Parliamentary Process

The Department of Agriculture and the State Law Advisers are of the opinion that the procedure established by section 76 of the Constitution should be followed in respect of this Bill.