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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

**PRICE (GST included) 30c PRYS (AVB ingesluit)
ABROAD 40c BUITELANDS
POST FREE · POSVRY**

Vol. 214]

CAPE TOWN, 20 APRIL 1983

[No. 8661

KAAPSTAD, 20 APRIL 1983

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 818.

20 April 1983

No. 818.

20 April 1983

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 36 of 1983: Agricultural Pests Act, 1983.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 36 van 1983: Wet op Landbouplae, 1983.

ACT

To provide for measures by which agricultural pests may be prevented and combated; and for matters connected therewith.

*(English text signed by the State President.)
(Assented to 13 April 1983.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) "apiary equipment" means beehives, accessories to beehives and anything else in which honey-bees, honey, beeswax or the eggs or larvae of honey-bees are kept or treated; (v) 5
 - (ii) "authorized person" means a person to whom a power or duty has been delegated or assigned under section 2 (4); (ix) 10
 - (iii) "control measure" means a control measure contemplated in section 6; (iii)
 - (iv) "controlled goods" means anything mentioned in paragraph (a) or (b) of section 3 (1); (ii)
 - (v) "department" means the Department of Agriculture; (vi) 15
 - (vi) "Director-General" means the Director-General: Agriculture; (vii)
 - (vii) "executive officer" means the officer designated in terms of section 2 (1); (xxiv) 20
 - (viii) "exotic animal" means any vertebrate member of the animal kingdom which is not indigenous to the Republic, and includes the eggs of such a member, but does not include such a member which is an animal to which the Livestock Improvement Act, 1977 (Act No. 25 of 1977), applies or which is a fish as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973); (xxiii) 25
 - (ix) "growth medium" means any solid or liquid substance in which or on which plants are or can be cultivated, including soil in containers or structures used for the cultivation of plants; (x) 30
 - (x) "honey" means honey, whether in combs or not, and pollen collected by honey-bees, and includes any preparation or product consisting of or containing honey or such pollen; (xii)
 - (xi) "infectious thing" means anything, except a plant, which may serve as a medium for the importation or spreading of any pathogen, insect or exotic animal; (iv)
 - (xii) "insect" means any invertebrate member of the animal kingdom, irrespective of the stage of development thereof, but not such a member included in the definition of "fish" in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973); (xiv) 40

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- (xiii) "local authority" means any institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961); (xx)
- (xiv) "Minister" means the Minister of Agriculture; (xvii) 5
- (xv) "officer" means an officer or employee as defined in section 1 of the Public Service Act, 1957 (Act No. 54 of 1957); (i)
- (xvi) "order" means an order contemplated in section 7; (xvi) 10
- (xvii) "owner", in relation to land—
- (a) means the person in whom the ownership of that land is vested or in whose name that land is registered or, if that person is absent from the Republic or his whereabouts are unknown, his representative in the Republic; 15
- (b) which has been sold, includes a buyer in whose name such land has not yet been registered;
- (c) subject to a usufruct, means the usufructuary;
- (d) under the control of a local authority, means that local authority; (viii) 20
- (xviii) "pathogen" means any algae, fungus, bacterium, virus, mycoplasma, spiroplasma, viroid or rickettsia-like organism, but does not include any infectious thing or parasite as defined in section 1 of the Animal Diseases and Parasites Act, 1956 (Act No. 13 of 1956); (xviii) 25
- (xix) "permit" means a permit mentioned in section 3 (1) or 6 (3); (xix)
- (xx) "plant" includes any live or dead part of a plant and any derivation of a plant; (xxi) 30
- (xxi) "prescribe" means prescribe by regulation; (xxv)
- (xxii) "quarantine area" means an area which has been determined as a quarantine area in an order under section 7; (xv)
- (xxiii) "regulation" means a regulation made under this Act; (xxii) 35
- (xxiv) "this Act" includes the regulations; (xiii)
- (xxv) "user of land" means an owner of land, and includes—
- (a) a person who has a personal or real right in respect of land in his capacity of fiduciary, fideicommissary, holder of a servitude, possessor, lessee or occupier, irrespective of whether he resides thereon;
- (b) a person who has the right to cut trees or wood on land or to remove trees, wood or organic material from land; 45
- (c) a person who has the right to remove sand, soil, clay, stone or gravel from land;
- (d) a person who carries on prospecting or mining activities on land. (xi)

Persons charged with administration of Act.

2. (1) The Minister shall designate an officer of the department as executive officer, who shall, subject to the instructions of the Minister, exercise the powers and perform the duties conferred or imposed upon the executive officer under this Act.

(2) The executive officer may delegate any of his powers to an officer, except the power to order under section 7 that something be destroyed.

(3) Any decision or order of such an officer may at any time be withdrawn or amended by the executive officer and shall, until it has been so withdrawn or amended and except in the application of this paragraph, be deemed to be a decision or order of the executive officer. 60

(4) If the Minister deems it fit, he may delegate or assign any power or duty conferred or imposed upon him or the executive officer under this Act to a person who is not an officer.

(5) Any decision or order of such a person may at any time be withdrawn or amended by the Minister and shall, until it has been so amended or withdrawn and except in the application of this paragraph, be deemed to be a decision or order of the Minister or executive officer, as the case may be. 65

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Importation of
controlled goods.

3. (1) Subject to the provisions of subsections (4), (5) and (6) no person shall import into the Republic—

- (a) any plant, pathogen, insect, exotic animal, growth medium, infectious thing, honey, beeswax or used ap-
iary equipment; 5
- (b) anything determined by the Minister by notice in the
Gazette,

except on the authority of a permit.

(2) A person importing controlled goods into the Republic on the authority of a permit— 10

- (a) shall do so only through a prescribed port of entry, ex-
cept where the executive officer has determined some
other place; 10
- (b) shall present them at that place to the executive officer
for such inspection as he deems necessary; 15
- (c) shall not remove them from that place before the
executive officer has consented in writing thereto.

(3) The executive officer may, on application by a person wishing to import controlled goods and against payment of the prescribed fees, grant consent that the inspection contemplated in subsection (2) (b) be carried out at a time other than during the official office hours of the executive officer. 20

(4) The Minister may by notice in the *Gazette* determine that any controlled goods or class of controlled goods be imported into the Republic without a permit, subject to conditions set out in that notice. 25

(5) The Minister may import into the Republic exotic animals of a specified kind, or pathogens or insects of a kind not indigenous to the Republic, if he is of the opinion that the presence thereof in the Republic— 30

- (a) is desirable in order to combat the occurrence of
plants, pathogens, insects or exotic animals of a
specified kind in the Republic;
- (b) is otherwise in the interest of a specified branch of agri-
culture. 35

(6) The Minister may by notice in the *Gazette* determine controlled goods or a class of controlled goods in respect of which a permit for their importation into the Republic may not be issued.

Powers of
executive of-
ficer.

4. (1) If the executive officer has ascertained or suspects on 40
reasonable grounds that controlled goods have been imported
into the Republic or have been or will be conveyed contrary to
the provisions of this Act or a condition referred to in section 3
(4) or of the permit concerned, or that there is with or in any
imported goods any pathogen, insect or exotic animal the im- 45
portation of which has not been authorized, he may—

- (a) order the person in charge of the vehicle with which
those goods have been imported or conveyed or will be
conveyed— 50
 - (i) not to off-load;
 - (ii) not to convey any further;
 - (iii) to off-load at a place determined by him,
such goods or such part thereof as he may determine;
- (b) order the person by whom or on whose behalf such
goods have been imported— 55
 - (i) to destroy at the place, in the manner and within
the period determined by him;
 - (ii) to remove from the Republic through the port, in
the manner and within the period determined by
him; 60
 - (iii) to treat, dispose of or deal with at the place, in the
manner and within the period determined by him,
such goods or such part thereof as he may determine,
including any container or material employed in the im-
portation thereof; 65
- (c) order that such goods or such part thereof as he may
determine be destroyed, after having given the person
by whom or on whose behalf those goods have been

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imported at least seven days' written notice of his intention to do so: Provided that where in the opinion of the executive officer the destruction of the goods is urgently required or the giving of notice is impracticable, notice need not be given; 5

- (d) where a person refuses or neglects to carry out any provision of an order contemplated in paragraph (a) or (b), order that the goods in question be destroyed;
- (e) order that such goods or such part thereof as he may determine, be off-loaded, removed or detained as he may determine, with a view to the exercise of any of his powers. 10

(2) When anything is required to be done in terms of this Act within a certain period, the executive officer may, before or after the expiry thereof and on application or of his own accord, 15 in his discretion determine a further period within which it shall be done.

(3) When the executive officer deems it necessary for the exercise of his powers or the performance of his duties, he may institute any inquiry and in his discretion request any information 20 and demand the production of any document from any person who in his opinion can supply such information or has the custody of such document.

(4) When the executive officer may issue or grant any order, permit or authority in terms of this Act, he may at any time, on 25 application or of his own accord—

- (a) make it subject to such conditions as he thinks fit;
- (b) amend the provisions thereof or the conditions concerned;
- (c) withdraw it. 30

Compulsory notification of presence of locusts on land.

5. (1) A user of land shall forthwith notify the nearest available magistrate, justice of the peace, police officer or officer of the department if flying locusts or voetgangers have appeared on the land concerned or if flying locusts have deposited eggs thereon, describe to him as accurately as possible where on such land 35 the flying locusts, voetgangers or eggs occur, and give him such further relevant information as he may request.

(2) A person who has been notified as provided in subsection (1), shall forthwith convey the information concerned to the Director-General. 40

Prescribing of control measures by Minister.

6. (1) In order to prevent and combat the spreading of pathogens, insects and exotic animals, the Minister may by notice in the *Gazette* prescribe control measures which shall be complied with or carried out by a user of land.

(2) Control measures may relate to— 45

- (a) the destruction of plants;
- (b) the cleansing or destruction of plants or any particular thing infected with pathogens or insects;
- (c) the combating of pathogens, insects or exotic animals;
- (d) the keeping, planting or cultivation of plants; 50
- (e) the keeping of pathogens, insects, exotic animals or any particular thing;
- (f) the removal of plants, pathogens, insects, exotic animals or any particular thing—
 - (i) from any land within a specified area to any other 55 land within the same area;
 - (ii) from any land within a specified area to any land within any other specified area;
- (g) the notification of the occurrence of specified pathogens, insects or exotic animals on land; 60
- (h) any other matter which the Minister may deem necessary or expedient to prescribe in order to further the objects of this Act, 65

and the generality of the power conferred by paragraph (h) shall not be limited by the preceding paragraphs. 65

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(3) A control measure may—

- (a) contain a prohibition or obligation with regard to any matter referred to in subsection (2);
- (b) provide that the executive officer may exempt any person from such a prohibition or obligation by means of a permit.

(4) Different control measures may be prescribed in respect of different plants, pathogens, insects, exotic animals or other things, or in respect of different areas or in respect of different circumstances or in such other respects as the Minister may think fit.

Orders with regard to land.

7. (1) The executive officer may by written notice, which shall be served in the prescribed manner, order any user of land to observe or carry out the provisions of a particular control measure on or with respect to any quarantine area determined in that order, or to do or omit to do any other act on or with respect to such quarantine area in order to further the objects of this Act.

(2) Such an order may provide that anything required in terms thereof, shall be done or omitted in the manner or within or during the period mentioned therein.

(3) The executive officer may, upon application by the user of land concerned and against payment of the prescribed fees, if any, withdraw or amend an order, and for that purpose carry out the necessary inspection of the quarantine area.

(4) (a) Notwithstanding any prohibition in an order referred to in subsection (1) the executive officer may in writing authorize a user of land to remove anything from the quarantine area concerned in order to cleanse or destroy it.

(b) An application for such authority shall be submitted in writing to the executive officer.

(5) (a) If anything has been destroyed by virtue of an order the Minister may, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose pay such compensation as he may consider reasonable in respect thereof.

(b) An application for the payment of compensation in terms of paragraph (a) shall only be considered if it is submitted in writing to the executive officer within 90 days after the date on which the things in question have been destroyed.

Powers of Minister.

8. The Minister may out of moneys appropriated by Parliament for that purpose do any act on or with respect to any land that he considers necessary in order to—

- (a) combat flying locusts and voetgangers and destroy eggs of flying locusts;
- (b) carry out the provisions of a control measure or an order where the user of land concerned refuses or neglects to do so;
- (c) release on or remove from any land any pathogen, insect or exotic animal imported in terms of section 3 (5);
- (d) further the objects of this Act.

Powers of entry and investigation.

9. (1) A person authorized by the Minister to do an act contemplated in section 8 may at any reasonable time—

- (a) enter upon any land in order to do that act on or in connection with such land or any other land;
- (b) proceed over any land in order to reach land on or in connection with which that act is to be done.

(2) Such person may—

- (a) after having notified the user of land concerned of his intention to do so, take with him such persons, animals, vehicles, goods and material as he may require for the purposes of an act referred to in subsection (1) when he enters upon or proceeds over that land;

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(b) require the user of land concerned or his manager, agent or employee on that land to render him such reasonable assistance as may be necessary in the circumstances to enable him to do the act in question.

(3) No compensation shall be payable to any person in respect of the rendering of assistance in terms of subsection (2) (b). 5

(4) The executive officer may at any reasonable time—

(a) enter upon or enter and inspect any land, building or vehicle if he suspects on reasonable grounds that there may be any controlled goods on or in it, and for that purpose he may inspect anything on or in that land, building or vehicle and remove it or a sample thereof for investigation;

(b) inspect any book or document at or on that land, building or vehicle which he suspects on reasonable grounds may relate to any controlled goods, and make copies of or extracts from that book or document;

(c) demand an explanation in connection with any relevant entry in such a book or document or in connection with anything observed by him during his inspection, from any person who in his opinion has knowledge of the entry concerned or of that observed by him;

(d) in his discretion seize anything which may serve as evidence of the commission of an offence in terms of this Act, and for that purpose remove it or a sample thereof or anything else from the land, building or vehicle in question, and affix any identification mark or seal to anything;

(e) enter upon any land in order to demarcate a quarantine area and for that purpose effect or erect any marker, peg, label or other mark on or in connection with any land;

(f) enter upon any land in order to determine if the user of land concerned is complying with or carrying out or has complied with or carried out the provisions of any control measure or order;

(g) proceed over any land in order to reach land so that he can exercise any of his powers or perform any of his duties;

(h) enter upon or enter any land, building or vehicle in order to carry out any other investigation in connection with any matter mentioned in this Act.

(5) When the executive officer wishes to exercise any power referred to in subsection (4) on or in connection with any land, building or vehicle, he may require the user of land, owner or person in charge concerned, or his manager, agent or employee, to render him such reasonable assistance as may be necessary in the circumstances to enable him to exercise the power in question. 45

(6) No compensation shall be payable to any person in respect of the rendering of assistance in terms of subsection (5). 50

(7) Any person authorized under this section to enter upon, enter or proceed over any land, building or vehicle shall show to the user of land, owner or person in charge concerned, or his manager, agent or employee, proof of his identity if he is asked to do so. 55

Recovery of expenses incurred by State.

10. (1) Any amount owing in respect of fees contemplated in section 3 (3) or 7 (3), expenses incurred by the State in the exercise of any power mentioned in section 4 (1) (d) or 8 (b) and the interest mentioned in subsection (3) shall constitute a debt to the State by the person concerned from the dates contemplated in subsections (2) and (3), respectively. 60

(2) Where fees contemplated in section 3 (3) or 7 (3) are owing or where the State has incurred expenses as contemplated in subsection (1), the executive officer shall determine the amount thereof and shall cause a notice to be served on the person con- 65

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cerned in which he is ordered to pay that amount not later than a date specified in the notice.

(3) If the amount owing is unpaid on the specified date, interest thereon shall be payable from the day following immediately on that date at the standard rate of interest determined in terms of section 26 (1) of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and applicable on the date of the notice mentioned in subsection (2). 5

Appeal to Minister.

11. (1) If the executive officer has refused any application, submitted to him in writing, to act under any of his powers, or if he of his own accord has amended or withdrawn any order, authority or permit or any condition attached thereto, he shall as soon as practicable notify the person concerned in writing of the reasons for his refusal or conduct. 10

(2) Any person who feels aggrieved by such refusal or conduct, may appeal against it to the Minister in the prescribed manner, and upon payment of the prescribed amount. 15

(3) The Minister may, after considering the prescribed documents, confirm the refusal or conduct or make such other order as he may think fit, including an order that the prescribed amount, or such part thereof as he determines, be refunded to that person. 20

Preservation of secrecy.

12. No person shall, except for the purposes of exercising his powers or performing his duties in terms of this Act, or for the purposes of legal proceedings under this Act, or when required to do so by any court or under any law, disclose to any other person any information acquired by him in the exercise of those powers or the performance of those duties and relating to the business or affairs of any person. 25

Offences and penalties.

13. (1) Any person who— 30

(a) contravenes the provisions of section 3 (1) or (2), including any condition imposed in connection with a permit;

(b) refuses or neglects to notify the person referred to in section 5 (1) as required or to give him the requested further information; 35

(c) refuses or neglects to comply with or carry out the provisions of a control measure, order or authority, including any condition imposed in connection therewith;

(d) obstructs or hinders the executive officer, an officer or an authorized person in the exercise of his powers or the performance of his duties; 40

(e) effects any unauthorized entry or deletion on any document issued or required under this Act;

(f) refuses or neglects to supply information, produce a document or give an explanation to any person who is in terms of this Act authorized to ask therefor, or who supplies information or gives an explanation knowing it to be false; 45

(g) refuses or neglects to render the assistance contemplated in section 9 (2) (b) or (5); 50

(h) damages, destroys, removes, shifts, alters or otherwise tampers with any marker, peg, label or other mark effected or erected for the purpose of demarcating a quarantine area; 55

(i) discloses information contrary to the provisions of section 12; 55

(j) contravenes any other provision of this Act not specifically provided for in the preceding paragraphs, 60

shall be guilty of an offence and liable— 60

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- (i) on a first conviction of an offence in terms of paragraph (a), (b), (d) or (e), to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; 5
- (ii) on a second or subsequent conviction of an offence mentioned in subparagraph (i), whether the same or some other offence mentioned in that subparagraph, to a fine not exceeding R10 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment; 10
- (iii) on conviction of an offence in terms of paragraph (f), (g), (h), (i) or (j), to a fine not exceeding R600 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. 15

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

Presumptions and evidence.

14. In criminal proceedings under this Act—

- (a) it shall be presumed that the applicable provisions of 20 this Act apply to the land on or in respect of which the offence concerned has allegedly been committed, unless the contrary is proved;
- (b) a document which purports to have been certified by the executive officer to the effect that it is a copy of the 25 order to which the proceedings relate, shall be received as evidence in any court without further proof or the production of the original order;
- (c) if a copy of an order referred to in paragraph (b) purports to have been endorsed by the executive officer to the effect that the order concerned has been served on the person named in that order in a certain manner, it shall be presumed that such order has been served on the said person in that manner, unless the contrary is 30 proved;
- (d) where it is proved that a marker, peg, label or other mark has been damaged, destroyed, removed, shifted, altered or otherwise tampered with contrary to the provisions of this Act, it shall be presumed that it was done by the person who was the user of land in respect 35 of the land in question on the date on which the executive officer became aware of such damage, destruction, removal, shifting, alteration or tampering, unless the contrary is proved. 40

Liability of employer or principal.

15. (1) Any act or omission of a manager, agent or employee 45 constituting an offence under this Act shall be deemed to be the act or omission of his employer or principal, and the said employer or principal may be convicted and sentenced in respect thereof unless he proves—

- (a) that he did not permit or connive at the act or omission; 50
- (b) that he took all reasonable steps to prevent an act or omission of the nature in question; and
- (c) that an act or omission, whether legal or illegal, of the nature in question did not under any condition or circumstances fall within the course of the employment or the scope of the authority of the manager, agent or employee in question. 55

(2) The fact that an employer or principal has forbidden an act or omission of the nature in question, shall not by itself be regarded as sufficient proof that he has taken all reasonable steps as required by subsection (1) (b). 60

(3) The provisions of subsection (1) shall not affect the criminal liability of the manager, agent or employee concerned.

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Regulations.

16. (1) The Minister may make regulations regarding—
- (a) the manner in which application shall be made for any permit or authority;
 - (b) the ports of entry through which controlled goods shall be imported in terms of section 3 (3) (a);
 - (c) fees payable in terms of this Act;
 - (d) the manner in which any notice, order or other document mentioned in this Act shall be or may be served;
 - (e) the manner in which and the period within which an appeal shall be noted in terms of section 11, the officer by whom and the manner in which the refusal or conduct in question shall be investigated, the manner in which an appellant may submit information or evidence or make representations, whether personally or through a legal representative, and the preparation and submission of a report and recommendation to the Minister;
 - (f) any matter required or permitted to be prescribed under this Act;
 - (g) generally any matter which he may deem necessary or expedient to prescribe in order to further the objects of this Act,

and the generality of the power conferred by paragraph (g) shall not be limited by the preceding paragraphs.

(2) Different regulations may be made in terms of this section in respect of different areas in the Republic or in such other respects as the Minister may think fit.

(3) A regulation prescribing fees shall only be made with the concurrence of the Minister of Finance.

Delegation of powers by Minister.

17. (1) The Minister may delegate to an officer any power conferred upon him under this Act, except the power—
- (a) conferred upon him by section 3 (1) (b), (4) or (6);
 - (b) to prescribe control measures under section 6;
 - (c) to decide an appeal under section 11;
 - (d) to make regulations under section 16.

(2) The provisions of section 11 shall apply *mutatis mutandis* in respect of any decision or order of an officer referred to in subsection (1).

Limitation of liability.

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

Certain provisions bind State.

19. The provisions of this Act, except sections 11, 13 and 15, shall bind the State: Provided that no fees shall be payable by the State in terms of this Act.

Repeal of laws.

20. (1) Subject to the provisions of subsections (2) and (3) the Agricultural Pests Act, 1973 (Act No. 3 of 1973), and sections 40 and 41 of the Plant Improvement Act, 1976 (Act No. 53 of 1976), are hereby repealed.

(2) A permit issued in terms of section 11 (1) of the Agricultural Pests Act, 1973, and which is of force at the commencement of this Act, shall be deemed to be a permit contemplated in section 3 (1).

(3) A written notice in terms of section 19 (2) of the Agricultural Pests Act, 1973, or an act repealed by that Act, under which land has been declared to be under quarantine and which is of force at the commencement of this Act, shall be deemed to be an order served under section 7 on the user of land concerned.

Short title and commencement.

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

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