



CHAPTER 18:23

ACQUISITION OF FARM EQUIPMENT OR MATERIAL ACT

Act 7/2004, 6/2005 (s. 26)

ARRANGEMENT OF SECTIONS

Section

1. Title.
2. Interpretation.
3. Prohibition on destruction, etc., of farm equipment or material.
4. Identification of farm equipment or material.
5. Valuation of farm equipment or material.
6. Acquisition of farm equipment or material by acquiring authority.
7. Compulsory acquisition of farm equipment or material.
8. Application for order confirming acquisition of farm equipment or material.
9. Payment for farm equipment or material.
10. Use of acquired farm equipment or material.
11. Impersonation.
12. Regulations.
13. Transitional provision.
14. Amendment of section 5 of Cap. 20:10.

AN ACT to provide for the acquisition of farm equipment or material not being used for agricultural purposes; to amend section 5 of the Land Acquisition Act [Chapter 20:10]; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : 3rd September, 2004]

1 Title

This Act may be cited as the Acquisition of Farm Equipment or Material Act [Chapter 18:23].

2 Interpretation

(1) In this Act—

“acquiring authority” means the Minister of Special Affairs in the President's Office responsible for Lands, Land Reform and Resettlement or any other Minister to whom the President may from time to time assign the administration of this Act;

“designated valuation officer” means a person who is designated as a valuation officer in terms of section *five*;

“farm equipment” means movables used for agricultural purposes on any agricultural land acquired for resettlement purposes under the Land Reform Programme, including irrigation equipment not embedded in the ground, tractors, ploughs, disc harrows, trailers, combine harvesters, pumps not permanently attached to the land, sprinklers, risers, movable storage facilities and Modrho tobacco curers;

“farm material” means material used for agricultural purposes on any agricultural land acquired for resettlement purposes under the Land Reform Programme, including seed, fertiliser, farm feed and chemicals intended for the destruction of any noxious plant or insect or for the prevention, treatment or cure of any disease, infestation or other unhealthy or unfavourable condition of livestock, poultry, domesticated animals and plants;

“identify”, in relation to farm equipment or material or any item thereof, means include in an inventory compiled in terms of section *four*;

“Land Reform Programme” means the Land Reform Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time), in connection with the programme of acquiring agricultural land for resettlement purposes which commenced under the terms of the Land Acquisition Act [Chapter 20:10] on the 23rd May, 2000.

(2) Any word or expression which has not been defined in subsection (1) and to which a meaning has been assigned in any provision of the Land Acquisition Act [Chapter 20:10] shall have the same meaning when used in this Act.

3 Prohibition on destruction, etc., of farm equipment or material

(1) No owner or holder of farm equipment or material shall wilfully demolish, damage, alter or in any other manner impair the farm equipment or material, or cause any other person to demolish, damage, alter or in any other manner impair it, without the permission in writing of the acquiring authority.

(2) An owner or holder of farm equipment or material who contravenes subsection (1) shall be guilty of an offence and liable to— (a) a fine—

(i) equivalent to so much of the amount of the impairment caused to farm equipment or material as is ascertainable in monetary terms; or

(ii) not exceeding level ten; whichever is the greater amount; or

(b) imprisonment for a period not exceeding two years; or

to both such fine and such imprisonment.

4 Identification of farm equipment or material

(1) Any duly authorised representative or employee of the acquiring authority may enter any land or premises at any reasonable time and do such acts thereon as are reasonably necessary to ascertain—

(a) whether there is on the land or premises any farm equipment or material not currently being used for agricultural purposes on any agricultural land; and

(b) the owner or holder of such farm equipment or material; and

(c) the items of such farm equipment or material on the land or premises; and

(d) the condition of such farm equipment or material and its suitability for agricultural purposes.

(2) The acquiring authority shall provide each of its authorised representatives or employees with a certificate indicating his or her authority for the purposes of this section and the authorised representative or employee shall produce such certificate to any interested person on demand.

(3) Upon entering any land or premises the duly authorised representative or employee of the acquiring authority shall, if he or she has reasonable cause to believe that there is any farm equipment or material on the land or premises not currently being used for agricultural purposes on any agricultural land, request the owner or occupier thereof to compile an inventory of such farm equipment or material on the land or premises: Provided that—

(a) the owner or holder of any farm equipment or material shall have the burden of proving, to the satisfaction of a duly authorised representative or employee of the acquiring authority, that such equipment or material is currently being used for agricultural purposes on any agricultural land;

(b) if the owner or occupier thereof refuses to compile an inventory in terms of this subsection, the duly authorised representative or employee of the acquiring authority may proceed to compile an inventory of items which, in the opinion of the representative or employee, comprise farm equipment or material not currently being used for agricultural purposes on any agricultural land.

(4) Any person who, after farm equipment or material has been identified in terms of subsection (3), sells, donates, demolishes, damages, alters or in any other manner impairs or disposes of such farm equipment or material without the permission in writing of the acquiring authority, shall be guilty of an offence and liable to— (a) a fine—

(i) equivalent to so much of the amount of the impairment caused to, or loss of, the farm equipment or material as is ascertainable in monetary terms; or

(ii) not exceeding level ten; whichever is the greater amount; or

(b) imprisonment for a period not exceeding two years; or

to both such fine and such imprisonment.

5 Valuation of farm equipment or material

(1) The acquiring authority may designate as a valuation officer any member of the Public Service who, in the acquiring authority's opinion, is qualified to carry out valuations of farm equipment or material and to exercise any other functions of a designated valuation officer in terms of this Act.

(2) The acquiring authority shall provide every designated valuation officer with a certificate indicating his or her appointment and the designated valuation officer shall produce such certificate to any interested person on demand.

(3) A designated valuation officer shall, at the request of the acquiring authority or his or her duly authorised representative or employee, carry out the valuation of any farm equipment or material identified in terms of section *four*.

6 Acquisition of farm equipment or material by acquiring authority

(1) Subject to this Act, the acquiring authority may, either by agreement or compulsorily, acquire any farm equipment or material not currently being used for agricultural purposes on any agricultural land, where the acquisition is reasonably necessary for the utilisation of that farm equipment or material on any agricultural land.

(2) The acquiring authority shall give not less than seven days' notice of the intention to acquire any farm equipment or material to the person owning or holding the farm equipment or material.

(3) The notice referred to in subsection (2) shall be served in person:

Provided that, where the owner or holder of the farm equipment or material cannot be located, the notice shall be published in the *Gazette* and in a newspaper circulating in the area in which the farm equipment or material to be acquired is situated.

7 Compulsory acquisition of farm equipment or material

(1) After the identification and valuation of farm equipment or material in terms of sections *four* and *five* respectively, the acquiring authority may, if there is no agreement for the purchase of the farm equipment or material concerned—

- (a) acquire the farm equipment or material by making an order compulsorily acquiring the farm equipment or material for compensation equivalent to the value placed on the farm equipment or material by the designated valuation officer; and
- (b) serve on the owner or holder of the farm equipment or material a copy of the order referred to in paragraph (a).

(2) An acquisition order made in terms of subsection (1) shall contain— (a) a description of the farm equipment or material to be acquired; and

(b) the compensation payable for the acquisition of the farm equipment or material.

(3) An acquisition order made in terms of subsection (1) shall be accompanied by a notice in writing inviting the owner or holder to indicate within fourteen days whether he or she contests the acquisition of the farm equipment or material or the compensation fixed therefor.

(4) Upon service of an acquisition order on the owner or holder in terms of subsection (1), ownership of the farm equipment or material shall vest in the acquiring authority, who shall thereupon have the power to take immediate possession of the farm equipment or material.

8 Application for order confirming acquisition of farm equipment or material

(1) Where the owner or holder of any farm equipment or material compulsorily acquired in terms of subsection (1) of section *seven* contests the acquisition of the farm equipment or material or the compensation fixed therefor, the acquiring authority shall, not later than thirty days after the acquisition, apply to the Administrative Court for an order confirming the acquisition of the farm equipment or material.

(2) An application in terms of subsection (1) shall be accompanied by—

- (a) a copy of the acquisition order; and
- (b) copies of the notices served or published, as the case may be, in terms of subsection (2) of section *six* and subsection (3) of section *seven*.

(3) The Administrative Court shall grant an order referred to in subsection (1) where it is satisfied—

- (a) that the acquisition of the farm equipment or material is reasonably necessary for the utilisation of that farm equipment or material on any agricultural land; and
- (b) that the farm equipment or material was not, on the date of its identification, being used for agricultural purposes on any agricultural land; and
- (c) subject to subsection (4), that the compensation fixed by the acquiring authority is reasonable in the circumstances.

(4) In granting an order confirming the acquisition of farm equipment or material, the Administrative Court may fix any compensation that it deems reasonable in the circumstances.

(5) Where the Administrative Court refuses to grant an order confirming the acquisition of farm equipment or material, it shall order the acquiring authority to return the farm equipment or material to the owner or holder thereof.

(6) Where the owner or holder of the farm equipment or material concerned or the acquiring authority is dissatisfied with any decision of the Administrative Court, whether in relation to the acquisition of the farm equipment or material or the compensation fixed therefor, either party may appeal to the Supreme Court against that decision.

9 Payment for farm equipment or material

(1) The acquiring authority shall pay to the owner or holder of any farm equipment or material acquired in terms of this Act the compensation offered, agreed or fixed therefor, as the case may be, within a reasonable time and, in any event, where the farm equipment or material is compulsorily acquired—

- (a) at least one quarter of the compensation payable shall be paid at the time the equipment or material concerned is acquired, or within thirty days thereafter; and
- (b) the balance of the compensation payable shall be paid within—
 - (i) five years after the acquisition thereof in the case of farm equipment; (ii)
 - one year after the acquisition thereof in the case of farm material.

(2) The compensation to be paid to the owner or holder of any farm equipment or material in terms of subsection (1) shall accrue interest at the prescribed rate from date of acquisition thereof.

10 Use of acquired farm equipment or material

(1) Subject to subsection (2), any farm equipment or material acquired in terms of this Act shall vest in the State for the benefit of the Land Reform Programme.

(2) The State may, subject to such conditions as are prescribed under section *twelve* sell or otherwise dispose of for valuable consideration any farm equipment or material acquired in terms of this Act to any private individual, institution or corporation requiring to use the equipment or material for agricultural purposes on any agricultural land:

Provided that if the person from whom the farm equipment or material was acquired by the State contests the acquisition, the State shall not sell or otherwise dispose of it in terms of this subsection until the matter is finally determined in accordance with section *eight*.

[Section substituted by section 26 of Act 6 of 2005]

11 Impersonation

Any person who, for the purpose of gaining entry into any land or premises, falsely holds himself or herself out to be a duly authorised representative or employee of the acquiring authority or designated valuation officer, shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

12 Regulations

The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

13 Transitional provision

(1) Anything done in terms of any provision of the Presidential Powers (Temporary Measures) (Acquisition of Farm Equipment or Material) Regulations, 2003, published in Statutory Instrument 273A of 2003, shall be deemed to have been done in terms of the corresponding provision of this Act.

(2) This Act shall be deemed to have come into operation on the 15th December, 2003.

14 Amendment of section 5 of Cap. 20:10

(1) Section 5 ("Preliminary notice of compulsory acquisition") of the Land Acquisition Act [*Chapter 20:10*] ("the principal Act") is amended□

- (a) in subsection (4) by the deletion of "two years" wherever it occurs and the substitution of "ten years";
- (b) in subsection (9) in paragraph (c) by the deletion from subparagraph (i) of "thirty days" and the substitution of "five days".

(2) Subsection (4) of section 5 of the principal Act as amended by this Act shall apply□

- (a) to every notice issued in terms of subsection (1) or (3) of section 5 of the principal Act before the date of commencement of this Act and in force at such date;
- (b) to a fresh notice issued in terms of subsection (1) or (3) of section 5 of the principal Act after the date of commencement of this Act in respect of land subjected to a previous notice which has lapsed before such date.