



Republic of Namibia
Annotated Statutes

Livestock Improvement Act 25 of 1977 (RSA)

(RSA GG 5462)

brought into force in part in South Africa on 1 May 1979 by RSA Proc. R.80/1979 (RSA GG 6416), with the *exception* of portions of section 1; portions of section 9(3)(b); sections 18, 19, 20, 21, 22, 23, 30(1)(q), (r) and (s), 34(1)(k) and 36; section 30(1)(i) in so far as it relates to section 30(1)(q), (r) and (s); and portions of section 37;
APPLICABILITY TO SOUTH WEST AFRICA UNCERTAIN

RSA Proc. R.80/1979 reads as follows:

"I hereby declare that all the provisions of the said Act except -

- (a) the definitions of "Stud Book Association" and "livestock breeders' society" in section 1;
- (b) section 9(3)(b) in so far as it relates to other animals than those of which the pedigree and performance records have been evaluated in terms of a scheme, irrespective of whether the scheme concerned was established under the said Act or not;
- (c) sections 18, 19, 20, 21, 22, 23, 30(1)(q), (r) and (s), 34(1)(k) and 36;
- (d) sections 30(1)(i) in so far as it relates to section 30(1)(q), (r) and (s); and
- (e) section 37 in so far as it relates to -
 - (i) the Registration of Pedigree Livestock Act, 1957 (Act 28 of 1957);
 - (ii) the Registration of Pedigree Livestock Amendment Act, 1962 (Act 27 of 1962); and
 - (iii) the Registration of Pedigree Livestock Amendment Act, 1967 (Act 1 of 1967);

shall come into operation on 1 May 1979."

The 1993 judgement of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) (dated 1 November 1993) found that the Act had never been brought into operation in South West Africa by proclamation, as section 38 of the Act requires. However, the Act was amended in independent Namibia in 1993, and the Ministry continues to issue subsidiary notices under the Act as if it were in force.

APPLICABILITY TO SOUTH WEST AFRICA: Section 1 defined "Republic" to include "the territory", which was defined as "the territory of South West Africa". Section 35 stated "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." However, section 38 stated that the Act would come into operation only on a date fixed by the State President by Proclamation in the South African *Government Gazette*.

Portions of the Act were brought into force in South Africa by the State President with effect from 1 May 1979 by RSA Proc. R.80/1979 (RSA GG 6416). The State President was acting in terms of section 38 of the Act, which was excluded from transfer to South West Africa, and so had the authority to bring the Act into force with respect to South West Africa. However, the Proclamation which brought the Act into force in part in South Africa does not appear to have been applicable to South West Africa because it occurred after the date of transfer and yet made no explicit reference to South West Africa or to the consent of the South West African Administrator-General. Section 3(4) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, provides as follows:

"(4) Any proclamation, regulation or rule which is issued or made after the commencement of any transfer proclamation by, or on the authority of, the State President or Minister under a law which at such commencement applies both in the territory and in the Republic, and which is published in the *Government Gazette* of the Republic, shall, notwithstanding the provisions of subsection (1) apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) shall apply [which provides *inter alia* that a

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reference to the State President in a law covered by a transfer proclamation shall be construed as a reference to the Administrator-General].” [emphasis added]

A possible counterargument might be that the Act did not “apply” in both South Africa and South West Africa before it was brought into force and so did not fall under section 3(4). However, it should be noted that the post-independence case of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) drew a distinction between “applying” and being “operative”, and found that the Act is not actually in force in Namibia:

“The problem is that s 35 applied the Act to Namibia, but did not make it operative in Namibia because s 38 of the said Act provided:

‘(1) This Act shall be called the Livestock Improvement Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

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

The proclamation which put part of the said Act into operation was Proc R80 of 1979, but only in South Africa. It must be assumed that the State President deliberately did not put the Act into operation in Namibia. He could have done so by merely stating in Proc R80 of 1979 that Proc R80 of 1979 applies in the territory of South West Africa, and is made with the consent of the Administrator-General.

Even in South Africa the said Livestock Improvement Act was passed and assented to by the State President and published in Government Gazette 5462 of 23 March 1977. Part of it was, however, only put into operation in South Africa by Proc R80 of 1979 on 1 May 1979.

The question is why? Again the answer is obvious. It was provided for in the Act itself that a large number of administrative organs and the appointment of officials to carry on the day-to-day administration of the Act would be in place once it, or a relevant part of it, would come into operation. So, for example:

(a) The Minister had to appoint 16 members to the Advisory Board in s 3 of that Act, of which two had to be officers of the Department of Agriculture and one had to be an officer of the Department of Agriculture, Economics and Marketing.

(b) The Minister had to appoint a Registrar in terms of s 4 of that Act.

(c) The Registrar had to invite a list of names of three persons to be submitted to him by each one of the 13 associations, Boards or companies contemplated in s 3(2)(b)(i)-(xiii).

(d) The Minister had to appoint the executive committee of the Studbook Association and the other committees contemplated in s 3(5)(c)(i)-(iii) read with s 16(2)(b).

(e) A register had to be prepared as contemplated in s 5 of the Act.

(f) Notices as contemplated in s 2 and regulations contemplated in s 34 had to be prepared to be ready for promulgation before, on or shortly after the date on which the Livestock Improvement Act had come into operation.

(g) The application forms in terms whereof one could apply for -

(i) registration as an inseminator;

(ii) registration of premises as an artificial insemination centre;

(iii) a certificate for the approval of an animal to collect semen;

(iv) the renewal of a registration of an artificial insemination centre;

(v) the renewal of certificates in respect of animals for the collection of ova, and the like - see, for example, the numerous forms and certificates contemplated in Schedules I-XVI of Government Gazette 6416, dated 27 April 1979.

It is important to note that, when a law provides for certain organs and procedures to be established without which the Act cannot be implemented properly, the Legislature usually provides that the law will only become ‘operative’, as distinguished from ‘applicable’, on a date to be determined by the President, Administrator, Minister or similar entity by proclamation or notice in the Gazette.

The Legislature that enacts an Act may even provide for bringing different parts of an Act into operation on different dates, as was the case in the Livestock Improvement Act, 1977. This last procedure should of course only be used if the various sections or parts of such an Act are severable and would not be applicable to s 16(1) and (2)(a) and (b) of the Livestock Improvement Act 1977 and its various parts.

That an Act is capable of being administered (notwithstanding the fact that it has not as yet come into operation) is furthermore explicitly envisaged in s 12(3) of the Interpretation of Laws Proclamation 37 of 1920 [OG 35], which provides as follows:

‘(3) Where a law confers a power -

(a) to make any appointments; or

(b) to make . . . rules, regulations or by-laws; or

(c) to give notices; or

(d) to prescribe forms; or

(e) to do any other act or thing for the purpose of the law,

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into

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operation at the commencement thereof, subject to this restriction that any instrument ... rules, regulations or by-laws made ... under the power shall not ... come into operation until the law comes into operation.' (My emphasis.)

See also s 14 of the equivalent South African Act 33 of 1957, and *S v Manelis* 1965 (1) SA 748 (A) at 753.

It is common cause between the State and defence that at the time of the alleged offences, ie in April 1993, about six years after the Act was passed, the crucial organs and procedures for receiving, considering and deciding applications for written authorisation to import, as provided for in s 16 of the said Act, had still not been established in Namibia.

Mr Small is correct in contending that the Administrator-General had the power himself to declare the Act operative in Namibia, but for that an AG proclamation expressly stating that the Act is operative from a certain date would have been necessary. I do not understand Mr Small to contend that such an AG proclamation was ever issued. **[This appears to be incorrect. Section 3(1)(h) of the transfer proclamation excluded section 38 from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the reference to the State President in section 38 was not to be construed as referring to the Administrator-General.]**

In conclusion on this issue I must point out that the provision in an Act of Parliament that the date of operation is to be decided on and promulgated by an organ of the Executive may be regarded as an administrative function or as delegated legislation or a combination of both. In all instances, however, the decision to declare operative, and the declaration itself, must comply with the provisions of the enabling Act, and must in itself be reasonable and not ambiguous, particularly where it provides for criminal offences and criminal sanctions for non-compliance with the provisions of the Act.

To declare an Act operative, when essential organs or procedures for complying with the law and for avoiding a contravention and avoiding criminal sanctions are not yet established, appears to me not only to be *ultra vires* the enabling Act but in conflict with art 18 of the Namibian Constitution. See also art 21 of the Namibian Constitution; Steyn Die Uitleg van Wette 5th ed at 238-49.

Even if the State President, or the Administrator-General in this instance, declared the Act as a whole or parts of it operative at any point in time, when the organs and procedures to be set up under s 16 were not yet established, it seems to me that such declaration would in itself be *ultra vires* or unconstitutional, particularly insofar as it purported or purports to make s 16(1) and 16(2)-(8) of the said Act operative."

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978, dated 2 March 1978.

Section 3(1)(h) of the transfer proclamation excluded section 4(1), the references to the Minister in section 33, and section 38 of the Act from the operation of section 3(1)(c) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977. Section 3(2) of the transfer proclamation excluded the Act from the operation of section 3(1)(c) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that Republic retained the meaning given to it in the definition section of the Act (South Africa and South West Africa).

The provisions of the Act relating to the Advisory Board for Animal Production were excluded from transfer by section 3(2)(b) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which exempted from the operation of section 3(1) "those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic".

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Livestock Improvement Amendment Act 31 of 1984 (RSA GG 9168)* – which was not made expressly applicable to South West Africa.

The Act was substantially amended after Namibian independence (and after the High Court ruling on the Act) by Act 25 of 1993 (GG 753), which establishes a Livestock Improvement Board. The Ministry has also issued notices under the Act in recent years, indicating that Government believes the Act to be operative in Namibia.

as amended by

Livestock Improvement Amendment Act 25 of 1993 (GG 753)
came into force on date of publication: 2 December 1993

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ACT

To provide for the development and promotion of the livestock industry; for the establishment of an Advisory Board for Animal Production; for the control of the collection and sale of semen and ova and the artificial insemination and inoovulation of certain animals; for a system of evaluation and certification of the performance of certain animals with the object of improving the genetic production potential of certain kinds and breeds of animals; for the control of the importation and exportation of certain animals, semen, ova and eggs; for the incorporation as livestock breeders' societies of certain groups of persons engaged in the breeding of certain kinds and breeds of animals; and for the continuation of the legal personality of the South African Stud Book and Livestock Improvement Association, the Karakul Breeders' Society of South Africa and certain registered societies; and to provide for matters connected therewith.

(Afrikaans text signed by the State President)

(Assented to 15 March 1977)

ARRANGEMENT OF SECTIONS

1. Definitions
2. Application of Act
3. Livestock Improvement Board
4. Designation of registrar
5. Register of inseminators, A.I. centres, animals and livestock breeders' societies
6. Register to be evidence
7. Prohibition of collection of semen or artificial insemination and inoovulation of animals
8. Prohibition of sale of semen
9. Requirements for registration of inseminators and A.I. centres and for approval of animals
10. Registration of inseminators and A.I. centres and approval of animals
11. Period of registration or approval
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13. Termination of registration or approval
14. Establishment of schemes
15. Provisions of a scheme
16. Importation of animals, semen, ova and eggs
17. Exportation of animals, semen, ova and eggs
18. Incorporation of livestock breeders' societies
19. Amendment of constitution
20. Annual return
21. Action in case of complaints against livestock breeders' societies
22. **[deleted]**
23. Exclusive powers of Stud Book Association and Karakul Breeders' Society
24. Fees not payable by State
25. Discretionary powers of registrar
26. Power to enter upon premises, carry out inspections, take samples for examination and seize substances or articles
27. Appeal against decisions or actions
28. False or misleading advertisements

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29. Secrecy
30. Offences and penalties
31. Evidence and presumptions
32. Assignment of powers and duties
33. Limitation of liability
34. Regulations
35. [deleted]
36. [deleted]
37. [deleted]
38. Short title and commencement

Schedule
LAWS REPEALED

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

**[Act 25 of 1993 makes the following substitutions throughout the Act:
* "Ministry" for "Department"; and
* "Namibia" for "the Republic".]**

Definitions

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

“advertisement”, in relation to any animal, semen, ova or eggs, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference -

- (a) appearing in a newspaper or other publication;
- (b) distributed to members of the public; or
- (c) brought to the notice of members of the public in any manner,

and which is intended to promote the sale or encourage the use of such animal, semen, ova or eggs; and “advertise” has a corresponding meaning;

[definition of “advisory board” deleted by Act 25 of 1993]

“A.I. centre” means any premises registered as an A.I. centre in terms of section 10;

“animal” means any member of any such kind of animal and of any such breed thereof as may in terms of section 2 have been declared to be a kind and breed of animal for the purposes of this Act;

“board” means the Livestock Improvement Board established by section 3;

[definition of “board” substituted by Act 25 of 1993]

[definition of “Department” deleted by Act 25 of 1993]

“egg” means a fertilized egg of poultry, or of an ostrich which is an animal;

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“inseminator” means a person who collects semen or carries out the artificial insemination of animals;

“livestock breeders’ society” means a group of persons promoting the breeding (including the recording for registration of pedigrees), improvement and use of animals belonging to a kind and breed which has in terms of section 2 been declared, and in respect of which a certificate of incorporation has been issued in terms of section 18;

[The definition of “livestock breeders’ society” was never brought into force (see RSA Proc. R.80/1979), but it was amended by Act 25 of 1993 (not all of the changes are indicated by amendment markings).]

“livestock industry” means the industry involving animals;

“Minister” means the Minister of Agriculture, Water and Rural Development;

[definition of “Minister” substituted by Act 25 of 1993]

“Ministry” means the Ministry of Agriculture, Water and Rural Development;

[definition of “Ministry” inserted by Act 25 of 1993]

“officer” means an officer as defined in section 1(1) of the Public Service Act, 1980 (Act 2 of 1980);

[The definition of “officer” is substituted by Act 25 of 1993. The Public Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]

“ovum” means a fertilized or unfertilized ovum of an animal other than poultry;

“poultry” means any poultry which is an animal;

“poultry industry” means that branch of the livestock industry involving poultry;

“prescribed” means prescribed by regulation;

“register” means the register kept in terms of section 5;

“registrar” means the officer designated as Registrar of Livestock Improvement in terms of section 4, and includes an officer acting under a delegation from or under the control or direction of the registrar;

“regulation” means a regulation made under this Act;

[definition of “Republic” deleted by Act 25 of 1993]

“scheme” means a scheme established under section 14;

“sell” includes offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or exchange or dispose of to any person in any manner, whether for a consideration or otherwise; and “sale” has a corresponding meaning;

“semen” means the semen of an animal;

[The definition of “Stud Book Association” was never brought into force. See RSA Proc. R.80/1979. It was deleted by Act 25 of 1993.]

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[definition of “the territory” deleted by Act 25 of 1993]

“this Act” includes the regulations;

“veterinarian” means a person registered or deemed to be registered in terms of the Veterinary and Para-Veterinary Professions Proclamation, 1984 (Proclamation AG. 14 of 1984), to practise a veterinary profession as defined in section 1 of that Proclamation.

[definition of “veterinarian” substituted by Act 25 of 1993]**Application of Act**

2. (1) The provisions of this Act shall apply with reference to any such kind and breed of animal as the Minister may by notice in the *Gazette* declare to be a kind of animal and a breed thereof for the purposes of this Act.

(2) Different kinds and breeds of animals may be so declared in relation to different provisions of this Act.

(3) The Minister may likewise declare that any provision of this Act shall only apply -

- (a) in one or more specified areas of Namibia; or
- (b) to any person or persons belonging to a specified class.

Livestock Improvement Board

3. (1) There is hereby established a board to be known as the Livestock Improvement Board.

(2) The board shall exercise and perform all powers, duties and functions conferred or imposed upon it by this Act, and shall advise the Minister in relation to -

- (a) the orderly development and improvement of the livestock industry;
- (b) the co-ordinated development and improvement of the different branches of the livestock industry;
- (c) the provision of services in accordance with the needs of the livestock industry;
- (d) the desirability of the establishment of a scheme under section 14, and the provisions of such a scheme;
- (e) priorities in respect of research, and the co-ordinated utilization of research facilities, in connection with the livestock industry;
- (f) information services required for the livestock industry;
- (g) the importation and exportation of animals, semen, ova and eggs;
- (h) the collection and sale of semen and ova;
- (i) the artificial insemination and inoovulation of animals;

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- (j) any matter assigned to the board by this Act or any matter affecting the livestock industry and which the Minister may refer to it for advice or with regard to which the board may consider it necessary to advise the Minister.
- (3) The board shall consist of -
- (a) the registrar;
- (b) two officers in the service of the Ministry designated by the Minister from time to time; and
- (c) seven other members appointed by the Minister, of whom -
- (i) one shall be a person nominated for appointment by the board established by section 2 of the Meat Industry Act, 1981 (Act 12 of 1981);
- (ii) one shall be a person nominated for appointment by the board established by section 2 of the Karakul Pelts and Wool Act, 1982 (Act 14 of 1982);
- (iii) five shall be persons selected by the Minister from amongst persons who, in the opinion of the Minister, have had experience of, and shown capacity in, matters that are relevant to the functions of the board;

[Subparagraph (iii) should end with a full stop instead of a semicolon.]

(4) Whenever the nomination of a member referred to in subparagraph (i) or (ii) of paragraph (c) of subsection (3) becomes necessary, the Minister shall, in writing, request the board referred to in the appropriate subparagraph to nominate, within the period specified by the Minister, a person for appointment to the board.

(5) If a nomination is not received by the Minister within the period requested, the Minister may appoint such person as he or she thinks fit, and a person so appointed shall hold office as if he or she had been nominated as required by subsection (4).

(6) Any person appointed as a member of the board under paragraph (c) of subsection (3) shall, subject to the provisions of subsection (7), hold office for a period of three years, and may be re-appointed at the expiration of that period.

(7) A member of the board appointed under paragraph (c) of subsection (3) shall vacate his or her office if -

- (a) he or she by written notice delivered to the Minister resigns as member;
- (b) his or her estate is sequestrated;
- (c) he or she is convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
- (d) he or she has been absent from three consecutive meetings of the board without its leave; or
- (e) he or she is removed from office by the Minister under subsection (8).

(8) A member of the board appointed under paragraph (c) of subsection (3) may be removed from office by the Minister if the Minister is of the opinion that he or she -

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- (a) is incapacitated by physical or mental illness;
- (b) is otherwise unable or unfit to discharge the functions of a member of the board.

(9) If the office of a member of the board appointed under paragraph (c) of subsection (3) becomes vacant, the Minister shall appoint another person to fill the vacancy until the expiration of the period during which such member would, but for the vacation of his or her office, have continued in office.

(10) The members of the board shall from amongst themselves elect a member, other than the registrar, to be the chairperson of the board.

(11) The first meeting of the board shall be held at the time and place determined by the Minister and thereafter meetings of the board shall be held at such times and places as the board determines: Provided that the chairperson shall at the request of the Minister or the request in writing of at least three members of the board, convene a special meeting of the board.

(12) Five members of the board shall constitute a quorum at any meeting of the board.

(13) The chairperson or, in his or her absence, such other member as the members present shall elect, shall preside at a meeting of the board.

(14) The decision of a majority of the members of the board present at any meeting thereof shall constitute a decision of the board, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote.

(15) The board may determine the procedure at its meetings or at the meetings of any committee thereof.

(16) The administrative work incidental to the performance of the functions of the board shall be performed by the registrar with due regard to such instructions as may be issued by the board.

(17) (a) The board may establish committees to advise it on any matter relating to its functions, or to perform any functions of the board which the board may delegate to it under subsection (18) and may appoint such persons, including, subject to the approval of the Minister, persons other than members of the board, as it may deem fit to be members of any such committee.

(b) The board may designate any member of a committee as chairperson thereof.

(c) The board may amend or set aside any decision of any such committee.

(18) The board may delegate to any committee of the board or any member of the board referred to in paragraph (b) of subsection (3) any power or function conferred or imposed on the board by section 16 or 17.

(19) (a) A member of the board or a committee who is not in the full-time employment of the State shall be paid such remuneration and allowances as the Minister, in consultation with the Minister of Finance, may determine.

(b) The remuneration and allowances referred to in paragraph (a) and all other expenditure which may be payable or incurred in connection with the performance

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or exercise of the powers, duties and functions of the board, shall be defrayed out of moneys appropriated by Parliament for such purpose.

- (20) (a) If a member of the board or his or her spouse or any company or partnership of which he or she is a director or shareholder or partner is in any way directly or indirectly interested in a matter being considered or about to be considered by the board and whereby his or her private interest may conflict with his or her duties as a member of the board, he or she shall disclose the nature of his or her interest at a meeting of the board at the first opportunity it is possible for him or her to do so.
- (b) A member of the board who has an interest in a matter as contemplated in paragraph (a), shall not be present during any deliberation, or take part in any decision, of the board, with respect to that matter.

[section 3 substituted by Act 25 of 1993]

Designation of registrar

4. (1) The Minister shall designate an officer of the Ministry as Registrar of Livestock Improvement, who shall exercise the powers and perform the duties conferred or imposed upon the registrar in terms of this Act.

(2) The registrar shall exercise his powers and perform his duties subject to such instructions as may be issued by the Minister.

- (3) (a) Any power conferred or duty imposed upon the registrar may be exercised or performed by the registrar personally or by an officer under a delegation from or under the control or direction of the registrar.
- (b) Any decision made or order given by any such officer may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made or given by the registrar.

Register of inseminators, A.I. centres, animals and livestock breeders' societies

5. (1) The registrar shall keep a register of inseminators registered as such in terms of section 10, A.I. centres, animals approved in terms of section 10 and livestock breeders' societies, in which the prescribed particulars relating to such inseminators, A.I. centres, animals and livestock breeders' societies shall be recorded.

(2) The register shall upon payment of the prescribed fee, be open for inspection at the office of the registrar during office hours.

(3) The registrar shall furnish any person at his request and on payment of the prescribed fee, with a copy of any particulars recorded in the register or a certificate in respect thereof.

Register to be evidence

6. (1) The register shall be *prima facie* evidence of all matters directed or authorized by this Act to be noted therein.

(2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorized by this Act to be done,

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has or has not been done, shall be *prima facie* evidence of the matters specified in such certificate.

(3) A copy of an entry in the register or an extract from the register, purporting to be certified by the registrar, shall be admitted in evidence in any court of law without further proof or production of the original.

Prohibition of collection of semen or artificial insemination and inovulation of animals

7. (1) No person shall collect semen from an animal or artificially inseminate an animal unless he -

- (a) is a veterinarian;
- (b) is registered as an inseminator in terms of section 10; or
- (c) is the owner of or is in the full-time employment of the owner of the animal from which such semen is collected or which is artificially inseminated.

(2) Subject to the provisions of subsection (3), no person shall collect semen from an animal unless such animal has been approved in terms of section 10 for the purpose of collecting semen.

- (3) The provisions of subsection (2) shall not apply to the collection of semen -
 - (a) if it is collected exclusively for the purpose of being examined or tested; or
 - (b) if the semen so collected is used exclusively for the artificial insemination of animals also belonging to the owner of the animal from which such semen is collected, but subject to the provisions of subsection (5).

(4)

[subsection (4) deleted by Act 25 of 1993]

(5) An animal from which semen has been collected for the purpose of the artificial insemination of animals shall not be used for breeding purposes with, and the semen collected from such animal shall not be used for the purpose of the artificial insemination of, animals of more than five joint or successive owners of such animal, unless it has been approved in terms of section 10 for the purpose of collecting semen.

(6) No person shall, except on such conditions as may be prescribed or the registrar may determine, collect or sell ova or inovulate an animal.

Prohibition of sale of semen

8. (1) No person shall sell semen unless such semen -
- (a) has been collected by a veterinarian or a person who is registered as an inseminator in terms of section 10;
 - (b) has been collected from an animal approved in terms of section 10 for the purpose of collecting semen;
 - (c) has been collected at an A.I. centre;

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- (d) is of the prescribed composition and efficacy, and possesses such other properties as may be prescribed; and
- (e) is packed in the prescribed manner in a container which complies with the prescribed requirements and is sealed and marked or labelled in the prescribed manner.

[subsection (1) amended by Act 25 of 1993]

- (2) Notwithstanding the provisions of subsection (1) -
 - (a) the registrar may, on the application of the seller of an animal which has not been approved for the purpose of collecting semen in terms of section 10, approve that he may sell semen collected from such animal to the buyer of that animal;
 - (b)

[subsection (2) amended by Act 25 of 1993]

Requirements for registration of inseminators and A.I. centres and for approval of animals

- 9. (1) An inseminator may be registered as such if he -
 - (a) has successfully completed such a course of instruction as may be prescribed or determined by the registrar;
 - (b) has, in the opinion of the registrar, sufficient practical knowledge of the techniques regarding the collection of semen and artificial insemination of animals; and
 - (c) complies with such other requirements as may be prescribed.
- (2) Any premises where semen is collected, processed, packed, stored or sold, may be registered as an A.I. centre if -
 - (a) the prescribed facilities are available at such premises;
 - (b) the technical operations at such premises relating to the state of health of the animals being kept there and to the collection, processing, packing and storage of semen there, are controlled by a veterinarian on a full-time basis; and
 - (c) such premises comply with such other requirements as may be prescribed.
- (3) An animal may be approved for the collection of semen if -
 - (a) a veterinarian who is an officer has certified that such animal is acceptable in respect of -
 - (i) general state of health;
 - (ii) absence of disease;
 - (iii) absence of any visible hereditary defect;

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- (iv) quality of its semen; and
 - (v) such other attributes as may be prescribed;
- (b) the pedigree and performance records of such animal are of such a nature that the use of the semen of such animal for the purpose of the artificial insemination of animals would in the opinion of the registrar be in the interests of the livestock industry; and

[Section 9(3)(b) was never brought into force “in so far as it relates to other animals than those of which the pedigree and performance records have been evaluated in terms of a scheme, irrespective of whether the scheme concerned was established under the said Act or not” (RSA Proc. R.80/1979).]

- (c) such animal complies with such other requirements as may be prescribed.

Registration of inseminators and A.I. centres and approval of animals

10. (1) Any person who -
- (a) is an inseminator and desires to be registered as such; or
 - (b) desires -
 - (i) that any premises be registered as an A.I. centre; or
 - (ii) that any animal, be approved for the purpose of collecting semen,

shall apply therefor to the registrar in the form and manner prescribed therefor, and such an application shall be accompanied by the prescribed application fee for the kind of registration concerned or approval, as well as by such information in connection therewith as may be prescribed or the registrar may require.

(2) The registrar shall consider an application made in terms of subsection (1), as well as such information as may be submitted in connection therewith, and -

- (a) may make any inquiry in connection therewith which he may deem necessary;
- (b) shall submit an application for the registration of premises as an A.I. centre, to the board for its recommendation in regard thereto; and
- (c) shall submit an application for the approval of an animal for the purpose of collecting semen to the livestock breeders' society (if any) concerned with the kind and breed of animals to which such animal belongs, for its recommendation in regard thereto.

[subsection (2) amended by Act 25 of 1993]

(3) If the registrar is satisfied that such application may be granted and, in the case of an application for the registration of premises as an A.I. centre, the board, or, in the case of an application for the approval of an animal for the purpose of collecting semen, the livestock breeders' society concerned, recommends it, he or she shall -

- (a) register the inseminator who applied for registration as an inseminator, and issue to him a certificate of registration;

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- (b) register such premises as an A.I. centre, and issue to the applicant a certificate of registration;
- (c) grant the application for the approval of the animal concerned for the purpose of collecting semen, and issue to the applicant, in respect of such approval, a certificate of approval; and
- (d) record the applicable prescribed particulars in the register.

[subsection (3) amended by Act 25 of 1993]

(4) The registration of an inseminator as such or any premises as an A.I. centre, or the approval of an animal, in terms of subsection (3) shall be subject to the provisions of this Act and such conditions as the registrar may, if he deems it necessary, in each case impose.

(5) If the registrar refuses to grant an application made in terms of subsection (1), he shall in writing advise the person who made such application of his decision and of the grounds on which it is based.

(6)

[subsection (6) deleted by Act 25 of 1993]

Period of registration or approval

11. The registration of an inseminator, or of premises as an A.I centre, or the approval of an animal for the purpose of collecting semen, shall, subject to the earlier termination thereof under this Act be valid from the date of issue of the certificate in respect thereof under section 10(3) until the date of expiry indicated thereon, and shall thereafter be renewable from time to time.

[section 11 amended by Act 25 of 1993]

Renewal of registration or approval

12. (1) Any person to whom a certificate has been issued in terms of section 10(3) may within the prescribed time and in the form and manner prescribed therefor, apply to the registrar for the renewal of the registration or approval in question, and such an application shall be accompanied by the prescribed renewal fee for the registration in question or such approval, as well as by such information in connection therewith as may be prescribed or the registrar may require.

[subsection (1) amended by Act 25 of 1993]

(2) The provisions of section 10(2), (3), (4) and (5) shall *mutatis mutandis* apply in respect of an application mentioned in subsection (1).

(3) A renewal granted by virtue of subsection (2) shall, subject to the earlier termination thereof in terms of this Act, be valid for the prescribed period, and an application for the further renewal thereof shall be made within the prescribed period in accordance with the provisions of subsection (1), read with the provisions of subsection (2).

(4) The registrar shall not consider an application for the renewal of a registration or approval which was received after the date of expiry thereof, unless such application was received within ninety days after such date of expiry and such additional fee as may be prescribed, has been paid.

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Termination of registration or approval

13. (1) The registrar may at any time terminate the registration of an inseminator, or of any premises as an A.I. centre and he or she may likewise withdraw the approval of an animal if he or she is satisfied that a requirement of this Act or a condition which the registrar has imposed under section 10(4), or section 10(4) as applied by section 12(2), as the case may be, has not been complied with.

[subsection (1) amended by Act 25 of 1993]

(2) If the registrar terminates the registration of an inseminator as such, or of any premises as an A.I. centre, or withdraws the approval of an animal, he shall in writing inform the person to whom the certificate in question was issued, thereof and of the grounds on which it is based.

(3) When a registration has been terminated or an approval withdrawn, the certificate concerned shall be returned within the prescribed period to the registrar by the person to whom it was issued.

Establishment of schemes

14. (1) The Minister may, on the recommendation of the board and after consultation with the Minister of Finance, by notice in the *Gazette* establish a scheme for the evaluation and certification of the performance of animals of the kinds and breeds specified in the notice, with the object of improving the genetic production potential of such kinds and breeds.

[subsection (1) amended by Act 25 of 1993]

(2) Different schemes may be established for animals of different kinds and breeds, and the requirements in a scheme for such different kinds and breeds may differ.

(3) The Minister may at any time by notice in the *Gazette* amend or revoke a scheme.

(4) Before the Minister establishes a scheme or amends any provision of a scheme, he shall refer the proposed scheme or amendment to the board for its recommendation in regard thereto and shall thereafter publish it in the *Gazette*, together with a notice inviting interested persons to submit, within the period specified in the notice, which period shall not be less than twenty-eight days as from the date of publication of such proposed scheme or amendment, to such person as may be specified in such notice, any objections to or representations concerning the proposed scheme or amendment.

[subsection (4) amended by Act 25 of 1993]

(5) Any objections or representations in terms of subsection (4) shall be submitted to the board for its recommendation in regard thereto, and if the Minister, as a result of any of such objections or representations or a recommendation of the board, effects any alteration to the proposed scheme or amendment published as aforesaid, it shall not be necessary to publish such alteration before such scheme or amendment is finally established or effected by notice under subsection (1) or (3).

[subsection (5) amended by Act 25 of 1993
(including correction of grammatical error in original)]

Provisions of a scheme

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15. (1) The Minister may in a notice under section 14(1) whereby a scheme is established -

- (a) designate the person who or the body which shall exercise the powers and perform the duties conferred or imposed in terms of the scheme;
- (b) provide that any person intending to participate in a scheme and any animal intended for evaluation in terms of a scheme, shall be enrolled with the person or body designated under paragraph (a);
- (c) provide for the manner in which such a person or such an animal shall be enrolled, the forms to be used for an application for enrolment, the information which shall accompany such application and the circumstances in which any such enrolment shall lapse, be refused or be cancelled;
- (d) determine the requirements for enrolment to be complied with by such a person or such an animal, the conditions on which such a person or such an animal shall be enrolled and the period of validity of such enrolment;
- (e) determine that, as from the date on which a person or an animal is enrolled in terms of such scheme, the provisions of the scheme shall be binding on such person or animal;
- (f) indicate the kinds and breeds of animals to which the provisions of the scheme shall apply;
- (g) provide for the manner in which animals being evaluated shall be treated and cared for, and the control to which they shall be subjected;
- (h) determine the manner in which and the times at which any inspection of animals with reference to which the provisions of such scheme are applicable, shall be carried out, and the forms to be used in connection with such an inspection;
- (i) determine the requirements and standards of qualify with which animals shall comply for certification in terms of the scheme;
- (j) determine the manner in which animals shall be certified, the form of a certificate in connection therewith, the restrictions on the use of such a certificate and the circumstances in which such a certificate shall lapse;
- (k) determine the manner in which animals so certified shall be identified;
- (l) determine the records to be kept and the information to be furnished by any person enrolled in terms of the scheme;
- (m) provide for the publication of the results of an evaluation, together with such comments in connection therewith as the Minister may deem necessary;
- (n) determine the fees or charges payable to the person or body designated in terms of paragraph (a) by any person enrolled in terms of the scheme, and stipulate that the rendering of any service may be refused to a person who is indebted to such person or body in any amount in respect of such fees and charges;

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- (o) confer on the person designated in terms of paragraph (a), or on any person authorized in writing by such person or the body designated in terms of paragraph (a) to enforce any provision of the scheme, the powers of inspection specified in subsection (2); and
- (p) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to further or better achieve the objects of the scheme, the generality of the powers conferred by this paragraph not being limited by the preceding paragraphs.

(2) The powers of inspection which may be conferred under subsection (1)(o), shall be the following, namely, to -

- (a) enter upon any place or premises on which or in which there are any animals which are or are suspected to be, intended for evaluation and certification in terms of a scheme, and inspect or test such animals;
- (b) inspect any such place or premises or any equipment or other article thereon or therein which is or is suspected to be used in the treatment or care of such animals;
- (c) check the manner in which such animals are treated and taken care of;
- (d) demand from a person who is enrolled in terms of a scheme, or who is in charge of the place or premises specified in paragraph (a), any information regarding the animals, equipment or other article specified in paragraph (a) or (b);
- (e) examine all books and documents at, on or in such place or premises which on reasonable grounds are suspected to relate to such animals, and make copies of or extracts from any such book or document; and
- (f) seize any such animal, book, document or any equipment or other article specified in paragraph (b), which may afford evidence of any offence under this Act or the scheme.

(3) Any person authorized in writing by any person or body as provided in subsection (1)(o) and carrying out any inspection in terms of subsection (2) in the presence of any person affected by such inspection, shall first exhibit such written authorization to the person so affected.

(4)

[subsection (4) deleted by Act 25 of 1993]

Importation of animals, semen, ova and eggs

16. (1) No person shall import into Namibia any animal, semen, ova or eggs unless such importation has been authorized by the registrar in writing: Provided that such written authorization shall not be required for the importation of any animal dispatched to an abattoir in Namibia for the purpose of being slaughtered there.

- (2) (a) Any person desiring to obtain such authorization, shall apply therefor in the prescribed manner and form and pay the prescribed application fee in the prescribed manner, and such application shall be accompanied by such documents as may be prescribed or the registrar may determine.

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- (b) Such application shall -
- (i) in the case of any animal (except poultry), semen or ova, be lodged with the livestock breeders' society concerned with the kind and breed of animal to which such animal, semen or ova intended for importation belongs, which shall forward it together with its recommendation in regard thereto, to the board: Provided that if no such livestock breeders' society exists, the application shall be lodged with the board for its recommendation in regard thereto;
 - (ii) in the case of poultry or eggs, be lodged with the board for its recommendation in regard thereto.
- (c) The board shall submit such application together with its recommendation in regard thereto, to the registrar: Provided that where the application relates to an animal of the Karakul sheep species or the semen or ova of such an animal, the board shall make such recommendation only with the concurrence of the board established by section 2 of the Karakul Pelts and Wool Act, 1982 (Act 14 of 1982).

[Subsection (2) is amended by Act 25 of 1993, including the correction of a misspelling in the original provision. Among other amendments, Act 25 of 1993 states that it substitutes paragraph (c) of subsection "62"; this is clearly a typographical error for subsection "(2)".]

(3) The registrar shall consider such application, as well as the recommendation submitted to him in regard thereto in terms of subsection (2)(c), and he may make any inquiry in connection therewith which he may deem necessary.

- (4) (a) If the granting of such application is recommended by the board and the registrar agrees that such application may be granted, he or she may, on such conditions as may have been recommended by the board or may be prescribed or he or she may deem fit, in his or her discretion authorize in writing the importation concerned.

[paragraph (a) amended by Act 25 of 1993]

(b)

[paragraph (b) deleted by Act 25 of 1993]

(5) A condition referred to in subsection (4)(a) may include a restriction on the number of animals or the quantity of semen, ova or eggs to be imported, as well as any requirement as to the quality thereof.

(6) If the registrar refuses to authorize the importation contemplated, he shall in writing inform the person who applied therefor, of his decision, but the grounds on which it is based shall not be disclosed.

(7) An authorization in terms of this section shall not exempt the person authorized from the provisions of any other law relating to the importation of anything into Namibia.

- (8) (a) Any animal, semen, ova or eggs imported into Namibia in contravention of the provisions of this section and not removed from Namibia by the importer thereof at his own expense within such period as the registrar may determine, shall be forfeited to the State, and shall be destroyed or disposed of in any other manner, according as the registrar may direct.

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- (b) Any costs incurred by the State in connection with the destruction of any animal, semen, ova or eggs in terms of the provisions of paragraph (a), may be recovered from the importer concerned.

Exportation of animals, semen, ova and eggs

17. (1) No person shall export from Namibia any animal, semen, ova or eggs unless such exportation has been authorized by the registrar in writing: Provided that such written authorization shall not be required for the exportation of eggs (except the eggs of ostriches) not intended for breeding purposes.

(2) The provisions of section 16(2), (3), 4(a), (5), (6) and (7) shall *mutatis mutandis* apply with reference to an application for such authorization.

Incorporation of livestock breeders' societies

18. (1) Any group of persons desiring a certificate of incorporation as a livestock breeders' society, shall apply therefor to the registrar in the prescribed manner and form, and such application shall be accompanied by its constitution, the prescribed application fee and such other documents as may be prescribed or the registrar may determine.

(2) Such a certificate of incorporation may on such an application be issued to such a group of persons if -

- (a) the kind and breed of animal with which such group of persons is concerned has been declared under section 2;
- (b) no other such certificate is in force in respect of any livestock breeders' society which is concerned with the same kind and breed of animal;
- (c) the board recommends it;

[Paragraph (c) is substituted by Act 25 of 1993; the amending Act erroneously states that it is substituting paragraph (c) of subsection (1), but there is no paragraph (c) in subsection (1). It is clear that the intention was to refer to paragraph (c) of subsection (2).]

- (d) the constitution of such group of persons -
- (i) contains the prescribed provisions;
- (ii) provides for the registration or recording of pedigrees of animals of the kind and breed concerned, and determines the conditions on which such registration or recording shall be made;
- (iii)

[subparagraph (iii) deleted by Act 25 of 1993]

- (iv) provides that an officer designated by the Minister may attend any meeting of its members and take part in the proceedings thereat but without the right to vote at any such meeting; and

- (v)

[subparagraph (v) deleted by Act 25 of 1993]

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(3) The registrar shall consider an application referred to in subsection (1), as well as such information as may have been submitted to him in connection therewith, and he may make such inquiry in connection therewith as he may deem necessary.

(4) If the registrar grants such application, he shall issue a certificate of incorporation to the group of persons concerned and record the prescribed particulars in the register.

(5) The registrar shall give notice in the *Gazette* of the issuing by him of such certificate of incorporation in terms of subsection (4), and of the date as from which the livestock breeders' society concerned shall be incorporated, and shall notify the Registrar of Companies thereof, who shall as soon as practicable after that date record the name of such livestock breeders' society in the register of companies to be kept in terms of the Companies Act, 1973 (Act No. 61 of 1973).

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (6) (a) A livestock breeders' society shall, as from the date specified in the certificate of incorporation issued to it, be a juristic person.
- (b) Subject to the provisions of paragraph (c), the provisions of the Companies Act, 1973, shall not apply to a livestock breeders' society.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (c) The Minister may by notice in the *Gazette* declare any provision of the said Act not inconsistent with the provisions of this Act, with such modifications as may be specified in the notice, applicable to a livestock breeders' society, and may withdraw or amend such notice in like manner.
- (d) The assets, liabilities, rights and obligations vested in a person in his capacity as a member of a group of persons concerned on behalf of the members of such group as such, or for which such person is liable in that capacity on behalf of the members as such, shall as from the date specified in the certificate of incorporation issued to such group in terms of subsection (4), vest in the livestock breeders' society concerned.

(7)

[subsection (7) deleted by Act 25 of 1993]

[Section 18 was never brought into force. See RSA Proc. R.80/1979.]

Amendment of constitution

19. (1) The constitution of a livestock breeders' society may be amended in the prescribed manner: Provided that such amendment shall not be inconsistent with the provisions of this Act.

(2) Such number of copies as may be required by the registrar of each such amendment, or of the amended constitution, shall be submitted to the registrar within thirty days after such amendment has been effected, and such amendment shall, subject to the provisions of subsection (3), come into operation ninety days after being so submitted.

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(3) If the registrar, on the recommendation of the board, is of the opinion that such amendment is inconsistent with the provisions of this Act, the livestock breeders' society concerned shall be notified thereof, and thereupon such amendment shall be notified thereof, and thereupon such amendment shall be null and void.

[Section 19 was never brought into force (see RSA Proc. R.80/1979), but it was substituted by Act 25 of 1993.]

Annual return

20. Each livestock breeders' society shall annually, within the prescribed period after the end of its financial year, submit to the registrar a copy of such livestock breeders' society's prescribed annual return.

[Section 20 was never brought into force (see RSA Proc. R.80/1979), but it was substituted by Act 25 of 1993.]

Action in case of complaints against livestock breeders' societies

21. (1) If a complaint is lodged with the Minister that a livestock breeders' society, has not properly attained or is unlikely properly to attain the objects for which a certificate of incorporation has been issued to it, he or she may, if the board recommends an inquiry, refer such complaint for inquiry to a committee consisting of three members, appointed by the Minister, who shall be persons deemed fit by the Minister and one of whom he or she shall designate as the chairperson of such committee.

[subsection (1) amended by Act 25 of 1993]

(2) The Minister shall at least one month prior to the commencement of such inquiry notify such livestock breeders' society in writing of the act or omission which is to be the subject of the inquiry and of the date on which the inquiry shall commence, and such livestock breeders' society shall be entitled to be represented at such inquiry by an advocate or an attorney.

(3) The provisions of section 27(4) shall *mutatis mutandis* apply with reference to an inquiry referred to in subsection (1).

(4) If the committee mentioned in subsection (1) finds that the livestock breeders' society concerned has not properly attained or is unlikely properly to attain the objects specified in subsection (1), the Minister may cancel the certificate of incorporation issued to such livestock breeders' society or suspend it for such period as he or she may deem fit,

[Subsection (4) is amended by Act 25 of 1993. The comma at the end should be a full stop.]

(5) When the certificate of incorporation issued to such livestock breeders' society is cancelled, such livestock breeders' society shall be dissolved, and as from the date of such cancellation all the assets, liabilities, rights and obligations of such livestock breeders' society shall devolve as the Minister may determine.

(6) (a) The registrar shall give notice in the *Gazette* of the cancellation, under subsection (4), of the certificate of incorporation issued to such livestock breeders' society.

(b) The registrar shall delete the name of such livestock breeders' society from the register.

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- (c) The registrar shall notify the Registrar of Companies of such dissolution, and the Registrar of Companies shall delete the name of such livestock breeders' society from the register mentioned in section 18(5).

(7) Any member of the committee mentioned in subsection (1) who is not in the full-time service of the State, may be paid such allowances as the Minister may with the concurrence of the Minister of Finance determine.

[Section 21 was never brought into force. See RSA Proc. R.80/1979.]

22.

**[Section 22 was never brought into force. See RSA Proc. R.80/1979.
It was deleted by Act 25 of 1993.]**

Exclusive powers of Stud Book Association and Karakul Breeders' Society

23. (1) No person other than a livestock breeders' society may -
- (a) issue a certificate or registration of the pedigree of an animal bred in or imported into Namibia;
 - (b) issue a certificate or recording of the pedigree of an animal bred in or imported into Namibia;
 - (c) publish the pedigrees of animals mentioned in paragraphs (a) and (b), in the form of stud books or herd or flock books.

[subsection (1) substituted by Act 25 of 1993]

(1A) Subject to the provisions of subsection (3), a livestock breeders' society shall not exercise any of the functions referred to in paragraphs (a), (b) and (c) of subsection (1) in respect of any animal other than an animal belonging to the kind and breed of animal with which such livestock breeders' society is concerned.

[subsection (1A) inserted by Act 25 of 1993]

- (2) (a) A certificate contemplated in paragraph (a) or (b) of subsection (1) shall not be issued unless the breeder of the animal concerned has registered with the livestock breeders' society concerned a prefix or suffix to designate the animals bred by him or her.
- (b) Any such prefix or suffix shall be registered on such conditions and upon payment of such fee as the livestock breeders' society concerned may determine, and the registration of such prefix or suffix shall be maintained on the periodical payment of the fee and on such conditions as may have likewise been determined, and the livestock breeders' society shall issue a certificate in respect of each such registration.
- (c) Any prefix or suffix registered in favour of any person, shall not be used by any other person as a prefix or suffix or in any other manner to designate an animal bred by such other person.

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**[Subsection (2) is amended by Act 25 of 1993,
which also corrects a misspelling in the original Act.]**

(3) Notwithstanding the provisions of subsection (1A), the functions referred to in subsections (1) and (2) may, in relation to any animal belonging to a kind and breed in respect of which no livestock breeders' society exists, be exercised by any livestock breeders' society if such livestock breeders' society has been authorised by the registrar, on the recommendation of the board, to exercise those functions in relation to animals belonging to the kind and breed of animal concerned.

[subsection (3) substituted by Act 25 of 1993]

(4) The provisions of paragraphs (a) and (c) of subsection (1) and subsection (3) shall not be construed as prohibiting -

- (a) the breeder of an animal belonging to a kind and breed of which pedigrees are not registered or recorded, as the case may be, with a livestock breeders' society from furnishing particulars of the pedigree of such animal in writing or otherwise; or
- (b) the owner of an animal in respect of which a certificate of registration or recording has been issued under such a power, from furnishing particulars of the pedigree of such animal shown on such certificate, in writing or otherwise.

[subsection (4) substituted by Act 25 of 1993]

[Section 23 was never brought into force. See RSA Proc. R.80/1979.]

Fees not payable by State

24. No fees payable in terms of this Act shall be payable by the State.

Discretionary powers of registrar

25. (1) (a) Any discretionary power conferred on the registrar by this Act, other than that conferred by section 16 or 17, shall not be exercised by him to the prejudice of any applicant or any other person who appears to the registrar to be an interested party, without giving such applicant or other person an opportunity of being heard within such period as may be prescribed or, if no period has been prescribed, within such reasonable period as the registrar may determine.
- (b) An applicant or other person mentioned in paragraph (a) may waive such right to be heard.

(2) Whenever in terms of this Act any period is specified within which any act is to be performed or anything is to be done, the registrar may, save where it is expressly otherwise provided, extend such period either before or after its expiry.

Power to enter upon premises, carry out inspections, take samples for examination and seize substances or articles

26. (1) The registrar or an officer authorized thereto in writing by the registrar may at any reasonable time -

- (a) enter upon and inspect any place, premises, vehicle or vessel on or in which semen or ova are or are suspected to be kept or collected or the artificial insemination or ino-vulation of animals is or is suspected to be carried out or animals, semen, ova or

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eggs imported or to be exported in contravention of the provisions of this Act are or are suspected to be kept or any equipment or other article used in the collection or processing of semen or ova or in the artificial insemination or in ovulation of animals is or is suspected to be;

- (b) inspect or test such animals, semen, ova, eggs, equipment or other article and demand from the person in charge of any such place, premises, vehicle or vessel any information regarding such animals, semen, ova, eggs, equipment or other article;
- (c) examine all books and documents on or in any such place, premises, vehicle or vessel which he has reason to believe relate to such animal, semen, ova, eggs, equipment or other article or to the collection of semen or ova or the artificial insemination or in ovulation of animals, make copies of or extracts from such books and documents and demand from the owner or custodian of any such book or document an explanation of any record or entry therein;
- (d) take samples or cause samples to be taken of the blood or semen of any animal or of any semen, ova or eggs on or in any such place, premises, vehicle or vessel, and examine or test such samples;
- (e) seize any animal, semen, ova, eggs, book, document, equipment or other article on or in any such place, premises, vehicle or vessel which in his opinion may afford evidence of any offence under this Act;
- (f) inspect any operation carried out on or in any such place, premises, vehicle or vessel in connection with the collection of semen or ova or the artificial insemination or in ovulation of animals and demand from the person in charge of such operation any information regarding it;
- (g) order the removal or disposal, in such manner and within such period as may be prescribed, of animals, semen, ova or eggs on or in any such place, premises, vehicle or vessel and which do not comply with the prescribed requirements.

(2) Where an officer acting under such written authority of the registrar carries out any inspection in terms of subsection (1) in the presence of any person affected by such inspection, such officer shall first exhibit such written authority to such person.

Appeal against decisions or actions

27. (1) A person who considers himself or herself aggrieved by any decision or action taken by the registrar in terms of this Act may, within the period and in the manner prescribed and upon payment of the prescribed fee, appeal to the Minister against the decision or action in question.

[subsection (1) amended by Act 25 of 1993]

- (2) (a) The Minister shall refer the appeal for investigation and decision to a board of appeal, the members of which shall be appointed by the Minister and which shall, subject to the provisions of paragraph (b), consist of -
 - (i) one person designated as chairman on account of his knowledge of law; and
 - (ii) two persons who in the opinion of the Minister have expert knowledge of the subject of the appeal.

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- (b) Any person who has any direct or indirect interest in the outcome of the appeal, shall not be appointed in terms of paragraph (a).

[subsection (2) amended by Act 25 of 1993]

(3) An appeal shall be heard on the date and at the place and time fixed by the chairperson of the board of appeal, who shall notify the appellant and the registrar in writing thereof.

[subsection (3) amended by Act 25 of 1993]

(4) The chairperson of the board of appeal may, for the purposes of the hearing of the appeal -

- (a) summon any person who, in his opinion, may give material information concerning the subject of the hearing or who he believes has in his possession or custody or under his control any document which has any bearing upon the subject of the hearing, to appear before him at a time and place specified in the summons, to be interrogated or to produce that document, and the chairman may retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and
- (c) call any person present at the hearing as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.

[subsection (4) amended by Act 25 of 1993]

(5) The procedure at the hearing of the appeal shall be as determined by the chairman.

(6) The appellant, if he or she appears before the board of appeal at the hearing of the appeal, and the registrar, may be represented by an advocate or an attorney.

[subsection (6) amended by Act 25 of 1993]

(7) If a person appointed under subsection (2)(a) -

- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in his stead in time; or
- (c) is, after the investigation has commenced, unable to continue therewith,

the parties to the appeal may agree that the investigation be continued by the remaining members, in which event, where the member who has died or become incapacitated was or is the chairman of the board, the Minister shall designate one of the remaining members to act as chairman.

- (8) (a) If the parties do not agree in terms of subsection (7), the investigation shall be adjourned in order that the Minister may appoint a member in accordance with the requirements of subsection (2) in the place of the member who has died or has become incapacitated.

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(b) Where an appointment has been made under paragraph (a), the investigation shall, if the parties so agree, be continued from the stage at which the investigation was interrupted by the death or incapacity of a member, or shall, if the parties do not so agree, be commenced *de novo*.

(9) The board of appeal may after investigation of the appeal -

(a) confirm, set aside or vary the relevant decision or action of the registrar; and

(b) order the registrar to execute the decision of the board of appeal in connection therewith.

[subsection (9) amended by Act 25 of 1993]

(10) (a) The decision of the board of appeal shall be in writing, and a copy thereof shall be furnished to the registrar and the appellants.

(b) No appeal shall lie against the decision of the board of appeal.

[subsection (10) amended by Act 25 of 1993]

(11)

[subsection (11) deleted by Act 25 of 1993]

(12) A member of the board of appeal and any person summoned under subsection 4(a) who are not in the full-time service of the State, may be paid such allowances as the Minister may with the concurrence of the Minister of Finance determine.

[subsection (12) amended by Act 25 of 1993]

False or misleading advertisements

28. (1) No person shall publish or distribute or cause or permit to be published or distributed any false or misleading advertisement concerning any animal, semen, ova, eggs or the artificial insemination or inoovulation of animals.

(2) It shall be a sufficient defence for any person, other than the person selling the animal, semen, ova or eggs or carrying out the artificial insemination or inoovulation of animals to which the false or misleading advertisement relates, who is charged with a contravention of subsection (1), if he proves to the satisfaction of the court that he did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect, unless it is proved that the accused failed on demand by the registrar or a police officer to furnish the name and address of the person at whose instance the advertisement was published or distributed.

Secrecy

29. No person shall disclose to any other person any information acquired by him in the performance of his functions in terms of this Act or a scheme and relating to the business or affairs of any other person, except -

(a) to the Minister, the registrar or any other person for the purposes of the performance of his functions in terms of this Act;

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- (b) to a police officer for the purposes of an inquiry relating to the administration of the provisions of this Act; or
- (c) when required to do so by any court of law or under any law.

Offences and penalties

- 30.** (1) Any person -
- (a) who makes a false entry in the register or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy thereof;
 - (b) who, if any statement or explanation is demanded from him by the registrar or an officer or by any person or body designated in terms of section 15(1)(a) in the administration of the provisions of this Act or a scheme, fails or refuses to make such statement or to give such explanation, or makes a false statement or representation to the registrar or officer or such person or body knowing it to be false;
 - (c) who obstructs or hinders the registrar, an officer, a person or body designated in terms of section 15(1)(a) or a person authorized by such person or body in the exercise of his powers or the performance of his duties in terms of this Act or a scheme;
 - (d) who, having been duly summoned to appear at proceedings in terms of section 27, or section 27 as applied by section 21, fails without lawful cause so to appear;
 - (e) who, having appeared as a witness at proceedings in terms of section 27, or section 27 as applied by section 21, refuses without lawful cause to be sworn or to make an affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
 - (f) who collects semen or ova, sells ova or an animal or inoulates an animal in contravention of section 7(1), (2) or (6);
 - (g) who uses any animal or semen in contravention of section 7(5);
 - (h)
- [paragraph (h) deleted by Act 25 of 1993]**
- (i) who sells semen in contravention of section 8;
- [Paragraph (i) was never brought into force in so far as it relates to section 30(1)(q), (r) and (s). See RSA Proc. R.80/1979.]**
- (j) who makes any false or misleading statement -
 - (i) in an application for the registration of an inseminator as such or of any premises as an A.I. centre, or for the approval of an animal for the purpose of collecting semen; or

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- (ii) at the sale of any animal, semen, ova or eggs or at the rendering of services relating to the artificial insemination or insemination of animals or the collection of semen;
- (k) who conducts an A.I. centre which does not comply with the requirements referred to in section 9(2), or who uses premises not registered in terms of this Act as an A.I. centre for operations in connection with the collection, processing, packing, storage, conveyance and sale of semen;
- (l) who fails to return a certificate of registration or a certificate of approval to the registrar in contravention of section 13(3);
- (m) who fails to comply with a provision of a scheme while he is under an obligation to do so;
- (n) who imports any animal, semen, ova or eggs into Namibia in contravention of section 16 or who exports any animal, semen, ova or eggs from Namibia in contravention of section 17;
- (o) who contravenes or fails to comply with any condition on which he has under section 16(4)(a) been authorized to import any animal, semen, ova or eggs into Namibia, or any condition on which he has under section 16(4)(a), as applied by section 17(2), been authorized to export any animal, semen, ova or eggs from Namibia;
- (p) who tampers with any sample taken or any animal, equipment, semen, ova, eggs, book, document or other article seized under this Act;
- (q) other than a livestock breeders' society who, except in the circumstances referred to in section 23(4), furnishes in writing particulars of the pedigree of an animal bred in or imported into Namibia or publishes the pedigree of animals in the form of a stud book or a herd or flock book;

[Paragraph (q) was never brought into force (see RSA Proc. R.80/1979), but it was amended by Act 25 of 1993.]

- (r) who uses a prefix or suffix not registered in terms of section 23(2) as a prefix or suffix or in any other manner to designate animals bred by him, or who so uses a prefix or suffix registered in terms of that section in favour of any other person;

[Paragraph (r) was never brought into force. See RSA Proc. R.80/1979.]

- (s) who in furnishing particulars in the circumstances referred to in section 23(4), makes a false statement relating to the pedigree of an animal;

[Paragraph (s) was never brought into force. See RSA Proc. R.80/1979.]

- (t) who contravenes any provision of section 28(1);
- (u) who contravenes the provisions of section 29,

shall be guilty of an offence and on conviction liable -

- (a) in the case of an offence referred to in paragraph (n) or (o), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment;

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- (b) in the case of any other offence, to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

[closing portion of subsection (1) substituted by Act 25 of 1993]

(2) The court convicting any person of an offence under this Act may upon the application of the prosecutor declare any animal, semen, ova or eggs in respect of which the offence was committed and all other animals, semen, ova or eggs of a similar nature of which such person is the owner or which are in his possession, to be forfeited to the State.

(3) Anything forfeited under subsection (2) shall be disposed of in such manner as the Permanent Secretary: Agriculture, Water and Rural Development may direct.

[subsection (3) amended by Act 25 of 1993]

(4) Costs incurred in respect of any action under subsection (3), may be recovered from the person convicted.

(5) A magistrate's court shall have jurisdiction to impose any penalty provided for by this section.

Evidence and presumptions

31. (1) If a person is charged with having imported into Namibia any animal in contravention of the provisions of section 16(1) and it is proved that he has imported such animal into Namibia, it shall be presumed, until the contrary is proved, that such animal was not dispatched to an abattoir in Namibia for the purpose of being slaughtered there.

(2) In any prosecution under this Act -

- (a) any semen, ova or eggs in or upon any place, premises, vehicle or vessel at the time a sample thereof is taken in terms of section 26(1)(d) shall, unless the contrary is proved, be presumed to be in the same condition or to possess the same properties as such sample;
- (b) any statement or entry contained in any book or document kept by any person, or by the manager, agent or employee of such person, or found upon or in any premises occupied by, or any vehicle or vessel used in the business of, any person, shall be admissible in evidence against such person as an admission of the facts set forth in that statement or entry, unless it is proved that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his work as manager or in the course of his agency or employment.

Assignment of powers and duties

32. (1) The Minister may either generally or in relation to any particular matter assign to any officer of the Ministry any power conferred or duty imposed upon him under this Act, other than a power conferred by section 14 or 34.

(2)

[subsection (2) deleted by Act 25 of 1993]

(3)

[subsection (3) deleted by Act 25 of 1993]

Limitation of liability

33. No compensation shall be payable by the State, the Minister, the registrar or an officer acting under an authorization by or delegation from or under the control or direction of the registrar, by a person or body designated in terms of section 15(1) or by a person authorized by such person or body, in respect of any act done in good faith under this Act or a scheme;

Regulations

34. (1) The Minister may make regulations -

- (a) prescribing any certificate or other document or form to be issued or used for the purposes of this Act;
- (b) prescribing the period of validity and conditions of a certificate or authorization issued under this Act;
- (c) prescribing the fees payable in respect of any application, matter or document;
- (d) prescribing the requirements to be complied with for the registration of an inseminator as such or premises as an A.I. centre or for the approval of an animal for the purpose of the collection of semen, and the conditions subject to which such registration or approval shall be made;
- (e) prescribing the manner in which the technical operations at an A.I. centre relating to the state of health of animals being kept there and to the collection, processing, packing and storage of semen shall be regulated, the supervision of such operations, the periodical inspection of animals kept at an A.I. centre and the equipment to be used at an A.I. centre;
- (f) prescribing the manner in which an animal which has been approved for the purpose of collecting semen and the semen collected from it, shall be identified;
- (g) prescribing the properties of semen intended for sale, the manner in which it shall be collected, processed, packed, stored and conveyed for sale, the containers in which it shall be sold, the manner in which such containers shall be sealed and marked or labelled and the information which shall appear on such marks or labels;
- (h) prescribing the manner in which the artificial insemination of animals shall be carried out;
- (i) prescribing the records to be kept in connection with the collection, processing, packing, storage and sale of semen and the artificial insemination of animals, and the form and manner in which and the person by whom such records are to be kept;

[The word "artificial" is misspelt in the *Government Gazette*, as reproduced above.]

- (j) as to the collection and sale of ova, and the involution of animals;
- (k) as to the provisions to be included in the constitution of a livestock breeders' society;

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[Paragraph (k) was never brought into force. See RSA Proc. R.80/1979.]

- (1) with regard to any matter which in terms of this Act is required or permitted to be prescribed by regulation,

and, in general, with regard to any matter which the Minister may consider necessary or expedient to prescribe or regulate in order to attain or further the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Different regulations may be made in terms of this section in respect of animals of different kinds and breeds or in respect of different classes of inseminators or A.I. centres or in such other respects as the Minister may determine.

(3) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, not exceeding a fine of two hundred rand or imprisonment for a period of six months.

(4) No regulation prescribing any fees shall be made except with the concurrence of the Minister of Finance.

(5) If the Minister intends to make any regulation under this Act, he shall cause the text of the proposed regulation to be published in the *Gazette* together with a notice declaring his intention to make such a regulation and inviting interested persons to submit within such period of at least twenty-eight days as from the date of such notice, as may be mentioned in such notice, to such person as may be specified in such notice, any comments and representations they may wish to make in connection therewith.

- (6) The provisions of subsection (5) shall not apply in respect of -
 - (a) an amendment of a proposed regulation in pursuance of a notice published in terms of that subsection; and
 - (b) any regulation in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

35.

[section 35 deleted by Act 25 of 1993]

36.

[Section 36 was never brought into force. See RSA Proc. R.80/1979.
It was deleted by Act 25 of 1993.]

37.

- [Section 37 was never brought into force in so far as it relates to -
 - (i) the Registration of Pedigree Livestock Act, 1957 (Act 28 of 1957);
 - (ii) the Registration of Pedigree, Livestock Amendment Act, 1962 (Act 27 of 1962); and

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- (iii) **the Registration of Pedigree Livestock Amendment Act, 1967 (Act 1 of 1967).
See RSA Proc. R.80/1979. It was deleted by Act 25 of 1993.]**

Short title and commencement

38. (1) This Act shall be called the Livestock Improvement Act, 1977, 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.

[Act 25 of 1993 provides the following transitional provisions:

“Validation of certain written authorizations

25. Any written authorization, or document purporting to be a written authorization, granted or purporting to have been granted under section 16 or 17 of the principal Act by the registrar between 9 June 1993 and the date of commencement of this Act, shall be deemed to have been lawfully granted notwithstanding that such written authorization was granted by the registrar without a recommendation for the granting of the relevant application for such written authority, as required by paragraph (a) of subsection (4) of section 16 of the principal Act, before the amendment of that section by this Act, having been made by the relevant committee referred to in subparagraph (i) or (ii), as the case may be, of paragraph (b) of subsection (2) of section 16, before the amendment of that section by this Act, and any such written authorization is hereby validated.

Recognition of a certain livestock breeders’ society and of certain actions performed under the principal Act [Act 25 of 1977] before the commencement of this Act [Act 25 of 1993]

26. (1) The society which immediately before the commencement of this Act [Act 25 of 1993] existed under the name of the Karakul Breeders’ Society of Southern Africa shall be deemed to be a livestock breeders’ society in respect of which a certificate of incorporation has been issued in terms of section 18 of the principal Act as amended by this Act. **[The subsection number (1) is omitted in Act 25 of 1993 but has been added here.]**

(2) Any -

- (a) certificate of registration of the pedigree of an animal;
- (b) certificate of recording of the pedigree of an animal;
- (c) publication of the pedigrees of animals in the form of stud books or herd or flock books;

issued or published under subsection (1) of section 18 of the principal Act [Act 25 of 1977], or any registration of any prefix or suffix in respect of an animal effected under subsection (2) of that section, before the commencement of this Act [Act 25 of 1993], by the Stud Book Association referred to in that section, shall continue to be of force and effect as if it had been issued, published or effected, as the case may be, by a livestock breeders’ society incorporated under section 18 of the principal Act [Act 25 of 1977], as amended by this Act [Act 25 of 1993], which is concerned with the kind and breed of animal in question.

(3) Anything done, after 21 March 1990 and before the commencement of this Act [Act 25 of 1993], in respect of Karakul sheep by the society referred to in subsection (1) and which is purported to have been done in the exercise of a power conferred by subsection (1)(a) or (c) or subsection (2) of section 18 of the principal Act [Act 25 of 1977], before its amendment by this Act, and which would have been validly done if this Act [Act 25 of 1993] had been in force when it was done, is hereby declared to have been validly done.”]

Schedule

Number and year of Law	Short Title
Act No. 23 of 1954.....	Artificial Insemination of Animals Act, 1954.
Act No. 26 of 1957.....	Artificial Insemination of Animals Amendment Act, 1957.
Act No. 28 of 1957.....	Registration of Pedigree Livestock Act, 1957.
Act No. 70 of 1959.....	Artificial Insemination of Animals Amendment Act, 1959.
Act No. 27 of 1962.....	Registration of Pedigree Livestock Amendment Act, 1962.

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Act No. 56 of 1962.....	Artificial Insemination of Animals Amendment Act, 1962.
Act No. 18 of 1963.....	Prohibition of Export of Ostriches Act, 1963.
Act No. 74 of 1963.....	Livestock Improvement Act, 1963.
Act No. 1 of 1967.....	Registration of Pedigree Livestock Amendment Act, 1967.
Act No. 36 of 1969.....	Artificial Insemination of Animals Amendment Act, 1969.
