



Agriculture, Aquaculture & Fishing

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SOUTH AFRICA

- High Court opens the door to private FMD vaccination



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Following our earlier [analysis](#) of South Africa's Foot and Mouth Disease (FMD) crisis, the High Court has now issued an interim order that significantly reshapes the regulatory landscape governing vaccine administration.

To recap, earlier this year, agricultural organisations, including the South African Agri Initiative, Sakeliga and Free State Agriculture, issued an urgent application against the Government demanding that private livestock owners be permitted to administer vaccines independently.

The ruling provides critical clarity on the limits of private participation in vaccination efforts and the scope of the Government's powers under the Animal Diseases Act 35 of 1984 (Act).

Contrary to expectations that the court would fully endorse centralised government control, the order introduces a conditional, regulated framework permitting private livestock owners to procure and administer vaccines themselves, pending final determination of the dispute.

This development marks a pivotal moment in balancing biosecurity control with practical implementation challenges.

The relief is of an interim nature, and the applicants must institute proceedings for final relief within 20 days. The order is therefore a temporary regulatory arrangement and not a final determination of rights.

Crux of the argument

The applicants' position was grounded in urgency and operational reality, including that:

- The delays in the Government's rollout strategy were causing ongoing economic harm.
- Private capacity exists to administer vaccines efficiently and responsibly.
- The Act does not justify a *de facto* monopoly by Government over vaccine administration.
- A controlled system allowing private administration would accelerate containment efforts and would assist with getting FMD under control.

They ultimately sought relief allowing direct procurement and administration of vaccines by livestock owners and private veterinarians.



The Government argued for strict centralisation, emphasising *inter alia*:

- Its sole statutory mandate to control FMD as a regulated disease.
- The need for traceability, consistency and surveillance (record keeping).
- Risks associated with fragmented or unco-ordinated vaccination systems.
- South Africa's obligation to comply with international animal health standards.

It warned that expanding private administration could undermine national disease control strategies.

Due to the nature of the dispute, the court did not finally resolve it but granted interim relief pending final proceedings. The approach, outlined below, was an unconventional hybrid approach adopted by the court pending the outcome of final relief sought. This may be due to the fact that this is a matter concerning public interest and has a ripple economic effect.

Interim measures granted

The main point highlighted in the interim relief was the fact that owners and managers of cloven hoofed livestock may procure and administer FMD vaccines themselves, provided the vaccines are lawfully imported or manufactured. This was a significant departure from a purely state-controlled model.

The court ordered that strict pre-vaccination notification requirements, as well as post-vaccination reporting and affidavits, are to be adhered to.

Private vaccination is subject to mandatory oversight mechanisms (pre-vaccination), including:

- At least five days' prior written notice to the State Veterinarian or Provincial Director.
- There must be full disclosure of location and timing of vaccination; number and details of animals; identity of persons administering vaccines; vaccination methods; and cold-chain compliance plans.

This further ensures continued regulatory visibility and co-ordination.

The order imposes detailed compliance obligations for post-vaccination, such as, within 14 days after vaccination, livestock owners must submit a sworn statement confirming compliance with regulations, cold chain integrity, vaccine type, dosage and administration method, and the full identification of vaccinated animals.

This also links to the traceability framework aligned with biosecurity requirements and speaks to the concerns raised in respect of traceability and record keeping by the Government.

The court still placed emphasis on the Government's authority that remains intact. Importantly, the court preserved the Government's overarching role in that:

- The Government retains discretion to allocate vaccines it procures and to implement strategy and prioritisation.
- The order explicitly states that nothing limits the Government's ability to act in accordance with its own vaccination programmes.

In exercising its overarching role, the Government is not allowed to interfere with lawful commercial relationships relating to vaccine supply. This addresses the concerns raised about disruptions and/or interference in private vaccine procurement channels.

The court made it clear that the existing measures regarding animal movement restrictions and the reporting obligations of FMD cases remain fully in force.



Main points to bear in mind

There are a few key takeaways from this matter that remind us that, in some instances, a middle-ground approach can be reached even if it is just as an interim measure.

In this instance, the middle-ground approach rejected the Government's exclusivity, avoided private autonomy, and introduced and supported a controlled system of private participation within a certain ambit.

It is clear in the court's deferential approach that the suggestion for private participation and the capacity available is viewed as part of a solution to this crisis and should not be interpreted as a threat itself.

However, the flexibility, traceability, and compliance aspects in terms of the Act remain non-negotiable and the court preserves South Africa's ability to meet the necessary international standards.

How do the interim measures affect stakeholders?

Livestock owners may now procure and administer vaccines, but only if they are lawfully sourced and all notification and reporting requirements are met.

If livestock owners fail to comply with the requirements in legislation and as depicted in the court order, they can still be sanctioned in terms of the Act.

The livestock industry may now accelerate vaccine rollout, reduce bottleneck administration, and introduce a more collaborative public-private response. This will be an adjustment initially and will need all relevant stakeholders to work together to combat the disease.

Although the Government retains strategic control, it must now operate in parallel with private vaccination efforts and ensure that the parties co-ordinate their efforts rather than operating in silos.

Conclusion

The High Court's interim order represents a pragmatic recalibration of South Africa's FMD response.

Rather than choosing between government control and private autonomy, the court has endorsed a regulated partnership model, allowing private vaccination within a structured compliance framework.

While the final outcome remains to be determined, this order signals that in the face of a national agricultural crisis, legal frameworks must be sufficiently flexible to accommodate both biosecurity imperatives and practical realities.

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