



Republic of Namibia
Annotated Statutes

Forest Act 12 of 2001

(GG 2667)

brought into force on 15 August 2002 by GN 138/2002 (GG 2793)

as amended by

Forest Amendment Act 13 of 2005 (GG 3564)

came into force on date of publication: 28 December 2005

ACT

To provide for the establishment of a Forestry Council and the appointment of certain officials; to consolidate the laws relating to the management and use of forests and forest produce; to provide for the protection of the environment and the control and management of forest fires; to repeal the Preservation of Bees and Honey Proclamation, 1923 (Proclamation No. 1 of 1923), Preservation of Trees and Forests Ordinance, 1952 (Ordinance No. 37 of 1952) and the Forest Act, 1968 (Act No. 72 of 1968); and to deal with incidental matters.

(Signed by the President on 6th December 2001)

ARRANGEMENT OF SECTIONS

Preliminary

1. Definitions

Part I

Administration

2. Establishment of Forestry Council
3. Functions of the Council
4. Tenure and vacation of office
5. Administration and finance
6. Procedure and meetings
7. Director of forestry and forest officers

Forest Act 12 of 2001

8. Honorary forest officers
9. Licensing Officers

**PART II
Forest Management**

10. Aim of forest management
11. Duties of Director in relation to forestry management
12. Forest management plans

**PART III
Classified Forests**

13. State forest reserves
14. Regional forest reserves
15. Community forests
16. Forest management areas
17. Revocation of state forest reserves
18. Revocation of regional forest reserves
19. Revocation or suspension of community forest
20. Revocation or suspension of a forest management area

**PART IV
Protection of the Environment**

21. Protected areas
22. Protection of natural vegetation
23. Control over afforestation and deforestation
[The word "afforestation" is misspelt in the *Government Gazette*, as reproduced above.]

**PART V
Use of forests and forest produce**

24. Control of use of forests and forest produce
25. Honey producing organisms
26. Allowable harvest
27. Licence to harvest
28. Licence to graze or carry on agricultural activity
29. Licence to carry out mining activity
30. Licence to construct roads or building
31. Community forests
32. Forest management areas
33. Unclassified forests
34. Suspension and cancellation of licence
35. Collection of fees

**PART VI
Control and management of fire**

36. Fire management areas
37. Fire management plan
38. Fire management
39. Fire hazard area
40. Prohibition on fires

Forest Act 12 of 2001

- 41. Liability for fire damage
- 42. Control of fires

**PART VII
Offences and enforcement**

- 43. Powers of officers
- 44. Powers in relation to stray animals
- 45. Offences
- 46. Additional penalties

**PART VIII
General**

- 47. Appeals
- 48. Regulations
- 49. Repeals, amendments and savings
- 50. Short title and coming into operation

[The capitalisation of the Part headings in the ARRANGEMENT OF SECTIONS is inconsistent with the capitalisation of the Part headings in the text of the Act.]

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Preliminary

Definitions

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

“authorised officer” means a forest officer, an honorary forest officer, a licensing officer or a member of the police appointed under the Police Act, 1990;

“chief” means a chief as defined in section 1 of the Traditional Authorities Act, 1995 (Act No. 17 of 1995);

[The Traditional Authorities Act 17 of 1995 has been replaced by the Traditional Authorities Act 25 of 2000.]

“classified forest” means a forest reserve, a community forest or a forest management area;

“communal land” means land which, in terms of any law which governs communal land, is defined or recognised as communal land;

“community forest” means an area which, under section 15, has been declared to be a community forest;

“Council” means the Forestry Council established by section 2;

“Director” means the Director of Forestry appointed under section 7;

“fire hazard area” means an area which, under section 39, has been declared to be a fire hazard area;

Forest Act 12 of 2001

“fire management area” means an area which, under section 36, has been declared to be a fire management area;

“fire management committee” means a committee established by section 36;

“fire management plan” means a plan approved under section 37,

[This definition ends with a comma instead of a semicolon in the *Government Gazette*; there are no missing words.]

“forest management area” means an area which is the subject matter of an agreement entered into under section 16;

“forest officer” means the Director or any person who, under section 7, has been appointed as a forest officer;

“forest produce” means any thing which grows or is naturally found in a forest and includes -

- (a) any living organism or product of it; and
- (b) any inanimate object of mineral, historical, anthropological or cultural value;

“forest reserve” means a state forest reserve or a regional forest reserve;

“honorary officer” means any person who, under section 8, has been appointed as an honorary forest officer;

“licensing officer” means a forest officer or a person who, under section 9, has been designated or appointed as a licensing officer;

“local authority council” means a local authority council defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“management authority” means the person who or body which has been appointed as the management authority in terms of an order made under section 13(5)(b) or an agreement entered into under section 13(5)(a), 14(4), 15(1) or 16;

“management plan” means a management plan prepared under section 12 for a classified forest;

“Minister” means the Minister responsible for forestry;

[definition of “Minister” substituted by Act 13 of 2005]

“Ministry” means the Ministry charged with the administration of affairs relating to forestry;

[definition of “Ministry” substituted by Act 13 of 2005]

“prescribe” and its derivatives, means prescribe by regulation made under section 48;

“protected area” means an area which, under section 21(3), has been declared to be a protected area;

“protected plant” means a plant declared as such under section 22(5);

“regional council” means a regional council established by the Regional Councils Act,

Forest Act 12 of 2001

1992 (Act No. 22 of 1992);

“regional forest reserve” means an area which, under section 14, has been declared to be a regional forest reserve;

“state forest reserve” means an area which, under section 13, has been declared to be a state forest reserve; and

“traditional authority” means a traditional authority established by section 2 of the Traditional Authorities Act, 1995 (Act No. 17 of 1995).

[The Traditional Authorities Act 17 of 1995 has been replaced by the Traditional Authorities Act 25 of 2000.]

PART I Administration

Establishment of Forestry Council

2. (1) There is established a body to be known as the Forestry Council which consists of the following persons, namely -

- (a) one staff member of the Ministry charged with the administration of matters relating to forestry designated by the Minister responsible for that Ministry;
- (b) one staff member of the Ministry charged with the administration of matters relating to agriculture designated by the Minister responsible for that Ministry;
- (c) one staff member of the Ministry charged with the administration of environmental matters designated by the Minister responsible for that Ministry;
- (d) one staff member of the Ministry charged with the administration of land matters designated by the Minister responsible for that Ministry; and
- (e) three other persons appointed by the Minister of whom -
 - (i) two shall be persons nominated by two associations or organisations which the Minister reasonably believes represents the interests of farmers in Namibia;

[The verb “represents” should be “represent” to be grammatically correct.]

- (ii) one shall be a person nominated by the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997).

[subsection (1) substituted by Act 13 of 2005]

(2) If an association or organisation or institution referred to in subsection (1)(d) or (e) does not exist or fails or is unable to nominate a candidate within a reasonable time after being requested to do so, the Minister shall appoint to the Council, a person whom the Minister reasonably believes would be able to represent the interests of the relevant organisation or association or institution.

(3) Notwithstanding subsection (1), a person is not eligible to be appointed or designated as a member of the Council if he or she -

Forest Act 12 of 2001

- (a) is an unrehabilitated insolvent;
- (b) has been convicted of an offence of which dishonesty is an element and sentenced to imprisonment without the option of a fine; or
- (c) is considered a mentally ill person under the Mental Health Act, 1973 (Act No. 18 of 1973).

[subsection (3) amended by Act 13 of 2005]

Functions of the Council

3. The functions of the Council are to advise -
- (a) the Minister generally on forestry matters including legislation applicable to the forestry industry;
 - (b) the Minister on the preparation and implementation of the national forest policy;
 - (c) on any matter which the Minister or a member of the Council has placed before the Council; and
 - (d) any person who, or an institution which, requires assistance or information on forestry related matters.

Tenure and vacation of office

4. (1) Subject to subsection (2), any member of the Council appointed or designated in terms of section 2 shall hold office for a period of three years from the date of his or her appointment or designation, but may upon the expiration of that period again be appointed or designated.

[subsection (1) substituted by Act 13 of 2005]

- (2) A member of the Council shall vacate office if he or she -
- (a) ceases to hold the office by virtue of which he or she became a member or is no longer a member of the association, organisation or institution by virtue of which he or she became a member;
 - (b) has, without reasonable excuse, absented himself or herself from three consecutive meetings of the Council;
 - (c) in writing, resigns from office; or
 - (d) becomes subject to a disqualification referred to in section 2(3).

(3) Notwithstanding subsection (1), the Minister may, after affording a member an opportunity to make representations on the matter, remove a member from office, if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of his or her office.

(4) If a member dies or vacates his or her office before the expiration of his or her term of office, the vacancy shall be filled for the unexpired portion of the term of office of that

Forest Act 12 of 2001

member by the appointment or designation in the manner contemplated in section 2 of a suitable person.

[subsection (4) substituted by Act 13 of 2005]

(5)

[subsection (5) deleted by Act 13 of 2005]

Administration and finance

5. (1) The Director shall be the secretary of the Council and the administrative work of the Council shall be done by staff members of the Ministry who are made available for that purpose by the Permanent Secretary of the Ministry.

(2) A member of the Council or a person who has done work which is required to be done under this Act is entitled to be paid allowances or to be reimbursed for expenses incurred whilst doing that work, but no allowances shall be payable and no expenses shall be reimbursed to a member or person who is entitled to be or has been compensated for doing that work by the State or any person or institution.

(3) The allowances or expenses payable or reimbursable under subsection (2) shall be determined by the Minister after consulting the Minister of Finance and those allowances or expenses shall be paid out from money appropriated for that purpose by Parliament.

Procedure and meetings

6. (1) The Minister shall appoint one of the members of the Council to be the first chairperson of the Council and the members shall elect a vice-chairperson from amongst themselves.

(2) Subsequent chairpersons of the Council shall be elected by members of the Council from amongst themselves.

(3) The chairperson or in his or her absence, the vice-chairperson, shall, in consultation with the other members of the Council, determine the times and places at which meetings of the Council shall be held but at least one meeting of the Council shall be held during each calendar year.

(4) Three members of the Council may, in writing, request the chairperson to convene a meeting of the Council and if a meeting is not convened within 30 days after that request, at least two members of the Council may, in writing, request the Minister to convene a meeting of the Council.

(5) The quorum for a meeting of the Council is four members.

(6) The chairperson of the Council shall preside at meetings of the Council and if he or she is absent from a meeting, the vice-chairperson shall preside and if both are absent, the members who are present shall elect one of those present to preside over the meeting.

(7) The decision of the majority of the members present at a meeting shall be the decision of the Council, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her ordinary vote.

Forest Act 12 of 2001

(8) Where a member of the Council or a spouse, partner or business associate of the member has a direct or indirect financial interest in a matter which involves the Council, the member shall, at or before the meeting where the matter is to be discussed, advise the Council of the nature and extent of the financial interest, and thereafter the Council shall determine whether or not the member can participate in discussions relating to that particular matter.

(9) The Council shall cause minutes of its proceedings to be recorded.

(10) The Council may appoint a committee of members of the Council to advise it on any matter relating to its functions.

(11) The Council or a committee appointed under subsection (10) may invite any person who is not a member of the Council to participate in proceedings of the Council or a committee of the Council but that person has no right to vote at the proceedings.

(12) The Director shall attend meetings of the Council by virtue of his or her office but he or she shall not be entitled to vote on any matter which is before the Council.

(13) The Council may make rules governing the manner in which meetings are to be held and the procedure to be followed at a meeting.

Director of forestry and forest officers

7. (1) Subject to the Public Service Act, 1995 (Act No. 13 of 1995), the Minister shall -

- (a) appoint a person to be the Director of Forestry; and
- (b) designate staff members of the Ministry to be forest officers.

(2) For the purposes of this Act a forest officer may perform the functions or exercise the powers given to a licensing officer by this Act.

Honorary forest officers

8. (1) The Minister may, by notice in the *Gazette*, appoint any person to be an honorary forest officer for an area specified in that notice, and he or she may, by the same notice, authorise the honorary forest officer to exercise the powers or perform the functions specified in that notice.

(2) Subject to section 5(2) and (3), the Minister shall pay or cause to be paid, remuneration or allowances to an honorary forest officer who has done work which he or she is required to do under this Act.

Licensing officers

9. (1) For the purpose of this Act, but subject to the Public Service Act, 1995 (Act No. 13 of 1995), the Minister may in writing, designate any staff member of the Ministry to be a licensing officer who shall perform the functions or exercise the powers conferred on a licensing officer by this Act.

(2) The Minister may, by notice in the *Gazette*, appoint a person who is not a staff member of the Ministry to be a licensing officer for an area which is specified in that notice, who shall perform the functions or exercise the powers specified in that notice.

Forest Act 12 of 2001

(3) Subject to section 5(2) and (3), the Minister shall pay or cause to be paid, remuneration or allowances to a licensing officer appointed under subsection (2), for having done work which he or she is required to do under this Act.

PART II

Forest management

Aim of forest management

10. (1) The purpose for which forest resources are managed and developed, including the planting of trees where necessary, in Namibia is to conserve soil and water resources, maintain biological diversity and to use forest produce in a way which is compatible with the forest's primary role as the protector and enhancer of the natural environment.

(2) For the purposes of subsection (1), the Minister shall, in conjunction with other relevant institutions, promote and encourage the development and use of alternative sources of energy with a view to reducing harvesting pressure on Namibia's woody vegetation.

Duties of Director in relation to forestry management

11. (1) In order to achieve the aim mentioned in section 10, the Director shall compile and maintain a national forest inventory.

- (2) The inventory referred to in subsection (1) shall -
- (a) contain the total number of forest reserves as well as the total area covered by forest reserves in Namibia;
 - (b) contain the total number of community forests as well as the total area covered by community forests in Namibia;
 - (c) identify other public, private or communal land which is being used for forestry as well as the total area covered by that land;
 - (d) contain the type and quantity of forest produce found in the forest or land referred to in paragraphs (a), (b) and (c);
 - (e) contain a record of the management plan for each classified forest;
 - (f) identify -
 - (i) water catchment areas, steep slopes and other environmentally fragile areas which require permanent forest cover;
 - (ii) areas which are suitable for forest plantations;
 - (g) contain any other information which is necessary to ensure the efficient management of forest resources.

Forest management plans

12. (1) There shall be prepared for each classified forest, a management plan which plan shall -

Forest Act 12 of 2001

- (a) describe the area covered by the classified forest, the forest produce found in that classified forest and how the forest produce is being used;
 - (b) state the management objectives of the classified forest;
 - (c) state the measures to be taken for management of the classified forest; and
 - (d) state the name of the person who or body which will be appointed as the management authority for the classified forest.
- (2) The management plan for a state forest reserve shall -
- (a) in the case of a state forest reserve declared under section 13(1), be prepared by the Director after consulting the regional council and the local authority council for the area where the state forest reserve is situated; and
 - (b) in the case of a state forest reserve declared under section 13(8), be prepared by the Director, but the plan shall be subject to an agreement entered into under section 13(5)(a) or to an order made under section 13(5)(b).
- (3) The management plan for a regional forest reserve shall, subject to an agreement entered into under section 14(5), be prepared by the regional council of the area, after consulting the local authority council of the area where the regional forest reserve is situated.
- (4) The management plan for a community forest or a forest management area shall be agreed upon as part of the agreement entered into under section 15 or 16 respectively.
- (5) Where the Minister has reasonable cause to believe that a management plan for a community forest or a forest management area needs to be changed in order to achieve the purposes of this Act, and after consultation with a party to an agreement made under section 15 or a party to an agreement made under section 16 no agreement has been reached on the changes considered by the Minister to be necessary, the Minister may change the agreement to include the necessary changes.
- (6) The Minister shall pay compensation to a party to an agreement made under section 15 or 16, which or who, as the case may be, after having acquired rights because of the declaration of the community forest or the creation of a forest management area, loses those rights or suffers a reduction in the enjoyment of those rights because of a change made under subsection (5).

[The word "loses" should be "loses".]

PART III
Classified forests

State forest reserves

13. (1) With the concurrence of the Minister of Lands, Resettlement and Rehabilitation, the Minister may, by notice in the *Gazette*, declare any state land which is not communal land to be a state forest reserve.

- (2) Where on reasonable grounds the Minister is satisfied that -

Forest Act 12 of 2001

- (a) any communal land needs to be managed as a classified forest for the purposes of managing forest resources of national importance or to preserve the ecosystems and other components of biological diversity; and
- (b) effective management cannot be achieved through management of that communal land as a community forest;

he or she may, by notice in the *Gazette*, declare his or her intention to declare that communal land to be a state forest reserve.

- (3) A notice referred to in subsection (2) shall -
 - (a) identify and describe the communal land on which the state forest reserve is to be established;
 - (b) invite any person who objects to the declaration of a state forest reserve to, within 60 days of the publication of that notice, make written representations on the proposed declaration and management of a state forest reserve to the Director or to any person who has been specified in that notice;
 - (c) state that if objections to the proposed declaration are not received by the Director or other person specified in the notice within a period of 60 days from the date of publication of the notice, the Minister may proceed to declare the communal land to be a state forest reserve; and
 - (d) include a management plan for the proposed state forest reserve as well as details of how the revenue to be derived from the state forest reserve will be disposed of.

(4) Whilst a notice referred to in subsection (2) is in force, the Minister shall, in addition to publication of that notice, use any other means which are practicable in the circumstances to inform the persons referred to in subsection (3)(b) about the proposed declaration in order to ensure that the persons affected by the proposed declaration are given an opportunity to make representations on the matter.

(5) At the end of 60 days after publication of the notice referred to in subsection (2), the Minister shall consider any representations made under subsection (3)(b), if any were made, and he or she may -

- (a) enter into a written agreement with the chief or traditional authority for the communal land in question or such other authority which is authorised by law to grant rights over the communal land in question and that agreement shall create a state forest reserve on the communal land, incorporate the management plan for the state forest reserve, appoint the management authority for the state forest reserve and state how revenue derived from the state forest reserve will be disposed of; or
- (b) if an agreement contemplated in paragraph (a) cannot be reached, and with the concurrence of the Minister of Lands, Resettlement and Rehabilitation, make an order which creates a state forest reserve on the communal land in question, incorporates the management plan for the forest reserve, appoints the management authority for the state forest reserve and states how the revenue derived from the state forest reserve will be disposed of.

(6) The Minister shall pay compensation to a person who, or a community which, prior to the creation of a state forest reserve on communal land, had a legal right or claim in or to the

Forest Act 12 of 2001

communal land in question, but who or which, as the case maybe, loses that right or claim because of an agreement made under subsection (5)(a) or an order made under subsection (5)(b).

[The word “loses” should be “loses”.]

(7) The compensation referred to in subsection (6) may, in the case of communal land which is legally occupied by any person, consist in the provision that person, of equivalent rights to other land or alternative access to forest produce.

[The phrase “provision that person” was probably intended to read “provision to that person”.]

(8) After an agreement has been entered into under subsection (5)(a) or an order has been made under subsection (5)(b), the Minister may, by a notice in the *Gazette*, declare the communal land which is the subject matter of the agreement or order to be a state forest reserve and that state forest reserve shall, subject to subsection (9), be managed in accordance with that agreement or order.

(9) A state forest reserve shall be managed by a management authority appointed in terms of an agreement made under subsection (5)(a) or an order made under subsection (5)(b).

Regional forest reserve

14. (1) Where on reasonable grounds a regional council is satisfied that -
- (a) any communal land situated in the region for which it was established needs to be managed as a classified forest for the purposes of managing forest resources of national importance or to preserve the ecosystems and other components of biological diversity; and
 - (b) effective management cannot be achieved through management of the communal land as a community forest;

it may, in writing, request the Minister to have the communal land in question declared a regional forest reserve.

(2) On receipt of a request made under subsection (1), the Minister may, if he or she is satisfied that the request is reasonable and that it would be in the public interest to establish a regional forest reserve in the communal land in question, with the concurrence of the Minister of Lands, Resettlement and Rehabilitation, by notice in the *Gazette*, declare that a regional forest reserve is to be established on that communal land.

- (3) A notice referred to in subsection (1) shall -
- (a) identify and describe the communal land on which the regional forest reserve is to be established;
 - (b) invite any person who objects to the declaration of a regional forest reserve to, within 60 days of the publication of the notice, make written representations on the proposed declaration and management of a regional forest reserve to the regional council or to any person who has been specified in that notice;
 - (c) state that if objections to the proposed declaration are not received by the regional council or other person specified in the notice within a period of 60 days from the

Forest Act 12 of 2001

date of publication of the notice, the Minister may proceed to declare the communal land to be a regional forest reserve; and

- (d) include a management plan for the proposed regional forest reserve as well as how the revenue to be derived from the regional forest reserve will be disposed of.

(4) Whilst a notice referred to in subsection (1) is in force, the regional council shall, in addition to publication of that notice, use any other means which are practicable in the circumstances to inform the persons referred to in subsection (3)(b) about the proposed declaration in order to ensure that the persons affected by the proposed declaration are given an opportunity to make representations on the matter.

(5) At the end of 60 days after publication of the notice referred to in subsection (1), the regional council shall consider any representations made under subsection (3)(b), if any were made, and thereafter it may enter into a written agreement with the chief or traditional authority for that communal land or such other authority which is authorised by law to grant rights over that communal land and that agreement shall create a regional forest reserve on that communal land, incorporate the management plan for the regional forest reserve, appoint the management authority for that regional forest reserve and state how revenue derived from that regional forest reserve will be disposed of.

(6) A regional council shall pay compensation to a person who, prior to the creation of a regional forest reserve on communal land, had a legal right or claim in or to the communal land in question, but who loses that right or claim because of an agreement entered into under subsection (5).

[The word “loses” should be “loses”.]

(7) The compensation referred to in subsection (6) may, in the case of communal land which is legally occupied by any person, consist in the provision to that person, of equivalent rights in other land or alternative access to forest produce.

(8) A regional council shall refer an agreement referred to in subsection (5) to the Minister, and the Minister may, if he or she is satisfied that the agreement was made in accordance with this Act, by notice in the *Gazette*, declare the communal land which is the subject matter of the agreement to be a regional forest reserve and that regional forest reserve shall, subject to subsection (9), be managed in accordance with that agreement.

(9) A regional forest reserve shall be managed by the regional council of the area where it is situated or by a management authority appointed in terms of an agreement made under subsection (5).

Community forests

15. (1) The Minister may, with the consent of the chief or traditional authority for an area which is part of communal land or such other authority which is authorised to grant rights over that communal land enter into a written agreement with any body which the Minister reasonably believes represents the interests of the persons who have rights over that communal land and is willing and able to manage that communal land as a community forest.

- (2) The agreement referred to in subsection (1) shall -
 - (a) provide for the creation of a community forest;
 - (b) identify the geographical boundaries of the proposed community forest;

Forest Act 12 of 2001

- (c) include a management plan for the proposed community forest;
- (d) confer the rights, subject to the management plan, to manage and use forest produce and other natural resources of the forest, to graze animals and to authorise others to exercise those rights and to collect and retain fees and impose conditions for the use of the forest produce or natural resources;
- (e) appoint the body which is party to an agreement made in terms of subsection (1) to be the management authority for the community forest and require that management authority to manage the community forest in accordance with the management plan;
- (f) provide for equal use of the forest and equal access to the forest produce by members of the communal land where the community forest is situated; and
- (g) provide for adequate reinvestment of the revenues of the forest and for the equitable use or distribution of the surplus.

(3) Where an agreement referred to in subsection (1) has been entered into the Minister may, by notice in the *Gazette*, declare the area which is the subject matter of the agreement to be a community forest and that the community forest shall be managed in accordance with that agreement.

Forest management areas

16. (1) The Director may enter into a forest management agreement with any person or institution for the creation of a forest management area on land which does not form part of a classified forest, but which land is owned by that person or institution or can be legally used by that person or institution.

- (2) A forest management agreement referred to in subsection (1) -
 - (a) shall include a management plan for the forest management area and that plan may provide for the planting of trees, the management of natural forest and the harvesting practices which are to be followed in the forest management area;
 - (b) shall provide for modification or cancellation of that agreement; and
 - (c) may provide for technical or other assistance to be rendered by the Director in connection with the planting of trees and other activities to be carried out in the forest management area;

Revocation of state forest reserve

17. (1) Subject to subsection (2) and (3), the Minister may, by notice in the *Gazette*, revoke or modify a notice which declared a state forest reserve.

[The word "subsection" should be plural to be grammatically correct.]

(2) Where a state forest reserve was declared under section 13(8), the Minister shall, before publishing a notice under subsection (1), by notice in the *Gazette* declare his or her intention to revoke or modify the notice which declared that state forest reserve.

Forest Act 12 of 2001

- (3) A notice referred to in subsection (2) shall -
- (a) invite any person who objects to the revocation or modification of the notice to, within 60 days of the publication of the notice, make written representations on the proposed revocation or modification of that notice to the Director or to any person who is specified in that notice; and
 - (b) state that if objections to the proposed revocation or modification are not received by the Director or the person specified in that notice within a period of 60 days from the date of the notice, the Minister may proceed to revoke or modify the notice which declared the state forest reserve.

(4) Whilst a notice referred to in subsection (2) is in force, the Minister shall, in addition to publication of that notice, use any other means which are practicable in the circumstances to inform the persons referred to in subsection (3)(a) about the proposed revocation or modification in order to ensure that those people are given an opportunity to make representations on the matter.

(5) At the end of 60 days after publication of the notice referred to in subsection (2), the Minister shall consider any representations made under subsection (3), if any were made, and he or she may revoke or modify as contemplated in subsection (1).

(6) The revocation or modification of a state forest reserve declared under section 13(8) can only be done -

- (a) after the procedures outlined in subsections (2) to (5) have been followed; and
- (b) in terms of one of the following -
 - (i) if the agreement made under section 13(5)(a) or an order made under section 13(5)(b) provides for the revocation or modification of the notice;
 - (ii) if after the procedures outlined in subsections (2) to (5) have been followed, the agreement made under section 13(5)(a) has been replaced by a new agreement entered into between the Minister and the chief, traditional authority or the authority which is authorised by law to grant rights to the communal land in question; or
 - (iii) if after the procedures outlined in subsections (2) to (5) have been followed no new agreement as contemplated in subparagraph (ii) has been reached, and the Minister on reasonable grounds considers an agreement or order made under section 13(5) to be no longer satisfactory, the Minister has made an order revoking or modifying the notice.

(4) Where, due to the activities of any person during the existence of a state forest reserve, the value of any land has been enhanced or the conservation of forest resources has improved, the Minister shall, on revocation or modification of that state forest reserve, pay compensation to that person for the enhancement in the value of the land or improvements in the conservation of forest resources.

Revocation of regional forest reserve

18. (1) The regional council for an area in which a regional forest reserve is situated may, in writing, request the Minister to revoke or modify a notice which declared that regional forest reserve.

Forest Act 12 of 2001

(2) On receipt of a request made under subsection (1), the Minister may, by notice in the *Gazette*, declare that it is intended to revoke or modify a notice which declared a regional forest reserve.

(3) A notice referred to in subsection (2) shall -

- (a) invite any person who objects to the revocation or modification of the notice, to within 60 days of the publication of the notice, make written representations on the proposed revocation or modification of that notice to the regional council for the area where the regional forest reserve is situated or to any person who is specified in that notice; and
- (b) state that if objections to the proposed revocation or modification are not received by the regional council or the person specified in that notice within a period of 60 days from the date of that notice, the Minister may proceed to revoke or modify the notice which declared the regional forest reserve.

(4) Whilst a notice referred to in subsection (2) is in force, the Minister shall in addition to publication of that notice, use other means which are practicable in the circumstances to inform the persons referred to in subsection (3)(a) about the proposed revocation or modification in order to ensure that those persons are given an opportunity to make representations on the matter.

(5) At the end of 60 days after publication of the notice referred to in subsection (2), the relevant regional council shall consider any representations made under subsection (3), if any were made, make its comments on the matter and refer those comments together with the representations to the Minister.

(6) On receipt of the information given under subsection (5) the Minister may, subject to subsection (7), by notice in the *Gazette*, revoke or modify a notice which declared a regional forest reserve.

(7) A revocation or modification contemplated in subsection (6) can only be done -

- (a) after the procedures outlined in subsections (1) to (5) have been followed and consultations have been held with the relevant regional council; and
- (b) in terms of one of the following -
 - (i) if the agreement made under section 14(5) provides for the revocation or modification of the notice;
 - (ii) if after the procedures outlined in subsections (1) to (5) have been followed, and the agreement made under section 14(5) has been replaced by a new agreement entered into between the regional council and the chief, traditional authority or the authority which is authorised to grant rights over the relevant communal land; or
 - (iii) if after the procedures outlined in subsections (1) to (5) have been followed, no new agreement as contemplated in subparagraph (ii) has been reached, and the regional council considers on reasonable grounds that the agreement made under section 14(5) is no longer satisfactory, the regional council has made an order revoking or modifying the notice.

Forest Act 12 of 2001

(4) Where, due to the activities of any person during the existence of a regional forest reserve, the value of any land has been enhanced or the conservation of forest resources has improved, the regional council shall, on revocation or modification of that regional forest reserve, pay compensation that person for the enhancement in the value of the land or the improvements in the conservation of forest resources.

Revocation or suspension of community forest

19. (1) Where the management authority of a community forest has failed to comply with an agreement made under section 15, the Minister may order the management authority to comply with that agreement, restore any area of the community forest to the condition required by that agreement and where necessary, order the management authority to compensate a person who has suffered loss caused by deviation from that agreement.

(2) The Minister may, by notice in the *Gazette*, revoke a notice which declared a community forest if he or she -

- (a) has on reasonable grounds been satisfied that there has been failure to comply with the agreement made in terms of section 15 or that the management authority of that community forest has failed to comply with an order made under subsection (1);
- (b) reasonably believes that the management authority of that community forest no longer represents the interests of persons who have rights over the land in question as required by section 15(1); or
- (c) has been requested to do so by the management authority of that community forest.

(3) The Minister shall pay compensation to a management authority which is party to an agreement made under section 15 for the enhancement of the value of land or improvement in conservation of forest resources due to the management authority's activities during the subsistence of that agreement.

(4) Where the Minister -

- (a) is satisfied that the management authority of a community forest has complied with an order made under subsection (1);
- (b) is satisfied that the management authority of a community forest represents the interests of the persons who have rights over communal land as required by section 15(1); or
- (c) has been requested by the management authority of a community forest to reinstate a notice revoked under subsection (2), and he or she is satisfied that it is proper to reinstate that notice;

he or she may, by notice in the *Gazette*, reinstate a notice which was revoked under subsection (2).

(5) Where the Director is on reasonable grounds satisfied that -

- (a) there is imminent danger of damage to the resources of a community forest; and
- (b) the management authority for the community forest is unable or unwilling to take the necessary action to avert or minimise the danger;

Forest Act 12 of 2001

he or she may, order the suspension of an agreement made under section 15 in relation to the community forest, and take action which is reasonably necessary for the purpose of averting, minimising or repairing the damage.

(6) A suspension order made under subsection (5), shall be in writing, and shall be served on the management authority of the relevant community forest and on the Minister.

(7) After receiving a suspension order made under subsection (1), the Minister may -

- (a) confirm the suspension order and allow the Director to take or continue with the action referred to in subsection (5);
- (b) take any action which he or she is authorised to take by subsection (2), (3) or (4); or
- (c) if satisfied that the danger of damage to the resources of the community forest has been averted or minimised, revoke the suspension order.

Revocation or suspension of a forest management area

20. (1) Where a party to a forest management agreement entered into under section 16, fails to comply with that agreement, the Director may order that party to comply with that agreement, and to restore any area covered by that agreement to the condition required by that agreement.

(2) Where the Director is satisfied on reasonable grounds that a party to a forest management agreement has failed to comply with that agreement or has failed to comply with subsection (1), or where the Director has been requested by that party to revoke a forest management agreement, he or she may revoke that forest management agreement.

(3) Where the Director is on reasonable grounds satisfied that -

- (a) there is imminent danger of damage to the resources of a forest management area; and
- (b) a party to a forest management agreement is unable or unwilling to take action necessary to avert or minimise the danger of damage;

he or she may, order the suspension of the forest management agreement relating to the forest management area in question, and take action which is reasonably necessary for the purpose of averting, diminishing or repairing the damage.

[The comma after the word "may" is superfluous.]

(4) Where the Director -

- (a) is reasonably satisfied that a party to a forest management agreement has complied with the agreement or with an order made under subsection (1);
- (b) has been requested by a party to a forest management agreement to reinstate a forest management agreement which was revoked under subsection (2);
- (c) is reasonably satisfied that the danger of damage to the resources of a forest management area as contemplated in subsection (3) has been minimised or averted;

Forest Act 12 of 2001

he or she may, reinstate a forest management agreement which was revoked under subsection (2) or revoke a suspension order which was made under subsection (3).

[The comma after the word “may” is superfluous.]

PART IV

Protection of the environment

Protected areas

21. (1) Where the Minister is on reasonable grounds satisfied that on any area of land it is necessary to protect the soil, water resources, protected plants and other elements of biological diversity he or she shall, with a view to reaching an agreement on the matters referred to in subsection (2), consult with the Minister of Lands, Resettlement and Rehabilitation, the Minister of Agriculture, Water and Rural Development, the owner or occupier of the land in question and in the case of communal land, the chief or traditional authority for that communal land or the authority which is authorised by law to grant rights over that communal land.

(2) The persons referred to in subsection (1) shall seek to reach an agreement on -

- (a) the need for creating a protected area;
- (b) the measures required for the protection of the protected area and the assistance to be given by the Minister towards accomplishing those measures; and
- (c) the obligations of the owner or occupier of the land or the chief, traditional authority or the authority which is authorised to grant rights over communal land to maintain and protect the forest resources of the protected area.

(3) Where an agreement has been reached in accordance with subsection (2), the Minister may, by notice in the *Gazette*, declare the area which is the subject matter of the agreement to be a protected area which shall be managed in accordance with that agreement.

(4) The Minister shall pay compensation to the owner of land or the members of a community in respect of any communal land the long-term use of which is substantially diminished by measures taken in pursuance of a declaration made under subsection (3) if -

- (a) the owner's or the members of the community's other land or communal land is not likely to derive some benefit as a result of those measures; and
- (b) those measures are not limited to the protection of protected plants and restrictions on the removal of vegetation from sand dunes, drift sand, gullies and within one hundred metres of a watercourse.

(5) Unless otherwise authorised by this Act, no person shall damage or destroy vegetation in a protected area contrary to a notice published under subsection (3).

Protection of natural vegetation

22. (1) Unless otherwise authorised by this Act, or by a licence issued under subsection (3), no person shall on any land which is not part of a surveyed erven of a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992) cut, destroy or remove -

Forest Act 12 of 2001

- (a) vegetation which is on a sand dune or drifting sand or on a gully unless the cutting, destruction or removal is done for the purpose of stabilising the sand or gully; or
- (b) any living tree, bush or shrub growing within 100 metres of a river, stream or watercourse.

(2) A person who wishes to obtain a licence to cut and remove the vegetation referred to in subsection (1) shall, in the prescribed form and manner, apply for the licence to a licensing officer who has been designated or appointed for the area where the protected area is situated.

(3) On receipt of an application made under subsection (2) a licensing officer may -

- (a) subject to an applicable management plan if any, or to a notice creating a protected area; and
- (b) where he or she is reasonably satisfied that the cutting and removal of vegetation will not interfere with the conservation of soil, water or forest resources;

issue a licence which authorises the holder to cut and remove the vegetation in question.

(4) A licensing officer may require the holder of a licence issued under subsection (3) to plant vegetation on the land in question or impose conditions which are reasonable and necessary in the circumstances.

(5) The Minister may, by regulation, declare any plant or species of any plant to be a protected plant and shall impose conditions under which that protected plant shall be conserved, cultivated, used or destroyed by any person.

(6) No person shall do anything which is contrary to a condition imposed under subsection (5).

Control over afforestation and deforestation

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

23. (1) Unless approval has been given by the Director, no person shall -

- (a) plant trees, other than fruit trees, on more than 15 hectares of land on any piece of land or several pieces of land situated in the same locality;
- (b) clear the vegetation on more than 15 hectares on any piece of land or several pieces of land situated in the same locality which has predominantly woody vegetation; or
- (c) cut or remove more than 500 cubic metres of forest produce from any piece of land in a period of one year.

(2) The Director may require a person seeking authority required under subsection (1), to prepare an environmental impact assessment report and the report shall, in addition to the requirements imposed by any law for such reports, contain information and analysis which the Director requires.

(3) Before giving the approval contemplated in subsection (1), the Director shall take into consideration an environmental assessment report prepared under subsection (2).

Forest Act 12 of 2001

(4) Regional councils shall, in their respective regions, develop and implement tree planting programmes and report their progress to the Minister on a yearly basis.

PART V
Use of forests and forest produce

Control over forests and forest produce

24. (1) Forests and forest produce shall, in Namibia, subject to the permission of the owner of the land or the management authority of a classified forest and to the terms of a licence issued under this Act, be used in accordance with an applicable management plan.

- (2) No person shall -
- (a) destroy or damage vegetation or harvest forest produce;
 - (b) carry out any activity for the purpose of mining minerals;
 - (c) build a road, building or structure;
 - (d) disturb or remove soil; or
 - (e) carry out agricultural activities or graze animals;

in a classified forest unless he or she has been authorised to do so by a management plan, a forest management agreement or a licence issued under this Act.

(3) Notwithstanding subsection (2), the owner or legal occupier of any land, including communal land may, subject to any applicable management plan, in which harvesting limits are set in or an agreement entered into under this Act and section 26, without a licence, harvest forest produce from the land he or she owns or occupies and dispose of that forest produce in any way he or she likes.

(4) Notwithstanding subsection (2), a person who resides in or near a forest reserve or a person who resides in or near a community forest may, subject to a relevant management plan and section 26, cut and remove from the forest reserve or community forest, forest produce for use as household fuel or for the construction of shelter for himself or herself or for his or her livestock.

(5) The hunting of wild animals in a classified forest shall be done in accordance with the applicable management plan and no authorisation to hunt in terms of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) which is contrary to an applicable management plan shall be granted.

Honey producing organisms

25. (1) Unless otherwise authorised by this Act, but subject to subsection (2), no person shall remove or destroy a dwelling place or structure of a honey producing organism which is situated on any land, remove wax or honey from any dwelling place or structure of a honey producing organism or remove or destroy honey producing organisms which are at any place in Namibia.

(2) Notwithstanding subsection (1), but subject to a management plan, a forest management agreement, an agreement entered into under this Act or a licence issued under this Act, the owner of a dwelling place or structure of a honey producing organism may -

Forest Act 12 of 2001

- (a) where it is necessary for the purposes of preserving honey producing organisms and honey, remove his or her dwelling place or structure of a honey producing organism from any place; or
- (b) take honey or wax from his or her dwelling place or structure of a honey producing organism for any purpose.

(3) For the purposes of this section “owner” in relation to a dwelling place or structure of a honey producing organism means the legal owner or occupier of the land where the dwelling place or structure of a honey producing organism is situated or a person who because of an agreement between him or her and the owner or occupier of the land in question, is the owner of the dwelling place or structure of a honey producing organism.

Allowable harvest

26. Subject to a relevant management plan, the Director shall determine the quantity of forest produce for which a licence may be issued in any a forest reserve or a community forest and the maximum quantity of forest produce which may be harvested under section 24 (3).

[The phrase “any a” is obviously incorrect, but it is not clear if the intended language was “any forest reserve” or “a forest reserve”.]

Licence to harvest

27. (1) A person who wishes to obtain a licence to cut or remove forest produce from a forest reserve shall, in the prescribed form and manner, apply for the licence to a licensing officer who has been designated or appointed for the area where the forest reserve is situated.

(2) On receipt of an application made under subsection (1) a licensing officer may issue a licence to the applicant on condition that the applicant pays a royalty which has been prescribed by the Minister in concurrence with the Minister of Finance.

(3) No licensing officer shall issue a licence which is contrary to a management plan or a condition imposed by the Director under section 26.

Licence to graze or carry on agricultural activity

28. (1) A person who wishes to obtain a licence to graze animals or to engage in agricultural activities in a forest reserve shall, in the prescribed form and manner, apply for the licence to a licensing officer who has been designated or appointed for the area where the forest reserve is situated.

(2) On receipt of an application made under subsection (1) a licensing officer may issue a licence to the applicant on condition that the applicant pays a fee which has been prescribed by the Minister in concurrence with the Minister of Finance.

Licence to carry on mining activity

29. (1) A person who wishes to obtain a licence to carry out any activity for the purpose of mining in a forest reserve shall, in the prescribed form and manner, apply for the licence to a licensing officer who has been designated or appointed for the area where the forest reserve is situated.

Forest Act 12 of 2001

(2) On receipt of an application made under subsection (1) a licensing officer may issue a licence to the applicant on condition that the applicant pays the royalty or fee which has been prescribed by the Minister in concurrence with the Minister of Finance.

(3) No licensing officer shall, under subsection (2), issue a licence unless the applicant is the holder of mining licence issued under section 93 of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992).

[The word “a” appears to have been omitted before the phrase “mining licence”.]

Licence to construct roads or buildings

30. (1) A person who wishes to obtain a licence to construct a road or a building in a forest reserve shall, in the prescribed form and manner, apply for the licence to a licensing officer who has been designated or appointed for the area where the forest reserve is situated.

(2) On receipt of an application made under subsection (1) a licensing officer may issue a licence to the applicant on condition that the applicant pays the royalty or fee which has been prescribed by the Minister in concurrence with the Minister of Finance.

Community forests

31. The management authority of a community forest may, in accordance with the relevant agreement entered under section 15, dispose of forest produce from the community forest or permit the grazing of animals, the carrying out of agricultural activity or the carrying out of any other lawful activity in the relevant community forest.

[The word “into” appears to have been omitted in the phrase “entered under section 15”.]

Forest management areas

32. (1) A person who, or an institution which, in terms of a forest management agreement entered into under section 16(1), is entitled to harvest forest produce from a forest management area may, in accordance with that forest management agreement, harvest forest produce from the relevant forest management area.

Unclassified forests

33. (1) Notwithstanding section 24(2), but subject to the customary law applicable in a relevant communal land, the inhabitant of communal land may, on communal land which is not legally occupied by any person and which is not a classified forest, cut, take and remove forest produce for use as household fuel, for the construction of shelter for himself or herself or for his or her livestock or for the construction of structures used to protect his or her agricultural crop.

(2) No person shall harvest forest produce from land which is not classified forest, unless the harvesting is done in accordance with a licence issued under subsection (4) or under the circumstances referred to in subsection (1) or section 24(3).

(3) A person who, other than in the circumstances referred to in subsection (1) or section 24(3), wishes to harvest forest produce from communal land which is not legally occupied by any person and which is not a classified forest or from state land which is not a classified forest shall, in the prescribed form and manner, apply for a licence to a licensing officer who has been designated or appointed for the area.

Forest Act 12 of 2001

(4) On receipt of an application made under subsection (3), the licensing officer may issue a licence to the applicant on condition that the applicant pays the royalty which has been prescribed by the Minister in concurrence with the Minister of Finance.

(5) Before issuing a licence under subsection (4), the licensing officer shall, if the land in question is communal land which is not legally occupied by a person, obtain the consent of the chief or traditional authority or of the authority which has been authorised by law to grant rights over the communal land in question.

Suspension and cancellation of licences

34. (1) Where a forest officer has reasonable grounds to believe that there has been a contravention of this Act or a condition of a licence issued under this Act or that a contravention of this Act or a condition of licence issued under this Act is about to occur, he or she may, in writing, order the suspension of a licence and require the licence holder to take necessary measures to remedy or prevent the contravention within the period specified in that notice.

(2) Where a licence has been suspended under subsection (1), no person shall do a thing which was permitted to be done in terms of that suspended licence.

(3) If a licence holder fails to comply with subsection (1) and (2), the Director may cancel the licence in question.

Collection of fees

35. (1) A person who acquires or has in his or her possession forest produce in respect of which a fee or royalty is payable under this Act, and that fee or royalty has not been paid, is liable to pay the outstanding fee or royalty unless he or she at the time of acquiring the forest produce or taking possession of the forest produce did not know that the fee or royalty had not been paid or he or she had no reasonable cause to suspect that the fee or royalty had not been paid.

(2) Where a forest officer has reasonable grounds to believe that a fee or royalty payable under this Act has not been paid, he or she may, seize the forest produce and retain it until the fee or royalty has been paid.

(3) If the fees referred to in subsection (1) remain unpaid after a period of 30 days, the Director may cause the seized forest produce to be sold in such a way that the best price will be realised and he or she shall from the proceeds of sale, pay the cost of seizure and sale, pay the outstanding fees and pay any remaining money to the owner of the forest produce or to a person who was in possession of the forest produce, if that person is entitled by law to receive the money.

PART VI**Control and management of fire****Fire management areas**

36. (1) The Minister may, in respect of any area which is contiguous to or situated near a classified forest, by notice in the *Gazette*, declare the area specified in that notice to be a fire management area and by the same or a similar notice establish a fire management committee for that fire management area.

Forest Act 12 of 2001

(2) The Minister shall, after consultation with the regional council which has control over the area in which a fire management area is situated, prescribe the constitution, functions and procedures of a fire management committee.

(3) If a fire management area is declared in a community forest, the management authority of that community forest shall be the fire management committee of that fire management area.

(4) When necessary, the Minister may, by notice in the *Gazette*, withdraw the notice referred to in subsection (1) or change the boundaries of a fire management area.

Fire management plan

37. (1) A fire management committee shall, within a reasonable time after its establishment, prepare a fire management plan and submit it to the Minister for approval.

(2) A fire management plan shall -

(a) define the area to which it applies;

(b) state the objectives and scope of the plan; and

(c) contain provisions relating to -

(i) circumstances in which burning of things is allowed; and

(ii) the prevention, control and extinguishing of veld and forest fires.

(d) provide for the training of persons in fire management.

(3) If the Minister approves a fire management plan submitted under subsection (1), he or she shall determine the date when it will become operational and at least 30 days before it becomes operational, the Minister shall cause the particulars of the fire management plan to be included in a notice which the Minister shall publish in the *Gazette*.

(4) If the Minister disapproves of a fire management plan submitted under subsection (1), he or she shall make a written statement of the reasons for disapproval and send the statement and the fire management plan to the fire management committee.

(5) On receipt of the fire management plan and the statement referred to in subsection (4), the fire management committee shall, after taking into account the Minister's statement, revise the fire management plan and return it to the Minister for approval.

Fire management

38. (1) A fire management committee shall take necessary measures for the purpose of implementing a fire management plan approved under section 37, and to that extent, it may -

(a) order an owner or occupier of land which is situated in the fire management area; or

(b) in the case of an emergency, co-opt members of the Namibian Police, Namibian Defence Force or Namibian Prison Service or any person who is within the vicinity of the fire management area,

Forest Act 12 of 2001

to participate in implementing the fire management plan.

(2) Where the fire management plan for a fire management area has not been approved by the Minister, or where a fire management committee has failed to implement a fire management plan approved under section 37, an owner or occupier of land which is situated in the relevant fire management area may request the Minister -

- (a) to authorise the taking of action which is necessary to control or prevent fire in the fire management area; and
- (b) to oblige owners or occupiers of land which is situated in the fire management area to participate in the control and prevention of fire and to contribute to the costs which may be incurred.

(3) After receiving a request made under subsection (2), the Minister may in writing, make an order authorising the taking of the necessary action and obliging an owner or occupier of land to take action required under subsection (2)(b).

(4) No person shall, when ordered under subsection (1) to implement a fire management plan or when ordered by the Minister to comply with subsection (2)(b), refuse to comply with that order.

Fire hazard areas

39. (1) When it is necessary the Minister may, by notice in the *Gazette*, declare any area to be a fire hazard area.

- (2) A notice referred to in subsection (1) shall -
 - (a) specify the area which is covered by the notice;
 - (b) state the measures and precautions which are to be taken during the period that the notice is in force; and
 - (c) state the duration of the notice.

(3) The notice made under this section shall take precedence over a fire management plan.

Prohibition on fires

40. (1) No person shall light a fire or cause a fire to be lit in a forest reserve or a protected area, unless the fire is lit in a place which has been set aside for that purpose by a forest officer or the lighting of the fire has been authorised by a forest officer.

(2) No person shall light a fire or cause a fire to be lit in a community forest or a forest management area unless in the case of a community forest, the lighting of the fire has been authorised by the management authority of the community forest and is done in accordance with the relevant management plan, or in the case of a forest management area, the fire is lit in accordance with the forest management agreement for the area.

(3) No person shall light a fire or cause a fire to be lit in a fire management area, unless the lighting of the fire is done in accordance with a fire management plan.

Forest Act 12 of 2001

(4) No person shall, contrary to a notice made under section 39, light a fire or cause a fire to be lit in a fire hazard area.

Liability for fire damage

41. (1) A person who contravenes section 40 is liable to pay compensation to a person who suffers damage as a result of that contravention.

(2) For the purposes of subsection (1) where it is proved that a fire originated from any land owned or occupied by any person, and the owner or occupier of that land lit the fire or caused the fire to be lit, and did not take reasonable measures to prevent damage that owner or occupier is liable for damage caused by that fire.

[The word “land” appears to have been omitted above and should probably appear as follows: “... and the owner or occupier of that land lit the fire or caused the fire to be lit”. There is also a problem with the phrase “did not take reasonable measures to prevent damage”. The provision was probably intended to be “did not take reasonable measures to prevent damage” or possibly “did not take reasonable measures to manage the fire”. There should also be a comma after this phrase.]

Control of fires

42. (1) A member of a fire management committee or a forest officer may require any person to assist in controlling or extinguishing a fire which is about to or is likely to cause damage to a classified forest or protected area.

(2) A member of a fire management committee, a forest officer or a person who under subsection (1) is required to assist, may for the purpose of controlling or extinguishing a fire, enter onto any land or take action which is reasonably necessary to control or extinguish the fire.

PART VII Offences and enforcement

Powers of officers

43. (1) In so far as this section authorises the interference with a person’s right to privacy of his or her person and home as guaranteed by Article 13 of the Constitution, this section is enacted on the authority of sub-article (2) of that Article.

(2) An authorised officer may -

(a) where he or she has reasonable cause to believe that a person is doing an act or is in possession of a thing for which a licence or authority is required under this Act, demand for the production of a licence or an authority from that person;

[The word “for” in the phrase “demand for the production of a licence or an authority” is superfluous.]

(b) without a warrant, enter and inspect any land or premises, other than a dwelling house, in which an activity licensed under this Act is conducted;

(c) where he or she has reasonable cause to suspect that a vehicle is carrying forest produce which was obtained in contravention of this Act, without a search warrant stop and search the vehicle in question; or

Forest Act 12 of 2001

- (d) where he or she has reasonable cause to suspect that -
 - (i) an offence under this Act has been committed;
 - (ii) it is necessary to search a person or to enter into property for the purpose of carrying out a search; and
 - (iii) the delay which will be occasioned by applying for a search warrant from a judicial officer will prejudice the object of the search;

without a search warrant, search that person or enter into the property and conduct a search.

(3) Where an authorised officer has reasonable grounds to believe that an offence under this Act has been committed he or she may, without a warrant -

- (a) seize an article which is the subject matter of the offence or which has been used in committing the offence; or
- (b) arrest a person who is reasonably suspected of having contravened section 40 or 45(1)(f) or (6) or of having committed any offence under this Act and who the authorised officer reasonably believes will not respond to a summons to appear in court for trial.

(4) An authorised officer who acts under this section shall do so subject to Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and, subject to necessary changes, if he or she -

- (a) acts under subsection (3)(a), he or she is entitled to exercise the powers conferred or is obliged to perform the duties imposed on a member of the police by that Act; and
- (b) acts under subsection (3)(b), he or she is entitled to exercise the powers conferred or is obliged to perform the duties imposed on a peace officer by that Act.

(5) Subject to section 35, an article seized under subsection (3) shall be dealt with and disposed in the same way as an article which was seized under Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and an authorised officer who acts under subsection (3) shall, subject to necessary changes comply with that chapter.

(6) The Minister shall prescribe the identification documents which an authorised officer is required to carry or to produce on demand by a person in relation to whom the powers conferred by this Act may be exercised, or the apparel which an authorised officer is required to wear whilst executing his or her functions under this Act.

Powers in relation to stray animals

44. (1) Unless authorised by this Act, no person shall allow an animal which is under his or her charge or control to enter into a classified forest.

(2) Where an animal enters a classified forest contrary to subsection (1), an authorised officer may seize that animal and detain it at a place prescribed by the Minister.

(3) After seizing an animal pursuant to subsection (2), the authorised officer shall as soon as is reasonably practicable -

Forest Act 12 of 2001

- (a) in writing, inform a magistrate about the seizure;
- (b) inform the owner of the animal about the seizure, if the owner is known;
- (c) if the owner of the animal is not known, take all measures which are practicable and reasonable in the circumstances in order to ascertain the owner of the animal and to inform him or her about the seizure; and
- (d) inform the owner that the animal can be released if the prescribed costs of seizing and detaining the animal are paid to the authorised officer within 30 days of seizure of the animal.

(4) If the prescribed costs referred to in subsection (3)(d) are paid within 30 days of seizure of the animal, the authorised officer shall -

- (a) release the animal to the person from whom it was seized if that person may lawfully possess the animal; or
- (b) if the person from whom it was seized cannot lawfully possess the animal or cannot be found, to a person who may lawfully possess the animal.

(5) If after 30 days of seizure an animal has not been claimed or the prescribed costs of seizure and detention have not been paid, an authorised officer shall notify the magistrate who is stationed in the area where the animal was seized about the seizure and detention.

(6) A magistrate to whom notice has been given under subsection (5), shall cause the animal to be sold or disposed of in such a way that the best monetary value for the animal can be obtained and after that, he or she shall cause the costs of seizure and detention to be paid from the proceeds of sale, to the authorised officer who seized the animal and the balance to be paid to any of the persons referred to in subsection (4).

Offences

45. (1) A person who -
- (a) contravenes section 21(5), 22(1) or (6), 23(1), 24(2), 33(2) or 40;
 - (b) without lawful excuse alters, destroys or removes a boundary mark placed by a forest officer to mark an area for the purposes of this Act;
 - (c) possesses forest produce in respect of which he or she has reasonable cause to believe that an offence against this Act has been committed or that a fee or royalty which is due under this Act has not been paid;
 - (d) without having been authorised by a forest officer, affixes a mark on forest produce which mark can only be lawfully affixed by a forest officer for the purposes of this Act;
 - (e) without lawful excuse, removes, destroys or alters a mark or sign placed on forest produce by a forest officer for the purposes of this Act; or
 - (f) obstructs an authorised officer in the exercise of his or her powers or in the performance of his or her duties under this Act;

Forest Act 12 of 2001

commits an offence, and is liable on conviction to be sentenced to a fine which does not exceed N\$8 000 or to imprisonment for a period which does not exceed two years or to both the fine and imprisonment.

(2) A person who, after having lit a fire or caused a fire to be lit, allows that fire to spread into a classified forest or a protected area commits an offence, and is liable on conviction to be sentenced to a fine which does not exceed N\$4 000 or to imprisonment for a period which does not exceed one year or to both the fine and imprisonment.

(3) A person who, after having been requested under section 42(1) and without reasonable cause, fails to assist in the control or extinction of a fire and a person who fails to comply with section 38(4) commits an offence, and is liable on conviction to be sentenced to a fine which does not exceed N\$2 000 or to imprisonment for a period which does not exceed six months or to both the fine and imprisonment.

(4) A person who, when making an application under this Act, or when required to give information under this Act, intentionally makes a false statement or gives false information commits an offence, and is liable on conviction to be sentenced to a fine which does not exceed N\$12 000 or to imprisonment for a period which does not exceed three years or to both the fine and imprisonment.

(5) A person who contravenes section 25(1) commits an offence and is liable on conviction to be sentenced to a fine which does not exceed N\$500 or to imprisonment for a period which does not exceed three months or to both the fine and imprisonment.

(6) If -

- (a) an authorised officer without lawful cause, accepts, agrees to accept or solicits for a benefit as an inducement for him or her to do or omit to do any act which under this Act, he or she is required to do or omit to do, or as a reward for having done or omitted to do any act which under this Act, he or she was required to do or omit to do; or
- (b) a person without lawful cause, gives, agrees to give or offers to give a benefit to an authorised officer as an inducement for that authorised officer to do or omit to do any act which under this Act, that authorised officer is required to do or omit to do, or as a reward for having done or omitted to do any act which under this Act, the authorised officer was required to do or omit to do;

he or she commits an offence, and is liable on conviction to be sentenced to a fine which does not exceed N\$8 000 or to imprisonment for a period which does not exceed two years or to both the fine and imprisonment.

(7) A member of the Council who fails to comply with section 6(8) commits an offence and is liable on conviction to be sentenced to a fine which does not exceed N\$2 000 or to imprisonment for a period which does not exceed three months or to both the fine and imprisonment.

Additional penalties

46. After a court has convicted a person under this Act, it may in addition to imposing the penalty provided for in this Act, order that -

- (a) a licence held by the offender be cancelled;

Forest Act 12 of 2001

- (b) the forest produce in respect of which the offence has been committed and anything which was used in the commission of the offence be -
- (i) in the case of forest produce from a forest reserve, forfeited to the State;
 - (ii) in the case of forest produce from a community forest, be forfeited and paid to the management authority of that community forest; or
- [The word “be” is superfluous, being repeated in this subparagraph despite appearing in the introductory wording of paragraph (b).]**
- (iii) in the case of a forest management area, forfeited to the State if the area is situated on State land or given to the legal owner or occupier of the land, if the area is situated on privately owned land;
- (c) the offender pays, to the owner of the forest produce, compensation equivalent to the value of forest produce where the forest produce which is the subject matter of the offence was damaged or cannot be returned to the owner; or

[The verb “pays” should be “pay” to be grammatically correct (as in paragraph (d) below).]

- (d) the offender pay any fees or royalties which are outstanding to the person who or institution which is entitled to the fees.

PART VIII**General****Appeals**

47. (1) A person who is not satisfied with -
- (a) a decision of the Director made under section 20, 23, 26 or 34; or
 - (b) a decision of a licensing officer made under section 22, 27, 28, 29, 30 or 33;

may, within 30 days after knowing about the decision and in the prescribed form and manner, appeal against the decision to the Minister.

(2) A person who is not satisfied with a decision made under section 12(7), 13(6), 14(6), 17(4), 18(4), 19(3) or 21(4) in relation to compensation may, subject to the rules of the relevant court, appeal against the decision to a court which has jurisdiction over the matter.

Regulations

48. (1) The Minister may make regulations in relation to -
- (a) the form and manner in which applications for licences made under section 27, 28, 29, 30 or 33 are to be made;
 - (b) the conditions to be included in a licence issued under this Act or an agreement made under this Act;
 - (c) the constitution, functions and procedures of a management authority or a fire management area;

Forest Act 12 of 2001

- (d) the requirements for the marking of forest produce and the marks which are permitted to be used;
- (e) the measures to be taken for forest protection, prevention of fires, and protection of soil and water resources;
- (f) the recording and reporting of information use of forests and forest produce;

[Paragraph (d) appears to be missing a word or words between the word “information” and the phrase “use of forests and forest produce”.]

- (g) access to state forest reserves and the activities which may be undertaken in state forest reserves;
- (h) the possession or disposal of material which can cause fire in a classified forest, protected area, forest management area or fire hazard area;
- (i) the methods for measuring and evaluating the value of forest produce;
- (j) the standards for the grading of wood and wood products and the requirements for the grading of wood and wood products, produced or traded in Namibia;
- (k) the certification of forest produce and the conditions of their production and harvesting;
- (l) the transportation, processing, sale and exportation of forest produce and the issuing of permits, licences or other documents required for those activities;
- (m) plants which are declared to be specified plants under section 22(5);
- (n) the places where animals can be detained and the manner in which animals can be seized and detained pursuant to section 44(2);
- (o) the matters required to be prescribed under section 44(6);
- (p) any matter which is required to be prescribed under this Act or which is necessary to be prescribed in order to achieve the purposes of this Act.

(2) The Minister may, with the concurrence of the Minister of Finance, make regulations in relation to -

- (a) the allowances and remuneration payable under section 5(2), 8(2) or 9(3);
- (b) the rates payable under section 44(3) for keeping an animal; or
- (c) the fees for an application made in terms of section 27, 28, 29, 30 or 33 or the fee payable for anything which is required to be paid for under this Act.

(3) A regulation made under this section may provide for a penalty for a contravention or failure to comply with and in the case of a fine it shall not exceed N\$5 000 or in the case of imprisonment the period shall not exceed two years.

[Subsection (3) appears to be missing a word or words between the phrase “failure to comply with” and the phrase “in the case of a fine”; it was perhaps intended to read “failure to comply with such regulation”.]

Forest Act 12 of 2001

Repeals, amendments and savings

49. (1) The Preservation of Bees and Honey Proclamation, 1923 (Proclamation No. 1 of 1923), the Preservation of Trees and Forests Ordinance, 1952 (Ordinance No. 37 of 1952) and the Forest Act, 1968 (Act No. 72 of 1968) are repealed.

(2) The Soil Conservation Act, 1969 (Act No. 76 of 1969) is amended as follows -

- (a) in section 13(2) by the deletion of the phrase “Forest Act, 1968 (Act No. 72 of 1968)” and its replacement by “Forest Act, 2001 (Act No. 12 of 2001)”;
- (b) in section 13(6) by the deletion of the phrase “prescribed by section 24 of the Forest Act, 1968 (Act No. 72 of 1968)” and its replacement by “prescribed by section 45 of the Forest Act, 2001 (Act No. 12 of 2001)”.

Short title and coming into operation

50. This Act is called the Forest Act, 2001 and it shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.