



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 248 Promulgation of Forest Act, 2001 (Act No. 12 of 2001), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 248 2001

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 12 of 2001: Forest Act, 2001.

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)

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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);

“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;

“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,

“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 of Environment and Tourism;

“Ministry” means the Ministry of Environment and Tourism;

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

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“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, 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).

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 who shall be appointed by the Minister -

- (a) one staff member of the Ministry;
- (b) one staff member appointed after consultation with the Minister of Agriculture, Water and Rural Development;
- (c) one staff member appointed after consultation with the Minister of Lands, Resettlement and Rehabilitation;
- (d) two persons nominated by two associations or organisations which the Minister reasonably believes represents the interests of farmers in Namibia; and
- (e) one 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).

(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 for appointment to the Council if he or she -

- (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).

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), a member of the Council shall hold office for a period of three years, but a member is eligible for re-appointment at the end of his or her term of office.

- (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 of the Council vacates office under the circumstances referred to in subsection (2) or (3) or dies, the vacancy shall subject to section 2(3), be filled by -

- (a) a staff member appointed by the Minister or by the Minister after consulting the relevant Minister if the appointment was made under section 2(1)(a), (b) or (c); or
- (b) a person nominated by the organisation, association or institution which originally nominated him or her for appointment if that person was appointed under section 2(1)(d) or (e).

(5) A member who is appointed under subsection (4) shall hold office for the remainder of the period for which his or her predecessor was entitled to hold office.

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.

(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.

(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 -

- (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).

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 -
 - (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 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).
- (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.
- (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 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).

(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;
- (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.

(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.

(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.

(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.

(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;

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.

- (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;

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).

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.

