



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 685

Cape Town
Kaapstad

1 July 2022

No. 46650

THE PRESIDENCY

No. 1131 1 July 2022

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 1 of 2022: National Forests Amendment Act, 2022

DIE PRESIDENSIE

No. 1131 1 Julie 2022

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 1 van 2022: Wysigingswet op Nasionale Bosse, 2022

ISSN 1682-5845



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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 26 June 2022)

ACT

To amend the National Forests Act, 1998, so as to provide for clear definitions of natural forests and woodlands; to provide for public trusteeship of the nation’s forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act to control and remedy deforestation; to provide for appeals against decisions taken under delegated powers and duties; to reinforce offences and penalties; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 84 of 1998, as amended by section 1 of Act 12 of 2001

1. Section 2 the National Forests Act, 1998 (Act No. 84 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended— 5
- (a) by the insertion in subsection (1) before the definition of “biological diversity” of the following definition:
- “**assignment**” means the permanent or temporary transfer of—
- (a) a power, duty, role or function from the functional domain of national government to one or more provincial governments, organs of state or to persons who are not organs of state; or 10
- (b) the administration of a matter listed in Schedule 4, Part A, of the Constitution;”;
- (b) by the insertion in subsection (1) after the definition of “biological diversity” of the following definition: 15
- “**Appeal Committee**” means the committee constituted in terms of section 57A(2);”;
- (c) by the insertion after the definition of “Department” of the following definition:
- “**destruction of natural forest**” means any action where one or more trees in a natural forest is felled or caused to die, or the undergrowth removed, for the purpose of land use or resource use;” 20

- (d) by the substitution in subsection (1) for the definition of “natural forest” of the following definition:
 - “**‘natural forest’** means a group of predominantly indigenous trees—
 - (a) whose crowns are largely contiguous in its undisturbed state;
 - (b) which may represent any successional stage or state of forest degradation, in which case crowns may not be contiguous;
 - (c) which occur in association with characteristic plants or animals recognised in vegetation science as diagnostic species of a specific natural forest type; or
 - (d) which have been declared by the Minister to be a natural forest in accordance with section 7(2);”;
- (e) by the insertion after the definition of “natural forest” of the following definition:
 - “**‘new land use’** means any human activity leading to the use of land which would require the removal of natural forest, which is not restricted to land uses requiring land use approval, zoning or rezoning;”;
- (f) by the substitution in subsection (1) for the definition of “woodland” of the following definition:
 - “**‘woodland’** means—
 - (a) a group of indigenous trees which are not natural forest but whose crowns cover at least 5% of the area they occupy, and which may, in a degraded state have a crown cover of less than 5%; or
 - (b) any vegetation type declared by the Minister to be a woodland by notice in the *Gazette*.”.

Insertion of section 2A in Act 84 of 1998 25

2. The following section is hereby inserted in the principal Act after section 2:

“Public trusteeship of nation’s forestry resources

2A. The National Government, as the public trustee of the nation’s forestry resources, acting through the Minister, must ensure that these resources, together with the land and related ecosystems which they inhabit, are protected, conserved, developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government.”. 30

Amendment of section 7 of Act 84 of 1998, as amended by section 2 of Act 12 of 2001 and section 1 of Act 35 of 2005 35

3. Section 7 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 - “**Prohibition [on] against destruction [of trees] in natural forests**”;
- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) cut, disturb, damage, or destroy any indigenous tree or any other indigenous vegetation in a natural forest;
 - (b) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, [or any] forest product derived from a tree contemplated in paragraph (a), other indigenous vegetation or any forest product derived from vegetation contemplated in paragraph (a);”;
- (c) by the addition of the following subsections:
 - “(5) If a person is in breach of subsection 1(a), the Minister may, by written notice—
 - (a) inform that person of the—
 - (i) nature of the alleged breach;
 - (ii) steps which the person must take to prevent or to redress the said breach; and

- (iii) period within which he or she must take the steps referred to in paragraph (ii); and
- (b) in addition to any penalties in terms of section 63(2)—
 - (i) direct the said person to take the steps referred to in subsection (5)(a)(ii) to prevent further damage or to redress the said breach; and
 - (ii) determine the period within which he or she must take the steps referred to in subparagraph (i).
- (6) If the person fails to comply with the directive within the period determined under subsection (5)(b)(ii), the Minister may—
 - (i) take reasonable steps to remedy the situation;
 - (ii) recover consequential damage or costs from the person concerned; and
 - (iii) approach a competent court for relief.”.

Amendment of section 8 of Act 84 of 1998, as amended by section 2 of Act 35 of 2005 15

4. Section 8 of the principal Act is hereby amended by the addition of the following subsection:

“(3) A person may not conduct any activity in a protected area which is inconsistent with the conservation, recreation or any other management objectives of that area, except under a licence issued by the Minister in exceptional circumstances that may be determined by the Minister.”. 20

Amendment of section 14 of Act 84 of 1998

5. Section 14 of the principal Act is hereby amended by the addition of the following subsection:

“(6) The Minister may issue a written order to immediately terminate the felling, mutilation or destruction of an individual tree or group of trees if he or she has reasonable grounds to believe that such a tree or group of trees may qualify to be declared as— 25

- (a) protected, in accordance with section 12(a) and (b), until such time that a notice in this regard is published in the *Gazette* in accordance with section 14(2); or 30
- (b) a controlled forest area in accordance with section 17.”.

Amendment of section 15 of Act 84 of 1998, as amended by section 3 of Act 35 of 2005

6. Section 15 of the principal Act is hereby amended— 35

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The Minister must, by notice in the *Gazette* and in two newspapers circulating nationally, publish—”; and

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 40

“(b) an appropriate warning of the prohibition referred to in subsection (1) and the consequences of [its] an infringement [,] at least every five years or publish a change that has been effected to the list contemplated in paragraph (a) in the *Gazette* and in two newspapers circulating nationally.”. 45

Amendment of section 17 of Act 84 of 1998, as amended by section 4 of Act 35 of 2005

7. Section 17 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for the words following paragraph (b) of the following words: 5
 - “a natural forest or a woodland, which is threatened with deforestation, or is being **[or has been]** deforested, he or she may declare it a controlled forest area.”; and
 - (b) by the addition of the following subsections:
 - “(13) The Minister may declare a controlled forest area, and due to the 10
 - urgency of the situation, the Minister may proceed with the declaration without prior consultation with, or affording a prior hearing to, any affected person but as soon as reasonably possible after the declaration contemplated in section 17(3), the Minister must—
 - (a) consult with, and afford a hearing to, any affected person; 15
 - (b) consider any representations received during such consultation or hearing; and
 - (c) confirm, vary or cancel the declaration concerned.
 - (14) If the Minister is of the opinion that the owner failed to comply 20
 - with the notice issued in terms of subsections (3) and (4), he or she may—
 - (i) take reasonable steps to remedy the situation;
 - (ii) recover consequential damages or costs from the owner or person concerned; and
 - (iii) approach a competent court for any appropriate relief.”. 25

Amendment of section 23 of Act 84 of 1998, as amended by section 6 of Act 12 of 2001

8. Section 23 of the principal Act is hereby amended by the addition of the following subsection: 30
- “(4) No person may engage in any prospecting or mining activity in a State forest, except in terms of an existing lease agreement to mine, gravel or sand for road maintenance.”

Amendment of section 34 of Act 84 of 1998

9. Section 34 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for the full stop at the end of paragraph (i) 35
 - of a semi-colon; and
 - (b) by the addition in subsection (2) of the following paragraph:
 - “(j) youth, women and persons with disabilities.”

Amendment of section 35 of Act 84 of 1998

10. Section 35 of the principal Act is hereby amended by the substitution for 40
 subsections (4) and (5) of the following subsections, respectively:
- “(4) Members of the Council and members of **[a committee] the committees** of the Council referred to in section 36 who are not in the full-time employment of the State may be paid for their services, except for attending Council meetings.
- (5) The Minister must determine the remuneration and allowances payable to 45
 members of the Council and members of **[a committee] the committees** of the Council referred to in section 36 with the consent of the Minister of Finance.”

Amendment of section 36 of Act 84 of 1998

11. Section 36 of the principal Act is hereby amended by the substitution in subsection 50
 (6) for the words preceding paragraph (a) of the following words:
- “(6) The functions of the Committee on Forest Access are to advise the Council, the Department and the Minister on—”.

Amendment of section 37 of Act 84 of 1998

12. Section 37 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The chairperson of the Council must provide the Minister with advice or information emanating from any meeting [**within two weeks**] of the Council within a period not exceeding one month from the date of the said meeting.” 5

Amendment of section 47 of Act 84 of 1998

13. Section 47 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) [**a province or other**] an organ of State in accordance with section 99 of the Constitution of the Republic of South Africa, 1996; or” 10

Insertion of Chapter 6A in Act 84 of 1998

14. The following chapter is hereby inserted in the principal Act after Chapter 6:

“CHAPTER 6A

APPEAL

15

Right to appeal

57A. (1) A person who is aggrieved by any decision or action taken by a delegated official in terms of this Act may appeal in the prescribed manner to the Minister against such decision or action.

(2) The Minister may constitute a committee known as the Appeal Committee to investigate and consider any appeal referred to it in terms of section 57D. 20

Composition and membership of Appeal Committee

57B. (1) The Appeal Committee must consist of at least three members appointed by the Minister, on an *ad hoc* basis and when necessary, of whom— 25

(a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and

(b) two or more persons must have expert knowledge on the subject of the appeal. 30

(2) The person referred to in subsection (1)(a) must be designated as the chairperson of the Appeal Committee.

(3) The Minister must appoint the members for a determined period through an open and transparent process.

(4) The chairperson and the other members of the Appeal Committee must, for each day or part of a day in any month on which the duties attached to the office concerned were performed, be remunerated and paid a travelling and subsistence allowance, at such daily rate as the Minister in consultation with the Minister of Finance may determine from time to time. 35

(5) In order to be eligible for appointment or designation as a member of the Appeal Committee, and to continue to hold that office, a person must— 40

(a) not be subject to any disqualification set out in subsection (6); and
(b) have submitted to the Minister a written declaration stating that the person—

(i) is not disqualified in terms of subsection (6); and 45

(ii) does not have any personal interests, or interest through a spouse, partner or associate.

- (6) A person may not be a member of the Appeal Committee if that person—
- (a) is an unrehabilitated insolvent or he or she becomes insolvent and the insolvency results in the sequestration of that person's estate;
 - (b) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;
 - (c) is subject to an order of a competent court holding that person to be mentally unfit;
 - (d) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or
 - (e) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.
- (7) A member of the Appeal Committee must not—
- (a) engage in any activity that may undermine the integrity of the Appeal Committee;
 - (b) attend, participate in or influence the proceedings of the Appeal Committee, if, in relation to the matter before the Appeal Committee, that member has an interest that precludes that member from performing the functions of a member of the Appeal Committee in a fair, unbiased and proper manner;
 - (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Appeal Committee; or
 - (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Appeal Committee.
- (8) If, at any time, it appears to a member of the Appeal Committee that a matter being considered by the Appeal Committee during proceedings concerns an interest of that member referred to in subsection (7)(b), that member must—
- (a) immediately and fully disclose the nature of that interest to the members present; and
 - (b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.
- (9) The disclosure by a member of the Appeal Committee in terms of subsection (8)(a), and the decision by the Appeal Committee in terms of subsection (8)(b), must be expressly recorded in the records of the proceedings in question.

Vacancies in Appeal Committee

57C. (1) A member of the Appeal Committee vacates office—

- (a) if the member becomes subject to any disqualification referred to in section 57B(6); and
 - (b) in the case where the member has resigned by giving one month's notice in writing to the Minister, when the member's resignation takes effect.
- (2) The Minister may, subject to due process of law, remove any member of the Appeal Committee from office—
- (a) for misconduct;
 - (b) for failing to perform the duties of a member or to perform such duties diligently and efficiently; or

(c) if the member, because of any physical or mental illness or disability, has become incapable of performing a member's duties or performing the duties diligently and efficiently.

(3) (a) Any vacancy in the office of the Appeal Committee must be filled by the Minister through the appointment of another member in accordance with section 57B(3). 5

(b) A member so appointed holds office for the unexpired portion of the predecessor's term of office.

Investigation and consideration of appeal by Appeal Committee

57D. (1) The Minister may refer an appeal to the Appeal Committee. 10

(2) An appeal must be heard on the date, time and place determined by the chairperson.

(3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing. 15

(4) The chairperson may, for the purpose of the hearing of an appeal—
 (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control, any document which has any bearing upon the subject of the hearing, to appear before the Appeal Committee at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and 20

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing. 25

(5) A person who appeals in terms of section 57A may be represented by any person.

(6) If a member of the Appeal Committee—
 (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time; 30

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members of the Appeal Committee. 35

(7) Where the member of the Appeal Committee who has died or has become incapacitated as envisaged in subsection (5) was the chairperson of the Appeal Committee, the Minister must designate one of the remaining members of the Appeal Committee to act as chairperson, until the Minister appoints a chairperson. 40

(8) Any person appointed in terms of section 57B and 57C(3) must recuse himself or herself as a member of the Appeal Committee if he or she has any direct or indirect personal interest in the outcome of the appeal. 45

(9) The Appeal Committee must make recommendation to the Minister on its decision regarding an appeal.

Consideration of appeal by Minister

57E. (1) When the Minister receives a recommendation in terms of section 57D(9), he or she may— 50

(a) substitute, confirm or set aside the recommendations of the Appeal Committee; and

(b) order the delegated official to execute the decision in connection therewith.

(2) Where the Minister considers an appeal, he or she may— 55

(a) confirm, set aside or vary the decision of the delegated official; and

(b) order the delegated official to execute the decision in connection therewith.

- (3) The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), applies.
- (4) The decision of the Minister must be in writing and a copy thereof must be furnished to the delegated official, appellant and any other party that has an interest in the appeal. 5
- (5) If the Minister—
 - (a) sets aside any decision or action by the delegated official, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or
 - (b) varies any decision or action by the delegated official, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.”. 10

Amendment of section 58 of Act 84 of 1998

- 15. Section 58 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (6) of the following subsection: 15
 - “(6) A person who is guilty of a fifth category offence referred to in section 61 may [not] be sentenced to a fine not exceeding R10 million or imprisonment, **but may be sentenced to a fine up to R50 000** for a period of up to 10 years or to both such fine and imprisonment.”; and
 - (b) by the substitution in subsection (8) for paragraph (b) of the following paragraph: 20
 - “(b) for any offence in terms of this Act, may suspend or revoke a licence granted to the offender under section 7, 15 or 23.”.

Substitution of section 61 of Act 84 of 1998

- 16. The following section is hereby substituted for section 61 of the principal Act: 25
 - “**Offences relating to sustainable forest management**
 - 61. Any person who fails to take the steps which he or she has been instructed to take in terms of [section] sections 4(8), 7(5), 8(3), 14(6) and 17(3) within the period or the extended period laid down, is guilty of a fifth category offence.”. 30

Amendment of section 62 of Act 84 of 1998, as amended by section 12 of Act 12 of 2001 and section 7 of Act 35 of 2005

- 17. Section 62 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection: 35
 - “(1) Any person who contravenes the prohibition of certain acts in relation to trees, indigenous vegetation or any other forest product in natural forests referred to in section 7(1) is guilty of a [second] first category offence.”; and
 - (b) by the substitution for subsection (3) of the following subsection: 40
 - “(3) Any person who contravenes a prohibition or any other provision in a notice declaring a controlled forest area under section 17(3) and (4) is guilty of a [second] first category offence.”.

Amendment of section 63 of Act 84 of 1998, as amended by section 8 of Act 35 of 2005

- 18. Section 63 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 45
 - “(5) Any person who contravenes a condition in a license, exemption or any other authorisation in terms of this Act, in respect of—
 - (a) [in any] a protected area, a natural forest or protected trees, is guilty of a second category offence; and 50
 - (b) [in] any other forest, is guilty of a third category offence.”.

Amendment of section 65 of Act 84 of 1998

19. Section 65 of the principal Act is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (a);
- (b) by the substitution for the fullstop at the end of paragraph (b) of a semi-colon;
and
- (c) by the addition of the following paragraphs:
 - “(c) determine different levels of forest officers; and
 - (d) determine qualification criteria for forest officers.”.

5

Short title and commencement

20. This Act is called the National Forests Amendment Act, 2022, and comes into 10
operation on a date fixed by the President by proclamation in the *Gazette*.