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VAN SUIDWES-AFRIKA



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Government Notice

Goewermentskennisgewing

The following Government Notice is published for general information.

H. S. P. W. VAN NIEUWENHUIZEN,
Secretary for South West Africa.

Administrator's Office,
Windhoek.

No. 297] [16 October 1975

ORDINANCE, 1975: PROMULGATION OF

The Administrator has been pleased to assent, in terms of section 27 of the South West Africa Constitution Act, 1968 (Act 39 of 1968) to the following Ordinance which is hereby published for general information in terms of section 29 of the said Act:

<i>No.</i>	<i>Title</i>	<i>Page</i>
18	Roads Amendment Ordinance, 1975	1672

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

H. S. P. W. VAN NIEUWENHUIZEN,
Sekretaris van Suidwes-Afrika.

Kantoor van die Admlnistrateur,
Windhoek.

No. 297] [16 Oktober 1975

ORDONNANSIE 1975: UITVAARDIGING VAN

Dit behaag die Administrateur om sy goedkeuring te heg, ooreenkomstig artikel 27 van die Wet op die Konstitusie van Suidwes-Afrika, 1968 (Wet 39 van 1968) aan die volgende Ordonnansie wat hierby vir algemene inligting gepubliseer word, ooreenkomstig artikel 29 van gemelde Wet:

<i>No.</i>	<i>Titel</i>	<i>Bladsy</i>
18	Wysigingsordonnansie op Paaie, 1975	1673

No. 18 of 1975.]

ROADS AMENDMENT ORDINANCE, 1975.

(Assented to 7 October 1975).
 (Afrikaans text signed by the Administrator.)
 (Date of commencement 16 October 1975.)

ORDINANCE

To amend the Roads Ordinance, 1972, so as to correct a versional error in the Afrikaans text of the definition of "minor road"; to amend the texts of sections 1A and 34; to further regulate the representation of a person allowed by the chairman of a board to state his interest in any matter under consideration by such board; to further regulate the proclaiming, classifying, closing, deviation and reopening of certain roads; to provide that no person shall, without a certain permission having been granted, construct pipelines on, across or under any proclaimed road; to further regulate the prohibition of certain infringements, obstructions and interferences in respect of any such road; to further regulate the fencing off of certain roads; and to provide for incidental matters.

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:-

Amendment of section 1 of Ordinance 17 of 1972, as amended by section 2 of Ordinance 22 of 1973 and section 2 of Ordinance 10 of 1974.

1. Section 1 of the Roads Ordinance, 1972 (Ordinance 17 of 1972) — hereinafter referred to as the principal Ordinance — is hereby amended by the substitution, in the Afrikaans text of the definition of "minor road", for the expression "regmagtige" of the expression "regmatige".

Amendment of section 1A of Ordinance 17 of 1972, as substituted by section 3 of Ordinance 10 of 1974.

2. Section 1A of the principal Ordinance is hereby amended by the substitution for the expression "21, 22(2), 22(3)" of the expression "20, 22".

Amendment of section 11 of Ordinance 17 of 1972, as amended by section 5 of Ordinance 10 of 1974.

3. Section 11 of the principal Ordinance is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) The chairman of a board may in his discretion allow any person having an interest in any matter under consideration by the board to state his interest in that matter to the board whether personally or represented by a duly authorised representative: Provided that where a person is allowed to state his interest in a matter under consideration by the board all other persons who have an interest in that matter shall be offered equal opportunities to state their interests in that matter to the board, as well."

ROADS AMENDMENT ORDINANCE, 1975.

(No. 18 of 1975).

Substitution of section 16 of Ordinance 17 of 1972, as amended by section 20 of Ordinance 10 of 1974.

4. The following section is hereby substituted for section 16 of the principal Ordinance:

"Applications relating to district and farm roads to be received and dealt with by board.

16. (1) Whenever - ✓
- (a) at least twelve adult persons, who are the owners, lessees or occupiers of farms in a district, or a district and one or more adjoining districts, desire -
 - (i) a district or farm road to be proclaimed on land where no road previously existed;
 - (ii) a road to be declared a proclaimed district or farm road;
 - (iii) an existing district or farm road to be closed or deviated;
 - (iv) a closed road to be reopened and declared a proclaimed district or farm road;
 - (v) the classification of a district or farm road to be changed; or
 - (b) the owner, lessee or occupier of a farm desires an existing district or farm road to be closed or deviated where it crosses such farm; or
 - (c) the owner, lessee or occupier of a farm which does not have a farm road or minor road providing access to a proclaimed road, desires a farm road, which will provide such access, to be proclaimed,

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(No. 18 of 1975).

he or they may apply therefor to the chairman of the board (hereinafter referred to as the chairman) in the district of which that road, or that portion of the road to which the application refers, is situated.

(2) Any application in terms of subsection (1) shall be done in writing on a form approved by the Executive Committee which will be provided by the Roads Branch, and such application shall be accompanied by -

(a) an amount determined by the Executive Committee from time to time in respect of the cost of the publication of the notice referred to in subsection (3); and

(b) a sketch of the area concerned which will be provided by the Roads Branch, and on which the road or portion thereof to which the application refers and other proclaimed roads are shown.

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(3) Whenever the chairman receives an application in terms of subsection (1), it shall be made known by notice published in the *Official Gazette* and in at least one other newspaper circulating in the Territory.

(4) The chairman shall further make known the application by forwarding a copy of the notice referred to in subsection (3) to the owner, lessee or occupier of each farm which is or will be crossed by the road to which such application refers and whose address is known to him and, if such road terminates on the boundary of any farm, to the owner, lessee or occupier of the farm immediately adjacent to such road, and whose address is known to him.

ROADS AMENDMENT ORDINANCE, 1975

(No. 18 of 1975).

(5) Such notice shall command every person having any objection to the application to lodge his objection in writing, with the grounds upon which it is based clearly and specifically therein stated, with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice.

(6) (a) Such notice shall also state the number of the sketch referred to in subsection (2)(b).

(b) A copy of such notice and sketch shall lie for inspection at the office of the Director of Roads and the local Roads Superintendent during normal office hours for the full period of thirty days referred to in subsection (5).

(7) Before the first meeting of the board to be held after the expiry of the period of thirty days referred to in subsection (5) -

(a) the Roads Branch shall submit to the chairman the sketch referred to in subsection (2)(b) (hereinafter referred to as the sketch-map), on which minor and private roads in the area in question shall then also be shown;

(b) the chairman may, if he considers it necessary, himself conduct an investigation in regard to the application and report in writing to the board thereon, or he may require another member of the board or the Roads Branch to conduct an investigation in regard to the application and report in writing to the board thereon:

ROADS AMENDMENT ORDINANCE, 1975.

(No. 18 of 1975).

Provided that failure to submit the said sketch-map or to conduct the said investigation, or to submit the said report to the board before the said first meeting, shall not invalidate any proceedings of the board."

Substitution of section 17 of Ordinance 17 of 1972, as amended by sections 6 and 20 of Ordinance 10 of 1974.

5. The following section is hereby substituted for section 17 of the principal Ordinance:

"Requests relating to district and farm roads by board.

17. (1) Whenever a board itself requests that - Gov. N. 98/2010

- (i) a district or farm road be proclaimed on land where no road previously existed;
- (ii) a road be declared a proclaimed district or farm road;
- (iii) an existing district or farm road be closed or deviated;
- (iv) a closed road be reopened and declared a proclaimed district or farm road;
- (v) the classification of a district or farm road be changed,

the chairman shall obtain a sketch of the area concerned which will be provided by the Roads Branch, and on which the road or portion thereof to which the request refers and other proclaimed roads, are shown.

(2) Thereafter the request shall be made known by notice published in the *Official Gazette* and in at least one other newspaper circulating in the Territory.

(3) The provisions of section 16 (4), (5), (6) and (7) shall *mutatis mutandis* apply in regard to such request by the board."

ROADS AMENDMENT ORDINANCE, 1975

(No. 18 of 1975).

Substitution of section 18 of Ordinance 17 of 1972, as amended by section 20 of Ordinance 10 of 1974.

6. The following section is hereby substituted for section 18 of the principal Ordinance:

"Consideration of objections to application or request.

18. (1) At the first meeting of the board held after the expiry of the period of thirty days referred to in section 16(5), the chairman shall submit to the board the application or request together with all reports, comments and recommendations and sketch-maps which refer thereto and all objections lodged against it, for consideration thereof and the making of recommendations in connection therewith: Provided that failure to submit all reports, comments, recommendations or the sketch-map referred to in this subsection at the said first meeting of the board, shall not invalidate any proceedings of the board.

(2) After the board has made its recommendations, the chairman shall forward all the papers submitted to the board in terms of subsection (1), including all objections lodged against the application or request, together with -

- (a) the board's comments and recommendations and its reasons therefor;
- (b) an indication whether the board favours the appointment of a commission of enquiry in terms of section 19 or not; and
- (c) in any case, the names of four persons who are being proposed as possible members thereof if a commission of enquiry is appointed in terms of section 19.

to the Director of Roads who shall submit it to the Executive Committee together with his comments and recommendations thereon.

(3) The board may only propose a person who -

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(No. 18 of 1975).

(a) is a member of the board of an adjoining district; and

(b) has no interest in the granting or the refusal of the application or request in question,

as a member of a commission of enquiry referred to in section 19.”.

Substitution of section 19 of Ordinance 17 of 1972, as amended by section 20 of Ordinance 10 of 1974.

7. The following section is hereby substituted for section 19 of the principal Ordinance:

“Commission of enquiry into, and decision in regard to application or request, by Executive Committee.

19. (1) Whenever an application or request is submitted to it in terms of section 18(2) the Executive Committee may -

(a) decide which road arrangement is to be made in terms of the application or request: Provided that the Executive Committee may in its discretion impose any conditions when it so decides; or

(b) appoint a commission of enquiry into the application or request.

(2) A commission of enquiry appointed in terms of subsection (1) shall consist of three members, with a fourth person to act as substitute for any member who might be unable to attend the meetings and enquiries of the commission.

(3) The members of such a commission of enquiry may be persons proposed in terms of section 18(2) or, subject to the provisions of section 18(3)(b), any other persons appointed thereto by the Executive Committee.

(4) Such a commission of enquiry -

(a) shall investigate the application or request and, if deemed necessary by the Executive Committee, any other road or possible road

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(No. 18 of 1975).

which the Executive Committee considers to be relevant to such application or request or which such commission may, in the course of its investigation, find to be so relevant;

(b) may visit the localities and hear the evidence which it deems necessary for the purposes of its enquiry; and

(c) shall as soon as possible after completion of its enquiry furnish the Director of Roads with a written report thereon.

(5) To those members of such a commission who are not officers in the public service or officers or employees in the service of the Administration, shall be paid such remuneration, allowances and fees as may be determined by the Executive Committee from time to time.

(6) The cost of such an enquiry shall be defrayed by the Administration out of the Territory's revenue: Provided that the Executive Committee may order that the person or persons concerned shall reimburse the Administration with such costs or such portion thereof as the Executive Committee may in its discretion determine if the application is ultimately rejected.

(7) The Director of Roads shall submit any report which has been furnished to him in terms of subsection (4)(c), together with all other documents and papers which refer to the application or request dealt with in the report, to the Executive Committee, which may thereupon decide which road arrangement shall be made in terms of the relevant application or request: Provided that the Executive Committee may in its discretion impose any conditions when it so decides."

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(No. 18 of 1975).

Substitution of section 20 of Ordinance 17 of 1972, as amended by sections 7 and 20 of Ordinance 10 of 1974.

8. The following section is hereby substituted for section 20 of the principal Ordinance:

"Proposals by the Director of Roads relating to proclaimed roads.

20. (1) If the Director of Roads ^{Sec N. 104/2010} proposes that -

- (a) a road be proclaimed on land where no road previously existed;
- (b) a road be declared a proclaimed road;
- (c) a proclaimed road be closed or deviated;
- (d) a closed road be reopened and declared a proclaimed road;
- (e) the classification of a proclaimed road be changed.

such proposal shall be made known by notice published in the *Official Gazette* and in at least one other newspaper circulating in the Territory.

(2) The Roads Branch shall forward a copy of such notice to the owner, lessee or occupier of each portion of land which is registered as a separate unit in the Deeds Office of the Territory and which is or will be crossed by the road to which the proposal refers and whose address is known to that Branch, and if such road terminates on the boundary of any farm, to the owner, lessee or occupier of the farm immediately adjacent to such road and whose address is known to the Branch.

(3) Such notice shall command every person having any objection to the proposal to lodge his objection in writing, with the grounds upon which it is based clearly and specifically therein stated, with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice, and shall state

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the number of a sketch-map of the area concerned on which the road, or portion thereof, to which the proposal refers and other proclaimed minor and private roads in that area, are shown.

(4) A copy of such notice and sketch-map shall lie for inspection at the office of the Director of Roads and the local Roads Superintendent during normal office hours for the full period of thirty days referred to in subsection (3).

(5) The provisions of sections 18 and 19 shall *mutatis mutandis* apply in regard to such proposal by the Director of Roads, if the road or portion thereof to which it refers, is or will be a district or farm road.

(6) (a) If the road, or portion thereof, to which such proposal by the Director of Roads refers, is or will be a trunk or main road, the Director of Roads shall, after the expiry of the period of thirty days referred to in subsection (3), submit such proposal to the Executive Committee together with all the objections received against it, his comments and recommendations thereon and the sketch-map referred to in subsection (3).

(b) The provisions of section 19 shall *mutatis mutandis* apply in regard to a proposal submitted to the Executive Committee in terms of paragraph (a)."

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(No. 18 of 1975).

Substitution of section 21 of Ordinance 17 of 1972, as amended by sections 8 and 20 of Ordinance 10 of 1974.

9. The following section is hereby substituted for section 21 of the principal Ordinance:

"Applications relating to district and farm roads within the area of a local authority.

21. (1) Whenever the owner, lessee or occupier of a farm within the area of a local authority but outside the urban area -

- (a) desires that an existing district or farm road be closed or deviated where it crosses any such farm; or
- (b) which does not have a farm road providing access to a district, main or trunk road, desires a farm road which will provide such access, to be proclaimed,

he may apply therefor to the Director of Roads.

(2) The provisions of sections 16 (2), 20(1), (2), (3), (4) and (6) shall *mutatis mutandis* apply to an application referred to in subsection (1).

(3) If any portion of the road or portion thereof to which the application refers falls outside the area of the local authority concerned -

- (a) the provisions of section 16(2)(a) shall not apply to such application; and
- (b) the provisions of section 20(5) shall apply to such application."

Substitution of section 22 of Ordinance 17 of 1972, as amended by sections 9 and 20 of Ordinance 10 of 1974.

10. The following section is hereby substituted for section 22 of the principal Ordinance:

"Proclaiming and declaration of proclaimed roads, and the closing, deviation and reopening thereof, by Executive Committee.

22. (1) Notwithstanding anything to the contrary contained in any law, the Executive Committee may from time to time after investigation and report by the board concerned or the Director of Roads or both the board concerned and the Director of Roads, as the case may be -

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- (a) proclaim a road on land where no road previously existed and define the course of a road thus proclaimed;
- (b) declare any road to be a proclaimed road;
- (c) close or deviate any proclaimed road;
- (d) reopen any road which has been closed, declare the same to be a proclaimed road and define the course thereof:

Provided that the Executive Committee may, if it is deemed necessary or expedient, act without any such investigation and report: Provided further that the Executive Committee shall only exercise the powers granted to it in terms of this subsection within the area of a local authority after consultation with the local authority concerned.

(2) (a) Whenever the Executive Committee has in terms of subsection (1) -

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- (i) proclaimed a road on land where no road previously existed and defined the course of such road;
- (ii) declared a road to be a proclaimed road;
- (iii) closed or deviated a proclaimed road;
- (iv) reopened a road which had been closed and has declared the same to be a proclaimed road and has defined the course of such road,

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it shall be made known by notice in the *Official Gazette*.

(b) The proclaimed road to which such notice refers shall be described therein and the number thereof shall be stated therein.

(c) Such notice shall also state the number of a sketch-map on which that road is shown and such sketch-map shall be kept by the Roads Branch and shall at all times during normal office hours lie for inspection at the office of the Director of Roads against payment of the fees determined by the Executive Committee from time to time.

(3) The provisions of sections 16(3), (4), (5), (6) and (7), 18 and 19 shall *mutatis mutandis* apply in regard to an investigation and report by the board concerned, referred to in subsection (1).

(4) The provisions of section 20 shall *mutatis mutandis* apply in regard to an investigation and report by the Director of Roads referred to in subsection (1)."

Amendment of section 34 of Ordinance 17 of 1972.

11. Section 34 of the principal Ordinance is hereby amended by the substitution in subsection (1) for the expression "20" of the expression "19".

Amendment of section 36 of Ordinance 17 of 1972.

12. Section 36 of the principal Ordinance is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) construct any electric or other wires or cables or any pipeline on, across or under any proclaimed road."

ROADS AMENDMENT ORDINANCE, 1975

(No. 18 of 1975).

Amendment of section 37 of Ordinance 17 of 1972, as amended by section 14 of Ordinance 10 of 1974.

13. Section 37 of the principal Ordinance is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) infringe any proclaimed road by erecting or introducing any building or structure, advertisement, fence, furrow, canal, ditches or other obstructions on, across or under such proclaimed road or by wilfully or negligently causing water to run over it;”.

Amendment of section 40 of Ordinance 17 of 1972, as amended by section 16 of Ordinance 10 of 1974.

14. Section 40 of the principal Ordinance is hereby amended -

(a) by the substitution in subsection (5) for all the words preceding paragraph (a) of the following words:

“(5) The Executive Committee may, for any reason which it deems fit, decide that a trunk, main or district road, or any portion thereof, shall be fenced off on both sides in accordance with the standards prescribed by regulation, and, when it so decides it may make a contribution to the owner, lessee or occupier of the farm crossed by the road concerned, consisting of -”;

(b) by the insertion after subsection (5) of the following subsection:

“(5A) Whenever the Executive Committee has decided in terms of subsection (5) that a trunk, main or district road, or any portion thereof, shall be fenced off in accordance with the standards prescribed by regulation, the owner, lessee or occupier of the farm crossed by the road concerned shall complete the erection of such fence or fences within six months from the date determined by the Executive Committee, or within such other period as the Executive Committee may determine: Provided that the Executive Committee may at any time extend such period on such conditions as it may determine.”;

(c) by the substitution for paragraph (c) of subsection (6) of the following paragraph:

“(c) complete the erection of such fence or fences within six months from the date on which the material has been supplied to him or within such other period as the Executive Committee may determine.”; and

See Act 3/93/1(d)

Subst. by Act 3/93/1(e)

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(d) by the substitution for subsection (7) of the following subsection:

“(7) Should the erection of such fences not be completed within the period referred to in subsection (5A) or (6)(c) or, if the period has been extended, within such extended period, the Executive Committee may complete the erection thereof or cause it to be completed and recover the cost incurred in such completion from the person who had to erect the fence or cause it to be erected.”.

Short title.

15. This Ordinance shall be called the Roads Amendment Ordinance, 1975.