

(4 October 1996 - to date: Historical Version)

[This is the current version and applies as from 4 October 1996, i.e. the date of commencement of the General Law Amendment Act 49 of 1996 – to date]

MOUNTAIN CATCHMENT AREAS ACT 63 OF 1970

(Gazette No. 2858, Notice No. 1683. Commencement date: 7 October 1970)

As amended by:

Mountain Catchment Areas Amendment Act 41 of 1976 – Gazette No. 5068, Notice No. 586.

Commencement date: 7 April 1976

Expropriation Act 63 of 1975 – Gazette No. 4780, Notice No. 1314. Commencement date: 1 January 1977

[Proc. No. 273, Gazette No. 5363]

Mountain Catchment Areas Amendment Act 76 of 1981 – Gazette No. 7800, Notice No. 1994.

Commencement date: 23 September 1981

Abolition of Racially Based Land Measures Act 108 of 1991 – Gazette No. 13341, Notice No. 1490.

Commencement date: 30 June 1991

Constitution of the Republic of South Africa 200 of 1993 – Proc. No. 28, Gazette No. 16346. Commencement date: 7 April 1995. (Note: Proc. 28 relates to the assignment of the Mountain Catchment Areas Act, 1970, to the Provinces under section 235(8) of the Constitution of the Republic of South Africa, 1993 – Refer to the Regulations under this Act on the website for a copy of Proclamation 28)

General Law Amendment Act 49 of 1996 – Gazette No. 17477, Notice No. 1601. Commencement date: 4

October 1996

Note: The principal Act has been amended by the substitution for the word "Secretary", wherever it occurs with reference to the Secretary as defined in section 1, of the word "Director-General", by section 5 of Act 76 of 1981.

ACT

To provide for the conservation, use, management and control of land situated in mountain catchment areas, and to provide for matters incidental thereto.

(Afrikaans text signed by the State President)

(Assented to 23rd September, 1970)

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa as follows:-

1. Definitions

In this Act, unless the context otherwise indicates-

"**advisory committee**" means any advisory committee established under section 6;

"**department**" ... *(Definition of "department" deleted by section 1(a) of Act 76 of 1981)*

"**direction**" means any direction declared under section 3(1) to be applicable with reference to land contemplated in that section;

(Definition of "direction" substituted by section 1(b) of Act 76 of 1981)

"**Director-General**" in so far as a provision of this Act is applied in or with reference to a particular province, means the director-general of the provincial administration of that province;

(Definition of "Director-General" inserted by section 1(c) of Act 76 of 1981)

(Definition of "Director-General" substituted by section 1(a) (Schedule) of Proc. No. R28 of 1995)

"fire-belt" means any strip of land, whether under trees or not, which has been cleared of inflammable matter to prevent veld or forest fires or the spread thereof;

"fire protection plan" means any fire protection plan which is in operation under section 8;

"Gazette" means the *Provincial Gazette* of a province;

(Definition of "Gazette" inserted by section 1(b) (Schedule) of Proc. No. R28 of 1995)

"local authority", in so far as a provision of this Act is applied in or with reference to a particular province, means a local government body or a transitional council, as the case may be, contemplated in section 1(1) of the Local Government Transition Act 1993 (Act No. 209 of 1993);

(Definition of "local authority" substituted by section 1(c) (Schedule) of Proc. No. R28 of 1995)

"Minister", in so far as a provision of this Act is applied in or with reference to a particular province, means the competent authority to whom the administration of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), been assigned in that province;

(Definition of "Minister" substituted by section 1(d) of Act 76 of 1981)

(Definition of "Minister" substituted by section 1(d) (Schedule) of Proc. No. R28 of 1995)

"Minister of Finance", in so far as a provision of this Act is applied in or with reference to a particular province, means the member of the Executive council of that province responsible for the budget in the province;

(Definition of "Minister of Finance" inserted by section 1(e) (Schedule) of Proc. No. R28 of 1995)

"mountain catchment area" means any area declared under section 2 to be a mountain catchment area;

"occupier", in relation to land, means any person who as owner, lessee or otherwise has the management, charge, control or use of any land, whether he resides on that land or not, and includes any person who has a right of cutting trees or wood on any land or of removing trees or wood from any land, and in relation to land under the control of a local authority, that local authority, but does not include any person who as "bywoner" or "deelsaaier" is in occupation or has the use of any land;

(Definition of "occupier" substituted by section 28(a) of Act 108 of 1991)

"owner", in relation to any land, means-

- (a) the person in whose name the land is registered or, if such person is absent from the Republic or his whereabouts are unknown, his authorized representative in the Republic;

- (b) in the case of State land leased under a lease which contains an option in favour of the lessee to purchase the land so leased, the lessee who has exercised his option to purchase the land;
- (c) in the case of State land acquired by purchase but in respect of which title has not yet been given to the purchaser, such purchaser;
- (d) in the case of land under the control of a local authority, that local authority;
- (e) ... *(Paragraph (e) of the definition of "owner" deleted by section 28(b) of Act 108 of 1991)*

"**prescribed**" means prescribed by regulation;

"**province**" means a province established in terms of section 124 of the Constitution of the Republic of South Africa, 1993;

(Definition of "province" inserted by section 1(f) (Schedule) of Proc. No. R28 of 1995)

"**regulation**" means any regulation made under this Act;

"**Secretary**" ... *(Definition of "Secretary" deleted by section 1(e) of Act 76 of 1981)*

2. Declaration of mountain catchment areas

The Minister may by notice in the *Gazette* define any area and declare that area to be a mountain catchment area and may from time to time by like notice alter the boundaries of any mountain catchment area was established.

2A. Beacons

- (1) The Director-General may, for the purposes of the definition of any area by the Minister under section 2, cause beacons to be erected on the land concerned at places designated by the Minister.
- (2) A certificate purporting to be signed by the Director-General, in which it is stated that a beacon which has been erected under subsection (1) complies with the regulations and has been erected at a place designated by the Minister, shall on its mere production in any civil or criminal proceedings be *prima facie* proof that such beacon complies with the regulations and has been erected at a place so designated.

(Section 2A inserted by section 1 of Act 41 of 1976)

3. Power of Minister to declare directions applicable with reference to land in mountain catchment areas

- (1) The Minister may declare a direction to be applicable with reference to land which is situated-
- (a) within any mountain catchment area; or
 - (b) outside any mountain catchment area but within a distance of five kilometres from the boundary thereof,
- and which is specified in such direction, relating to -
- (i) in the case of land contemplated in paragraph (a)-
 - (aa) the conservation, use, management and control of such land;
 - (bb) the prevention of soil erosion, the protection and treatment of the natural vegetation and the destruction of vegetation which is, in the opinion of the Minister, intruding vegetation; and
 - (cc) any other matter which he considers necessary or expedient for the achievement of the objects of this Act in respect of such land, and
 - (ii) in the case of land contemplated in paragraph (b), the destruction of vegetation which is, in the opinion of the Minister, intruding vegetation.
(Section 3(1) substituted by section 2 of Act 76 of 1981)
- (2) A direction shall –
- (a) be made known by the Minister by notice in the *Gazette* or communicated by him by written notice to every owner and occupier of the land with reference to which it has been declared applicable;
 - (b) come into operation on a date specified in the relevant notice; and
 - (c) be binding on every owner and occupier of the land with reference to which it has been declared applicable, and their successors in title.
(Section 3(2) substituted by section 2 of Act 76 of 1981)
- (3) The Minister may withdraw, amend or, subject to such conditions as he may determine, suspend a direction.

4. Compensation payable in respect of patrimonial loss caused by complying with directions

- (1) If in terms of a direction limitations are placed on the purposes for which land may be used, the owner or occupier of such land shall be paid such compensation in respect of actual patrimonial loss suffered by him as may be determined in an agreement concluded between the Minister, in consultation with the Minister of Finance, and such owner or occupier.
- (2) In the absence of such agreement, the amount to be paid as compensation for actual patrimonial loss suffered by such owner or occupier, shall be determined by an appropriate court in terms of section 14 of the Expropriation Act, 1975, and the provisions of that section and section 15 of that Act shall apply *mutatis mutandis* in the determination of this amount, and in the application of such provisions a reference to the Minister of Agriculture shall be construed as a reference to the Minister.

(Section 4(2) substituted by section 86 of Act 63 of 1975)

- (3) No compensation shall be paid under the provisions of this section unless the person claiming compensation submits an application in the prescribed form to the Minister and furnishes in connection with such application the prescribed particulars.

5. Exemption of certain land situated in mountain catchment areas from certain taxes

- (1) Any land situated within any mountain catchment area upon which in terms of any direction no farming may be carried on, shall be exempt from all taxes imposed by a local authority on the value of immovable property.
- (2) ... *(Section 5(2) deleted by section 2 (Schedule) of Proc. No. R28 of 1995)*

6. Advisory committees

- (1) The Minister may in respect of any mountain catchment area establish an advisory committee to advise him in relation to matters referred to in sections 3, 4 (1) and 8.
- (2) (a) Any committee established under subsection (1) shall consist of so many members as the Minister may determine in each case.
 - (b) (i) Each of at least two-thirds of the members of such committee shall be appointed by-
 - (aa) the Minister; or
 - (bb) a body, institution, group or association which, in the opinion of the Minister, has an interest in the mountain catchment area in question or mountain catchment areas in general and is designated by the Minister, each such body, institution, group or association being entitled to one member to represent it on the committee.

- (ii) The remaining members of such committee shall be elected in the prescribed manner from persons nominated by owners of land situated in the mountain catchment area in question and from persons who are in the opinion of the Minister affected by directions which are connected with that mountain catchment area.
- (iii) If a body, institution, group or association referred to in subparagraph (i) (bb) for any reason fails to appoint a person as its representative on such committee, the Minister may appoint any person whom he deems suitable, as such a representative.
- (iv) The Minister may at any time withdraw any designation made by him under subparagraph (i).

(Section 6(2)(b) substituted by section 3(a) of Act 76 of 1981)

- (c) The Minister shall appoint one of the members of an advisory committee as chairman.

- (3) A member of an advisory committee shall hold office-

- (a) in the case of a member appointed by the Minister under subsection (2)(b)(i)(aa), for such period, not exceeding three years, as the Minister may determine at the time of his appointment; and

- (b) in the case of any other member, for such period as the Minister may prescribe by regulation.

(Section 6(3) substituted by section 3(b) of Act 76 of 1981)

- (4) Whenever any member of an advisory committee vacates his office before the expiry of his term of office, the Minister may appoint a person to fill the vacancy for the unexpired portion of the said term of office.

(Section 6(4) substituted by section 3(c) of Act 76 of 1981)

- (5) Notwithstanding the provisions of subsection (3), a member of any advisory committee may at any time be removed from office by the Minister.

(Section 6(5) substituted by section 3(d) of Act 76 of 1981)

- (6) Any person whose term of office as a member of an advisory committee has expired, shall be eligible for re-appointment or re-election as member thereof.

(Section 6(6) substituted by section 3(e) of Act 76 of 1981)

- (7) Any member of an advisory committee shall vacate his office-

- (a) if he resigns;

- (b) if he was, without the permission of the chairman of the advisory committee concerned, absent from two consecutive meetings of such committee; or
- (c) if he is removed from office under subsection (5).

7. Establishment of fire protection committees

The Minister may, if he deems fit, by notice in the Gazette establish a fire protection committee in respect of any mountain catchment area, and may by like notice withdraw any notice whereby a fire protection committee was established.

8. Fire protection plans

- (1) The Director-General may, after consultation with the advisory committee established in respect of any mountain catchment area, declare a fire protection plan to be applicable with reference to land situated in such mountain catchment area.
- (2) Any fire protection plan shall define the land with reference to which it applies and shall state the scope and object thereof and shall contain provisions relating to-
 - (a) the regulation or prohibition of veld burning;
 - (b) the prevention, control and extinguishing of veld and forest fires;
 - (c) the functions, powers and duties of the fire protection committee established in respect of the mountain catchment area within which the land in question is situated, in relation to the execution of the fire protection plan; and
 - (d) the date of commencement of such plan:

Provided that a fire protection plan shall not contain provisions which are inconsistent with the provisions of the Forest Act, 1968 (Act No. 72 of 1968).

- (3) The Director-General -
 - (a) shall, at least one month prior to the date specified under subsection (2), cause particulars of the fire protection plan to be published by notice in the *Gazette*;
 - (b) may, if he deems fit, at any time cause to be served on every owner or occupier of land with reference to which such fire protection plan is being or is to be applied and whose name and address are known to him, a copy of the fire protection plan.

- (4) Every owner and occupier of land with reference to which a fire protection plan has been applied under this section, and their successors in title, shall be bound by the provisions of such fire protection plan.

9. Director-General may amend fire protection plans

The Director-General may from time to time after consultation with the advisory committee concerned, and the fire protection committee concerned (if there is one), by notice in the *Gazette* amend the provisions of any fire protection plan: Provided that the Minister shall cause particulars of any such amendment to be published by notice in the *Gazette* at least one month prior to the date upon which such amendments are to come into operation.

10. Minister may render financial aid

The Minister may, in consultation with the Minister of Finance, from moneys appropriated by the Provincial legislature for the purpose, and subject to such conditions as he may determine, render financial aid by way of grants or otherwise-

- (a) to any fire protection committee; and
- (b) to the owner and occupier of land in respect of expenses incurred by them in compliance with any provision of any fire protection plan or any direction.

(Section 10 substituted by section 3 (Schedule) of Proc. No. R28 of 1995)

11. Right of entry on or way over land

- (1) Any duly authorized officer of any department of State, any member of any advisory committee or fire protection committee or any person authorized by any fire protection committee, may enter upon any land situated in any mountain catchment area and may take with him such equipment and number of assistants as are required for the performance of any act on such land which is ordered in terms of any direction or any provision of any fire protection plan or which is authorized by the Minister under section 13.
- (2) Any officer, member or person referred to in subsection (1), shall at all reasonable times have right of way over any land for the purpose of-
 - (a) ascertaining the desirability of declaring that land to be a mountain catchment area;
 - (b) ascertaining the desirability of the construction upon that land of fire-belts or of declaring directions applicable with reference to that land;

- (c) inspecting or maintaining any works constructed or under construction upon that land for the purpose of preventing veld or forest fires; or
 - (d) ascertaining whether the provisions of this Act, or any direction or provision of any fire protection plan which is applicable to or with reference to such land are being properly carried out or complied with.
- (3) Any person duly authorized thereto by the Director-General may enter upon any land at all reasonable times, subject to prior notification of the landowner, occupier or manager concerned, and shall for that purpose have right of way over any other land, with such equipment and number of assistants as are required for the performance on that land of any act connected with -
- (a) the exercise by the Minister of any power conferred on him in terms of section 2 or 2A;
 - (b) the exercise by the Director-General of any power conferred on him in terms of section 2A; and
 - (c) the construction, erection, marking, maintenance and repair of any beacon referred to in section 2A (1).

(Section 11(3) inserted by section 2 of Act 41 of 1976)

12. Minister may perform certain acts

The Minister may, from moneys appropriated by the Provincial legislature for the purpose, perform or cause to be performed on any land contemplated in section 3(1) any act which he deems necessary in order to achieve any object of this Act, including any act which has been ordered in terms of any direction or, in the case of any land situated in a mountain catchment area, any provision of any fire protection plan, and shall for that purpose also have the powers conferred by section 11 on persons mentioned in that section.

(Section 12 substituted by section 4 of Act 76 of 1981)

(Section 12 substituted by section 4 (Schedule) of Proc. No. R28 of 1995)

13. Regulations

- (1) The Minister may make regulations relating to-
- (a) the constitution of any fire protection committee;
 - (b) the calling of and the procedure and quorum at meetings of any advisory committee or fire protection committee;
 - (c) the allowances payable to any member of any advisory committee or fire protection committee;

- (cA) the form and dimensions of beacons referred to in section 2A(1), and the manner of their construction, erection, marking for identification, maintenance and repair;

(Section 13(cA) inserted by section 3 of Act 41 of 1976)

- (d) the conditions subject to which and the rates at which financial aid by way of grants or otherwise shall be rendered under this Act; and
 - (e) all matters which he deems it necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) Any regulation relating to State revenue or expenses shall be made in consultation with the Minister of Finance.

14. Penalties

Any person who-

- (a) contravenes or fails to comply with any provision of this Act or any regulation;
- (b) refuses or fails to comply with any direction;
- (c) obstructs or hinders any person referred to in section 11 in the execution of his duties or the performance of his functions;
- (d) damages, or without the permission of the Director-General alters, any fire-belt or any other works constructed under this Act;
- (e) contravenes or fails to comply with any provision of a fire protection plan;
- (f) alters, moves, disturbs or wilfully damages or destroys any beacon erected under section 2A (1),

(Section 14(f) inserted by section 4(b) of Act 41 of 1976)

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

15. Service of notices

Service of any notice under this Act may be effected-

- (a) by delivering a copy thereof personally to the person upon whom it is to be served; or
- (b) by leaving such copy at the usual or last known place of residence or business of such person;
or
- (c) by sending such copy by registered post to the usual or last known place of residence or business of such person.

16. Jurisdiction of magistrate's court

Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

17. Delegation of powers

The Minister or the Director-General, as the case may be, may delegate to any officer in any department of State all or any of the powers conferred upon him by this Act, other than the powers referred to in sections 2, 2A and 13.

(Section 17 substituted by section 5 of Act 41 of 1976)

18. Limitation of liability of State Minister, etc.

The State, the Minister, any officer in any department of State or any member of any advisory committee or fire protection committee or any person authorized under this Act, shall not be liable in respect of anything done in good faith under the provisions of this Act.

19. *(Section 19 repealed by section 5 (Schedule) of Proc. No. R28 of 1995)*

(Editor's Note: Section 19 again got repealed by the Schedule to Act 49 of 1996)

20. Transitional provisions

- (1) As from the commencement of this Act, no direction shall in terms of the Soil Conservation Act, 1969 (Act No. 76 of 1969), be declared applicable with reference to land situated in a mountain catchment area, and as from the said commencement land situated in a mountain catchment area shall not be declared to be a fire protection area in terms of the last-mentioned Act.
- (2) Any direction or provision of any fire protection scheme which has prior to the commencement of this Act been applied under the Soil Conservation Act, 1969, with reference to land in respect of which any mountain catchment area is declared under the provisions of this Act, shall remain in force until withdrawn by the Minister.

21. Short title

This Act shall be called the Mountain Catchment Areas Act, 1970.