



STATE OF SABAH

FOREST ENACTMENT, 1968

(Sabah No. 2 of 1968)

Together with the Subsidiary Legislation
made thereunder

Forest Enactment 1968 (No. 2 of 1968)

An Enactment to repeal and replace the law relating to the preservation of forests and the regulation and control of dealings in forest produce; and for matters connected therewith and incidental thereto.

[1st January, 1969.]

ENACTED by the Legislature of the State of Sabah as follows:

PART I

PRELIMINARY

1. Short title and commencement.

This Enactment may be cited as the Forest Enactment, 1968, and shall come into operation upon such date as the Yang di-Pertua Negeri* may, by notice in the Gazette,† appoint.

2. Interpretation.

In this Enactment, unless the context otherwise requires –

“admitted right” means a right admitted in respect of a Forest Reserve by a reservation notice;

“alienated lands” means any land in respect of which a registered title for the time being subsists under any written law relating to land title registration, land tenure or mining, or which has become in any manner vested in any person or authority other than the State;

“authorised officer” means the Director, the Deputy Director, any Senior Assistant Director of Forestry, any Assistant Director of Forestry, and any other forest officer designated for the purposes of the provision concerned by the Minister by notice in the Gazette‡;

“Collector” shall have the same meaning as in the Land Ordinance;

“conceded privilege” means a privilege conceded in respect of a Forest Reserve by a reservation notice;

“Deputy Director” means the Deputy Director of Forestry appointed under section 3 of this Enactment;

“Director” means the Director of Forestry appointed under the said section 3;

“forest offence” means any offence against any of the provisions of this Enactment or of the rules;

“forest officer” means any person appointed under the said section 3;

“forest produce” means -

(a) the following when found in or brought from a Forest Reserve, State land or alienated land - timber, firewood, charcoal, getah, wood oil, bark, extracts of bark, copal, damar and atap:

Provided that in the case of alienated land this paragraph shall only apply to the produce of natural uncultivated trees or plants;

(b) the following when found in or brought from a Forest Reserve or State land - trees and any produce thereof, silk, cocoons, honey and wax;

(c) the following when found in or brought from a Forest Reserve - all vegetable and animal matters and products other than animals and animal products which are subject to the provisions of the Wildlife Conservation Enactment, and all minerals and mineral substances other than mineral oil and minerals and mineral substances which are subject to the provisions of the Mining Ordinance;

“Forest Reserve” means a Forest Reserve declared as such under section 12 of this Enactment;

“forest right” means an admitted right and a right contained in a licence or licence agreement;

“licence” means a licence issued under section 24 of this Enactment;

“licence agreement” means a licence agreement entered into under section 15 of this Enactment;

“livestock” includes asses, buffaloes, bulls, cows, elephants, geldings, goats, horses, stallions, mares, mules, oxen, pigs, ponies, sheep and steers, and the young thereof;

“member of the armed forces” means any member of the armed forces not below the rank of Lance Corporal;

“Minister” means the Minister for the time being responsible for matters relating to natural resources;

“notice of intention” means a notice published under section 6 of this Enactment;

“occupier” means the person in actual occupation of land regardless of his title, if any, to such land;

“property mark” means a mark, placed on forest produce to denote its ownership or origin or any agency by which it has been handled, and registered under the rules;

“reservation notice” means a notice declaring land to be a Forest Reserve, issued under subsection (1) of section 12 of this Enactment as amended or modified by any notice affecting that Reserve made under section 13 or section 14 of this Enactment;

“the rules” means any rules made under section 42 of this Enactment;

“State land” means all land in the State other than a Forest Reserve or alienated land;

“timber” means any tree which has been felled or which has fallen, and any part of any tree which has been cut, or has fallen off, and all round, sawn, split or hewn wood, and any wood which has been hollowed or fashioned into boats or boat shape;

“tree” includes any tree, shrub or bush of any kind, seedling, sapling or re-shoot of any age, root, stump, stem, branch, palm, cane, climber or creeper, and any part of any of those.

3. Appointment of officers.

(1) The appropriate authority shall appoint-

(a) a Director of Forestry and a Deputy Director of Forestry; and

(b) so many Senior Assistant and Assistant Directors of Forestry, Senior Forestry Officers, Timber Officers, Timber Inspectors, Forest Rangers, Foresters and other officers as may be considered necessary for the purposes of this Enactment.

(2) All officers of the Forests Department holding office at the date of commencement of this Enactment shall be deemed to have been appointed under this section.

(3) For the purposes of this section, “the appropriate authority” means the State Public Service Commission in respect of appointments falling within Article 37 of the Constitution and the Yang di-Pertua Negeri in all other cases.

4. Functions of officers.

(1) Subject to the general or special directions of the Minister, the Director shall be

directly responsible for the administration of the forests of the State and shall, subject to the provisions of this Enactment, have the general superintendance of all matters within the provisions of the Enactment.

(2) The Director may, by notice in the Gazette, delegate to the Deputy Director the exercise of all or any of the powers vested in him under this Enactment, but no such delegation shall prevent the exercise by the Director of any power so delegated.

(3) The Minister may, by notice in the Gazette, invest any other forest officer with all or any of the powers conferred upon the Director by this Enactment.

(3A) The Minister may, by notice published in the Gazette, invest, subject to such conditions and restrictions as may be prescribed in the notice, the exercise and performance of any power or duty conferred or imposed on any forest officer or police officer under subsection (1) of section 36 of this Enactment on any member of the armed forces generally or in any particular case:

Provided that the Minister may in like manner revoke or withdraw such investment of power or duty.

(4) Every forest officer other than the Director shall exercise the powers and perform the duties conferred or imposed upon him as such by this or any other State law, under the general supervision of the Director, and shall comply with any general or special directions which the Director may give in that regard.

PART IA

FOREST REHABILITATION FUND

4A. Establishment and administration of Forest Rehabilitation Fund.

(1) There shall be established a fund to be known as the "Forest Rehabilitation Fund" (hereinafter referred to as the "Fund").

(2) The Fund shall be administered by a committee to be known as the "Forest Rehabilitation Fund Committee" (hereinafter referred to as the "Committee") consisting of-

- (a) the Secretary of Natural Resources, as Chairman;
- (b) the State Treasurer; and
- (c) the Director.

4B. Moneys to be paid into the Fund.

(1) There shall be paid into the Fund -

(a) such sum as may be appropriated by the Legislative Assembly necessary for the purposes of the Fund;

(b) the forest rehabilitation fee collected under section 4E;

(c) any loan or grant given to the Government by the Federal Government for the purposes of the Fund; and

(d) any money paid to the Government under subsection (2) of section 28B.

(2) All moneys paid into the Fund shall -

(a) be deposited in any bank duly licensed under the Banking and Financial Institutions Act, 1989; or

(b) be invested in accordance with the provisions of the Trustee Act, 1949.

4C. Purposes of the Fund.

The Fund shall be used for the following purposes:

(a) the preparation of the forest management plans;

(b) the preparation and implementation of reforestation plans;

(c) the reviewing of the forest management plans and reforestation plans;

(d) the preparation and implementation of programmes relating to amenity forests; and

(e) any expenses incurred by the Government in carrying into effect a reforestation plan under section 28B.

4D. Accounts and audit.

(1) The Committee shall keep proper accounts and other records in respect of the operations of the Fund, and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The Committee shall cause its accounts to be audited annually by the Auditor-General.

(3) As soon as the accounts of the Committee have been audited, but not later than six months after the end of the financial year, the Committee shall cause a copy of the audited statements of accounts to be transmitted to the Minister together with a copy of any observations made by the Auditor-General on the statement or on the accounts of the Committee.

(4) The Minister shall cause a copy of the statement and observations transmitted to him under subsection (3) to be laid before the State Legislative Assembly.

4E. Forest rehabilitation fee.

(1) For the purposes of the fund, there shall be payable to the Government a fee (to be known as forest rehabilitation fee) in respect of any of the forest produce removed from any Forest Reserve, State land or alienated land, at the rate as may be prescribed.

(2) The Minister may by order prescribe the manner of collection of such fee.

(3) Subsection (1) shall not apply to the removal of forest produce by the holder of a licence or licence agreement who has been required to carry into effect a reforestation programme under section 28B.

PART II

FOREST RESERVES

5. Power to constitute Forest Reserves.

Without prejudice to the power to constitute any Forest Reserve by any Enactment, the Yang di-Pertua Negeri may, in manner hereinafter provided, constitute any State land, other than land reserved for a public or special purpose under any written law, to be a Forest Reserve of specific class of one or more of the following Classes:

- (a) Class I Protection Forest - Maintenance of forest essential on climatic or physical grounds;
- (b) Class II Commercial Forest - For supply of timber and other produce to meet the general demands of trade;
- (c) Class III Domestic Forest - For supply of timber and other produce for local consumption;
- (d) Class IV Amenity Forest - For local amenity and aboretum work;
- (e) Class V Mangrove Forest - For supply of mangrove timber or other produce to meet the general demands of trade;
- (f) Class VI Virgin Jungle Reserve - For forest research purpose; and
- (g) Class VII Wildlife Reserve - For protection of wildlife:

Provided that the Yang di-Pertua Negeri may by notice published in the Gazette classify into one of the specified Classes any existing Forest Reserve, or any specified part or portion thereof, which has not been so classified.

5A. Power to declare protected areas.

(1) The Yang di-Pertua Negeri may, by notification in the Gazette, declare any area in a Forest Reserve or on State land which may require special protection for reasons of soil, wildlife, ecological or water conservation to be a protected area and may, at any time, in like manner vary or revoke such declaration.

(2) Notwithstanding the terms of any licence or licence agreement to the contrary, no logging, land clearing, cultivation, grazing or other exploitation of any kind shall be undertaken in a protected area declared under subsection (1) except as provided in the declaration of the protected area or as specially authorised in writing by the Minister.

6. Notification of proposal to constitute Forest Reserve.

Whenever it is proposed to constitute a Forest Reserve, the Minister shall publish in the Gazette a notice -

- (a) specifying as nearly as possible the situation and extent of the land affected;
- (b) declaring that it is proposed to constitute such land a Forest Reserve; and
- (c) specifying the class or classes of the said Forest Reserve.

7. Prohibitions in proposed Reserves.

(1) Notwithstanding the provisions of this or any other State law, during the period between the publication of a notice of intention and the terminal date in respect of the proposal notified thereby -

- (a) no new title shall be issued without the specific approval of the Minister over any of the land specified in such notice;
- (b) no new right or privilege shall be acquired or exercised in or over any such land;
- (c) no new building shall be erected or plantation formed on any such land;
- (d) no fresh clearing for cultivation or for any other purpose shall be made on any such land;
- (e) no tree shall be cut on, or forest produce taken from, such land for any purpose whether under the authority of any licence or permit or otherwise:

Provided that the Director may, in his absolute discretion, authorise in writing the doing of any act which would otherwise be prohibited by paragraphs (b) to (e) of this subsection.

(2) Any person who attempts to exercise any right in contravention of paragraph (b) of subsection (1) of this section, or who does any act prohibited by paragraphs (c) to (e) of the said subsection, shall, unless duly authorised as therein provided, be guilty of an offence.

(3) The Director may, whether any person is prosecuted for an offence in connection therewith or not, destroy or remove any building erected or plantation formed in contravention of subsection (1) of this section.

(4) For the purpose of subsection (1) of this section, “terminal date” means —

(a) the date of publication of a notice under subsection (1) of section 11 of this Enactment; or

(b) the date fixed by a reservation notice, whichever event first happens.

8. Notice by District Officer or Collector.

As soon as practicable after the publication of a notice of intention, the District Officer or Collector of the District in which the land specified in such notice is situate shall publish, in convenient places on or in the vicinity of such land and at such other places as he may deem expedient, a notice in the English and Malay languages, and in such other languages as he may in any particular case consider desirable to ensure that the local inhabitants of the area may be aware of its contents-

(a) specifying as nearly as possible the situation and extent of the land concerned;

(b) setting forth in substance the provisions of section 7 of this Enactment;

(c) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such land; and

(d) fixing a period of not less than three months from the date of first publication of such notice and requiring every person who has any objection to the reservation of such land, or who applies to exercise any right or privilege which is being or has been exercised in or over any part of such land, within such period either to present to such District Officer or Collector a written statement specifying, or to appear before the District Officer or Collector and state orally, the extent and nature of such objection, right or privilege, and any such oral statement shall be reduced into writing by the District Officer or Collector.

9. Enquiry by District Officer or Collector.

(1) At the expiration of the period fixed under paragraph (d) of section 8 of this Enactment, the District Officer or Collector shall make enquiry, in such manner as he may think fit-

(a) into all objections raised and applications made under the said paragraph;

into the propriety of conceding in and over the area concerned any right or privilege which to his knowledge is being or has been exercised but in respect of which no such application has been made.

(2) In any enquiry under this section, the District Officer or Collector shall consider and record any opinion which the Director or any forest officer nominated by the Director for the purpose, may express as to any objections made or privileges or rights claimed or proposed to be conceded in respect of the area concerned.

(3) For the purposes of an enquiry under this section, a District Officer or Collector shall have and may exercise all the powers vested in the Court of a Magistrate for compelling the attendance of witnesses, and the production of documents, in a civil suit.

10. Report by District Officer or Collector.

As soon as practicable after the completion of an enquiry under section 9 of this Enactment, the District Officer or Collector shall forward to the Minister, through the Director -

(a) a statement of all objections made and rights and privileges claimed under paragraph (d) of section 8 of this Enactment;

(b) a statement of any right or privilege considered by him under paragraph (b) of subsection (1) of the said section 9;

(c) the record of any opinion given under subsection (2) of the said section 9; and

(d) his comments and recommendations, and, in forwarding the same to the Minister, the Director may make such observations and recommendations as he may think desirable.

11. Abandonment of proposal to constitute Forest Reserve.

(1) The Minister may, by notice in the Gazette, abandon a proposal to constitute a Forest Reserve at any time before the publication of a reservation notice relating to such Reserve.

(2) As soon as practicable after the publication of a notice of abandonment under subsection (1) of this section, the District Officer or Collector concerned shall publish the contents thereof in the same places and in the same manner as the notice relating to the proposal concerned was published under section 8 of this Enactment.

12. Declaration of Forest Reserve.

(1) After consideration of the documents received under section 10 of this Enactment, the Yang di-Pertua Negeri may, by notice in the Gazette, declare the whole or any part of the land specified in a notice of intention to be a Forest Reserve.

- (2) A reservation notice shall -
- (a) specify the land to be included in the Forest Reserve and the class or classes of the Forest Reserve;
 - (b) set forth the rights and the privileges which the Yang di-Pertua Negeri thinks it just to admit or concede within the Forest Reserve, or any portion thereof, to any person or group of persons;
 - (c) set forth the special conditions, if any, which may be attached to the reservation;
 - (d) specify a date, not being earlier than fourteen days after the publication of such notice, upon which it shall come into operation.
- (3) From the date specified in a reservation notice, the land specified therein shall be a Forest Reserve and shall, together with all the produce thereof and things found therein, be the property of the State, subject only to the admitted rights and conceded privileges.
- (4) Where any rights are admitted or privileges are conceded in a Forest Reserve -
- (a) the reservation notice shall prescribe, as far as possible, the quantity, whether by reference to the amount or the number of persons or groups of persons who may exercise any such right or privilege, and the type of any forest produce which may be taken or received in the exercise of such right or privilege;
 - (b) the exercise of any such right or privilege shall be subject to the control of the Director and to such orders as he may from time to time make to regulate the manner in which and, with the approval of the Minister, the local limits within which, such right or privilege may be exercised.
- (5) Before the date upon which a reservation notice comes into force, the District Officer or Collector of the District in which the Forest Reserve is situated shall cause the substance of such notice to be published in the same manner as that prescribed for the publication of a notice under section 8 of this Enactment.
- (6) Save as otherwise expressly provided by this Enactment, as from the date when a reservation notice comes into force, all rights and privileges other than admitted rights or conceded privileges shall be extinguished.
- (7) Any person who exercises any admitted right or conceded privilege in contravention of, or otherwise than in compliance with, any order made by the Director under subsection (4) of this section shall be guilty of an offence.

13. Acquisition of alienated land for inclusion in Forest Reserve.

(1) If the Yang di-Pertua Negeri considers it expedient to include in a Forest Reserve any alienated land he may cause such land to be acquired under the Land Acquisition Ordinance and may thereafter, by notice in the Gazette (which may be a notice under section 12 of this Enactment), include such land in a Forest Reserve.

(2) The provisions of the foregoing sections of this Part, other than section 7, shall not apply to any land proposed to be included in a Forest Reserve under this section, and the said section 7 shall apply to such land -

(a) as if the first declaration published under subsection (2) of section 3 of the Land Acquisition Ordinance was a notice of intention;

(b) as if a notification, if any, issued under section 10 of the said Ordinance was a notice issued under section 11 of this Enactment; and

(c) as if a notice under subsection (1) of this section was a reservation notice.

(3) Notwithstanding the provisions of subsection (2) of this section, the Yang di-Pertua Negeri may, in a notice under this section, declare that any or all admitted rights or conceded privileges exercisable in respect of the Forest Reserve concerned shall be exercisable, either wholly or to such extent as may be specified, in any area included in such Reserve under this section, and thereupon subsection (4) of section 12 of this Enactment shall apply accordingly.

14. Modification and extinction of privileges, etc.

(1) After such enquiry (if any) as he may deem necessary, the Yang di-Pertua Negeri may, by notice in the Gazette-

(a) admit rights or concede privileges not previously admitted or conceded in respect of any Forest Reserve; or

(b) rescind, modify or add to any admitted right or conceded privilege or special condition governing the reservation of a Forest Reserve,

and subsections (4) and (6) of section 12 of this Enactment shall apply to such rights and privileges accordingly.

(2) Where it is shown to the satisfaction of the Yang di-Pertua Negeri that any admitted right or conceded privilege has not been exercised for a continuous period of more than three years, the Yang di-Pertua Negeri may, by notice in the Gazette, annul permanently such right or privilege.

15. Acquisition of rights in Forest Reserve.

(1) Save as otherwise provided in this Enactment and notwithstanding the provisions of any other State law, no right of any description in or over a Forest Reserve or any part

thereof shall be acquired except by virtue, and in accordance with the terms of, a licence agreement entered into by the Minister with the approval of the Cabinet or of a licence.

(IA) A licence agreement entered into by the Minister under subsection (1) of this section may provide for the planting of forest or timber trees upon such terms and conditions as may be agreed.

(2) Any licence agreement entered into by the Minister under this section shall be subject to any admitted rights or conceded privileges and any special conditions attaching to the Forest Reserve concerned under the provisions of this Enactment, but subject thereto, where any provision of such licence agreement is inconsistent with any provision of this Enactment compliance with the provisions of such licence agreement shall be deemed to be compliance with the provisions of this Enactment:

Provided that no licence shall be issued or no licence agreement shall be entered into under this Enactment in respect of Forest Reserves of Class I, Class VI and Class VII.

16. Prohibition of transfer of privileges, etc.

Notwithstanding anything in this Enactment or in any other written law, no admitted right or conceded privilege shall be transferred by way of grant, sale, lease, charge or other manner, except succession on death, without the written consent of the Minister.

17. Power to stop way or water-course in Forest Reserve.

The Director may, with the previous sanction of the Minister, cause to be stopped any public or private way or watercourse in a Forest Reserve:

Provided that sanction under this section shall only be given if for the way or watercourse to be so stopped another way or watercourse which, in the opinion of the Minister, is equally convenient already exists or has been provided or constructed by the Director.

18. Rights of entry and access.

(1) Any forest officer may, at all reasonable times, enter, together with any necessary workmen and equipment, upon any land contiguous to a Forest Reserve for the purpose of fixing or placing any boundary mark or beacon, or demarcating or cutting any boundary line, within or around such Forest Reserve, and may dig up any ground for the purpose of fixing or placing any mark, and may cut down and remove any timber or other growth which may obstruct any such boundary line:

Provided that as little damage as possible shall be done to such land or to any property thereon.

(2) Notwithstanding the provisions of any State law or the terms of the grant of any alienated land, the Director shall have the right, upon payment of compensation for actual damage done to property but not in respect of the actual land concerned, to mark out over any alienated land a road or way to provide means of access or approach to a Forest

Reserve and for the purpose of the removal from such Reserve of timber or other forest produce, whether by a public servant or by any person duly exercising any lawful right to remove such timber or forest produce, and in such case public servants in the course of their duties as such, persons as aforesaid, and their servants or agents, for the purposes of the removal of such timber and forest produce but not otherwise, shall be entitled to the use and benefit of such road or way in the same manner and to the same extent as if the said road or way were a public road or way.

(3) Any person who obstructs or causes to be obstructed or attempts to obstruct or cause to be obstructed any forest officer in the exercise of the powers conferred by, or the lawful use of any road or way under, the provision of this section shall be guilty of an offence.

19. Endangering Forest Reserve by fire.

(1) Any person who kindles, keeps or carries any fire, or leaves any fire burning, near a Forest Reserve in such a manner as to endanger such Reserve or any forest produce therein shall be guilty of an offence and liable to imprisonment for seven years or to a fine not exceeding one hundred thousand ringgit or to both such imprisonment and fine.

(2) The fact that any fire has escaped into a Forest Reserve and damaged any forest produce therein shall be conclusive proof that the person who kindled such fire is guilty of an offence under subsection (1) of this section.

(3) Where any fire escapes into a Forest Reserve from any alienated land and causes damage to any forest produce, the occupier of such alienated land shall be guilty of an offence under subsection (1) of this section unless he proves -

(a) that such fire was not kindled by himself, his servants or agents or any member of his family; and

(b) that on becoming aware of such fire on his land, he took all reasonable measures to prevent such fire spreading to such Reserve.

20. Acts prohibited in Forest Reserves.

(1) Unless expressly authorised by or under the provisions of this Enactment -

(a) any person who -

(i) girdles, marks, lops, taps or injures by fire or otherwise any forest produce;

(ii) negligently causes any damage in felling any tree or in cutting, extracting or removing any forest produce;

(iii) kindles or causes to be kindled or carries any fire, or throws down any lighted match or other lighted material, in a Forest Reserve shall be guilty of an offence and liable to imprisonment for seven years and a fine;

(b) any person who -

- (i) erects or constructs any building or livestock enclosure;
- (ii) depastures livestock or causes or permits any livestock to be;
- (iii) cultivates any land or clears or digs up any land for cultivation or for any other purpose,

in any Forest Reserve shall be guilty of an offence;

(c) any person who -

- (i) enters any part of a Forest Reserve which has been closed by or under the rules;
- (ii) damages, alters, shifts, removes, or interferes in any way whatsoever with, any fence or notice board in a Forest Reserve,

shall be guilty of an offence and liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) Unless expressly authorised by or under the provisions of this Enactment, any person who cuts, collects, converts, fells, or removes any forest produce in a Forest Reserve shall be guilty of an offence and on conviction shall be punished with a fine not exceeding five hundred thousand ringgit and to imprisonment for a term which shall not be less than one year but shall not exceed twenty years.

(3) Any person convicted of an offence under this section may, in addition to any penalty imposed on the conviction, be ordered to pay, in respect of any forest produce unlawfully taken, to the Government -

- (a) a sum not exceeding ten times the royalty, fee and other sum due;
- (b) a sum not exceeding ten times the value of such forest produce; and
- (c) any other charges payable,

and any sum ordered to be so paid shall be recoverable as if it were a fine so imposed.

21. Building, etc., in Forest Reserve.

Any building, fence or enclosure erected or maintained in a Forest Reserve contrary to the provisions of this Enactment shall vest in the State, and the Director may destroy the same or otherwise dispose of them as he may think fit.

22. Forest Reserve not to cease or to be excised.

No Forest Reserve shall cease to be a Forest Reserve or any portion thereof shall be

excised from such Reserve except by Enactment or except where it is required for conversion to a Park, a Game Sanctuary or a Bird Sanctuary under the law for the time being in force relating thereto.

PART III

GENERAL PROVISIONS AS TO FOREST PRODUCE, ETC.

23. Forest produce on State and alienated land.

(1) Unless expressly authorised by or under the provisions of this Enactment, any person who -

(a) girdles, marks, lops, taps or injures by fire, or otherwise any forest produce on any State land; or

(b) removes any forest produce found on any alienated land beyond the boundaries of that land,

shall be guilty of an offence and on conviction shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) Unless expressly authorised by or under the provisions of this Enactment, any person who cuts, collects, converts, fells or removes any forest produce on any State land shall be guilty of an offence and on conviction shall be punished with a fine not exceeding five hundred thousand ringgit and to imprisonment for a term which shall not be less than one year but shall not exceed twenty years.

(3) Any person convicted of an offence under this section may, in addition to any penalty imposed on the conviction, be ordered to pay, in respect of any forest produce unlawfully taken, to the Government -

(a) a sum not exceeding ten times the royalty, fee and other sum due;

(b) a sum not exceeding ten times the value of such forest produce; and

(c) any other charges payable,

and such sum ordered to be so paid shall be recoverable as if it were a fine so imposed.

24. Licences.

(1) Subject to the provisions of this Enactment, the Director or any person authorised by him in that behalf may issue licences for the doing of all or any of the acts prohibited by sections 20 and 23 of this Enactment upon such conditions and subject to the payment of such fees or royalties (if any) as may be prescribed or as may be specified in such licence:

Provided that where a licence relates to the doing of any act in Forest Reserve or on State land, it shall not be issued without the written approval of the Minister.

(2) A licence unless sooner revoked or cancelled shall be valid for such period as may be specified therein and may be renewed twice for a period not exceeding one year each by the Director or any person authorised by him in that behalf by an endorsement on the licence with a note of such renewal and the date of its intended expiry.

(3) A licence relating to the doing of any act in a Forest Reserve shall not be expressed as being valid for a period exceeding five years, and if by mistake or otherwise such licence is expressed to be valid for a longer period or contains no period of validity it shall cease to be valid at the expiration of five years from the date of issue thereof.

(4) No licence shall be issued for the doing of any act on State land before the issue of a Temporary Occupation Licence by the Collector under the provisions of the Land Ordinance.

(5) No licence shall be issued for the doing of any act on alienated land except on application by, or with the written permission of, the owner or lessee of such land.

(6) A licence shall be personal to the holder thereof and shall not be transferable in any manner whatsoever, and shall cease to be valid on the death of such holder or if such holder is declared to be insolvent under the provisions of any written law.

(7) (Deleted).

24A. Revocation and cancellation of licence.

(1) Notwithstanding any provisions of this Enactment the Minister may, as and when he deems it necessary in the public interests, revoke or cancel a licence or licences or vary the conditions or impose such additional conditions upon such licence or licences entered into or issued under this Enactment.

(2) For the purpose of this section "licence" shall include a licence agreement entered into under section 15 of this Enactment:

Provided that before exercising the powers conferred upon him under this subsection, an opportunity to be heard shall first be given by the Minister to the holder of the licence or the licence agreement.

24B Stumpage Sales.

(1) Subject to the applicable forest management plan, the Director may issue licences under section 24 or the Minister may enter into a licence agreement under section 15, as the case may be, on the basis of sale of standing timber by tender or auction.

(2) The tender or auction price of the standing timber to be paid by the holder of a licence or licence agreement to the Government shall be in addition to any fee, royalty and other payment payable to the Government on forest produce.

24C Fee and royalty.

Fee, royalty and other payment on forest produce shall be payable by the holder of any licence or licence agreement to the Government at such rates as may be prescribed from time to time by the Minister.

24D Cancellation and suspension of licence.

(1) If the Director has reasonable grounds to believe that a holder of a licence or licence agreement or his agents servants has contravened any of the provisions of this Enactment or any of the terms and conditions of the licence or licence agreement, he may, by giving a notice in writing to the holder thereof, or his agents or servants order that any or all logging operations within the area of the licence or licence agreement or any part or parts thereof shall cease with immediate effect.

(2) Anyone who refuses to comply with such notice in writing shall be guilty of an offence and liable to a fine of not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) The Director may at any time cancel the notice in writing if he thinks fit to do so.

(4) Unless such notice had previously been cancelled under subsection (3), the Director shall within thirty days from the date of the issuance of the notice require the holder of the licence or the licence agreement to whom the notice has been issued to appear before him to show cause as to why his licence or licence agreement should not be suspended or cancelled.

(5) Anyone who is required to appear to show cause under subsection (4) shall be notified in writing by the Director the nature of the breach or offence committed by him and he may appear himself or by his authorised representative.

(6) If, after the inquiry, the Director is satisfied that the holder of the licence or licence agreement has contravened any of the provisions of this Enactment or rules made thereunder or any of the terms and conditions of the licence or licence agreement, he may

-

(a) cancel the licence or, in the case of a licence agreement, recommend to the Minister to terminate it and the Minister may do so accordingly; or

(b) suspend such licence or licence agreement for a further period he deems fit.

(7) Anyone who is dissatisfied with the decision of the Director made under subsection (6) may, within thirty days from the date such decision is received by him, appeal to the Minister whose decision shall be final.

(8) Any decision made by the Director under subsection (6) shall take immediate effect notwithstanding any appeal to the Minister made under subsection (7).

25. Forest produce not removed on expiration of licence.

(1) Any forest produce which has been cut or collected in a Forest Reserve or on State land under a licence and which is not removed from the area to which such licence relates within one month from the expiration of such licence shall vest in the State and may be disposed of by the Director in such manner as he may think fit:

Provided that the Director or any forest officer authorised by him in that behalf may extend the said period of one month in any particular case.

(2) The operation of subsection (1) of this section shall not relieve the licensee of his liability to pay any royalty, fee or other sum due in respect of the forest produce concerned.

26. Unclaimed timber.

(1) Any timber which may be found in any place other than on alienated land, and which is not in the apparent possession or under the apparent control of any person, shall be deemed to be the property of the State unless and until any person proves to the satisfaction of the Director that he is lawfully entitled to the possession thereof.

(2) When any such timber has been so vested in the State the Director may from time to time, as the occasion may require, publish or cause to be published a notice thereof in any manner he thinks fit and shall cause a copy of such notice to be served on any person he has reason to believe to be interested in the timber.

(3) Such notice shall -

(a) contain a description of such timber;

(b) state the place where it was found;

(c) call upon any person claiming to be lawfully entitled to the possession thereof to make his claim to such notice within such period, being not less than one month, as may be specified.

(4) Where any timber taken into possession under subsection (1) of this section is in such condition that, in the opinion of the Director, it should be disposed of before the expiration of the relevant period mentioned in this section, the Director may direct the sale of such timber and the proceeds of such sale shall be dealt with in the same manner as such timber could have been dealt with had it not been so sold.

(5) Notwithstanding subsection (2) of section 4, the powers conferred on the Director under this section shall not be delegated to any person and the decision of the Director in exercising his powers thereunder shall be final.

(6) No person shall be entitled to recover possession of any timber collected under subsection (1) of this section until all expenses incurred in collecting, moving, storing and disposing of the timber as assessed by the Director have been paid up to the Government.

26A. (Deleted).

27. Fees, etc., a charge on forest produce.

(1) When any royalty, fee, cost, charge or expense is due and payable by any person to the State for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce or on any other forest produce in the possession of such person, and such produce may be taken possession of by an authorised officer and may be retained by him until such amount has been paid.

(2) If any amount mentioned in subsection (1) of this section is not paid within one month of the seizure thereof an authorised officer may cause the forest produce seized to be sold by public auction and the proceeds of such sale shall be applied in the first instance in payment of the amount due and of the expenses incurred in the seizure and sale and the balance thereafter shall be paid to the person entitled thereto:

Provided that if no such person can be ascertained with reasonable diligence such balance shall become the property of the State after the expiration of a period of three months from the date of such sale.

28. Improvement of forests generally.

Any authorised officer may enter upon any land and may cut and destroy any diseased, dead or dying tree likely to cause the spread of such disease or to cause damage to any other tree or to forest produce, life or property.

PART IIIA

FOREST MANAGEMENT AND DEVELOPMENT

28A Requirement of forest management plan, forest harvesting plan etc.

Unless otherwise exempted by the Minister, before any licence for an area exceeding one thousand hectares in a Forest Reserve or on State land is issued or before a licence agreement is entered into, the Director shall require the prospective holder thereof to prepare -

- (a) a forest management plan or forest harvesting plan, as the case may be; and
- (b) a reforestation plan,

in such manner as may be specified by the Director.

28B Management plan, forest harvest plan etc., to be carried into effect.

(1) The holder of a licence or a licence agreement who has been required under section 28A of this Enactment to prepare -

- (a) a forest management plan or forest harvesting plan, as the case may be; and
- (b) a reforestation plan,

shall from a date to be appointed by the Director carry them into effect to the satisfaction of the Director.

(2) Where the holder of licence or licence agreement, without reasonable cause, fails to carry into effect a reforestation plan to the satisfaction of the Director, the Director may in addition to revoking the licence or recommending to the Minister to terminate the licence agreement, as the case may be, require the holder thereof to pay forthwith to the Government a sum equivalent to the amount which would be incurred by the Government if it were to undertake or to engage any person to carry into effect the plan, such amount to be assessed by the Director in accordance with the guidelines and rates which the Minister may prescribe.

PART IV

PENALTIES AND PROCEDURE

29 Acts excepted.

Nothing in this Enactment shall be deemed to prohibit or render punishable -

- (a) any act done by any forest officer in the course of his duty as such;
- (b) the valid exercise, in accordance with any order made under paragraph (b) of subsection (4) of section 12 of this Enactment, of any admitted right or conceded privilege;
- (c) the exercise of any right given by, or the compliance with the terms of, any licence agreement or licence;
- (d) the exercise, in respect of any land alienated prior to the first day of January, 1902, of any rights reserved to the owner of such land by the terms and conditions of the grant thereof.

30. General offences.

(1) Any person who, without lawful authority or legal right -

- (a) makes upon or fixes to any forest produce any property mark, or any mark authorised by the rules for use by any forest officer;
- (b) alters, defaces or destroys any such mark or has in his possession any instrument or implement for making, counterfeiting or altering any such mark;
- (c) issues or purports to issue any licence;
- (d) alters, defaces or counterfeits any licence or other document lawfully issued or made under the provisions of this Enactment or of any rule or order made thereunder;
- (e) in any Forest Reserve or on State land covers any tree stump or any evidence of the extraction of forest produce with brushwood or earth or by any other means whatsoever conceals, destroys or removes, or attempts to conceal, destroy or remove, such stump or evidence or any part thereof;
- (f) alters, removes or destroys or defaces or otherwise injures any boundary mark or survey beacon appertaining to a Forest Reserve or to any land specified in a notice of intention;
- (g) keeps or has in his possession, custody or control any forest produce which bears any property mark or in respect of which a forest offence has been committed or upon which the royalty or other payment due in respect thereof has not been paid or made;
- (h) wears, otherwise than for the purpose of a bona fide theatrical performance, any uniform or part of a uniform, or any badge or other identifying mark which has been issued by the Forests Department for the use of forest officers or other employees of that Department, or which so resembles such uniform, badge or mark as to make it appear that such person is a forest officer or other employee of the Forests Department,

shall be guilty of an offence.

(2) Any person guilty of an offence under subsection (1) shall on conviction be liable -

- (a) if the offence is under paragraph (a), (b), (c), (d), (e), or (f) of subsection (1), to a fine not exceeding five hundred thousand ringgit and to imprisonment for a term which shall not be less than one year but shall not exceed twenty years;
- (b) if the offence is under paragraph (g) of subsection (1), to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and
- (c) if the offence is under paragraph (h) of subsection (1), to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

30A Offence of evasion of royalty etc.

(1) Any person who -

(a) is in any way knowingly concerned in conveying, disposal of or dealing with any forest produce in respect of which a forest offence has been committed or upon which the royalty or other payment due in respect thereof has not been paid or made; or

(b) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any royalty or other payment due to the Government,

shall be guilty of an offence and on conviction be liable to imprisonment for a term not exceeding five years and a fine.

(2) In addition to the penalty imposed under subsection (1) of this section, the convicting court shall order the offender to pay to the Government a sum equivalent to five times the amount of royalty or other payment which would have been payable to the Government:

Provided that where the amount of royalty or other payment cannot be ascertained, the sum ordered to be paid shall be one hundred thousand ringgit.

(3) proved that the accused has knowledge that a forest offence has been committed in respect of the forest produce or that no royalty or other payment upon the forest produce due to the Government has In any prosecution under this section, it shall be presumed until the contrary is been paid or made.

31. Assaulting or resisting forest officer.

Any person who assaults, resists or wilfully obstructs any forest officer in the due execution of his duties as such shall be guilty of an offence.

32. Liability for acts, etc of others,

(1) Any person who would have been guilty of a forest offence if anything had been done or omitted by him personally, shall be guilty of such offence and liable to the penalty prescribed therefor if such thing has been done or omitted by his partner, agent or servant unless such person proves to the satisfaction of the Court before which he is charged that he took all reasonable precautions to prevent the doing or omission of such thing:

Provided that -

(a) nothing in this subsection shall affect the liability of such partner, agent or servant; and

(b) the liability of such person shall not extend to imprisonment unless he was privy to the act or omission concerned.

(2) Where a person convicted of a forest offence is a body corporate, every person who, at the time of the commission of such offence was a director, manager, secretary or other officer of such body corporate or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

33. Penalties.

(1) Any person guilty of a forest offence for which no other penalty is provided shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) Where any forest offence, other than an offence under subsection (1) of section 19 or paragraph (a) of subsection (1) of section 20 of this Enactment, is committed -

(a) after sunset and before sunrise; or

(b) after a previous conviction of the offender for a like offence,

the convicting Court may inflict double the penalty prescribed for such offence.

34. Additional orders on conviction.

In addition to any penalty imposed for a forest offence, the convicting Court may order -

(a) that any licence held by the offender shall be cancelled;

(b) that, where the act constituting the offence could have been authorised by a licence but no such licence had been issued, a sum equal to the fees and other sums which would have been payable for or under such licence, shall be paid by the offender to the Government;

(c) that, where any forest produce has been damaged, injured or removed in the commission of such offence, the offender shall pay to the Government or other owner of such produce, compensation equivalent to ten times the value thereof;

(d) that, where any forest produce has been cut, collected, converted, felled or removed in contravention of this Enactment, the offender shall pay to the Government the fees, royalties and other payments which would have been payable under this Enactment.

35. Compounding of offences.

(1) Subject to subsection (2), the Director may, with the general or special approval of the Minister, compound any offence under this Enactment by making a written offer to such person to compound the offence upon payment to the Director of such amount not exceeding the maximum fine for that offence within such time as may be specified in the offer.

(2) The offence which may be compounded under subsection (1) shall only be in respect of an offence committed for the first time.

(3) Where the offence committed involves the taking of forest produce under section 20 or 23, the Director may, if he thinks fit, in addition to the amount payable under subsection (1), require such person to pay to the Government -

(a) a sum not exceeding ten times the royalty, fee and other charges of such forest produce;

(b) a sum not exceeding ten times the value of such forest produce;

(c) the costs of repairing any damage in respect of the offence committed; and

(d) any other charges payable to the Government.

(4) In compounding any offence under subsection (1), anything seized under this Enactment shall be forfeited and disposed of in accordance with the direction of the Director.

(5) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(6) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

36. General powers of forest and police officers.

(1) Any forest officer or police officer -

(a) may require the production by any person of any licence or other authority for any act done or committed by such person or his servants or agents for which such licence or authority is required by or under this Enactment or the rules;

(b) may require any person in possession of any forest produce to give an account of the manner in which such person came into such possession, and if such person fails to account for such possession to the satisfaction of the officer, the latter may seize and detain such produce;

(c) if he has reasonable cause for believing that any person has committed a forest offence, and -

(i) that such person is unlikely to attend the Court in answer to any summons addressed to him; or

(ii) upon being requested to give his name and address, such person fails to do so or gives a name and address which such officer believes to be false,

may arrest such person without warrant;

(d) may seize and detain -

(i) any forest produce in respect of which there is reason to believe that a forest offence has been committed;

(ii) any tool, instrument, boat, conveyance, machinery, equipment or other thing whatsoever used or reasonably suspected or having been used in or about the commission of a forest offence;

(iii) any livestock found in a Forest Reserve which is not present in such Reserve by virtue and in accordance with the terms and conditions of a forest right or conceded privilege;

(iv) any record, book, map, plan, account or any other document whatsoever used or reasonably suspected of having been used in or about the commission of a forest offence;

(e) may, without warrant, -

(i) if he has reason to believe that any person has committed a forest offence, enter and search any building, other than a dwelling house, or any conveyance or enclosure which is under the control of such person or his servants or agents;

(ii) enter any timber yard, log pond or sawmill by day, or at any time when such yard, pond or sawmill is working or open, to inspect any forest produce which may be found therein.

(2) Any person arrested under subsection (1) shall, without unnecessary delay, be taken or sent to the officer in charge of the nearest police station or be produced before a Magistrate to be dealt with as provided by the Criminal Procedure Code.

(2A) Any forest officer not below the rank of Forest Ranger, any police officer not below the rank of Sergeant and any officer in charge of police station may, in relation to any investigation in respect of any forest offence, without the order of the Public Prosecutor, exercise the special powers in relation to police investigations given by the Criminal Procedure Code in any seizable case.

(3) Any person who is the holder of any licence or other authority which he is required to produce under paragraph (a) of subsection (1) of this section and who fails or refuses to produce such licence or authority shall be guilty of an offence and liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment:

Provided that such failure or refusal shall not constitute an offence if the licence or authority concerned is produced within five days of the requirement being made, or within such longer period, if any, as the officer making the requirement may specify, at such place as such officer shall have specified.

(4) Where any property is seized and detained under subsection (1) of this section, the officer concerned, if he is not himself an authorised officer, shall forthwith report such seizure and detention to an authorised officer.

(5) In this section –

“forest produce” means

(i) in the case of anything found in or in the vicinity of a Forest Reserve, any of the things enumerated in the definition of “forest produce” in section 2 of this Enactment; and

(ii) in any other case, any of the things enumerated in paragraphs (a) and (b) of the said definition.

37. Disposal of property seized.

(1) All things liable to seizure under this Enactment shall be liable to forfeiture.

(1A) Where anything has been seized under this Enactment, the Director may, in his discretion, temporarily release such thing to the owner of the same on security being furnished to his satisfaction that such thing shall be surrendered to him on demand or to produce it before a Court of competent jurisdiction.

(2) Whenever anything mentioned under paragraph (d) of subsection (1) of section 36 is seized, the seizing officer shall forthwith –

(a) where the seizure is made by any other person than the Director, deliver such thing into the control or custody of the Director; and

(b) except where the seizure is made in the presence of the owner, his agent or servant, as the case may be, give notice in writing of such seizure and the grounds thereof to the owner of such thing –

(i) if known, either by delivering such notice to him personally or by post at his place of abode or business; or

(ii) if unknown, by publishing such notice in any manner as he thinks fit.

(3) An order for the forfeiture or for the release of anything liable to forfeiture under this Enactment shall be made by the Court before which the prosecution with regard thereto has been held, and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of the Court that an offence under this Enactment or any breach of the restrictions or conditions subject to or upon which any agreement has been entered into or any licence, or permit has been granted has been committed and that the thing was the subject matter of or was used in the commission of the offence notwithstanding that no person may have been convicted of such offence or breach.

(4) If there be no prosecution with regard to anything seized under this Enactment, such thing shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim thereto is made before that date in the manner hereinafter set forth.

(5) Any person asserting that he is the owner of anything liable to forfeiture under this Enactment and that it is not liable to forfeiture may personally or by his agent authorised in writing give written notice to the Director that he claims the same.

(6) On receipt of such notice the Director shall refer the claim to a Magistrate of the First Class for his decision.

(7) The Magistrate to whom reference is made under subsection (6) shall issue a summon requiring the person asserting that he is the owner of the thing and the person from whom it was seized to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence under this Enactment or a breach of the restrictions or conditions subject to or upon which any agreement has been entered into or any licence or permit has been granted has been committed and that such thing was the subject matter, or was used or reasonably suspected of having been used in the commission of such offence or breach shall order the same to be forfeited, or may in the absence of such proof order its release.

(8) Notwithstanding anything in this section, if anything seized under this Enactment is subject to speedy and natural decay or deterioration, the Director may sell the thing and shall thereafter deal with the proceeds of such sale as he would have dealt with such thing had it not been sold.

(9) In any proceeding before any Court relating to seizure of anything under this Enactment subject to forfeiture under this section the Court shall proceed with the trial or the appeal as the case may be on the merits of the case only without enquiring into the manner or form of making any seizure except in so far as the manner and form of seizure may be evidence on such merits.

(10) All things forfeited shall be delivered to the Director and shall be sold in accordance with the provisions of this Enactment.

37A. No costs, damages etc., on seizure.

No person shall in any proceedings before any court in respect of the seizure of anything seized in the exercise or purported exercise of the powers conferred under this Enactment be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such thing or the payment of their value unless seizure was made without reasonable or probable cause.

38. Presumption and proof.

(1) In any prosecution for a forest offence, the onus of proving the existence of a lawful authority or legal right or the possession of a licence or permit shall lie upon the accused.

(2) Where in a prosecution for a forest offence it is alleged that any royalty has not been paid or some payment due has not been made, the onus of proving the payment of such royalty or the making of such payment shall lie upon the accused.

(3) Where in a prosecution for a forest offence it is alleged that any forest produce was cut in, or obtained from a Forest Reserve, State land or alienated land, it shall be presumed to have been so cut, obtained or removed unless the contrary is proved.

(4) Any livestock found in a Forest Reserve shall be deemed to have been caused or permitted to be in such Reserve by the owner of such livestock unless he proves the contrary.

(5) When in any proceedings taken under this Enactment or the rules, or in consequence of anything done thereunder, any question arises as to whether any forest produce is the property of the State, such produce shall be deemed to be the property of the State until the contrary is proved.

(6) In any prosecution under paragraph (d) of section 30 of this Enactment, any licence or document which is proved to have been altered, defaced or counterfeited shall, until the contrary be proved, be presumed to have been so altered, defaced or counterfeited by the person in whose possession it was found or who has relied or attempted to rely thereon as authority for the doing of any act which would otherwise have been unlawful.

(7) Where in a prosecution for a forest offence under paragraph (g) of section 30 against a licensee, it is alleged that such licensee has in his possession, custody or control forest produce in respect of which a forest offence has been committed, it shall be presumed until the contrary is proved, that such licensee has in his possession, custody or control forest produce in respect of which a forest offence has been committed if it is proved that the volume of timber produce purportedly under his licence exceeds the volume of timber produced from his licensed area.

(8) Where in a prosecution for a forest offence under -

- (a) subsection (2) of section 20;
- (b) paragraph (b) of subsection (1) of section 23; or
- (c) subsection (2) of section 23,

against the holder of a licence or licence agreement, his agents or servants, it is alleged that such person did cut, collect, convert, fell or remove any forest produce illegally, it shall be presumed until the contrary is proved that he did cut, collect, convert, fell or remove such forest produce illegally, if it is proved that timber extraction routes, paths or roads exist between the area under his licence or licence agreement and the area in which the illegal cutting, collection, conversion, felling or removal of the forest produce is alleged to have been committed.

(9) Where in a prosecution for a forest offence, in so far as it may be necessary to establish the offence charged, it shall be presumed until the contrary is proved -

- (a) that any map, plan or chart purporting to be made by the authority of the Director is so made and accurate;
- (b) that any mark placed on any tree, timber or any boundary mark of an area under a licence within a Forest Reserve or State Land placed by or under the authority of a forest officer has been so placed and is accurate;
- (c) that any person found within a Forest Reserve or State Land in possession of any forest produce has taken or removed such forest produce without a licence issued under this Enactment; and
- (d) that any person found within a Forest Reserve or State Land in possession of any has machine, equipment or conveyance as specified in the Schedule intends to take or remove any forest produce.

(10) In any prosecution for a forest offence, it shall be presumed until the contrary is proved that any timber found within the boundaries of the State shall be “forest produce” within the meaning as defined in section 2 of this Enactment

39. Civil remedies preserved.

Nothing in this Enactment shall take away or interfere with the right of the State or of any person to sue for and recover at common law or otherwise compensation for or in respect of damage or injury caused by an offence against this Enactment.

40. Non-liability of Government officer and members of the armed forces.

The Government, forest officers, police officers and members of the armed forces shall not be held responsible for any loss or damage which may occur in respect of any forest

produce or other property while detained by, or otherwise in the custody of, any such officer under this Enactment or the rules, or in respect of any timber taken into possession under section 26 of this Enactment, unless such loss or damage arose out of a malicious, fraudulent or grossly negligent act of any such officer.

40A. Power to prosecute and to institute legal action etc.

(1) The Director may prosecute any offence or institute any action, suit or other proceedings relating to any matter under this Enactment.

(2) In any prosecution, action, suit or other proceedings to which this section applies, the Director may appear personally or may be represented by the State Attorney-General, any legal officer of the State Attorney-General's Chambers or of the Forestry Department, or any authorised officer.

PART V

MISCELLANEOUS

41. Saving of native rights.

Subject to any provisions of the rules prohibiting or regulating the cutting or removal of any specified form of forest produce or prohibiting or regulating the cutting or removal of all or any forest produce in any specified locality, nothing in this Enactment shall be deemed to prohibit the cutting and removal from State land which is not for the time being in the lawful occupation of some person or, with the permission of the owner thereof, from alienated land, by any native of any timber, atap or other forest produce which may be necessary -

- (a) for the construction or repair of a dwelling-house for the abode of himself and his family;
- (b) for the construction of fences and temporary huts on any land lawfully occupied by him;
- (c) for the construction or repair of native boats;
- (d) for the upkeep of his fishing stakes and landing places;
- (e) for fire-wood to be consumed for his domestic purposes; or
- (f) for the construction and upkeep of clinics, schools, community halls, places of worship, bridges and any work for the common benefit of the native inhabitants of his kampung.

41A. Rewards.

The Director may order such rewards as he may deem fit to be paid to any forest officer or other person for services rendered in connection with any offence or seizure made under this Enactment.

41B. Protection of informers.

(1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of an informer or the substance and nature of the information received from him or to state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or are liable to inspection in any civil or criminal proceedings contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on trial for any offence against this Enactment the court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit inquiry, and require full disclosure concerning the informer.

41C. Protection of forest officer, police officers, members of the armed forest and other persons.

No action or prosecution shall be brought, instituted or maintained in any court against any forest officer, police officer or member of the armed forces either personally or in his official capacity for or on account of or in respect of any act ordered or done by him or purporting to have been ordered or done by him for the purpose of carrying into effect this Enactment, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purporting to have been done by him under order, direction or instruction of any forest officer, police officer or member of the armed forces given for any such purpose as aforesaid:

Provided that the act of such officer or person was done in good faith and in the reasonable belief that it was necessary or the purpose intended to be served thereby.

42. Rules.

(1) The Minister may make rules*

(a) for general forest management, and in particular -

(i) establishing any committee for the management of any Forest Reserve, or any part thereof, defining the terms of reference of such committee and declaring privileges and

conditions which shall apply either generally or particularly within such Forest Reserve or any part thereof:

Provided that no such privilege or condition shall derogate from any admitted right or conceded privilege or any special condition specified in respect of such Forest Reserve or any part thereof or in a reservation notice;

(ii) closing any Forest Reserve or part thereof to the public or controlling the entry of persons into any Forest Reserve and regulating the period during which persons may remain therein and the conditions under which they may do so;

(iii) specifying areas of State land where shifting cultivation may or may not be practised and regulating the practice of such cultivation;

(iv) providing for the establishment and maintenance of nurseries and for the afforestation of lands, the improvement and production of forest produce, and the introduction, or prohibition of the introduction, of new species of trees or other forest produce;

(v) authorising the payment of grants and bonuses for the encouragement of forestry, forest management and the production and improvement of forest produce;

(vi) providing for fire prevention, and the fighting of fires, in relation to forest areas and growing forest produce;

(b) relating to forest produce generally, and in particular-

(i) prohibiting or regulating, by means of permit or otherwise, the possession of, or any dealings in, specified types of forest produce;

(ii) prohibiting the collection or removal of forest produce without a pass in addition to a licence or otherwise than in accordance with the conditions of such a pass, and providing for the issue, production and return of such passes;

(iii) regulating or prohibiting the export of any forest produce and prescribing any fees and payments payable in respect thereof;

(iv) regulating the seasoning, treatment, grading, measurement and storage of forest produce;

(v) regulating the use of marks on timber and the registration, and the refusal or cancellation of registration, of such marks; prescribing the time for which such registration is to hold good, and limiting the number of such marks which may be registered by any one person;

- (vi) regulating, by licensing or otherwise, the possession of marking hammers and other implements for marking timber;
- (c) relating to the transport etc., of forest produce, and in particular -
 - (i) prescribing routes along which forest produce may be moved within the State and prohibiting the use of other, or other specified, routes, and prescribing points from which such produce may be exported from, or imported into, the State;
 - (ii) providing for the protection of river banks and of bridges, dams or other public works by the regulation of the floating of timber or other forest produce on any water or waterway, or of the storage of timber or other forest produce on river banks;
 - (iii) prohibiting or regulating any act relating to forest produce which might cause the obstruction of any waterway or navigation channel, or cause danger to navigation;
 - (iv) regulating the size and shape of log rafts, and the types of vessels used to move such rafts, either generally or in the case of any particular water-way, navigation channel or harbour, and regulating generally the transit of forest produce by land or water and by different means and classes of transport;
 - (v) establishing checking stations to which forest produce or any specified type of forest produce, is to be brought for examination, or for the realisation of money due to the Government in respect thereof, or in order that a mark may be affixed thereto for the purposes of this Enactment; and prescribing the conditions under which such produce is to be brought to, detained at and removed from, such checking stations;
- (d) relating to licences, royalties and fees, and in particular -
 - (i) regulating the manner in which, and the conditions upon which, licences and permits may be issued;
 - (ii) restricting or prohibiting the issue of licences and permits in respect of classes or descriptions of forest produce or in respect of areas;
 - (iii) prescribing fees, royalties and payments payable to the Government on forest produce, and the manner in which, and time at which, they are to be levied;
 - (iv) providing for the remission or exemption from payment, in whole or in part of any fees, royalties or payments payable to the Government;
 - (v) prescribing the fees payable in respect of licences and permits and of any other thing done under the provisions of this Enactment or of the rules;
 - (vi) requiring the holders of licences to maintain accounts and render returns and to submit their books for inspection;

(vii) providing for the payment of a surcharge in the event of failure to pay at the prescribed time or by the due date any royalty, fee or other payment under this Enactment or the rules;

(e) (i) providing for the registration, licensing and regulation of sawmills;

(ii) providing for the registration, licensing and maintenance of tractors, trucks and other vehicles used in the extraction or removal of timber in a Forest Reserve or State land and the control of the movement or traffic density of such tractors, trucks or other vehicles in relation thereto;

(f) prescribing any forms to be used for the purposes of this Enactment or of the rules;

(g) providing for rewards to be made to informers;

(h) generally for giving effect to the objects and purposes of this Enactment.

(2) The rules may provide that any specified rule or rules shall or shall not apply to any particular class of forest produce, or to any particular area, the limits of which shall be defined, or to any classification of land.

(3) (a) The rules may provide penalties for any contravention of, or failure to comply with, any of the provisions of such rules.

(b) The rules may provide compensation, equivalent to ten times of the value of the forest produce cut, collected converted or removed in contravention of, or failure to comply with, any of the provisions of such rules.

(4) The Minister may, by notice in the Gazette, specify the botanical equivalents of any English, Malay or other vernacular names used in any rules made under this section to denote any tree or other forest produce, and in any proceedings taken under this Enactment or in consequence of anything done thereunder any botanical name so assigned shall be deemed to correspond with any such name unless the contrary is proved.

43. Repeal and savings.

(1) The Forests Ordinance is hereby repealed:

Provided that -

- (a) all appointments made, and powers and authorities exercised or conferred under that Ordinance shall, so far as they are not inconsistent with the provisions of this Enactment, be deemed to have been made, exercised or conferred under this Enactment;
- (b) notwithstanding anything in this Enactment contained, any grant, licence agreement or contract -
- (i) entered into prior to the first day of January, 1955, and expressed to confer any rights or privileges in respect of the utilisation of any land for the purposes of forestry or silviculture or in respect of the collection, removal, sale, purchase, utilisation or storage of forest produce; or
- (ii) made under paragraph (a) of subsection (1) of section 16 of the said Ordinance, and still in force at the date of commencement of this Enactment, shall be deemed to be a licensed agreement for the purposes of this Enactment;
- (c) any permit, licence or other right not falling under paragraph (b) of this proviso, issued or granted under the said Ordinance and still valid at the date of commencement of this Enactment shall be deemed to be a licence issued under section 24 of this Enactment.
- (2) Where in any written law or document reference is made to a reserved forest such reference shall be construed as being to a Forest Reserve, and any land declared to be a reserved forest under the Ordinance hereby repealed shall be deemed to be a Forest Reserve duly constituted under the provisions of this Enactment which shall apply to such land accordingly.

SCHEDULE

(Section 38(9)(d))

PART A - MACHINE

- (a) Grader
- (b) Log loader
- (c) Bulldozer
- (d) Crawler tractor
- (e) Winched skidder

PART B - EQUIPMENT

- (a) Wire ropes
- (b) Machet
- (c) Axe
- (d) Fuel or oil tank
- (e) Oil drum
- (f) Measuring tapes
- (g) Chainsaw
- (h) Power saw
- (i) Mobile saw
- (j) Hand saw
- (k) Log tongs
- (l) Log hooks
- (m) Wedges

PART C - CONVEYANCE

- 1. LAND
 - (a) Timber lorry
 - (b) Winch lorry
 - (c) Locomotive
- 2. AIR
 - (a) Aircraft
 - (b) Balloon
- 3. WATER
 - (a) Boat
 - (b) Barge
 - (c) Tongkang
 - (d) Sampan
 - (e) Pontoon

* "Yang di-Pertua Negeri" substituted for "Yang di-Pertua Negara" by virtue of Enactment No. 17 of 1976.

† In force 1st January, 1969 - see G.N.5. 16/1969.

‡ See G.N. 622/1969.

* See Forest Rules 1969 (G.N.S. 17 of 1969) at page 53 infra.