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Maandag, 26 Januarie 1931.

No. 400

The following Draft Ordinance which will be introduced during the Third Session of the Second Legislative Assembly is published for general information.

H. P. SMIT,  
*Secretary for South West Africa.*

Administrator's Office,  
Windhoek,

Die volgende Ontwerpordonnansie, wat gedurende die Derde Sessie van die Tweede Wetgewende Vergadering voorgelê sal word, word vir algemene informasie gepubliseer.

H. P. SMIT,  
*Sekretaris vir Suidwes-Afrika.*

Kantoor van die Administrateur,  
Windhoek.

The Roads (Motor By-Passes) Ordinance, 1931 . . . 7085

Die Paaie (Moterdeurgange) Ordonnansie 1931 . . . 7085

## DRAFT ORDINANCE

To provide for the construction of motor by-passes in fences across public roads.

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

1. In this Ordinance the expression "motor by-pass" means an opening in a fence fitted with a device designed to prevent the passage of stock but to permit the passage of motor vehicles, the expression "the principal Ordinance" means the Roads and Outspans Ordinance, 1927 (Ordinance No. 15 of 1927), as amended by the Roads and Outspans Ordinance Amendment Ordinance, 1928 (Ordinance No. 10 of 1928), the Roads and Outspans Ordinance Further Amendment Ordinance, 1929 (Ordinance No. 10 of 1929), and the Roads and Outspans Ordinance Further Amendment Ordinance, 1930 (Ordinance No. 13 of 1930), and any expression to which in the principal Ordinance a meaning has been assigned has, when used in this Ordinance, the same meaning.

2. (1) The Administrator, or, in a district for which a roads board or roads council has been constituted, the board or the council, as the case may be, may construct a motor by-pass in any fence across any public road. Whenever the passage of vehicles over that road has not been limited under section *sixty-two* of the principal Ordinance to motor vehicles, any by-pass in any fence across that road shall be constructed next to a gate across the road.

(2) The cost of constructing any such by-pass shall, if the construction is by the Administrator, be paid out of the public revenues, and, if the construction is by the board or council, be paid out of the funds of the board or council, as the case may be.

3. The owner of any fence may at his own cost construct a motor by-pass at any place in that fence.

4. The Administrator may by notice published in the *Gazette* prescribe specifications for the construction of motor by-passes, and every motor by-pass shall conform to the specifications so prescribed.

5. The owner for the time being of any fence in which a motor by-pass has been constructed under the provisions of section *two* or *three* shall at his own cost maintain such motor by-pass in good order. If the fence is owned jointly, the liability hereby imposed shall be borne by the owners jointly. If any such owner fails to maintain any such motor by-pass in good order, the Administrator, the board or the council, as the case may be, may make such repairs to the motor by-pass as are necessary to restore it to good order, and may recover the cost of such repairs from that owner. Any owner who fails to comply with the provisions of this section, shall be guilty of an offence and shall be liable on conviction to the penalties imposed by section *sixty-nine* of the principal Ordinance.

6. No liability for any loss suffered by any person through any injury to any person, stock or vehicle caused by the passage or attempted passage of such person, stock or vehicle through or over any motor by-pass shall attach to the Administration, the board, the council or the owner of the fence by reason of the construction, maintenance or repair of any such by-pass in accordance with the provisions of this Ordinance:

Provided that nothing in this section shall exempt the Administration, the board, the council or the owner of the fence by whom any such motor by-pass was constructed from liability for any loss caused by negligence in the construction or by failure to comply with the specifications prescribed under section *four*, or exempt any owner of any fence responsible under section *five* for the maintenance of any such motor by-pass from liability for any loss caused by his failure to maintain such motor by-pass in good order.

7. This Ordinance may be cited as the Roads (Motor By-Passes) Ordinance, 1931, and shall be read as one with the principal Ordinance.

## ONTWERPORDONNANSIE

Om voorsiening te maak vir die konstruksie van moterdeurgange in omheinings oor publieke paaie.

DIT WORD VERORDEN deur die Wetgewende Vergadering vir die Gebied Suidwes-Afrika as volg:—

1. In hierdie Ordonnansie beteken die uitdrukking "moterdeurgang" 'n opening in 'n omheining, wat van 'n meganisme voorsien is bereken om die deurgaang van vee te verhinder, maar om die deurgaang van motervoertuie toe te laat. Die uitdrukking "die Hoofordonnansie" beteken die Paaie en Uitspanplekke Ordonnansie 1927 (Ordonnansie No. 15 van 1927), soos gewysig deur die Paaie en Uitspanplekke Ordonnansie Wysigingsordonnansie 1928 (Ordonnansie No. 10 van 1928), die Paaie en Uitspanplekke Ordonnansie Verder Wysigingsordonnansie 1929 (Ordonnansie No. 10 van 1929), en die Paaie en Uitspanplekke Ordonnansie Verder Wysigingsordonnansie 1930 (Ordonnansie No. 13 van 1930), en enige uitdrukking, waaraan in die Hoofordonnansie 'n betekenis toegeken is, het, wanneer in hierdie Ordonnansie gebruik, dieselfde betekenis.

2. (1) Die Administrateur of, in 'n distrik waarvoor 'n padkommissie of padraad ingestel is, die kommissie of die raad, soos die geval mag wees, kan 'n moterdeurgang in enige omheining oor enige publieke pad konstrueer. Wanneer die deurgang van voertuie oor daardie pad nie onder artikel *twee-en-sestig* van die Hoofordonnansie tot motervoertuie beperk is nie, moet enige deurgang in enige omheining oor daardie pad naasaan 'n hek oor die pad gekonstrueer word.

(2) Die koste van die konstrueer van enige sodanige deurgang moet, as die konstruksie deur die Administrateur geskied, uit die staatsfondse, en, as die konstruksie deur die kommissie of raad geskied, uit die fondse van die kommissie of raad, soos die geval mag wees, betaal word.

3. Die eienaar van enige omheining kan op sy eie koste 'n moterdeurgang op enige plek in daardie omheining konstrueer.

4. Die Administrateur kan deur kennisgewing in die *Offisiële Koerant* gepubliseer spesifikasies voorskryf vir die konstruksie van moterdeurgange, en elke moterdeurgang moet ooreenstem met die spesifikasies aldus voorgeskryf.

5. Die persoon, wat asdan eienaar van enige omheining is, waarin 'n moterdeurgang kragtens die bepaling van artikel *twee* of *drie* gekonstrueer is, moet sodanige moterdeurgang op sy eie koste in 'n goeie toestand hou. As die omheining gesamentlik besit word, moet die aanspreeklikheid, wat hierby opgelê word, gesamentlik deur die eienaars gedra word. As enige sodanige eienaar in gebreke bly om enige sodanige moterdeurgang in 'n goeie toestand te hou, kan die Administrateur, die kommissie of die raad, soos die geval mag wees, sodanige reparasie aan die moterdeurgang maak as nodig is om dit in 'n goeie toestand te herstel, en kan hy die koste van sodanige reparasies op daardie eienaar verhaal. Enige eienaar, wat in gebreke bly om die bepaling van hierdie artikel na te kom, is aan 'n oortreding skuldig en na skuldigebevinding blootgestel aan die strawwe deur artikel *nege-en-sestig* van die Hoofordonnansie opgelê.

6. Geen aanspreeklikheid vir enige verlies deur enige persoon gely ten gevolge van enige letsel aan enige persoon, vee of voertuig veroorsaak deur die deurgaang of gepoogde deurgaang van sodanige persoon, vee of voertuig deur of oor enige moterdeurgang sal op die Administrasie, die kommissie, die raad of die eienaar van die omheining ter oorsake van die konstruksie, onderhoud of reparasie van enige sodanige deurgang ooreenkomstig die bepaling van hierdie Ordonnansie rus nie:

Met die verstande dat niks in hierdie artikel die Administrasie, die kommissie, die raad of die eienaar van die omheining, deur wie enige sodanige moterdeurgang gekonstrueer is, van aanspreeklikheid vir enige verlies veroorsaak deur nalatigheid in die konstruksie of deur in gebreke te bly om die spesifikasies kragtens artikel *vier* voorgeskryf na te kom, sal vrystel nie, of enige eienaar van enige omheining, wat kragtens artikel *vyf* aanspreeklik is vir die onderhoud van enige sodanige moterdeurgang, van aanspreeklikheid vir enige verlies veroorsaak deur sy versuim om sodanige moterdeurgang in 'n goeie toestand te hou sal vrystel nie.

7. Hierdie Ordonnansie kan as die Paaie (Moterdeurgange) Ordonnansie 1931 aangehaal word en moet as een gelees word met die Hoofordonnansie.

Interpretation of terms.

Construction of motor by-pass by Administration or roads board or roads council.

Construction of motor by-pass by owner of fence.

Specifications for construction of motor by-passes.

Repair of motor by-passes.

Exemption from liability for loss.

Short title.

Woordbepaling.

Konstruksie van moterdeurgang deur Administrasie of padkommissie of padraad.

Konstruksie van moterdeurgang deur eienaar van omheining.

Spesifikasies vir konstruksie van moterdeurgange.

Reparasie van moterdeurgange.

Vrystelling van aanspreeklikheid vir verlies.

Kort titel.