



Republic of Namibia
Annotated Statutes

Trespass of Animals Ordinance 16 of 1939

(OG 796)

came into force on date of publication: 13 June 1939

as amended by

Trespass of Animals Amendment Proclamation 21 of 1943 (OG 1065)

came into force on date of publication: 3 August 1943

Trespass of Animals Amendment Ordinance 9 of 1944 (OG 1115)

came into force on date of publication: 26 April 1944

ORDINANCE

To provide for the consolidation and amendment of the law relating to trespass by animals, the recovery of fees and damages therefor, and the establishment of pounds in connection therewith.

*(Assented to 7th June, 1939)
(English text signed by the Administrator)*

ARRANGEMENT OF SECTIONS

[Only the Chapters in this Ordinance have headings.]

PRELIMINARY

CHAPTER I

Impoundment of Trespassing Animals

CHAPTER II

Provisions relating to Rural Areas

CHAPTER III

General and Miscellaneous

Trespass of Animals Ordinance 16 of 1939

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the Governor-General, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section *twenty-six* of the South West Africa Constitution Act, 1925 (Act No. 42 of 1925), of the Parliament of the Union of South Africa, as follows:-

[This Proclamation uses both “firstmentioned” and “first-mentioned”, with and without a hyphen. These words are reproduced here as they appear in the *Official Gazette*.]

PRELIMINARY

1. The laws specified in the Schedule annexed hereto are hereby repealed, provided that any regulations published under the said laws shall remain in force until repealed, except in so far as such regulations may be in conflict with the provisions of this Ordinance.

2. In this Ordinance, unless inconsistent with the context -

“*animals*” means and includes cattle, horses, mules, asses, sheep, goats, ostriches and pigs;

“*cattle*” means and includes bulls, cows, oxen, heifers, tollies and calves;

“*flock*” means any number of sheep or goats which are in one lot, or under the charge of one person;

“*horses*” means and includes male horses, mares, geldings, colts and fillies;

“*owner*” means the owner of an animal and includes the manager, agent or caretaker for the owner of the animal;

“*police officer*” includes a non-commissioned officer in charge of a police post;

“*proprietor*” means and includes the owner, lessee or occupier of land, and except in Chapter II includes further any Municipal Council or Village Management Board in regard to streets or other public places over which such Council or Board exercises jurisdiction;

[The Local Authorities Act 23 of 1992 repealed the Village Management Boards Ordinance 14 of 1963.]

“*rural areas*” shall mean any areas outside urban areas, and any other areas declared to be rural areas for the purpose of this Ordinance by the Administrator by notice in the *Gazette*;

“*stallions*” means and includes male horses or asses not castrated;

“*sufficient fence*” shall mean when applied to wire fences, a fence having not less than four strands of well-galvanised wire, with straining posts not more than five hundred yards apart, and iron standards (these shall weigh not less than twelve pounds avoirdupois each) or hardwood poles (these shall be at least four inches in diameter at the thin end and be planted not less than two feet deep in the ground) at not more than ten, fifteen or twenty yards apart, with not less than two, three or four droppers (if hardwood droppers are used, these shall be at least one and a half inches in diameter at the thin end) between them respectively; in other cases it shall mean any fence, wall or hedge at least four feet six inches high through which no animal could pass without breaking the same.

[The full stop at the end of this definition should be a semicolon,]

Trespass of Animals Ordinance 16 of 1939

“*This Ordinance*” includes any regulation made thereunder;

“*urban areas*” shall mean Municipalities, Village Management Board Areas, and any area of land included in a township as established in terms of the Townships Ordinance, 1928 (Ordinance No. 11 of 1928), as amended from time to time.

[The Local Authorities Act 23 of 1992 repealed the Village Management Boards Ordinance 14 of 1963. The Townships Ordinance 11 of 1928 was repealed by the Townships and Division of Land Ordinance 11 of 1963, which was repealed by the Urban and Regional Planning Act 5 of 2018.]

CHAPTER I

Impoundment of Trespassing Animals

3. The provisions of this chapter must be read as subject to the special provisions of Chapter II relating to rural areas.

4. The Administrator shall whenever and wherever it shall appear to him necessary authorise the establishment of a pound and the appointment of a poundmaster for such a period and on such conditions as are herein or may by regulation be prescribed. The establishment of any pound and the appointment of the poundmaster shall be notified in the *Gazette*. The Administrator may disestablish any pound by notice in the *Gazette*.

5. Every poundmaster shall furnish to the magistrate of the district in which the pound concerned is situated, security for the due and faithful performance of his duties as such poundmaster to such amount and subject to such conditions as may be prescribed by the Administrator.

6. Any proprietor upon whose lands any animals are found trespassing may send such animals to that pound which is nearest, by a practicable road or thoroughfare, to the land trespassed upon, and to no other pound; provided that no animal belonging to a traveller and grazing on any outspan recognised by law, may be so impounded, except as provided in section *forty-nine*.

7. Any person who illegally impounds any animal shall be liable to make good to the owner all damages, costs and charges arising out of such proceeding.

8. No proprietor shall sell or dispose of any animal found trespassing on his property. Any person contravening the provisions of this section shall be guilty of the crime of theft, and liable on conviction to all the penalties provided by law in respect of the said crime; provided that the enforcement of any penalty or sentence imposed shall not deprive the owner of any legal right he may have to recover from such proprietor the value of such animal and any damage sustained by reason of its detention or sale.

9. (1) No proprietor shall knowingly allow any stray animal to remain upon his property for a period longer than two weeks, unless he shall have forwarded to the owner of the animal, if known to him, or to the nearest poundmaster or to the post commander of the nearest police post a notice of the presence of such animal upon his property. Such notice shall be sent by letter delivered or duly posted, and shall set forth, as nearly as possible, the species, marks, and distinguishing peculiarities of the animal in question and, in regard to horses and cattle, their colour also.

(2) No proprietor shall detain any animal found trespassing upon his land for more than twenty-four hours, or ride, work or use such animal.

Trespass of Animals Ordinance 16 of 1939

(3) Any person contravening the provisions of this section shall be guilty of an offence.

10. Any person who shall rescue or attempt to rescue or incite or assist any other person to rescue any animals lawfully impounded or lawfully seized for the purpose of being impounded shall be guilty of an offence.

11. The owner of any animal lawfully impounded for trespass upon -

- (1) any garden, vineyard or orchard;
- (2) any place upon which a cultivated crop is growing or upon which such a crop is still lying;
- (3) any yard, floor or place containing grain or dried fruit or other products of the soil;

shall be liable to pay trespass money to the proprietor of the property trespassed upon calculated according to the rate provided by regulation; provided that -

- (a) any proprietor or the agent or caretaker for any proprietor, sending animals to the pound for a trespass under this section shall at the same time send a signed memorandum to the poundmaster, setting forth the number and description of the animals and the nature of the place or property upon which they have trespassed;
- (b) if the memorandum delivered with the animals does not state the nature of the place or property upon which they have trespassed, they shall be considered as impounded for trespass under the provisions of section *twelve* hereof;
- (c) when such animals are taken to the pound by the proprietor, agent or caretaker aforesaid in person, then the verbal statement of such proprietor, agent or caretaker upon the matters referred to in the preceding provisions of this section shall be taken and recorded by the poundmaster, and shall be sufficient.

12. The owner of any animal lawfully impounded for trespass upon any uncultivated land or any place not of the description in the last section given, shall be liable to pay trespass money to the proprietor of the property trespassed upon at the rate prescribed by regulation; provided that in case any property shall be trespassed upon twice within the space of one fortnight by the same cattle or horses belonging to the same owner, then the said owner shall be liable in respect of the second trespass to pay at double the ordinary rate.

13. Every person who delivers any animal to a poundmaster to be impounded shall be entitled to receive from such poundmaster a fee to be called mileage for every mile or portion of a mile travelled, at the tariff provided in the regulations; provided that -

- (a) when the person so delivering the said animals is not himself the proprietor of the land trespassed upon or the agent or caretaker for the proprietor, then he shall produce a written memorandum signed by such proprietor, agent or caretaker, giving a description of the animals, and authorising the bearer to convey them to the pound, and every such memorandum shall be preserved by the poundmaster as a voucher;
- (b) when more persons than one have been employed in conveying the said animals to the pound, mileage shall only be paid by the poundmaster to one of such persons but the person impounding the animals may recover in any competent court from the owner, similar mileage in respect of every other of such persons necessarily

Trespass of Animals Ordinance 16 of 1939

employed; provided that when ostriches are impounded the poundmaster shall pay mileage for as many drivers as are necessarily employed;

- (c) mileage shall be paid in terms of the shortest available route.

Provided further that no person shall be entitled to receive from any such poundmaster any mileage in respect of asses delivered to any such pound.

14. The owner of any animals liable to impoundment for trespass, may, before the animals have been removed from the property trespassed upon, tender to the person complaining of the trespass a sum of money to cover the damages suffered by him, or the trespass money lawfully claimable under this Ordinance in connection with such trespass, such tender to be made to the complainant himself or to his agent or caretaker. If such animals as aforesaid are in course of being conveyed to the pound then their owner may tender as aforesaid a sum of money to cover the damage or trespass money aforesaid and also the mileage to which the complainant would be entitled under the provisions of this Ordinance if the animals had actually been impounded. If the said tender be refused, the complainant shall pay the cost of all legal proceedings which he may thereafter institute and shall be liable for all damages sustained by the owner of the animals by reason of their detention after the date of tender, unless the tender is found to be insufficient by a competent court; or unless in the opinion of such court the tender was refused in the *bona fide* belief that the person making the tender was not the owner or the duly authorised agent of the owner.

15. The owner of any goats or sheep infected with scab and found trespassing, shall, if the sheep and goats are not found mixed with other sheep or goats free from disease, be liable to pay to the proprietor twice the amount of trespass money which would have been payable under these regulations in respect of a similar trespass by sheep or goats not so infected. In the event of the trespassing sheep and goats being found so mixed as aforesaid their owner shall be liable to pay to the proprietor four times the amount of trespass money which would have been payable in respect of a similar trespass by sheep and goats not so infected.

16. For the purposes of this Ordinance, if any sheep or goat found trespassing be infected with scab then all sheep or goats in the same flock and found trespassing at the same time, shall be deemed to be similarly infected; and if any sheep or goat in any flock with which any other flock has become mixed, is infected, then the entire mixed flock shall be deemed to be similarly infected. The nearest post commander of police shall have authority to determine any dispute on facts arising out of the provisions of this section, for the purpose of the calculation of trespass money payable in terms of section *fifteen*.

17. Any person who shall wilfully drive any sheep or goats infected with scab into or upon the property of another person, upon which property there are at the time any sheep or goats not infected with the said disease, shall over and above any damage or trespass money payable under this Ordinance or otherwise, be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months.

[A fine not exceeding one hundred pounds is equivalent to a fine not exceeding N\$200.]

18. Subject to the provisions of the Diseases of Stock Proclamation, 1920 (Proclamation No. 28 of 1920), as amended from time to time, it shall be the duty of every poundmaster to receive into his charge all animals tendered at his pound between sunrise and sunset by any proprietor or by the manager, agent or caretaker for any proprietor or by any person authorised in writing thereto by such proprietor, manager, agent or caretaker in order to be impounded, as having been found trespassing upon the land of such proprietor, provided that any animals tendered by a member of the police force or such other persons as are herein or may

Trespass of Animals Ordinance 16 of 1939

by regulation be prescribed shall likewise be received for impoundment as having trespassed upon any town lands, streets or public places or having been left unattended in contravention of any local regulations or bye-laws issued by or affecting the municipality, village management board or other local authority in any town or village.

[The Diseases of Stock Proclamation 28 of 1920 was repealed by the Animals Diseases and Parasites Ordinance 34 of 1959, which was in turn repealed by the Animal Diseases and Parasites Amendment Act 9 of 1973 (RSA). The Animal Diseases and Parasites Act 13 of 1956 (SA) which was amended by Act 9 of 1973 was replaced in Namibia by the Animal Health Act 1 of 2011.]

The Local Authorities Act 23 of 1992 repealed the Village Management Boards Ordinance 14 of 1963 which provided the legal authority for village management boards.]

19. Any poundmaster who refuses or neglects to receive animal tendered in terms of the preceding section shall be guilty of an offence and on conviction liable on each occasion to a fine not exceeding five pounds and in default of payment, to imprisonment with or without hard labour for a period not exceeding one month, and he shall in addition be liable for any damage caused to the owner of the said animals or to any other person by reason of such refusal or neglect.

[A fine not exceeding five pounds is equivalent to a fine not exceeding N\$10.]

20. Every poundmaster shall give to the person delivering animals into his charge a written receipt setting forth the number and description of the animals so delivered and specifying the trespass for which the said animals have been sent to be impounded.

21. All animals seized or detained for any trespass committed beyond the limits of a municipality shall be sent to any pound within the said limits, if that pound be the one nearest to the place of trespass and the poundmaster shall be bound to receive the animals so sent: Provided that, if the said pound is a municipal pound established in terms of section *one hundred and seventy-one* of the Municipal Ordinance, 1935 (No. 24 of 1935), as amended, such impoundment shall be dealt with as if the trespass had been committed within the limits of such municipality.

**[Section 21 is amended by Ord. 9 of 1944 to add the proviso.
The Municipal Ordinance 24 of 1935 was replaced by the Municipal Ordinance 3 of 1949,
which was replaced in turn by the Municipal Ordinance 13 of 1963,
which was repealed by the Local Authorities Act 23 of 1992.]**

22. Every poundmaster shall maintain in good repair, and as far as possible, free from all infection, not less than three separate enclosures for the kraaling at night of ostriches and horses, of cattle, and of sheep, goats and pigs; but any magistrate may in regard to any pound in his district give permission to the poundmaster to maintain in manner aforesaid a lesser number of such enclosures.

23. Every stallion above the age of two years, every bull above the age of one year, every sheep ram or goat ram or boar above the age of nine months, and every animal which from contagious disease, dangerous vice or other reason shall be unfit to mix with other impounded animals, shall be kept and fed separately, and the fees to be received or retained, as the case may be, by a poundmaster for the keeping and feeding of such animals shall be those provided by regulation.

24. It shall be lawful for any poundmaster to destroy any impounded animal likely to prove dangerous to human life or destructive to other animals impounded; provided that -

Trespass of Animals Ordinance 16 of 1939

- (a) no such animal shall be destroyed until a member of the police or two disinterested land owners or stock owners shall have examined it, and agreed with the poundmaster as to the necessity for its destruction;
- (b) the poundmaster shall if circumstances and time permit summon the owner of such animal if known to attend the examination aforesaid. Such summons may be by letter duly sent through the post;
- (c) if the owner of the animal objects to its destruction such owner may release it, if he do so forthwith, provided he releases at the same time all other animals belonging to him which may have been impounded on the same occasion as the animal proposed to be destroyed;
- (d) every member of the police, land owner or stock owner attending for the purpose of the inspection aforesaid shall be paid by the poundmaster such fees as may be prescribed by regulation. The amount so paid shall be recoverable by the poundmaster from the owner of the animal if it be destroyed; if the animal be not destroyed or the owner be unknown or if it be impossible for any other reason, to recover from the owner the whole or any part of such amount the said amount or unrecovered portion thereof, as the case may be, shall be paid to the poundmaster by the magistrate on behalf of the Administration.

25. Every poundmaster shall, with regard to all animals which are found or are suspected to be suffering from an infectious or contagious disease after being received at his pound, act in terms of the Diseases of Stock Proclamation aforesaid, and any regulations made thereunder.

[The word "contagious" is misspelt in the *Official Gazette*, as reproduced above.]

26. Whenever any impounded stock requires to be dipped, dressed, inoculated, treated or sprayed in accordance with the instructions of a Government veterinary or other duly authorised officer, the poundmaster shall, on receipt of such instructions, carry out the work and shall in regard to such instructions be in the same position and incur the same responsibilities including criminal liability and possess the same rights as if he were the owner of such stock and such instructions had been given to such owner.

27. No poundmaster shall ride, work or use any animal impounded in his pound. Any poundmaster who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

[A fine not exceeding twenty-five pounds is equivalent to a fine not exceeding N\$50.]

28. Every poundmaster shall be entitled to demand or retain as the case may be, in respect of every animal impounded with him in terms of this Ordinance -

(1) a pound fee, provided that no animal shall be considered to be impounded until it shall have been actually placed within a pound kraal;

(2) a further fee for every day during which any such animal shall be herded, grazed or fed by him.

The said fees shall be prescribed by regulation.

Trespass of Animals Ordinance 16 of 1939

29. The owner of the animals impounded shall pay to the poundmaster for his own use the fees mentioned in the preceding section and the mileage or trespass moneys paid by the poundmaster together with an amount equal to five *per cent.* of such mileage or trespass moneys. The said animals may be detained by the poundmaster as security for the said amounts; provided that -

- (a) if the value of the animals impounded is in excess of the total charges due thereon and ascertained under the provisions of this Ordinance, and if the owner is unable to pay the said charges, then the poundmaster shall only detain so many of the said animals as may be reasonably sufficient to secure the total charges due upon all the animals and shall deliver the remainder of the animals to the said owner;
- (b) any poundmaster who shall retain after demand any greater number of such animals than is reasonably necessary to secure such charges as aforesaid shall be liable to the owner thereof for any damages sustained by him on account of such retention.

30. No poundmaster shall release any impounded animal until there shall have been paid to him, over and above all other fees and charges, the amount of all damages or trespass money due and payable under the provisions of this Ordinance; and in case of the release of any such animals without payment of such damages or trespass money as aforesaid, the poundmaster shall be liable for the payment thereof.

31. (1) Every poundmaster who knows the name of the owner of any animal impounded in his pound shall forthwith send a notice by way of a registered letter to such owner at his place of residence, informing him of the fact that the said animal has been impounded, of the amount payable for the release of such animal on the date of such notice, and of such further fees or charges as will become payable if such animal is released on a subsequent date.

(2) If the name of the person to whom the brand has been allotted which should by reason of the place on the animal's body on which it is impressed, be the last brand on such animal, does not appear from the most recent complete list of registered brands published in the *Gazette* and is unknown to the poundmaster, he shall forthwith enquire from the Senior Veterinary Officer who the person is to whom such brand has been allotted and the Senior Veterinary Officer shall inform the poundmaster of the name and address of such person .

32. Whenever any impounded animals shall not be released within ten days from the date of their impoundment the poundmaster shall publish in a paper or papers circulating in the district in which the pound is situated, and by notice posted at the offices of the magistrate of the district, and of the police, an advertisement setting forth the species, brands, marks and distinguishing peculiarities of such animals, if any, of the presence and nature of which the poundmaster shall carefully satisfy himself, and in regard to horses and cattle their colour also, and such advertisement shall notify that the animals therein mentioned will be sold at the next sale of impounded cattle and shall set forth the date, not being less than thirty days from the date of first publication, and the time and place of such sale. The expenses of such publication shall be borne by the poundmaster and be recovered by him from the owner of the animals advertised if released before the sale, or otherwise out of the proceeds of the sale thereof.

Provided that in regard to the impoundment of asses,

- (a) the periods of ten and thirty days herein prescribed shall be five and fourteen days respectively;
- (b) it shall be sufficient to post a notice as aforesaid at the office of the magistrate, or of the nearest post commander of police, as well as at the pound;

Trespass of Animals Ordinance 16 of 1939

- (c) if at the sale so advertised and held, no offer is made for the purchase of the animal, it may be destroyed by the poundmaster.

33. The sales of animals lawfully impounded and so advertised shall be conducted on such terms and conditions as are herein or may by regulation be prescribed.

34. Every sale of impounded stock shall be held at the pound at the hour of eleven in the morning on any Wednesday. At every such sale the poundmaster shall act as auctioneer, but no poundmaster, or any member of his household or family resident with him, or any person in his permanent employ, shall be directly or indirectly interested in any purchase at any sale so held by such poundmaster;

Provided that if any Wednesday falls on a public holiday the sale may be held on the next succeeding Wednesday not being a public holiday;

Provided further that sales of impounded asses may be held on any weekday.

35. No animal shall be put up at any sale unless it has been impounded for at least forty-two days, except with the consent of the owner; provided that, in respect of asses impounded, the period of forty-two days herein prescribed shall be fourteen days.

36. At every sale all animals except sheep and goats shall be sold singly. Sheep and goats shall be sold in lots of not more than ten, and in no case shall sheep and goats or sheep or goats with different marks or brands be sold together in the same lot.

37. The poundmaster shall be entitled to receive and retain ten *per cent.* out of the proceeds of every pound sale as a fee for his attendance at such sale.

38. At every such sale, the animals shall be sold for cash and the proceeds less the amount of pound fees and other fees and charges herein provided for and properly chargeable in respect of such animals, and less the amount of damages due or assessed under the provisions hereof shall be forthwith upon receipt handed to the magistrate of the district to be by him paid to the owners of the animals sold, according to their respective rights provided that:

- (a) in the case of an unbranded animal, the said proceeds shall be paid forthwith by the said magistrate into the Territory Revenue Fund;
- (b) in the case of a branded animal, the said proceeds shall become the property of the Administration and be paid into the Territory Revenue Fund, if unclaimed by the owner of such animal after being in the hands of the said magistrate for a period of twelve months;
- (c) every poundmaster shall be obliged after the sale of any head of cattle, horse, or ostrich and before delivery to the purchaser, to brand the same with such distinguishing mark as may be fixed for his pound, provided such animal has reached the age of nine months. For such branding he shall be allowed a fee of one shilling and sixpence in each case, which shall be recoverable from the purchaser.

[There are 20 shillings in a pound in British currency.
There are also 240 pence in a pound. One pound is equivalent to N\$2.]

Any poundmaster contravening this provision shall be guilty of an offence and liable on conviction to a fine of two pounds in each case.

Trespass of Animals Ordinance 16 of 1939

[A fine of two pounds is equivalent to a fine of N\$4.]

39. Every poundmaster shall keep a poundbook, in which he shall legibly enter the following particulars:

- (a) the date when, and the cause for which, all animals received by him are impounded;
- (b) the number and description of the animals;
- (c) the name and residence of the person impounding such animals and the name and address of the owner or supposed owner;
- (d) the date and particulars of the release or sale of the animals as the case may be;
- (e) any other matters which the poundmaster may be required by regulation to ascertain and record.

The said entries shall be made at the time the acts recorded were done, or so soon thereafter as possible, but not after any dispute concerning them has arisen. The poundmaster shall follow the directions of the magistrate in regard to the form in which the entries in the poundbook are to be made.

40. Every poundbook shall be kept at the residence or the office of the poundmaster, and shall at all reasonable times be open for inspection to any Government official having authority from the magistrate of the district so to do and to any member of the police, free of charge; it shall be similarly open to every person upon payment of a fee of sixpence for each inspection; and every poundmaster shall grant extracts from his poundbook, signed by himself, free of charge to every such Government official and member of the police, and on payment of one shilling for every such extract not exceeding one hundred words and sixpence for every subsequent hundred or part of one hundred words, to any other person demanding the same.

[There are 20 shillings in a pound in British currency. There are also 240 pence in a pound. One pound is equivalent to N\$2.]

41. Every poundmaster shall take his poundbook with him to every sale of animals impounded in his pound, and such book shall be open at the place of sale, free of charge to all persons desirous of inspecting it.

42. In the case of the death or injury of any impounded animal the poundmaster shall enter in his poundbook a description of such animal and the cause of its death or injury; and the absence of any such entry or its falsity in any material respects shall be held to be *prima facie* proof of the fact that the death or injury in question was due to the default of the poundmaster.

43. Every poundmaster shall, monthly, on the first day of each and every month, forward to the magistrate of his district a copy of all entries made in his poundbook during the preceding month, and the magistrate shall preserve all such copies in his office for the inspection of any person desirous of seeing them upon payment of the fees prescribed in section *forty* hereof.

44. It shall be lawful for the magistrate to require any poundmaster within his district at any time to produce his poundbook for purposes of inspection or for comparison of the copies of entries forwarded to him with the original entries, or for any other purpose, within a stated period, and any poundmaster who refuses or neglects to comply with any such requirement shall be guilty of an offence.

Trespass of Animals Ordinance 16 of 1939

45. Every poundmaster shall have and preserve at or near his pound a copy of this Ordinance and any regulations framed thereunder and the same shall be open for reference to the public at all reasonable times; and he shall erect and maintain at or near the pound a board upon which shall be painted, printed or written in legible characters the rate of fees and compensation for damage fixed by this Ordinance.

46. Every poundmaster who shall -

- (a) refuse to allow his poundbook or copy of this Ordinance and the regulations issued thereunder to be inspected by any person having a lawful right to inspect, or
- (b) neglect or refuse to forward to the magistrate of his district the copies of entries referred to in section *forty-three*,

shall be guilty of an offence.

47. Every poundmaster who shall -

- (a) knowingly make a false entry in his poundbook,
- (b) fraudulently destroy or erase any entry already made or

[There should be a comma after the word "made".]

- (c) wilfully deliver to the magistrate or any person a false copy or extract from his poundbook,

shall be guilty of an offence.

48. No poundmaster shall confine in his own pound any animals found trespassing upon property belonging to himself, except under the written authority of the nearest post commander of police. Failing such authority such animals shall be sent to such other pound as may be nearest to his own pound by a practicable road or thoroughfare, and any poundmaster sending such animals to another pound shall enter in his poundbook the number and description of the animals sent; provided that nothing in this section contained shall apply to the impounding in a municipal or village pound of any animals trespassing upon any land situate within the jurisdiction of any municipality, village management board, or other local authority. Any poundmaster contravening the provisions of this section shall be guilty of an offence.

[The last sentence in section 48 is incomplete in the English version of the Ordinance in the *Official Gazette*. The sentence in the Afrikaans version is "Enige skutmeester wat die bepalings van hierdie artikel oortree maak hom skuldig aan 'n oortreding." The incomplete sentence has been completed above (in green type), based on the Afrikaans version of the Ordinance.

The Local Authorities Act 23 of 1992 repealed the Village Management Boards Ordinance 14 of 1963 which provided the legal authority for village management boards.]

49. Every police constable as well as any person authorised in writing by the magistrate of the district may impound any animals found upon any outspan which is enclosed with a sufficient fence, other than animals in the possession of travellers who have outspanned for a period not greater than twenty-four hours or for any period during which they may be detained by stress of weather or other sufficient cause upon the said outspan.

Trespass of Animals Ordinance 16 of 1939

50. For any stock found trespassing in cultivated land in any native location or native reserve, the owner of the said stock shall be liable to pay trespass money as provided by regulation.

51. Stock found straying on the common lands (not being cultivated lands) of any native location or native reserve as aforesaid, may be taken possession of by the person finding it, who shall take the said stock to the European officer in charge of such location or reserve and after due enquiry upon his written order, but not otherwise, such stock may be impounded and the person finding and bringing such stock shall be entitled to receive from the poundmaster mileage at the rate set out in the regulations, but no trespass fees shall be chargeable. All disbursements paid as mileage shall be recovered from the owner of the stock or be deducted from the proceeds of the sale thereof.

52. Whenever any poundmaster shall prove to the satisfaction of the magistrate of the district that the sums disbursed by him in respect of fees and charges in any period of six months ending on the 30th June or the 31st December, in carrying out the provisions of sections *fourteen, twenty-five, twenty-six and thirty-two* are in excess of the income derived by him during such period from the conduct of his pound, it shall be lawful for the Administrator thereupon to authorise the payment to such poundmaster of a sum representing the difference between such income and such sums so disbursed as aforesaid.

53. Subject to the provisions of the Diseases of Stock Proclamation aforesaid any magistrate may send to any pound in his district any animals which are the object of criminal investigation and may remove or authorise removal of the same at his discretion. It shall be the duty of the poundmaster to receive any animals so sent to his pound. Such animals shall not be subject to the general provisions herein contained but shall be dealt with as the magistrate may direct and against payment of the fees prescribed by regulation.

54. All fines and penalties imposed by any of the provisions of this Ordinance shall be recoverable in the court of the magistrate of the district in which the offence shall have been committed, and may be proceeded for by any person in regard to whose property the act or omission entailing any such fine or penalty shall have taken place.

55. It shall be lawful for any court to order that the costs of prosecution or defence be paid either by the person proceeding for the recovery of a fine or penalty under this proclamation or the regulations framed thereunder or by the person accused thereof, or it shall be lawful to make no order as to costs. The costs referred to in this section shall be such as would be taxed and allowed if the proceedings were in the nature of a civil action in a magistrate's court in the Territory.

56. Nothing contained in this Ordinance shall be construed as depriving any person of any right which he may possess to seek redress by way of civil action in any competent court, or under such system of arbitration as may be contained in any regulations published in terms of section *seventy-five*, if he should be dissatisfied with the ordinary measure of compensation granted in terms of this Ordinance; provided that

- (a) if he has claimed damages under the provisions of this Ordinance he shall be thereafter debarred from seeking redress by way of such civil action;
- (b) whenever any complainant shall decide to proceed at law for the recovery of damages for any alleged trespass, the owner of the animals impounded for such alleged trespass shall be entitled to release the same upon payment of pound fees and upon giving security to the satisfaction of any magistrate for the payment of any damages and costs which the complainant may recover.

Trespass of Animals Ordinance 16 of 1939

57. The provisions of this Ordinance shall not affect the provisions of section *one hundred and seventy-one* of the Municipal Ordinance, 1935 (No. 24 of 1935), as amended.

[Section 57 is substituted by Ord. 9 of 1944. The Municipal Ordinance 24 of 1935 was replaced by the Municipal Ordinance 3 of 1949, which was replaced in turn by the Municipal Ordinance 13 of 1963, which was repealed by the Local Authorities Act 23 of 1992.]

CHAPTER II

Provisions relating to Rural Areas

58. The proprietor of land situated in a rural area must forthwith after he has become aware of the presence upon his land of any trespassing animal, elect -

- (a) to take advantage of the provisions of Chapter I, and to send the said animal to the nearest pound, after which the said trespass will be subject in all respects to the provisions of the said chapter,

or

- (b) to proceed in terms of the remaining sections of this chapter.

Where such proprietor has not sent or taken such trespassing animal to the nearest pound in terms of the provisions of Chapter I, within fourteen days after he is aware of such trespass, he shall be deemed to have elected to be bound and shall be bound by the provisions of the remaining sections of this Chapter.

59. (1) The proprietor of any land shall detain, confine or herd any animal found trespassing thereon or cause it to be detained, confined or herded.

(2) The proprietor of any land on which any stock has been found trespassing shall not be liable for the loss or disappearance of that stock, unless the loss or disappearance was caused by the wilful act of the proprietor of the land.

60. (1) Whenever the proprietor of any land observes or otherwise receives knowledge of the presence upon that and of any trespassing animal, he shall within two weeks after he is aware of the presence of such animal deliver or cause to be delivered to the commander of the police post nearest to that land written notice thereof, or personally report the fact to such commander.

(2) The proprietor of any land who at the date of commencement of this Ordinance knows of the presence of any trespassing animal or animals upon that land shall within two weeks after the aforesaid date, deliver or cause to be delivered to the commander of the police post nearest to that land written notice thereof, or personally report the fact to such commander.

(3) Every such notice or report shall include an accurate description of each animal found trespassing, in which shall be stated the species, sex, colour, approximate age, brands, and the places on the animal's body on which the brands are impressed, earmarks and any other characteristics or distinctive marks of or borne by the animal, which may serve to enable the owner of the animal to identify it; and if the proprietor of the land knows who is the owner of the animal, he shall in such notice or report state the name of such owner.

(4) If any animal found trespassing bears no brand or earmark or if the proprietor of the land is unable to read any brand borne by it, that fact shall be stated in the notice or report by

Trespass of Animals Ordinance 16 of 1939

the proprietor of the land; and the proprietor shall keep the animal within easy reach of his homestead, where possible, in order that it may be inspected in accordance with the provisions of section *sixty-one*. If the animal cannot be found when a policeman wishes to inspect the same, the proprietor shall after consultation with such policeman fix a date on which the animal has to be produced for inspection, failing which the notice of trespass becomes void.

61. Whenever in any such notice or report received by the commander of a police post it is stated that any animal found trespassing bears no brand or that the brand which, by reason of the place on the animal's body on which it is impressed, the proprietor of the land judges to be the brand last impressed upon such animal, is not legible to such proprietor, the post commander shall cause the animal to be inspected by a policeman as soon as conveniently may be. The policeman making the inspection shall report to the post commander whether the animal bears any brands, and if so, what those brands are and on which places of the animal's body they are impressed.

62. (1) If from the notice or report referred to in section *sixty*, from the report by a policeman referred to in section *sixty-one*, or from any other source, the commander of the police post ascertains who is the owner of the animal or who is the registered holder of the brand which, by reason of the place on the animal's body on which it is impressed, the post commander judges to be the brand last impressed upon such animal, he shall forthwith notify such owner or holder of the name of the place where the animal then is and the name of the proprietor of the land. Such notice shall contain a full description of the animal and shall be served upon such owner or holder personally or left at his place of residence or last known place of residence or he sent to him by registered post. A copy of such notice shall be retained by the post commander.

(2) If the post commander is unable to ascertain who is the owner of the animal or who is the registered holder of the brand which, by reason of the place on the animal's body on which it is impressed, the post commander judges to be the brand last impressed upon such animal, he shall require the proprietor of the land to deposit with him a sum of money sufficient to cover the cost of publishing the notice hereinafter referred to in accordance with the provisions of this section. Such proprietor shall forthwith make such deposit. Upon receipt of the deposit the post commander shall cause to be published once in each of two newspapers circulating in the district a notice containing a full description of the animal and stating the place where the animal then is and the name of the proprietor of the land: Provided that if in the opinion of the post commander the total value of such animal or animals as may form the subject of any one notice or report will be less than the cost of such publication in the newspapers the post commander shall only put up a notice as is in sub-section (3) hereof provided.

(3) The post commander shall affix at a prominent place at the police post a copy of every notice referred to in sub-section (1) and a copy of every notice referred to in sub-section (2) of this section, and shall keep it so affixed for a period not less than three months: Provided that in the case of asses that have been found trespassing it shall be sufficient if such notice has been kept so affixed for a period of four weeks.

63. (1) The owner of any animal found trespassing upon the land of another shall, subject to the provisions of sub-section (2) of section *sixty-four* and sub-sections (1) and (2) of section *sixty-seven* be entitled to release and remove that animal upon payment to the proprietor of the land of the amounts mentioned hereunder, and shall not be entitled to remove the animal except upon such payment. The amounts so to be paid shall be the following:-

- (a) the cost of publishing the notice referred to in sub-section (2) of section *sixty-two* concerning that animal, if such notice has been published, or, if the notice related

Trespass of Animals Ordinance 16 of 1939

to more than one animal, a proportionate share of such cost, the amount of such share being fixed by the post commander; and

- (b) grazing fees in respect of that animal for the whole period of the trespass, reckoned from the date on which the notice or report referred to in sub-section (1) of section *sixty-two* was delivered or made to the post commander, at the following rates:-

| | If the trespass occurred on land enclosed with a sufficient fence. | If the trespass occurred on land not enclosed with a sufficient fence. |
|--|--|--|
| Bulls or stallions (other than mules) over eighteen months of age: | 6d per day, per head. | 3d per day, per head. |
| Other cattle, horses, mules, or asses or ostriches or pigs: | 3d per day, per head. | 1½d per day, per head. |
| Sheep rams or goat rams over nine months of age: | 3d per day, per head. | 1½d per day, per head. |
| Other sheep or goats: | 1d per day, per head. | ½d per day, per head. |

[Paragraph (b) is substituted by Proc. 21 of 1943.
The abbreviation "d" refers to pence in British currency.
There are 240 pence in a pound and one pound is equivalent to N\$2.]

(2) No person, whether or not he is the owner of the animal, shall remove any animal which is trespassing upon any land without paying the amounts due under sub-section (1) of this section or without the consent of the proprietor of the land, which consent may be given after the act.

(3) The payment made in accordance with the provisions of sub-section (1) of this section, sub-section (2) of section *sixty-four* or sub-section (1) or (2) of section *sixty-seven* by the owner of any animal which has been found trespassing on the land of another shall not affect the liability at common law or under any other statute of the owner of such animal to compensate the proprietor of the land or any other person for any loss caused to such proprietor or other person by such animal; and such proprietor or other person may, notwithstanding any payment made by the owner of such animal in accordance with the provisions mentioned, enforce any such liability against such owner in any court of competent jurisdiction, and in particular, if such trespassing animal is a bull, stallion, sheep ram or goat ram, may recover from the owner thereof the amount of the loss suffered by such proprietor or other person by reason that such bull, stallion, sheep ram or goat ram has covered any cow, mare or sheep ewe or goat ewe lawfully running on such land.

64. (1) Whenever any animal which has trespassed upon the land of any proprietor, thereafter, and before the animal has become the property of that proprietor in accordance with section *sixty-five* is found trespassing upon the land of any other proprietor, the firstmentioned proprietor shall be entitled, unless he has by his own wilful act caused the animal so to trespass upon the land of the second-mentioned proprietor, to release the animal upon payment to the second-mentioned proprietor of such amounts as would be payable under this Ordinance upon the release of the animal by the owner thereof; and the first-mentioned proprietor shall be entitled to remove the animal to the land upon which the first-mentioned trespass took place.

Trespass of Animals Ordinance 16 of 1939

(2) The owner of the animal shall be bound to pay the first-mentioned proprietor before the release of the animal by the owner any amount properly paid under the provisions of this section by the first-mentioned proprietor to the second-mentioned proprietor.

(3) Whenever any animal which has trespassed upon the land of any proprietor returns to the possession of the owner thereof before the animal has become the property of the proprietor of the land in accordance with the provisions of section *sixty-five*, the proprietor shall be entitled unless due payment is made in terms of the provisions of section *sixty-three*, to reclaim that animal from its owner and remove it to the land upon which the trespass took place.

65. If, after the lapse of three months, or in the case of asses after the lapse of four weeks, from the date on which the notice by the post commander referred to in subsection (1) of section *sixty-two* was served or left or posted in accordance with the provisions of that section, or where a notice concerning the animal has been published in accordance with the provisions of sub-section (2) of section *sixty-two*, after the lapse of three months from the date of the last publication of that notice, the animal has not been released by the owner thereof under the provisions of section *sixty-three*, read with sections *sixty-four* and *sixty-seven*, the proprietor of the land on which the animal is trespassing may report that fact to the post commander. As soon as is convenient after the receipt of such report, the post commander shall cause such animal (if a bovine, equine or ostrich, and if it has reached the age of nine months) to be branded with a brand prescribed for the purpose by the Administrator. Thereupon such animal shall become the property of the proprietor of the land.

66. (1) The proprietor of any land who has given a notice or made a report such as is referred to in section *sixty* to the commander of a police post of the presence upon his land of any trespassing animal, and who at any time after the giving of the notice or the making of the report ascertains who is the owner of that animal, shall forthwith deliver or cause to be delivered to the commander of that police post written notice, or make a personal report to the commander stating who that owner is.

(2) Upon receipt of any such notice or report the post commander shall forthwith notify the owner of the animal of the name of the place where the animal then is and the name of the proprietor of the land. Such notice shall be served upon or left for or sent to the owner in accordance with the provisions of sub-section (1) of section *sixty-two*.

(3) If the proprietor of the land fails to give the notice or make the report as provided in sub-section (1) the owner of the animal shall, notwithstanding the fact that the animal has been branded by the police in accordance with the provisions of section *sixty-five* be entitled at any time to reclaim the animal upon making the payments mentioned in sub-section (1) of section *sixty-three*, sub-section (2) of section *sixty-four*, and sub-sections (1) and (2) of section *sixty-seven*, where applicable, grazing fees, however, being reckoned only up to the date upon which the proprietor of the land ascertained who was the owner of the animal.

67. (1) The owner of any sheep or goats infected with scab and found trespassing upon the land of another shall, if the sheep or goats are not found mixed with other sheep or goats lawfully upon that land and free from that disease, be liable to pay to the proprietor of the land in respect of the trespass twice the amount of grazing fees that would have been payable under paragraph (c) of sub-section (1) of section *sixty-three* in respect of similar trespass by sheep or goats not so infected. If such trespassing sheep or goats are found mixed with other sheep or goats lawfully upon the land and free from the disease, and if such mixing is not due to the default of the proprietor of the land, the owner shall be liable to pay to the proprietor in respect of the trespass four times the amount of grazing fees that would have been so payable in respect of a similar trespass by sheep or goats not so infected.

Trespass of Animals Ordinance 16 of 1939

(2) The owner of any sheep or goats infected with scab and found trespassing upon the land of another shall be bound to pay to the proprietor of the land before the release thereof all costs reasonably incurred or to be incurred by the proprietor for or in connection with the dipping and dressing of such sheep or goats and of any sheep or goats with which such infected sheep or goats have mixed without the default of the proprietor.

(3) For the purposes of this section, if any sheep or goat found trespassing is infected with scab, all sheep or goats in the same flock and found trespassing at the same time shall be deemed to be similarly infected; and if any sheep or goat in any flock with which any other flock has become mixed is infected with scab, then the entire mixed flock shall be deemed to be similarly infected.

(4) If any dispute arises as to whether any trespassing sheep or goats are or were infected with scab, as to whether any sheep or goats have been mixed with any other sheep or goats, as to whether any such mixing was due to the default of the proprietor of the land, or as to the costs reasonably incurred by the proprietor for or in connection with the dipping and dressing of any sheep and goats, or as to any other question of fact relative to such dispute, the question shall be decided by the majority of three arbitrators, one of whom shall be appointed by the proprietor of the land, one by the owner of the sheep or goats and one by the commander of the nearest police post. If the proprietor of the land or the owner of the sheep or goats fail to appoint an arbitrator, the said post commander shall appoint such arbitrator. No arbitrator appointed under this section shall be entitled to claim payment of any fees and expenses. If for any reason it is not practicable to have the question or questions at issue decided by arbitrators, so appointed, such question or questions shall be decided by the post commander.

[The verb “fail” should be “fails” to be grammatically correct in the following sentence:

“If the proprietor of the land or the owner of the sheep or goats fail to appoint an arbitrator, the said post commander shall appoint such arbitrator.”]

68. If any bull or stallion over eighteen months of age, or any sheep ram or goat ram over nine months of age which is found trespassing upon any land has not been released by his owner under the provisions of section *sixty-three* read with sections *sixty-four* and *sixty-six* within the period of thirty days reckoned from the date on which the notice by the post commander referred to in sub-section (1) of section *sixty-two* was served or left or posted in accordance with the provisions of that sub-section, or, where a notice concerning the animal has been published in accordance with the provisions of sub-section (2) of section *sixty-two* within the period of thirty days reckoned from the date of the last publication of that notice, the proprietor of the land on which the animal was found trespassing may have the animal inspected by a Government veterinary officer and if in the opinion of the said officer the animal is not suitable for breeding purposes, he shall castrate the same or order same to be castrated.

69. Any person who knowingly and wilfully makes any false statement, in any notice or report given or made under section *sixty* or section *sixty-six*, or who knowingly and wilfully fails to disclose in any such notice or report any material fact which he could reasonably expect might lead to the discovery of the owner of any animals to which that notice or report relates, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding one hundred pounds, or, in default of payment, to imprisonment with or without hard labour for a period not exceeding twelve months.

[A fine not exceeding one hundred pounds is equivalent to a fine not exceeding N\$200.]

CHAPTER III

General and Miscellaneous

Trespass of Animals Ordinance 16 of 1939

70. The provisions of this Chapter shall be of general application throughout the Territory.

71. All pigs, poultry or pigeons found trespassing in or upon -

- (a) any garden, vineyard or orchard; or
- (b) any place upon which any species of cultivated crop is growing, or upon which such crop is still lying; or
- (c) any place containing grain,

may be destroyed by the proprietor of the land on which the garden, vineyard, orchard or place is situate or by any person acting on his authority, and any dog found trespassing at any time on land enclosed with a sufficient fence in which there are game or animals may be destroyed. The owner of any pigs, poultry or pigeons so found trespassing shall be liable to make good any damage done by such pigs, poultry, or pigeons to any such garden, vineyard, orchard, crop or grain, and the owner of any dog so found trespassing shall be liable to make good any damage done by such dog to any such game or animals.

72. (1) If any animal trespassing upon the land of another is found or suspected to be suffering from a contagious or infections disease, the proprietor of that land shall report the matter to the commander of the police post nearest to that land, and apply to him for permission to destroy the animal. The post commander shall, as soon as conveniently may be after the receipt of that report cause the animal to be inspected by a veterinary officer, or if a veterinary officer is not readily available by a European member of the South West Africa Police, and if such veterinary officer or policeman agree with the proprietor of the land that it is necessary that the animal be destroyed, he shall deliver to the proprietor a written certificate to that effect. The proprietor may thereupon destroy the animal or cause it to be destroyed.

[The phrase "a contagious or infections disease" should be "a contagious or infectious disease".]

(2) No liability, civil or criminal, in respect of the destruction of any animal upon the authority of any such certificate shall attach to any person concerned in such destruction.

(3) This section shall not apply to any sheep or goat suffering only from scab.

73. (1) If any head of cattle, or any horse, mule or ass found trespassing upon the land of another is so wild as not to be controllable in the way in which cattle, horses or asses are ordinarily controlled, the proprietor of the land may apply to the magistrate of the district to be declared the owner of the animal. Such application may be made verbally or in writing through the commander of the nearest police post.

The magistrate, may, after such investigation as he may deem necessary, cause to be put up at the Magistrate's Court, and at all police posts in the district a notice containing a full description of the animal and stating the fact that such application has been made, the name of the proprietor of the land and the place where the animal then is.

(2) If after the lapse of one month from the date of the last publication of such notice the animal has not been released by the owner thereof in accordance with the provisions of the last preceding Chapter and removed from the land trespassed upon, the proprietor shall be declared in writing by the magistrate to have become the owner of the animal. The ownership in the animal shall thereupon vest in the proprietor.

Trespass of Animals Ordinance 16 of 1939

74. Any person who contravenes or omits to comply with any provision of this Ordinance or of any regulation made thereunder in respect of which no special penalty has been provided, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding twenty-five pounds, or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months.

[A fine not exceeding twenty-five pounds is equivalent to a fine not exceeding N\$50.]

75. The Administrator may make regulations, not in conflict with the provisions of this Ordinance, as to the following matters, and may provide penalties for the contravention of such regulations:-

- (a) the appointment and rights of poundmasters and the dismissal of poundmasters;
- (b) the treatment of sheep and goats infected with scab and the liability of the owners in respect of the same;
- (c) the care of impounded animals;
- (d) the treatment and disposal of infected or dangerous animals;
- (e) the treatment of animals found trespassing on the land of a poundmaster;
- (f) the notification to their owners of the animals impounded;
- (g) the keeping of books and records by poundmasters;
- (h) the assessment, tender and payment of damages for trespass of animals;
- (i) the payment to the person impounding stock of mileage fees and trespass moneys;
- (j) the release of impounded animals;
- (k) the sale of impounded animals;
- (l) the castration of stallions, bulls, and rams impounded and the obligations of the owners in respect of the trespass of such stallions, bulls or rams;
- (m) the trespass on outspans;
- (n) the fees recoverable by poundmasters and the disposal thereof;
- (o) municipal pounds;
- (p) the trespass of animals in native locations or native reserves;
- (q) the inspection of pounds and the records appertaining thereto;
- (r) the notification of pound sales;
- (s) the system of arbitration that is to be followed, in cases where proprietors of land seek such arbitration to settle the amount of damage suffered through trespassing cattle;
- (t) any other matter which may be settled by regulation in terms of this Ordinance;

Trespass of Animals Ordinance 16 of 1939

- (u) in general for the better carrying out of the provisions of this Ordinance;
- (v) the shaving of trespassing animals for the purpose of deciphering indistinct brands.

76. Nothing in this Ordinance contained shall be deemed to modify in any respect the provisions of the Diseases of Stock Proclamation, 1920.

77. This Ordinance shall be called the Trespass of Animals Ordinance, 1939.

SCHEDULE

Laws Repealed

- 1.** Proclamation by the Administrator No. 5 of 1917, as amended from time to time.
- 2.** The Trespass of Animals (Rural Areas) Ordinance, 1931 (Ordinance No. 9 of 1931), as amended from time to time.
- 3.** The Trespass of Animals Amendment Ordinance, 1938 (Ordinance No. 7 of 1938).