



ROYAL SOLOMON ISLANDS POLICE

FORESTRY OFFENCES

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Forest Resources and Timber Utilisation Act (Ch. 40)

Timber (Levy and Mill Licensing) Regulations 2005

Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005

The Revised Solomon Islands Code of Logging Practice, dated May 2002

Criminal Procedure Code (Ch. 7)

Penal Code (Ch. 26)

FOREST RESOURCES AND TIMBER UTILISATION ACT

DEFINITIONS

Section 2 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘(1) In this Act except where the context otherwise requires –

"Commissioner of Forest Resources" means the Commissioner of Forest Resources appointed under section 3;

"enforcement officer" means an enforcement officer appointed pursuant to section 3;

"forest offence" means an offence punishable under this Act;

"forest officer" means a forest officer appointed under section 3 and includes the Commissioner of Forest Resources and an enforcement officer;

"forest produce" means trees, timber, poles, branches, charcoal, wood ashes, palms, bamboos, canes, climbers, creepers, grass, moss, fungus, lichens, plants or parts thereof, leaves, flowers, fruit seeds, roots, fibres, bark, bark extracts, wood extracts, gums, oils, resins, pitch, sap, latex, rubber, tar, wax, honey, products of animals, litter, humus, earth, sand and stone found in or brought from a state forest or forest reserve and such other things as the Minister may by notice declare to be forest produce;

"land-use plan" means a plan for the use of land for agriculture, livestock, reforestation, post-logging development, aquaculture, or for infrastructure for any of the aforesaid things, and includes a plan for such other use of land as the Minister may, by legal notice, published in the Gazette, declare in this behalf;

"livestock" includes asses, bulls, cows, geldings, goats, horses, stallions, mares, mules, oxen, pigs, sheep and steers and the young thereof;

FOREST RESOURCES AND TIMBER UTILISATION ACT

"mill" means a sawmill and includes any mechanically powered plant, machinery or equipment for converting unmilled timber into milled timber, but does not include any plant, machinery or equipment which the Minister may by notice declare not to be a mill for the purpose of this Act;

"milled timber" includes sawn timber, wood particles, wood pulp and veneer, produced in or by a mill;

"state forest" means a state forest declared under section 20;

"Tambu place" means a Tambu place commonly so called and considered holy, sacred or forbidden by Solomon Islanders;

"timber" includes trees, other than protected trees specified in Schedule 1, when they have fallen or been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;

"timber levy" means a timber levy imposed under section 19;

"tree" includes any root, stump, stem, branch, brushwood, young tree or sapling;

"unmilled timber" means timber that has not been converted into milled timber.

(2) In this Act, except where the context otherwise requires, the expressions "customary land", "freehold interest in land", "land register", "leasehold interest in land", "public land", "registration" and "Solomon Islander" shall have the respective meanings ascribed to them in the Land and Titles Act'.

FOREST RESOURCES AND TIMBER UTILISATION ACT

POLICE POWERS

Arrest, Search And Seizure

Section 32 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘(1) Any *enforcement officer* or *forest officer* or *police officer* may without a warrant –

(a) demand from any person the production of any authority or license for any act done or committed by such person in any *state forest* or *forest reserve** or in relation to any *forest produce* for which a license or permit is required under this Act;

(b) require any person found within any *state forest* or forest reserve or in the vicinity of such forest, and who has in his possession any *forest produce*, to give an account of the manner in which such person became possessed of such produce, and may arrest that person if he fails to give a satisfactory account;

(c) arrest any person reasonably suspected of being guilty of a *forest offence* or of being in possession of any *forest produce* in respect of which an offence has been committed:

Provided that no person shall be arrested under this subsection unless such person refuses to give his name and address or gives a name and address which there is reasonable cause to believe is false or there is reasonable cause to believe that he will abscond;

(d) seize and detain any *livestock* found trespassing or found without any person in charge of them in any *state forest* or forest reserve;

(e) enter any timber yard or *mill* by day to inspect *forest produce* therein.

* As declared under section 24 of the Act.

FOREST RESOURCES AND TIMBER UTILISATION ACT

(2) Any enforcement officer or forest officer making an arrest under this section shall without unnecessary delay take or send the person arrested to a police officer, and any police officer making an arrest under this section or to whom a person arrested under this section is taken, shall deal with such person in accordance with the provisions of the Criminal Procedure Code Act relating to persons arrested without a warrant'. (emphasis added)

Seizure Of Property Used In Committing Forest Offence

Section 33 states:

'(1) Where there is reason to believe that a *forest offence* has been committed in respect of any *forest produce*, such produce, together with all tools, machinery, equipment, boats, conveyances and *livestock* reasonably suspected to have been used in the commission of such offence, may be seized by any enforcement officer or forest officer or police officer.

(2) Every officer seizing any property under this section shall place on such property, or on the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, so soon as may be, make a report of such seizure to a Magistrate.

(3) In any proceedings in respect of a *forest offence* alleged to have been committed in respect of any *forest produce*, the *averment* that any substance is *forest produce* shall be sufficient without proof of such fact unless the person charged proves the contrary'. (emphasis added)

FOREST RESOURCES AND TIMBER UTILISATION ACT

Forfeiture Of Property After Conviction For A Forest Offence

Section 34 states:

‘(1) When any person is convicted of a *forest offence*, all *forest produce* in respect of which such offence has been committed, and all tools, machinery, equipment, boats, conveyances and *livestock* used in the commission of such offence, shall be liable to be forfeited by order of the court recording the conviction.

(2) Such forfeiture may be in addition to any other penalty prescribed for such offence’. (emphasis added)

Power To Dispose Of Property Seized When Person Suspected Of Forest Offence

Section 35 states:

‘(1) Where there is reason to believe that a *forest offence* has been committed by a person who is unknown or cannot be found, any property seized in respect of such suspected offence under section 33 shall be taken possession of and may be disposed of by or under the direction of the Commissioner of Forest Resources, but no such property shall be sold or otherwise disposed of until the expiration of one month from the date of the service or publication of the notice given under subsection (2), or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he may produce in support of his claim within such period of one month, or until after the determination of any appeal under section 37.

(2) When possession is taken of any property under subsection (1), the Commissioner of Forest Resources, or, subject to the directions of the Commissioner of Forest Resources, an enforcement officer or a forest officer, shall cause notice thereof to be served upon any person whom he has reason to suspect to be interested in the property or may publish such notice in such manner as he deems fit’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

FELLING OF TREES FOR SALE

Offences

Section 4 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘(1) Any person who fells any tree or removes any timber from any land for the purpose of sale thereof or of the products thereof otherwise than –

(a) for use within Solomon Islands as firewood or unmilled timber;

(b) for supplying logs for milling to a mill licensed under section 18, from within the area that mill is by its license authorised to draw unmilled timber;

(c) for such other purpose declared by the Minister by notice to be exempt from the provisions of this section; or

(d) under and in accordance with the terms and conditions of a valid license issued under section 5,

shall be guilty of an offence and liable to a fine of three thousand dollars or to imprisonment for two years or to both such fine and such imprisonment.

(2) Any person who fells a tree or removes timber from any land shall, until the contrary is proved, be presumed to have felled that tree or removed that timber for the purpose of sale.

(3) The onus of proving that a tree has been felled or timber has been removed for any of the purposes specified in paragraphs (a) or (b), or under paragraph (c) of subsection (1), shall lie on him who so alleges’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

Wording of Charge

Section 4(1)

‘did [fell a tree **or** remove timber from land] for the purpose of [sale **or** the products] thereof otherwise than in accordance with the provisions of section 4(1) of the *Forest Resources and Timber Utilisation Act* (Ch. 40) to wit [specify how the tree **or** timber was used]’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

MILLS TO BE LICENSED

Offences

Section 17 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘Any person who installs or operates a mill otherwise than under and in accordance with the terms and conditions of a valid licence issued under section 18 shall be guilty of an offence and liable to a fine of three thousand dollars or to imprisonment for two years or to both such fine and such imprisonment:

Provided that this section shall not apply to any mill or class or description of mills declared by the Minister by notice to be exempt from the provisions of this section’.

Wording of Charges

‘did [install or operate] a mill not exempt from the provisions of section 17 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) otherwise than under and in accordance with the terms and conditions of a valid licence issued under section 18 of the said Act’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

STATE FORESTS

Offences

Section 22 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘Any person who within a state forest otherwise than under and in accordance with a valid permit issued under section 23 or in pursuance of any right which existed prior to the declaration of that state forest (the onus of proving which shall lie on such person) –

- (a) fells, cuts, taps, damages, burns, removes, works or sells any tree;
- (b) causes any damage therein by negligence in felling any tree, dragging any timber, lighting any fire or otherwise howsoever;
- (c) clears or breaks up any land for cultivation or any other purposes;
- (d) resides or erects any building, shelter or structure;
- (e) grazes or permits to be grazed any livestock;
- (f) has in his possession any machinery, equipment or implement for cutting, taking, working or removing any forest produce, without being able to show that such machinery, equipment or implement is in his possession for a lawful purpose; or
- (g) constructs or re - opens any road, saw - pit or workplace,

shall be guilty of an offence and liable to a fine of two thousand dollars or to imprisonment for one year or to both such fine and such imprisonment’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

Wording of Charges

‘who within a state forest namely [specify the name of the state forest] otherwise than under and in accordance with a valid permit issued under section 23 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) or in pursuance of any right which existed prior to the declaration of the said state forest did:

- [fell, cut, tap, damage, burn, remove, work **or** sell] a tree; **or**
- cause damage therein by negligence in [felling a tree, dragging timber, lighting a fire **or** (specify how otherwise negligent)]; **or**
- [clear **or** break up] a land for [cultivation **or** (specify other purpose)]; **or**
- [reside therein **or** erect a (building, shelter **or** structure)]; **or**
- [graze **or** permit to be grazed] livestock; **or**
- have in [his **or** her] possession [machinery, equipment **or** an implement to wit (specify the implement) for] [cutting, taking, working **or** removing] forest produce without being able to show that the said [machinery, equipment **or** implement] was in [his **or** her] possession for a lawful purpose; **or**
- [construct **or** re – open] a [road, saw - pit **or** workplace]’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

FOREST RESERVES

Offences

Section 27 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘(1) Any person who within a forest reserve otherwise than under and in accordance with a valid permit issued under section 28 –

(a) fells, cuts or removes any forest produce otherwise than for his own personal or domestic use;

(b) clears or breaks up any land for cultivation, or any other purpose;

(c) resides or erects any building, shelter or structure; or

(d) grazes or permits to be grazed any livestock,

shall be guilty of an offence and liable to a fine of three thousand dollars or imprisonment for one year or to both such fine and such imprisonment.

(2) Subsection (1) shall not apply to any person acting in exercise of any right specified under section 24, but any person charged with an offence under this section shall, until the contrary is proved, be presumed not to have been a person acting as aforesaid’.

Wording of Charges

Section 27(1)

‘who within a forest reserve otherwise than under and in accordance with a valid permit issued under section 28 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) did:

FOREST RESOURCES AND TIMBER UTILISATION ACT

- [fell, cut **or** remove] forest produce to wit [specify the forest produce] otherwise than for [his **or** her] own personal or domestic use and the prosecution hereby avers* that the said substance is forest produce for the purpose of the *Forest Resources and Timber Utilisation Act* (Ch. 40); **or**
- [clear **or** break up] land for [cultivation **or** (specify other purpose)]; **or**
- [reside therein **or** erect a (building, shelter **or** structure)]; **or**
- [graze **or** permit to be grazed] livestock’.

* Refer to section 33(3) of the Act.

FOREST RESOURCES AND TIMBER UTILISATION ACT

FALSIFICATION OF TIMBER MARKS

Offences

Section 29 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘Any person who –

(a) knowingly counterfeits upon any tree or timber, or has in his possession any implements for counterfeiting, any mark used by enforcement officers or forest officers to indicate that such tree or timber may lawfully be felled or removed by some person; or

(b) unlawfully or fraudulently affixes to any tree or timber any mark used by enforcement officers or forest officers; or

(c) alters, defaces or obliterates any such mark placed on any tree or timber by or under the authority of an enforcement officer or a forest officer; or

(d) wastes timber by such acts or operations as are specified in the regulations,

shall be guilty of an offence and liable to a fine of three thousand dollars or to imprisonment for two years or to both such fine and such imprisonment’.

Wording of Charges

Section 29(a)

‘did knowingly counterfeit upon [a tree or timber] a mark used by enforcement officers or forest officers to indicate that the said [tree or timber] may lawfully be felled or removed by some person’.

FOREST RESOURCES AND TIMBER UTILISATION ACT

‘did has in [his **or** her] possession an implement for counterfeiting a mark used by enforcement officers or forest officers to indicate that [a tree **or** timber] may lawfully be felled or removed by some person’.

Section 29(b)

‘did [unlawfully **or** fraudulently] affix to [a tree **or** timber] a mark used by enforcement officers or forest officers’.

Section 29(c)

‘did [alter, deface **or** obliterate] a mark placed on [a tree **or** timber] by or under the authority of an enforcement officer or a forest officer’.

Section 29(d)

‘did waste timber by an [act **or** operation] as are specified in the *regulations*^{*},

* This is currently no such regulations.

FOREST RESOURCES AND TIMBER UTILISATION ACT

RECEIVING ILLEGALLY OBTAINED FOREST PRODUCE

Offence

Section 30 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘Any person who receives any forest produce knowing or having reasonable cause to believe it to have been obtained in contravention to this Act shall be guilty of an offence and liable to a fine of one thousand and five hundred dollars or to imprisonment for one year or to both such fine and such imprisonment’.

Wording of Charge

‘did receive forest produce to wit [specify the forest produce] [knowing **or** having reasonable cause to believe] that the said forest produce had been obtained in contravention to the *Forest Resources and Timber Utilisation Act* (Ch. 40) and the prosecution hereby avers* that the said substance is forest produce for the purpose of the said Act’.

* Refer to section 33(3) of the Act.

FOREST RESOURCES AND TIMBER UTILISATION ACT

REMOVAL OF UNAUTHORISED BUILDINGS, ETC

Offence

Section 31 of the *Forest Resources and Timber Utilisation Act* (Ch. 40) states:

‘(1) When any person is convicted of erecting any unauthorised building, shelter or structure or of planting any unauthorised crops in a state forest or forest - reserve, the court may in addition to any penalty it may impose, order such building, shelter, structure or crops to be removed and the land restored to its previous condition within such time as it shall fix.

(2) Any person who fails to obey an order made under subsection (1) within the time fixed, shall unless he satisfies the court that he has used all diligence to carry out such order, be liable to a fine not exceeding one hundred dollars for every day during which the default continues.

(3) Notwithstanding the provisions of subsection (2), when an order has been made under subsection (1) and not carried out within the time fixed, the Commissioner of Forest Resources may cause the order to be carried out and may recover the expenses of so doing as a civil debt from the person convicted’.

Wording of Charge

Section 31(2)

‘did fail to obey an order made under section 31(1) of the *Forest Resources and Timber Utilisation Act* (Ch. 40) within the time fixed’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

INTRODUCTION

The *Timber (Levy and Mill Licensing) (Amendment) Regulations 2005* became law effective 31 August 2005 as specified in Legal Notice No. 83. Those regulations amended the *Timber (Levy and Mill Licensing) Regulations*.

DEFINITIONS

Regulation 1A states:

‘In these regulations, unless the contrary intention appears –

“approved timber rights agreement” means an agreement for the sale of timber rights in customary land in accordance with Form 4 in the Schedule to the Forest Resources and Timber Utilisation (Prescribed Forms) Regulations signed and approved in accordance with Part III of the Act;

“buffer” means an area referred to in regulation 4B(1);

“code of logging practice” means the document known as the “The Revised Solomon Islands Code of Logging Practice” dated May 2002 and published by the Ministry of Forests, Environment and Conservation;

“gully” means a watercourse in which water flows for less than 6 months in a year;

“landing” means an area where logs are stored before being transported to a log pond;

“licensed mill” means a mill licensed under section 18 of the Act;

“log pond” means an area that is the main storage area for storing logs awaiting transport;

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

“roadline” means the total area from forest edge to forest edge comprising the road and cleared area alongside the road;

“stream” means a watercourse in which water flows for at least 6 months in a year;

“whoa boy” means a water bar or cross drain’.

HARVEST PLANNING

Offences

Regulation 4A states:

‘(1) This regulation applies to a person who –

(a) fells 1,000 cubic metres of timber or more in a year to be supplied for milling to a licensed mill; or

(b) uses extraction machinery for the purposes of operating a licensed mill.

(2) A person referred to in subsection (1) shall not commence felling timber in a year unless he has prepared, in accordance with the code of logging practice, an annual harvesting plan for the year and the Commission of Forest Resources has approved the plan.

(3) A person referred to in subsection (1) shall not commence felling operations in a coupe unless he has prepared, in accordance with the code of logging practice, a coupe plan for the coupe and the forest officer authorised to do so has approved the coupe plan.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

(4) A person who contravenes this regulation commits an offence’.

Penalty: \$100 or imprisonment for 3 months.

Wording of Charges

Regulation 4A(2) and (4)

‘did [fell (1,000 **or** at least 1,000) cubic metres of timber in a year commencing on (specify the date) to be supplied for milling to a licensed mill **or** use extraction machinery for the purposes of operating a licensed mill] and who did commence felling timber in that year although [he **or** she] had not prepared in accordance with the code of logging practice an annual harvesting plan for the year and the Commission of Forest Resources had not approved the plan’.

Regulation 4A(3) and (4)

‘did [fell (1,000 **or** at least 1,000) cubic metres of timber in a year commencing on (specify the date) to be supplied for milling to a licensed mill **or** use extraction machinery for the purposes of operating a licensed mill] and who did commence felling operations in a coupe although [he **or** she] had not prepared in accordance with the code of logging practice a coupe plan for the coupe and a forest officer authorised to do so had not approved the coupe plan’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

AREAS WHERE FELLING NOT PERMITTED

Offences

Regulation 4B states:

'(1) Subject to subregulation (2), a person who fells timber to be supplied for milling to a licensed mill shall not allow timber he fells to fall inside, any of the following areas:

- (a) a State Forest or a Forest Reserve;
- (b) areas that have ecological or scientific importance, including outer reef and lagoon islands, swamps, wetlands and mangroves vital for the protection of important marine resources;
- (c) areas which are 400 meters above sea level unless approved by the Commissioner of Forest Resources;
- (d) areas within 30 meters from a tambu area;
- (e) areas within 30 meters from a garden of an owner of the land;
- (f) areas within 100 meters from a village;
- (g) subject to paragraph (h), areas within 100 meters from the ocean, a lagoon or a lake;
- (h) areas within 50 metres from a log pond;
- (i) areas where there is a landslip, including the area where the soil that slipped lies;

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

(j) areas within 50 meters from the bed of a stream that is 10 metres or more wide;

(k) areas within 25 meters from the bed of a stream that is less than 10 meters wide;

(l) areas within 10 metres from a gully;

(m) in any other area identified by the owner or owners of the land in the approved timber rights agreement as an area where they do not want felling to occur.

(2) A person may fell timber to be supplied for milling to a licensed mill in a buffer if he has the approval to do so of the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources.

(3) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charges

Regulation 4B(1) and (3)

‘did fell timber to be supplied for milling to a licensed mill and who did allow timber that [he **or** she] did fell to fall inside:

- a [State Forest **or** Forest Reserve] namely [specify the name of the forest **or** reserve]; **or**
- an area that has [ecological **or** scientific] importance; **or**

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

- an area 400 meters above sea level although not approved by the Commissioner of Forest Resources namely [specify the name of the Commissioner]; **or**
- an area within 30 meters from a tambu area namely [specify the name of the tambu area]; **or**
- an area within 30 meters from a garden of an owner of the land namely [specify the name of the owner]; **or**
- an area within 100 meters from a village namely [specify the name of the village]; **or**
- an area within 100 meters from [the ocean **or** a (lagoon **or** lake) namely (specify the name of the lagoon or lake)]; **or**
- an area within 50 metres from a log pond; **or**
- an area where there was a landslip; **or**
- an area within 50 meters from the bed of a stream that was at least 10 metres wide; **or**
- an area within 25 meters from the bed of a stream that was less than 10 meters wide; **or**
- an area within 10 metres from a gully; **or**
- an area identified by the [owner **or** owners] of the land in the approved timber rights agreement namely [specify the name/s of the owner/s] as an area where they do not want felling to occur'.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

ROADS

Offence

Regulation 4C states:

‘(1) A person who fells timber to be supplied for milling to a licensed mill shall construct roads in a manner that complies with the following:

(a) the survey line along which a road shall be constructed shall be marked out in accordance with the following guidelines:

(i) the cleared edge of the road shall be located at least 40 meters from the edge of a buffer;

(ii) the road shall not pass over a buffer;

(iii) there shall be as few watercourse crossings as possible;

(iv) the road shall be located on high ground;

(v) the survey line shall avoid side slopes that need side cutting or benching and balance cut and fill;

(b) the maximum area that shall be cleared for a roadline is 40 meters;

(c) a road shall be constructed with adequate drainage to avoid erosion, including by using the following drainage systems to prevent water running onto the road and drain water off the road:

(i) table or V drains;

(ii) drain turnouts;

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

- (iii) cross fall from the centre of the road to the edge of the road;
 - (iv) culverts for moving water across the road;
 - (d) drains shall be constructed so that --
 - (i) they do not run directly into watercourses or onto landings;
 - (ii) they run onto forested areas; and
 - (iii) where possible, they run onto flat areas;
 - (e) the road surface shall be compacted with rollers, trucks and any other heavy equipment that is available.
- (2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charge

Regulation 4C(1) and (2)

‘did fell timber to be supplied for milling to a licensed mill and who did fail to construct a road in a manner that complies with the provisions of regulation 4C(1) of the *Timber (Levy and Mill Licensing) Regulations* to wit [specify how the road was built whilst failing to comply with those provisions]’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

LANDINGS

Offences

Regulation 4D states:

‘(1) A person who fells timber to be supplied for milling to a licensed mill shall construct landings in a manner that complies with the following:

(a) the cleaned edge of a landing shall be located at least 40 meters from the edge of a buffer;

(b) a landing shall not be constructed in a buffer;

(c) a landing shall be located on high ground;

(d) a landing shall be sloped or constructed with adequate drainage to avoid erosion so that the water runs into forested areas or onto a road;

(e) the surface of a landing shall be compacted with rollers, trucks and any other heavy equipment that is available;

(f) the maximum size for a landing is 40 meters by 40 meters;

(g) a roadside landing shall be measured from the road edge it is contiguous to;

(h) the maximum area that shall be cleared for a landing is 1,600 square meters and for a roadside landing 80 meters wide by 30 meters long;

(i) there shall not be more than 5 landings constructed for each 100 hectares of forested land subject to the license.

(2) When a person who fells timber to be supplied for milling to a licensed mill will no longer use a landing he must do the following:

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

- (a) remove from the landing and adjacent forested land any excess bark or waste;
 - (b) rip the surface of the landing to a depth of at least 60 centimetres;
 - (c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the landing and spread evenly across the ripped surface of the landing;
 - (d) ensure that the landing is effectively drained;
 - (e) replant the whole or part of it as required by the forest officer who inspects the landing.
- (3) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 month'.

Wording of Charges

Regulation 4D(1) and (3)

'did fell timber to be supplied for milling to a licensed mill and who did fail to construct a landing in a manner that complies with the provisions of regulation 4D(1) of the *Timber (Levy and Mill Licensing) Regulations* to wit [specify how the landing was built whilst failing to comply with those provisions]'

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

Regulation 4D(2) and (3)

'did fell timber supplied for milling to a licensed mill who no longer uses a landing that [he **or** she] was responsible for constructing and who did fail to comply with the provisions of regulation 4D(2) of the *Timber (Levy and Mill Licensing) Regulations* to wit [specify what the defendant did fail to comply with]'

BUFFERS

Offences

Regulation 4E states:

'(1) A person who fells timber to be supplied for milling to a licensed mill shall not—

- (a) fell timber in a buffer;
- (b) allow timber felled outside a buffer to fall inside the buffer;
- (c) subject to paragraph (d), operate skidding machinery within a buffer;
- (d) skid timber within a buffer unless using a temporary crossing within the buffer that complies with regulation 4F; or
- (e) conduct any operations within a buffer on the request of the owner of the land unless approved by the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources.

(2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months'.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

Wording of Charges

Regulation 4E(1) and (2)

‘did fell timber to be supplied for milling to a licensed mill and who did:

- fell timber in a buffer; **or**
- allow timber felled outside a buffer to fall inside the said buffer; **or**
- operate skidding machinery within a buffer; **or**
- skid timber within a buffer whilst not using a temporary crossing within the said buffer that complies with regulation 4F of the *Timber (Levy and Mill Licensing) Regulations*; **or**
- conduct an operation within a buffer on the request of the owner of the land namely [specify the name of the owner] whilst not approved by the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources’.

TEMPORARY CROSSINGS

Offences

Regulation 4F states:

‘(1) A person who fells timber to be supplied for milling to a licensed mill shall not construct or use a temporary crossing unless it has, before the person commences felling the timber, been identified on a coupe harvesting plan and marked out on the ground.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

(2) A person who fells timber to be supplied for milling to a licensed mill shall construct a temporary crossing in a manner that complies with the following:

- (a) temporary crossings shall be located in the flattest location possible;
- (b) temporary crossings should be constructed with logs or piper logs;
- (c) temporary crossings that are constructed with logs shall not be covered with soil.

(3) When a temporary crossing that is constructed with logs is no longer being used, the licensee shall remove the logs.

(4) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charges

Regulation 4F(1) and (4)

‘did fell timber to be supplied for milling to a licensed mill and who did [construct **or** use] a temporary crossing that had not been identified on a coupe harvesting plan and marked out on the ground before the said person commenced to fell the timber’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

Regulation 4F(2) and (4)

‘did fell timber to be supplied for milling to a licensed mill and who did fail to construct a temporary crossing in a manner that complies with the provisions of regulation 4F(2) of the *Timber (Levy and Mill Licensing) Regulations* to wit [specify how the temporary crossing did not comply with those provisions]’.

Regulation 4F(3) and (4)

‘being a licensee responsible for the construction of a temporary crossing in compliance with the provisions of regulation 4F(2) of the *Timber (Levy and Mill Licensing) Regulations* that was constructed with logs did fail to remove the said logs when the said crossing was no longer being used’.

This charge is identical in terms of the responsibilities of a licensee as provided for by regulation 17(3) of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005*. It is recommended that a prosecution for such an offence be commenced under those regulations, rather than under regulation 4F(3) of the *Timber (Levy and Mill Licensing) Regulations*. Regulation 17 commences on page 53. The *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* deals specifically with the responsibilities of a licensee or a person acting for or on behalf of a licensee.

SKIDDING

Offences

Regulation 4G states:

‘(1) A person who fells timber to be supplied for milling to a licensed mill shall carry out skidding operations in a manner that complies with the following:

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

- (a) the width of the skid blade shall be not more than 4.5 meters wide;
 - (b) roading blades shall not be used as skid blades in forested areas;
 - (c) subject to paragraph (d), a skid track shall be 5.5 meters or less wide;
 - (d) if side cutting is required, the area distributed by the skidder shall be not more than 7 meters wide;
 - (e) the skidder shall travel back and forth on the same skid track;
 - (f) if skidding on a slope that is less than 12 degrees, the skidding must be done with the blade raised;
 - (g) if skidding on a slope that is 12 degrees or more, the skid blade may be used but its use should be kept to a minimum.
- (2) When a person who fells timber to be supplied to a licensed mill has finished using a skid track he must --
- (a) if the skid track is on a slope that is less than 10 degrees, construct at least one whoa boy every 40 meters along the skid track; or
 - (b) if the skid track is on a slope that is 10 degrees or more, construct at least one whoa boy every 20 meters along the skid track.
- (3) In addition to complying with subregulation (2), the person must construct a whoa boy where there is any change in slope along the skid track.
- (4) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months'.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

Wording of Charges

Regulation 4G(1) and (4)

‘did fell timber to be supplied for milling to a licensed mill who did carry out a skidding operation in a manner not in compliance with the provisions of regulation 4G(1) of the *Timber (Levy and Mill Licensing) Regulations* to wit [specify how the skidding operation was not carried out in compliance with those provisions]’.

Regulation 4G(2) and (4)

‘did fell timber to be supplied to a licensed mill who did finish using a skid track and who did fail to:

- construct at least one whoa boy every 40 meters along the said skid track because the said skid track was on a slope that is less than 10 degrees; **or**
- construct at least one whoa boy every 20 meters along the said skid track because the said skid track was on a slope that is 10 degrees or more’.

Regulation 4G(3) and (4)

‘did fell timber to be supplied to a licensed mill and who did fail to construct a whoa boy where there was a change in slope along a skid track’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

AVOIDING WASTING TIMBER

Offences

Regulation 4H states:

‘(1) A person who fells timber to be supplied for milling to a licensed mill shall conduct his felling operations in a manner that maximises log value and avoids wastage of timber, including by --

- (a) directionally felling trees to minimise crown and truck breakage;
- (b) directionally felling trees so they are in position for easy skidding;
- (c) directionally felling into the same gap to minimise canopy opening;
- (d) keeping stumps as low as possible;
- (e) ensuring log ends are cut straight, not at an angle;
- (f) trimming side branches and buttresses; and
- (g) maximising the highest value log length before the tree is cross cut.

(2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

Wording of Charges

Regulation 4H(1) and (2)

'did fell timber to be supplied for milling to a licensed mill did fail to conduct [his **or** her] felling operations in a manner that maximised log value and avoided wastage of timber by failing to:

- directionally fell trees to minimise [crown **and/or** truck breakage]; **or**
- directionally fell trees so that the said trees were in position for easy skidding;
or
- directionally fell trees into the same gap to minimise canopy opening; **or**
- keep stumps as low as possible; **or**
- ensure log ends were cut straight and not at an angle; **or**
- trim [side branches **and/or** buttresses]; **or**
- maximise the highest value log length before the tree was cross cut'.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

WEATHER RESTRICTIONS

Offence

Regulation 4I states:

‘(1) A person who fells timber to be supplied for milling to a licensed mill shall not conduct his felling operations in weather conditions that increase the risk of personal injury occurring and the level of damage to soil, water and forest resources to more than the usual risk or level of damage expected for well planned harvest operations.

(2) Examples of weather conditions when operations shall cease are when --

- (a) the wind strength prevents accurate directional falling of timber;
- (b) the ground becomes too slippery for chainsaw operators to move easily and quickly;
- (c) water flows along any length of a skid track;
- (d) water lies on the surface of a landing; and
- (e) a truck is not able to move along a road without the assistance of other machines.

(3) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

Wording of Charge

Regulation 4I(1) and (3)

‘did fell timber to be supplied for milling to a licensed mill who did conduct [his **or** her] felling operations in weather conditions that increased the risk of personal injury occurring and the level of damage to [soil, water **and/or** forest resources] to more than the usual risk or level of damage expected for well planned harvest operations’.

DECOMMISSIONING LOG PONDS

Offences

Regulation 4J states:

‘(1) When a person who fells timber to be supplied for milling to a licensed mill completes his operations in a log pond he must do the following:

- (a) remove from the log pond and adjacent forested land any excess bark or waste;
- (b) rip the surface of the log pond to a depth of at least 60 centimetres;
- (c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the log pond and spread evenly across the ripped surface of the log pond;
- (d) ensure that the log pond is effectively drained;
- (e) replant the whole or part of the log pond as required by the forest officer who inspects the landing.

TIMBER (LEVY AND MILL LICENSING) REGULATIONS

(2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charges

Regulation 4J(1) and (2)

‘did fell timber to be supplied for milling to a licensed mill who did complete [his **or** her] felling operations in a log pond but who:

- did fail to remove from the said log pond and adjacent forested land excess [bark **and/or** waste]; **or**
- did fail to rip the surface of the said log pond to a depth of at least 60 centimetres; **or**
- after ripping the surface of the said log pond to a depth of at least 60 centimetres did fail to return topsoil removed during construction of the said log pond and spread it evenly across the ripped surface of the said log pond; **or**
- did fail to ensure that the said log pond was effectively drained; **or**
- did fail to replant [the whole **or** part] of the said log pond as required by a forest officer namely [specify the name of the forest officer] who inspected the landing’.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

INTRODUCTION

The *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* became law effective 31 August 2005 as specified in Legal Notice No. 88.

DEFINITIONS

Regulation 2 states:

‘In these regulations, unless the contrary intention appears –

“approved timber rights agreement” means an agreement for the sale of timber rights in customary land, in accordance with Form 4 in the Schedule to the Forest Resources and Timber Utilisation (Prescribed Forms) Regulations, signed and approved in accordance with Part III of the Act;

“felling license” means a license granted under section 5 of the Act;

“gully” means a watercourse in which water flows for less than 6 months in a year;

“license” means a person to whom the Commissioner of Forest Resources grants a felling license;

“relevant provincial government”, in relation to an area, means the Provincial Executive, within the meaning of section 19 of the Provincial Government Act 1997, with jurisdiction over the land;

“stream” means a watercourse in which water flows for at least 6 months in a year’.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

Regulation 11 states:

‘In this Part [, referring to Part 5 – ‘*Felling Operations*’] --

“buffer” means an area referred to in regulation 13(1);

“code of logging practice” means the document known as the “The Revised Solomon Islands Code of Logging Practice” dated May 2002 and published by the Ministry of Forests, Environment and Conservation;

“landing” means an area where logs are stored before being transported to a log pond;

“log pond” means an area that is the main storage area for storing logs awaiting transport;

“roadline” means the total area from forest edge to forest edge comprising the road and cleared area alongside the road;

“whoa boy” means a water bar or cross drain’.

HARVEST PLANNING

Offences

Regulation 12 states:

‘(1) A licensee, or a person acting for or on behalf of a licensee, shall not carry out felling operations under the licensee’s felling licence in a year during the term of the licence unless he has prepared, in accordance with the code of logging practice, an annual harvesting plan for the year and the Commission of Forest Resources has approved the plan.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
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(2) A licensee, or a person acting for or on behalf of a licensee, shall not commence felling operations in a coupe unless he has prepared, in accordance with the code of logging practice, a coupe plan for the coupe and the forest officer authorised to do so has approved the coupe plan.

(3) A person who contravenes this regulation commits an offence’.

Penalty: \$100 or imprisonment for 3 months.

Wording of Charges

Regulation 12(1) and (3)

‘being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did carry out felling operations under the said licensee’s felling licence in a year during the term of the licence commencing on [specify the date that the licensee’s felling licence was issued] although [(he **or** she) being the licensee **or** the licensee] had not prepared in accordance with the code of logging practice an annual harvesting plan for the year and the Commission of Forest Resources had not approved the plan’.

Regulation 12(2) and (3)

‘being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did commence felling operations in a coupe although [(he **or** she) being the licensee **or** the licensee] had not prepared in accordance with the code of logging practice a coupe plan for the coupe and a forest officer authorised to do so had not approved the coupe plan’.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

AREAS WHERE FELLING NOT PERMITTED

Offences

Regulation 13 states:

'(1) Subject to subregulation (2), a licensee, or a person acting for or on behalf of a licensee, shall not carry out felling operations under the licensee's felling licence in, or allow timber felled under the licence to fall inside, any of the following areas:

- (a) a State Forest or a Forest Reserve;
- (b) areas that have ecological or scientific importance, including outer reef and lagoon islands, swamps, wetlands and mangroves vital for the protection of important marine resources;
- (c) areas which are 400 meters above sea level unless approved by the Commissioner of Forest Resources;
- (d) areas within 30 meters from a tambu area;
- (e) areas within 30 meters from a garden of an owner of the land;
- (f) areas within 100 meters from a village;
- (g) subject to paragraph (h), areas within 100 meters from the ocean, a lagoon or a lake;
- (h) areas within 50 metres from a log pond;
- (i) areas where there is a landslip, including the area where the soil that slipped lies;

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(j) areas within 50 meters from the bed of a stream that is 10 metres or more wide;

(k) areas within 25 meters from the bed of a stream that is less than 10 meters wide;

(l) areas within 10 metres from a gully;

(m) in any other area identified by the owner or owners of the land in the approved timber rights agreement as an area where they do not want felling to occur.

(2) A licensee, or a person acting for or on behalf of a licensee, may carry out felling operations under the licensee's licence in an area referred to in subregulation (1) if he has the approval to do so of the Commissioner of Forest Resources or a forest officer authorised to do so by the Commissioner of Forest Resources.

(3) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months'.

Wording of Charges

Regulation 13(1) and (3)

'being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did:

- carry out felling operations under the said licensee's felling licence in; **or**
- allow timber felled under the said licensee's felling licence to fall inside:

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- a [State Forest **or** Forest Reserve] namely [specify the name of the forest or reserve]; **or**
- an area that has [ecological **or** scientific] importance; **or**
- an area 400 meters above sea level although not approved by the Commissioner of Forest Resources namely [specify the name of the Commissioner]; **or**
- an area within 30 meters from a tambu area namely [specify the name of the tambu area]; **or**
- an area within 30 meters from a garden of an owner of the land namely [specify the name of the owner]; **or**
- an area within 100 meters from a village namely [specify the name of the village]; **or**
- an area within 100 meters from [the ocean **or** a (lagoon **or** lake) namely (specify the name of the lagoon or lake)]; **or**
- an area within 50 metres from a log pond; **or**
- an area where there was a landslip; **or**
- an area within 50 meters from the bed of a stream that was at least 10 metres wide; **or**
- an area within 25 meters from the bed of a stream that was less than 10 meters wide; **or**
- an area within 10 metres from a gully; **or**

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

- an area identified by the [owner **or** owners] of the land in the approved timber rights agreement namely [specify the name/s of the owner/s] as an area where they do not want felling to occur’.

ROADS

Offence

Regulation 14 states:

‘(1) A licensee, or a person acting for or on behalf of a licensee, shall construct roads in a manner that complies with the following:

(a) the survey line along which a road shall be constructed shall be marked out in accordance with the following guidelines:

(i) the cleared edge of the road shall be located at least 40 meters from the edge of a buffer;

(ii) the road shall not pass over a buffer;

(iii) there shall be as few watercourse crossings as possible;

(iv) the road shall be located on high ground;

(v) the survey line shall avoid side slopes that need side cutting or benching and balance cut and fill;

(b) the maximum area that shall be cleared for a roadline is 40 meters;

(c) a road shall be constructed with adequate drainage to avoid erosion, including by using the following drainage systems to prevent water running onto the road and drain water off the road:

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
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- (i) table or V drains;
- (ii) drain turnouts;
- (iii) cross fall from the centre of the road to the edge of the road;
- (iv) culverts for moving water across the road;
- (d) drains shall be constructed so that --
 - (i) they do not run directly into watercourses or onto landings;
 - (ii) they run onto forested areas; and
 - (iii) where possible, they run onto flat areas;
- (e) the road surface shall be compacted with rollers, trucks and any other heavy equipment that is available.

(2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charge

Regulation 14(1) and (2)

‘being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did fail to construct a road in a manner that complies with the provisions of regulation 14(1) of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* to wit [specify how the road was built whilst failing to comply with those provisions]’.

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LANDINGS

Offences

Regulation 15 states:

‘(1) A licensee, or a person acting for or on behalf of a licensee, shall construct landings in a manner that complies with the following:

(a) the cleaned edge of a landing shall be located at least 40 meters from the edge of a buffer;

(b) a landing shall not be constructed in a buffer;

(c) a landing shall be located on high ground;

(d) a landing shall be sloped or constructed with adequate drainage to avoid erosion so that the water runs into forested areas or onto a road;

(e) the surface of a landing shall be compacted with rollers, trucks and any other heavy equipment that is available;

(f) the maximum size for a landing is 40 meters by 40 meters;

(g) a roadside landing shall be measured from the road edge it is contiguous to;

(h) the maximum area that shall be cleared for a landing is 1,600 square meters and for a roadside landing 80 meters wide by 30 meters long;

(i) there shall not be more than 5 landings constructed for each 100 hectares of forested land subject to the license.

(2) When a licensee, or a person acting for or on behalf of a licensee, completes operations on a landing he must do the following:

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
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(a) remove from the landing and adjacent forested land any excess bark or waste;

(b) rip the surface of the landing to a depth of at least 60 centimetres;

(c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the landing and spread evenly across the ripped surface of the landing;

(d) ensure that the landing is effectively drained;

(e) replant the whole or part of it as required by the forest officer who inspects the landing.

(3) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 month’.

Wording of Charges

Regulation 15(1) and (3)

‘being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did fail to construct a landing in a manner that complies with the provisions of regulation 15(1) of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* to wit [specify how the landing was built whilst failing to comply with those provisions]’.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
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Regulation 15(2) and (3)

‘being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who had completed operations on a landing and who did fail to comply with the provisions of regulation 15(2) of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* to wit [specify what the defendant did fail to comply with]’.

BUFFERS

Offences

Regulation 16 states:

- ‘(1) A licensee, or a person acting for or on behalf of a licensee, shall not –
- (a) fell timber in a buffer;
 - (b) allow timber felled outside a buffer to fall inside the buffer;
 - (c) subject to paragraph (d), operate skidding machinery within a buffer;
 - (d) skid timber within a buffer unless using a temporary crossing within the buffer that complies with regulation 4F; or
 - (e) conduct any operations within a buffer on the request of the owner of the land unless approved by the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources.
- (2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

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Wording of Charges

Regulation 16(1) and (2)

'being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did:

- fell timber in a buffer; **or**
- allow timber felled outside a buffer to fall inside the said buffer; **or**
- operate skidding machinery within a buffer; **or**
- skid timber within a buffer whilst not using a temporary crossing within the said buffer that complies with regulation 17 of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005*; **or**
- conduct an operation within a buffer on the request of the owner of the land namely [specify the name of the owner] whilst not approved by the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources'.

TEMPORARY CROSSINGS

Offences

Regulation 17 states:

- '(1) A licensee, or a person acting for or on behalf of a licensee, shall not construct or use a temporary crossing unless the crossing has been identified on a coupe harvesting plan and marked out on the ground.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
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(2) A licensee, or a person acting for or on behalf of a licensee, shall construct a temporary crossing in a manner that complies with the following:

- (a) temporary crossings shall be located in the flattest location possible;
- (b) temporary crossings should be constructed with logs or piper logs;
- (c) temporary crossings that are constructed with logs shall not be covered with soil.

(3) When a temporary crossing that is constructed with logs is no longer being used, the licensee shall remove the logs.

(4) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charges

Regulation 17(1) and (4)

‘being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did [construct **or** use] a temporary crossing that had not been identified on a coupe harvesting plan and marked out on the ground’.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

Regulation 17(2) and (4)

'being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did fail to construct a temporary crossing in a manner that complies with the provisions of regulation 17(2) of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* to wit [specify how the temporary crossing did not comply with those provisions]'

Regulation 17(3) and (4)

'being a licensee responsible for the construction of a temporary crossing in compliance with the provisions of regulation 17 of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* that was constructed with logs who did fail to remove the said logs when the said crossing was no longer being used'.

As regards comments in respect of this offence, refer to page 34.

SKIDDING

Offences

Regulation 18 states:

'(1) A licensee, or a person acting for or on behalf of a licensee, shall carry out skidding operations under the licensee's licence that complies with the following:

- (a) the width of the skid blade shall be not more than 4.5 meters wide;
- (b) roading blades shall not be used as skid blades in forested areas;
- (c) subject to paragraph (d), a skid track shall be 5.5 meters or less wide;

<p style="text-align: center;">FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005</p>

(d) if side cutting is required, the area distributed by the skidder shall be not more than 7 meters wide;

(e) the skidder shall travel back and forth on the same skid track;

(f) if skidding on a slope that is less than 12 degrees, the skidding must be done with the blade raised;

(g) if skidding on a slope that is 12 degrees or more, the skid blade may be used but its use should be kept to a minimum.

(2) When a licensee, or a person acting for or on behalf of a licensee, has finished using a skid track he must --

(a) if the skid track is on a slope that is less than 10 degrees, construct at least one whoa boy every 40 meters along the skid track; or

(b) if the skid track is on a slope that is 10 degrees or more, construct at least one whoa boy every 20 meters along the skid track.

(3) In addition to complying with subregulation (2), the licensee shall construct a whoa boy where there is any change in slope along the skid track.

(4) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months'.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
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Wording of Charges

Regulation 18(1) and (4)

'being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did carry out a skidding operation under the said licensee's licence not in compliance with the provisions of regulation 18(1) of the *Forest Resources and Timber Utilisation (Felling Licenses) Regulations 2005* to wit [specify how the skidding operation was not carried out in compliance with those provisions]'

Regulation 18(2) and (4)

'being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did finish using a skid track and who did fail to:

- construct at least one whoa boy every 40 meters along the said skid track because the said skid track was on a slope that is less than 10 degrees; **or**
- construct at least one whoa boy every 20 meters along the said skid track because the said skid track was on a slope that is 10 degrees or more'.

Regulation 18(3) and (4)

'being a licensee who did fail to construct a whoa boy where there was a change in slope along a skid track'.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

AVOIDING WASTING TIMBER

Offences

Regulation 19 states:

'(1) A licensee, or a person acting for or on behalf of a licensee, shall conduct his felling operations under the licensee's licence in a manner that maximises log value and avoids wastage of timber, including by --

- (a) directionally felling trees to minimise crown and truck breakage;
- (b) directionally felling trees so they are in position for easy skidding;
- (c) directionally felling into the same gap to minimise canopy opening;
- (d) keeping stumps as low as possible;
- (e) ensuring log ends are cut straight, not at an angle;
- (f) trimming side branches and buttresses; and
- (g) maximising the highest value log length before the tree is cross cut.

(2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months'.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005
--

Wording of Charges

Regulation 19(1) and (2)

'being a [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did fail to conduct the felling operations under the said licensee's licence in a manner that maximised log value and avoided wastage of timber by failing to:

- directionally fell trees to minimise [crown **and/or** truck breakage]; **or**
- directionally fell trees so that the said trees were in position for easy skidding;
or
- directionally fell trees into the same gap to minimise canopy opening; **or**
- keep stumps as low as possible; **or**
- ensure log ends were cut straight and not at an angle; **or**
- trim [side branches **and/or** buttresses]; **or**
- maximise the highest value log length before the tree was cross cut'.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

WEATHER RESTRICTIONS

Offence

Regulation 20 states:

'(1) A licensee, or a person acting for or on behalf of a licensee, shall not carry on felling operations in weather conditions that increase the risk of personal injury occurring and the level of damage to soil, water and forest resources to more than the usual risk or level of damage expected for well planned harvest operations.

(2) Examples of weather conditions when operations shall cease are when --

- (a) the wind strength prevents accurate directional falling of timber;
- (b) the ground becomes too slippery for chainsaw operators to move easily and quickly;
- (c) water flows along any length of a skid track;
- (d) water lies on the surface of a landing; and
- (e) a truck is not able to move along a road without the assistance of other machines.

(3) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months'.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

Wording of Charge

Regulation 20(1) and (3)

'being the [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did conduct [his **or** her] felling operations in weather conditions that increased the risk of personal injury occurring and the level of damage to [soil, water **and/or** forest resources] to more than the usual risk or level of damage expected for well planned harvest operations'.

DECOMMISSIONING LOG PONDS

Offences

Regulation 21 states:

'(1) When a licensee, or a person acting for or on behalf of a licensee, completes his operations in a log pond he must do the following:

- (a) remove from the log pond and adjacent forested land any excess bark or waste;
- (b) rip the surface of the log pond to a depth of at least 60 centimetres;
- (c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the log pond and spread evenly across the ripped surface of the log pond;
- (d) ensure that the log pond is effectively drained;
- (e) replant the whole or part of the log pond as required by the forest officer who inspects the landing.

FOREST RESOURCES AND TIMBER UTILISATION (FELLING LICENSES) REGULATIONS 2005

(2) A person who contravenes this regulation commits an offence.

Penalty: \$100 or imprisonment for 3 months’.

Wording of Charges

Regulation 21(1) and (2)

‘being the [licensee **or** (person acting for **or** on behalf of) a licensee namely (specify the name of the licensee)] who did complete [his **or** her] felling operations in a log pond but who:

- did fail to remove from the said log pond and adjacent forested land excess [bark **and/or** waste]; **or**
- did fail to rip the surface of the said log pond to a depth of at least 60 centimetres; **or**
- after ripping the surface of the log pond to a depth of at least 60 centimetres did fail to return topsoil removed during construction of the said log pond and spread it evenly across the ripped surface of the said log pond; **or**
- did fail to ensure that the said log pond was effectively drained; **or**
- did fail to replant [the whole **or** part] of the said log pond as required by a forest officer namely [specify the name of the forest officer] who inspected the landing’.

PREVENTING A BREACH OF THE PEACE

STATUTORY PROVISIONS

The following provisions are in the *Criminal Procedure Code* (Ch/ 7):

Security For Keeping The Peace

Section 30 states:

‘(1) Whenever a Magistrate is informed on oath that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction’.

Order To Be Made

Section 34 states:

‘When a Magistrate acting under sections 30, 31, 32 or 33 deems it necessary to require any person to show cause under any such section, he shall make an order in writing setting forth—

(a) the substance of the information received;

(b) the amount of the recognisance;

(c) the term for which it is to be in force; and

(d) the number, character and class of sureties, if any, required’.

PREVENTING A BREACH OF THE PEACE

Procedure In Respect Of Person Present In Court

Section 35 states:

‘If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him’.

Summons Or Warrant In Case Of Person Not So Present

Section 36 states:

‘If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest’.

Copy Of Order Under Section 34 To Accompany Summons Or Warrant

Section 37 states:

‘Every summons or warrant issued under section 36 shall be accompanied by a copy of the order made under section 34, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same’.

PREVENTING A BREACH OF THE PEACE

Power To Dispense With Personal Attendance

Section 38 states:

‘The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to enter into a recognisance for keeping the peace, and permit him to appear by an advocate’.

Inquiry As To Truth Of Information

Section 39 states:

‘(1) When an order under section 34 has been read or explained under section 35 to a person present in court, or when any person appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under section 36, the Magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before Magistrates' Courts.

(3) For the purposes of this section the fact that a person comes within the provisions of section 33 may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate thinks just’.

PREVENTING A BREACH OF THE PEACE

Order To Give Security

Section 40 states:

‘(1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognisance, with or without sureties, the Magistrate shall make an order accordingly:

Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 34;

(b) the amount of every recognisance shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the recognisance shall be entered into only by his sureties.

(2) Any person ordered to give security for good behaviour under this section may appeal to the High Court, and the provisions of Part IX (relating to appeals) shall apply to every such appeal’.

Discharge Of Person Informed Against

Section 41 states:

‘If on an inquiry under section 39 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognisance, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or if such person is not in custody, shall discharge him’.

PREVENTING A BREACH OF THE PEACE

Commencement Of Period For Which Security Is Required

Section 42 states:

‘(1) If any person in respect of whom an order requiring security is made under sections 34 or 40 is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date’.

Contents Of Recognisance

Section 43 states:

‘The recognisance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the recognisance’.

Police To Prevent Offences

Section 49 states:

‘Every police officer may interpose for the *purpose of preventing*, and shall to the best of his ability prevent, the commission of any offence’.

PREVENTING A BREACH OF THE PEACE

Arrest To Prevent Such Offences

Section 51 states:

‘A police officer knowing of a design to commit any cognisable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented’.

PROCEDURE IN APPLYING FOR AND ENFORCING AN ORDER AS TO SHOW CAUSE

1. Applications are made to the court in the form of an *Affidavit [in Support]*¹ for:
 - a *Summons to Show Cause*² to be issued pursuant to section 30 of the *Criminal Procedure Code* (Ch. 7); and
 - an *Interim Order*³ to be issued pursuant to section 34 of the *Criminal Procedure Code* (Ch. 7).

A proforma *Summons to Show Cause* and *Interim Order* are to be submitted to the court together with the *Affidavit in Support*.

Such applications may be heard ex parte.

2. The court may issue the *Summons to Show Cause* and make an *Interim Order* ex parte if it deems necessary to do so.
3. Police are to serve the *Summons to Show Cause* and *Interim Order*.

¹ See page 72.

² See page 73.

³ See page 75.

PREVENTING A BREACH OF THE PEACE

4. At the hearing of the application for an *Order*⁴ to be made pursuant to section 34 of the *Criminal Procedure Code* (Ch. 7) the court may make the *Order*, *ex parte* if it deems necessary to do so.
5. Police are to serve the *Order*.
6. If a defendant commits an offence which is an act in non – compliance with the *Order*, the defendant:
 - should be arrested for committing the offence; and
 - at the hearing of the offence the defendant will be required to show cause why he or she and/or sureties should not forfeit the amount of the recognisance issued under the *Order*.

POSSIBLE OFFENCES

Road Blocks

Section 58 of the *Traffic Act* (Ch. 131) states:

‘(1) Any person who throws any object at any vehicle on a road or at any person in or on such vehicle, or *who places any object on any road or by any means impedes the progress of any vehicle whereby injury or damage might be caused to such vehicle or to any other vehicle or to any person*, shall be guilty of an offence and liable to a fine of two hundred dollars or to imprisonment for three months.

(2) A police officer may arrest without warrant a person whom he suspects on reasonable grounds of having committed an offence under this section’.
(emphasis added)

⁴ See page 77.

PREVENTING A BREACH OF THE PEACE

The term '*road*' is defined in section 2 of that Act as follows:

'means any public road within the meaning of the *Roads Act* or any Act replacing that Act and *includes any other road or way, wharf or car park on which vehicles are capable of travelling and to which the public has access, and includes a bridge over which a road passes*'. (emphasis added)

The term '*public road*' is defined in section 2 of the *Road Act* (Ch. 129) as follows:

'*means any road, street or thoroughfare heretofore declared or which may hereafter be declared by the Minister under section 3* and includes all carriageways, cartways, bridletracks and pathways as well as all bridges, drains, dams, embankments, causeways, fences and ditches belonging or appertaining to a public road and also any adjoining land declared as aforesaid'. (emphasis added)

If a roadblock is not set up on a '*road*' within the meaning of section 2 of the *Traffic Act* (Ch. 131), then no offence under that Act has been committed.

Section 178 of the *Penal Code* (Ch. 26) states (in part):

'Any person who --

(g) without lawful authority lays down in any *public way* any stone, timber or other materials (except building materials so enclosed as to prevent injury to passengers).

(s) obstructs in any way the free passage of any *public way* or who in any manner wilfully prevents any person from passing him or who by any negligence or misbehaviour prevents or interrupts the free passage on any public way of any person, motor vehicle, bicycle, wagon, carriage, cart, horse, mule or beast of burden'. (emphasis added)

The term '*public way*' is defined in section 4 of the *Penal Code* (Ch. 26) as follows:

'includes any highway, market place, square, street, bridge or other way which is lawfully used by the public'.

PREVENTING A BREACH OF THE PEACE

If a roadblock is not set up on a '*public way*' within the meaning of section 4 of the *Penal Code* (Ch. 26), then no offence under that Act has been committed.

Threatening Behaviour

Section 178(n) of the *Penal Code* (Ch. 26) states:

'Any person who in any *public place* uses threatening or abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned is guilty of an offence [...]'. (emphasis added)

The term '*public place*' is defined in section 4 of the *Penal Code* (Ch. 26) as including:

'any *public way* and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court'. (emphasis added)

The term '*public way*' is defined in section 4 of the *Penal Code* (Ch. 26) as including:

'any highway, market place, square, street, bridge or other way which is lawfully used by the public.'

If the offence does not occur in a '*public place*' within the meaning of section 4 of the *Penal Code* (Ch. 26), then no offence has not been committed.

Other offences to consider, include:

- '*Common Assault*', as provided for by section 244 of the *Penal Code* (Ch. 26). Whilst the term '*assault*' is not defined in statute it is defined by virtue of the common law.

PREVENTING A BREACH OF THE PEACE

‘An assault is an act by which the defendant intentionally or recklessly causes the complainant to *apprehend* immediate, or to sustain, unlawful personal violence’, see *R v Kimber* (1983) 77 CrAppR 225 at 228;

and

- ‘*Unlawful Assembly*’, as provided for by section 74 of the *Penal Code* (Ch. 26).

**IN THE MAGISTRATES' COURT
FOR THE DISTRICT**

Case No.

(Criminal Jurisdiction)

IN THE MATTER OF section 30 of the Criminal Procedure Code (Ch. 7)

AFFIDAVIT IN SUPPORT

I,, **HEREBY MAKE OATH**
and STATE as follows:

1. I am the

[THERE MUST BE EVIDENCE THAT A PERSON IS LIKELY TO COMMIT A
BREACH OF THE PEACE OR TO DO ANY WRONGFUL ACT THAT MAY
PROBABLY OCCASION A BREACH OF THE PEACE.]

INDICATE WHETHER ANY WARRANTS OF ARREST SHOULD BE ISSUED
UNDER SECTION 36 AND THE BASIS FOR SUCH AN APPLICATION.]

**That the facts deposed herein are to the best of my knowledge and
belief true in substance and fact.**

SIGNED and **SWORN** by the abovenamed)
Deponent at on this)

Before me:

.....

Magistrate

IN THE MAGISTRATES' COURT Case No.
FOR THE DISTRICT

(Criminal Jurisdiction)

IN THE MATTER OF section 30 of the Criminal Procedure Code (Ch. 7)

SUMMONS TO SHOW CAUSE

LET all parties concerned attend before the Magistrates' Court sittings at
..... on the day of
..... at o'clock in the
noon for the hearing of an Application to Show Cause why the following
orders should not be made:

1. That the defendants namely
shall refrain from committing a breach of the peace or doing any
wrongful act that may probably occasion a breach of the peace within
.....
and in particular:
 - (a) unlawfully setting up another road block;
 - (b) maintaining any existing unlawful road block;
 - (c) unlawfully threatening any employees of
.....
while such employees to carry out their lawful business;
 - (d) unlawfully carrying out any act or threats to such employees or
any other person at the abovementioned location;

(e) unlawfully threatening to cause damage or destruction to any equipment used by

(f) counselling or procuring any other person to carry out the abovementioned acts or threats.

2. That each defendant enter into a recognisance in the sum of \$1000 with or without sureties to ensure compliance.

Each defendant is to be served with a copy of the Interim Order made by the Court in respect of this Application to Show Cause together with a copy of this Summons.

Failure to personally appear on the date set aside to hear and determine the Application to Show Cause may result in an Order being made by the Court in the absence of a defendant.

Dated this day of

.....

Magistrate

IN THE MAGISTRATES' COURT Case No.
FOR THE DISTRICT

(Criminal Jurisdiction)

IN THE MATTER OF section 30 of the Criminal Procedure Code (Ch. 7)

INTERIM ORDER

UPON HEARING this application [in person or ex parte] and UPON INFORMATION received on OATH, the Court is satisfied that the defendants are likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace at

The COURT THEREFORE ORDERS as follows --

1. That pending the determination of the application to show cause, the defendants namely shall refrain from committing a breach of the peace or doing any wrongful act that may probably occasion a breach of the peace within and in particular:
 - (a) unlawfully setting up another road block;
 - (b) maintaining any existing unlawful road block;
 - (c) unlawfully threatening any employees of while such employees to carry out their lawful business;

- (d) unlawfully carrying out any act or threats to such employees or any other person at the abovementioned location;
- (e) unlawfully threatening to cause damage or destruction to any equipment used by;
- (f) counselling or procuring any other person to carry out the abovementioned acts or threats.

2. That these orders shall continue to be in force pending the hearing and determination of the Application to Show Cause.
3. That each defendant be served with a copy of the Affidavit in Support of the Application to Show Cause together with a copy of this Interim Order made by the Court.

Failure to personally appear on the date set aside to hear and determine the Application to Show Cause may result in an Order being made in the absence of a defendant.

Dated this day of

.....
Magistrate

IN THE MAGISTRATES' COURT Case No.
FOR THE DISTRICT

(Criminal Jurisdiction)

IN THE MATTER OF section 30 of the Criminal Procedure Code (Ch. 7)

ORDER

UPON HEARING this application [in person or ex parte] and UPON INFORMATION received on OATH, the Court is satisfied that the defendants are likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace at

.....

The COURT THEREFORE ORDERS as follows --

1. That the defendants namely
shall refrain from committing a breach of the peace or doing any
wrongful act that may probably occasion a breach of the peace within
.....
and in particular:

- (a) unlawfully setting up another road block;
- (b) maintaining any existing unlawful road block;
- (c) unlawfully threatening any employees of
.....
while such employees to carry out their lawful business;

- (d) unlawfully carrying out any act or threats to such employees or any other person at the abovementioned location;
- (e) unlawfully threatening to cause damage or destruction to any equipment used by;
- (f) counselling or procuring any other person to carry out the abovementioned acts or threats.

2. That each defendant shall enter into a recognisance in the sum of \$1000 [with **or** without] sureties as follows to ensure compliance.

3. That the period for which such security shall commence [forthwith **or** on the day of]

4. That this Order shall commence forthwith and remain in force until the day of

Dated this day of

.....

Magistrate