

eSwatini

## Concessions Act, 1904

Act 3 of 1904

Legislation as at 1 December 1998

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Concessions Act, 1904  
 Contents

Part I – General ..... 1

    1. Short title ..... 1

    1A. Interpretation ..... 1

Part II – Titles under land concessions ..... 1

    2. Recognition of grants and concessions ..... 1

    3. Appointment of Commission ..... 2

    4. Suspension of certain concessions ..... 2

    5. Commission to define boundaries ..... 4

    6. Staying actions ..... 4

    7. Establishment of towns, etc. .... 4

    8. Registers to be kept by the Minister ..... 4

    9. Priority of concessions ..... 4

Part III – Unconfirmed concessions ..... 5

    10. Definition ..... 5

    11. Confirmation ..... 5

    12. Cancellation of rights ..... 5

Part IV – Concessions rentals ..... 5

    13. Interpretation ..... 5

    14. Payment of rentals ..... 6

    15. Summary recovery of rentals ..... 6

    16. Jurisdiction of Magistrate’s Courts ..... 6

    17. Interest ..... 6

    18. Requirement on disposition of land or concession ..... 6

    19. Merging of rights ..... 7

    19bis. Concession rental to accrue to Ngwenyama in trust for the Swazi nation ..... 7

Part V – Burdens on land ..... 7

    20. Land concessions subject to certain rights ..... 7

    21. Outspans on Swazi areas ..... 7

    22. Stores and hotels on outspans ..... 7

    23. Saving ..... 7

Part VII ..... 8

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# Concessions Act, 1904

## Act 3 of 1904

There are multiple commencements

Provisions	Status
Part I (section 1A); Part II (section 2A)	commenced on 1 October 1904.
Part III (section 10A)	commenced on 19 October 1908.
Part V (section 20A)	commenced on 17 April 1909.
Part IV (section 13A)	commenced on 5 November 1912.
Part VII	not yet commenced.

*[This is the version of this document at 1 December 1998.]*

**An Act to provide for the grant of freehold and other rights to persons holding concessions, to grant relief to the holders of certain concessions not confirmed by the late Chief Court, to provide for the better collection and recovery of rents payable to the Swaziland Government in accordance with the terms of any concession, to remove doubts as to the effect of the vesting in the same person of rights and under different concessions, to declare the law as to burdens on land held under land concessions, and to provide for the payment of the rents, royalties and revenues collected under the said concessions into the revenue of Swaziland.**

### Part I – General

#### 1. Short title

This Act may be cited as the Concessions Act, 1904.

#### 1A. Interpretation

In this Act, unless the context otherwise requires –

“**Minister**” means the Minister responsible for concessions.

### Part II – Titles under land concessions

#### 2. Recognition of grants and concessions

No concession or grant made by or on behalf of the King or Paramount Chief of Swaziland shall be recognised by any court of law, save and except such as were confirmed by the Chief Court, and which have not at the first day of October, 1904, become void through forfeiture or otherwise. Where any such concession or grant was so confirmed in part only, the same shall not be recognised by any court of law except to the extent of such limited confirmation.

### 3. Appointment of Commission

It shall be lawful for the Governor to appoint a Commission of three or more persons, one of whom shall be the president thereof, to deal in manner hereinafter provided with concessions confirmed by the Chief Court.

### 4. Suspension of certain concessions

(1) Any concession or grant by or on behalf of the King or Paramount Chief of Swaziland confirmed by the Chief Court conferring any of the following rights on the grantee, to wit:

(a) exemption from the payment of duties on goods imported into Swaziland, or from any taxation, or from any law now or hereafter in force in Swaziland;

(a) *Explanatory Note. — At the time of the death of Paramount Chief Mbandzeni, in 1889, practically the whole of Swaziland had been apportioned out by concessions. These concessions — not only of mining and land rights, but also covering almost every conceivable (and inconceivable) field of activity — were mutually inconsistent and often irreconcilable. For this reason among others, the South African Republic and the British Government of the day arrived at an agreement, the main terms of which were recorded in the “Organic Proclamation” of September 1890. This Proclamation contained a provision establishing a “Chief Court” of three members, which was instructed to examine the existing concessions. The Chief Court declared over three hundred of these to be legal and binding, but, by taking a restrained view of its own powers, debarred itself from cleaning up the contradictions and inconsistencies.*

*Thus when, in 1903, the Government of the United Kingdom, by Order-in-Council, assumed responsibility for the government of Swaziland, the new Administration found it had succeeded to an hereditas damnosa. One of its earliest legislative acts was to promulgate, in October 1904, the Swaziland Administration Proclamation, No. 3 of 1904. After making provision for a number of administrative matters, this Proclamation, by sections 11 to 19, tackled the jigsaw puzzle of the concessions by providing that no concession, save such as had been confirmed by the Chief Court, would be recognised, and by suspending the operation of all save mineral and land concessions. The Proclamation set up a Commission, whose duties were, inter alia, to define the boundaries of land held under concession, to do everything that might be necessary “to put an end to all uncertainty and confusion”, and to determine the nature, extent and validity of the rights of respective holders of conflicting concessions. The decisions of the Commission were to become effective by registration in the Deeds Office, and thereafter no action was to be maintainable in any court of law involving a dispute on any of the questions to be resolved by the Commission. Thus some order was evolved out of chaos.*

*This was followed, in 1907, by a Proclamation based on the principle that one-third of the land was to be demarcated for the sole use and occupation of the Swazi. The demarcation was to be undertaken by a Special Commissioner. Freehold title to these areas was to be in the name of the High Commissioner.*

*Naturally, this cutting of the knot involved a mass of legislation (amounting, by 1912, to over forty Proclamations in all), covering procedure, surveys, costs, and so forth. Most of this was collected in 1951 into Chapter 85, the Concessions Proclamation. But now, over fifty years after the necessity for these procedural provisions arose, nobody save the legal historian wishes to study the rules of procedure, the safeguards, the broad principles by which the Commissioners were to be guided in securing that the interests of the parties concerned, particularly the Swazis, were clarified and made certain. The present importance of these Proclamations, in the modern statute book, lies only in the extent to which they furnish the foundations on which all land titles in Swaziland now rest. Consequently, a careful selection has been made, and the origins of the titles to the areas reserved for the Swazi nation are to be found in Chapter 63, of the titles of the land concessionaires in Chapter 135. A certain amount of overlapping has been found to be unavoidable, and some of the procedural provisions remain as brushwood to obscure the*

*unimpeded vision of the trees. The rights of mining vis-à-vis land concessionaires and holders of surface rights will be found in the Mining Proclamation — Cap. 145. The Private Revenue Concession, which has its own long and interesting history, is included in Cap. 135. — A.C.T.*

- (b) the exclusive right to import or export arms, ammunition, explosives, intoxicating liquors or any other goods, wares or merchandise into or out of Swaziland;
- (c) the exclusive right of trading, or of carrying on any commercial operation or undertaking, or any occupation or profession in any part of Swaziland;
- (d) the exclusive right of carrying on any industrial or manufacturing operation, or any chemical or mechanical operation concerning the mining or recovery of precious metals, or the reduction of refractory ones in any part of Swaziland;
- (e) the right to, or the enjoyment of, any rights under any concession which lapses or becomes forfeited or cancelled;
- (f) generally any exclusive right, save rights to land or to the use thereof for agricultural or grazing purposes, and rights to minerals;

shall, to the extent to which it confers any such right, be suspended until further notification is made as hereinafter provided, and during such suspension shall to the said extent not be recognised by any court of law: and no dealings in any such concession nor expenses incurred in connection therewith after the first day of October 1904, shall be taken into account by the Commission appointed under [section 3](#) in assessing the value of such right.

- (2) Any such right as aforesaid, of which notice has been given by the holder thereof within the period prescribed by section 12(2) of the Swaziland Administration Proclamation, No. 3 of 1904 shall be deemed and taken to be forfeited and of no force or effect.
- (3) Within six months after the Governor and the holder of any such right have agreed as to the value thereof, or after the determination of such value by the Commission, as the case may be, the Governor shall cause notice to be given to the holder thereof whether he intends to expropriate such right or not.
- (4) In case the Governor notifies his intention to expropriate any such right shall thereupon become cancelled.
- (5) Every such right as aforesaid in respect of which notice of expropriation has not been given shall, on the expiration of the period mentioned in subsection (3), become of full force and effect according to its true intent and meaning.
- (6) When the rent or other consideration in respect of any concession referred to in this or the next succeeding section is payable in kind, it shall be lawful for the Commission to assess the value thereof, and such value shall from the date of such assessment be the rent or other consideration payable in respect of such concession.
- (7) The Governor may, instead of expropriating any such right as aforesaid, limit the exercise thereof in such manner and on such terms as may be agreed on between him and the holder thereof, and thereupon the concession conferring such right shall be amended in terms of the said agreement, and shall, when so amended, be of full force and effect, anything to the contrary notwithstanding contained in any of the preceding subsections of this section.
- (8) Nothing in this section contained shall apply to concessions held by the Government of the Transvaal:

Provided always that all rents and royalties paid to the said government under any concession shall form part of the revenue of Swaziland, and shall be paid to the Accountant-General.

## 5. Commission to define boundaries

- (1) The Commission shall enquire into and determine the boundaries of the land affected by any concession, and shall where necessary cause beacons to be erected clearly indicating the bounds determined as aforesaid, and shall cause further surveys to be made and diagrams to be framed in accordance with such beacons, and in general shall cause everything to be done which may be necessary or advisable to put an end to all uncertainty and confusion as regards the situation, extent and boundaries of any land affected by any such concessions.
- (2) When the land affected by any such concession as aforesaid adjoins Mozambique territory, the boundary between such territory and Swaziland, when demarcated, shall be the boundary of such land on the said adjoining such territory.
- (3) The Commission shall further enquire into and decide the extent to which any concession the boundaries of which have been determined under subsection (1) of this section is registrable (if at all) as a servitude or lease against any other concession the boundaries of which have been similarly determined, and shall cause a copy of such decision to be transmitted to the Registrar of Deeds, who shall upon receipt thereof cause the necessary entries to be made in his registers, and endorsements to be made on the office copies or duplicates of the title deeds of any concession affected thereby, and also on such original title deeds or copies thereof as may be lodged with him.
- (4) In any case where it shall appear to the Commission that two or more concessions confirmed by the Chief Court affect the same land, either in whole or in part, or otherwise conflict, or are inconsistent one with another, the Commission shall have power notwithstanding anything contained in [section 9](#) to determine the nature, extent and validity of the rights of the respective holders of such concessions.

## 6. Staying actions

After the first day of October 1904, no action shall be maintainable in any court of law involving a dispute as to any matter which under this Part is to be determined by the Commission.

## 7. Establishment of towns, etc.

It shall be lawful for the Minister to expropriate, subject to the provisions of the law in force dealing with the compulsory expropriation of land, so much of any land as may be required for the establishment or extension of any town or village, and for a commonage in connection therewith. Compensation for any right injuriously affected by such expropriation shall be determined, in the absence of any agreement, by manner prescribed by the said law.

## 8. Registers to be kept by the Minister

The Minister shall keep registers of all concessions confirmed by the Chief Court, and of all leases, concessions, hypothecations or other encumbrances thereon, as well as of all general powers of attorney, notarial bonds and contracts with respect to persons and property in Swaziland which have been registered by the Registrar of Deeds in his special registers for Swaziland, and shall make the necessary entries in such registers in accordance with returns furnished him from time to time by the Registrar of Deeds, and shall upon payment of the fees prescribed by the Deeds Office Regulations supply the public with any information contained in such registers.

## 9. Priority of concessions

Subject to the provisions of subsection 5(4), and to any decision of the Commission thereunder, a concession of prior date not revoked by the grantor shall, if the conditions thereof have been fulfilled, or if in the opinion of the Commission there is a reasonable excuse for the non-performance of such conditions, have preference over a concession of later date. Where a written concession purports to confirm a prior verbal grant, the date of such verbal grant shall be taken to be the date of the concession,

unless such grant is disputed by the holder of a conflicting concession, in which case it shall be lawful for the Commission to decide such dispute.

### Part III – Unconfirmed concessions

#### 10. Definition

In this Part, the term “**unconfirmed concession**” shall mean a concession or grant made by or on behalf of the then King or Paramount Chief of Swaziland, which was not confirmed by the late Chief Court of Swaziland, or a portion of any such concession which was not so confirmed.

#### 11. Confirmation

- (1) The Minister may, upon the recommendation of the Commission confirm, with or without modification, all or any of the rights granted by any unconfirmed concession which was duly registered in the Deeds Office prior to the eleventh day of October 1899, and which would, if it had been confirmed by the late Chief Court, be a land concession or a mineral concession as defined in section 1 of the Concessions Partition Act, [No. 28 of 1907](#), or a portion of such concession, and may attach conditions to such confirmation.
- (2) The confirmation of any rights under this section shall, for the purposes of Part II of this Act and the Concessions Partition Act, [No. 28 of 1907](#), and for all other purposes, be deemed to be equivalent to confirmation by the late Chief Court, save that any rights so confirmed shall rank as though the concession under which they were granted were of subsequent date to any concession confirmed by the late Chief Court in respect of the area affected by such rights, and the provisions of the said Act and Part II shall apply accordingly.
- (3) Any decision of the Commission given, or purporting to have been given, under the provisions of [section 5](#) of this Act with respect to the area of an unconfirmed concession shall *mutatis mutandis* apply to any rights granted under such concession as confirmed by the Minister under this section, notwithstanding such decision was given before the date of such confirmation.

#### 12. Cancellation of rights

Any rights held under an unconfirmed concession which have not been confirmed by the British High Commissioner prior to the twentieth day of April 1909, shall be deemed to be null and void.

### Part IV – Concessions rentals

To provide for the better collection and recovery of rents payable to the Swaziland Government in accordance with the terms of any concession.

#### 13. Interpretation

In this Part, unless inconsistent with the context—

“**concession**” shall mean any grant of land or the use thereof for agricultural, mining or grazing purposes, or any grant of minerals or mineral products or timber made by or on behalf of the King or Paramount Chief of Swaziland, and confirmed either by the late Chief Court of Swaziland or by the High Commissioner under Part III of this Act;

“**concession rentals**” shall mean and include any rent or other consideration payable to the Swaziland Government in accordance with the terms of any concession, or in accordance with the terms of any grant of freehold title made under section 4 of the Concessions Partition Act, [No. 28 of 1907](#), or under a deed of transfer of such grant, but shall not include any moneys so payable by way of royalty, nor any bonus or rental payable under the terms of any mineral concession and becoming due only upon the happening of some event which has not occurred prior to the taking effect of this Part;

“**concessionaire**” shall mean in relation to a concession or to any land held under grant of a freehold title made under section 4 of the Concessions Partition Act, [No. 28 of 1907](#), or a deed of transfer of such grant, the person in whose name such concession or the freehold title to such land is registered, or in cases where such person is insolvent or dead the person in whom the administration of such concession or land is vested as trustee, executor or otherwise.

#### **14. Payment of rentals**

All concession rentals shall be paid by the concessionaires in advance to the Swaziland Government on or before the first day of January of the year in which they become due.

#### **15. Summary recovery of rentals**

If any concessionaire shall have failed to pay on or before the first day of January in any year the concession rental payable by him on or before such date, under the preceding section, the Swaziland Government may cause a demand in writing to be made upon such concessionaire to pay the amount stated in such demand within fourteen days or such longer period as may be deemed fit after service thereof:

Provided that if the address of the concessionaire or his legal representative is unknown, then such demand shall be made by Notice published in two successive issues of the *Gazette* and in a newspaper circulating in Swaziland. Where any concessionaire to, or in respect of, whom such demand has been made or published as herein provided fails to make payment of the rental due from him, together with the interest prescribed in [section 17](#), within the time specified in the demand, the Government may apply to the High Court of Swaziland or the Magistrate’s Court having jurisdiction in the district in which the land in respect of which the rental is payable is situate, for a summary warrant to recover such rental together with the interest thereon from the concessionaire liable to pay the same, and may include in one such application rentals recoverable from different concessionaires. The said Courts shall grant such warrant on production of a list of the names and addresses of the concessionaires so in default and the amounts together with interest as by this Part provided respectively due by them, together with a certificate by the Minister that they have been severally required to make payment of the said rentals by notice aforesaid and that such rentals are due by them, and every such warrant shall contain every authority and be executed in all respects as though it were a writ of execution issued out of the said Courts.

#### **16. Jurisdiction of Magistrate’s Courts**

Notwithstanding the provisions of the last preceding section, the Swaziland Government may at its discretion recover from any concessionaire in default (without notice or demand) the amount of the concession rental and the interest thereon due by such concessionaire, irrespective of the amount thereof, by action in the Magistrate’s Court of the First Class having jurisdiction in the district in which the land in respect of which the rental is payable is situate, whether the concessionaire liable for the same shall be resident within the jurisdiction of such Court or not. In case it shall not be possible to effect service of the summons within the jurisdiction of such Court as aforesaid, then such service shall be effected in such manner as the said Court shall direct.

#### **17. Interest**

In case any concession rental which becomes due shall remain unpaid after the date on which the same is required to be paid under [section 14](#) interest upon the same shall be chargeable and recoverable by the Swaziland Government at the rate of one-half per cent for every month or portion of a month for which the rental remains unpaid, reckoned from the date aforesaid.

#### **18. Requirement on disposition of land or concession**

No cession, lease, sub-lease or other disposition of, or mortgage or other encumbrance upon, any concession or any land held otherwise than under a concession shall be registered by the Registrar of Deeds until a receipt or certificate signed by the Minister or other person authorised by him shall be



produced to the Registrar of Deeds showing that all concession rentals due in respect thereof with interest, if any, chargeable thereon have been paid, or that no such rentals are payable in respect thereof.

## 19. Merging of rights

The liability to pay rent to the Swaziland Government under a concession shall not be or be held to have been extinguished by reason of the fact that such concession and any other concession or any freehold grant affecting the same area or any portion of the same area hereafter become vested, or before the sixth day of February 1909, had vested, in the same person.

## 19bis. Concession rental to accrue to Ngwenyama in trust for the Swazi nation

Notwithstanding anything in this Chapter, any concession rental payable in respect of any concession relating to any grant of land or the use thereof for mining purposes or to any grant of minerals or minerals products and any interest due on such concession rental shall accrue to the Ngwenyama in trust for the Swazi nation.

*[Amended A.14/1972]*

## Part V – Burdens on land

To regulate rights of way, and other servitudes, over land subject to a land concession.

## 20. Land concessions subject to certain rights

All land the subject of a land concession, whether demarcated for the use and occupation of the Swazi people under section 2 of the Concessions Partition Act, [No. 28 of 1907](#), or whether the same be free from use and occupation by the Swazi people, shall be subject to any rights of way and outspan, and to any rights to take water, wood or reeds which have been awarded by the Special Commissioner in respect of such land in his Report dated the fifth day of December 1908, or which may hereafter be awarded by him in respect of such land, provided always that in the case of any appeal to the Minister against any award by the Special Commissioner of such rights, the same shall take effect subject to and in accordance with the decision of the Minister on such appeal. All such land shall further be subject to such rights of way and outspan as have been or may hereafter from time to time be by law established.

## 21. Outspans on Swazi areas

Where any right of outspan exists, or is established under the preceding section, or under any other law, in respect of land demarcated for the use and occupation of Swazis under section 2 of the Concessions Partition Act, [No. 28 of 1907](#), the Minister may by notice in the *Gazette* define the boundaries of such outspan, and the land included within such boundaries shall be under the control of the Minister.

## 22. Stores and hotels on outspans

The Minister may, and on such terms as he may approve, permit the establishment of a wayside store or hotel, or the continuance of an existing store or hotel, upon a portion of the site of any such outspan which has been defined under the preceding section, in cases where it shall appear that the existence of a store or hotel on such outspan is for the public convenience.

## 23. Saving

Nothing in this Part contained shall be taken to affect the operation of any laws for the time being in force with respect to the grant of trading and liquor licences.

## Part VII

*[Please note: Part numbering as in original.]*

*[Repealed P.72/1961]*

*[See Explanatory Note under section 4(1)(a)]*