

THE FINNMARK ACT – A GUIDE

Issued by the Ministry of Justice and the Police and the
Ministry of Local Government and Regional Development

The brochure is to be distributed to all households
in Finnmark. It is also available on the Internet:

www.jd.dep.no

Publication No.: G-0381 B+S

English translation: Richard Lawson

All photographs: Samfoto

Graphic design: Sissel Sandve

Printing: Zoom Grafisk AS

08/2005 – Number of copies 35 000

Foreword (page 2)

After many years of uncertainty surrounding legal relations in Finnmark, the new Finnmark Act was adopted by the Storting in May/June 2005. The Sami Parliament and Finnmark County Council took part in the drafting of the Act through consultations with the Storting. The Government has given its support to development of the Government's Bill of 2003, which resulted from consideration by the Storting.

The Act was adopted by a large majority of the Storting across party lines on the recommendation of both the Sami Parliament and Finnmark County Council. It thus has a secure democratic footing, which provides a good starting point for the new Finnmarkseiendommen and for the forthcoming clarification of rights. We believe that the Finnmark Act will be of benefit to the whole population of Finnmark, to the Sami people and to Norway as a whole.

It is the development of Sami law that has prepared the ground for the Finnmark Act, but the Act is designed to provide security and opportunities for all residents of Finnmark. The land that is to be transferred from state ownership to local ownership via Finnmarkseiendommen will be jointly owned by all residents of the county. Clarification of individual and collective rights will take place on the basis of national law. It is the use that counts – not the ethnic origin of the user.

All residents of Finnmark will have the right to exploit natural resources on Finnmarkseiendommen's land. Persons who live outside Finnmark too will have a statutory access to hunt and fish on Finnmarkseiendommen's land.

This brochure provides a guide to the Act for all households in Finnmark. It has been prepared by the Ministry of Justice and the Ministry of Local Government and Regional Development, and is part of a larger framework of information activities that will take place in close cooperation between the Sami Parliament, Finnmark County Council and the ministries.

Odd Einar Dørum
Minister of Justice

Erna Solberg
Minister of Local Government and Regional
Development

The main content of the Finnmark Act

(page 3)

The purpose of the Finnmark Act is to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner. This shall be carried out for the benefit of the residents of the county, particularly as a basis for Sami culture, reindeer husbandry, use of uncultivated areas, commercial activity and social life.

Today, approximately 95 per cent of land in Finnmark is managed by the state-owned enterprise Statskog SF. This area, which consists of just over 45 000 km², will be transferred to local ownership via Finnmarkseiendommen (Finnmárkkuoþmodat).

Finnmarkseiendommen is a private landowner which has, in principle, the same relationship to public authorities as other landowners. Finnmarkseiendommen shall be governed by a board consisting of six persons: three board members appointed by the Sami Parliament and three by Finnmark County Council.

The Finnmark Act provides that the Sami people, through prolonged use of land and water, have acquired rights to land in Finnmark. Other residents of Finnmark may also have acquired such rights. A commission will be established to survey these rights. A special court will also be set up to decide disputes concerning such rights.

All residents of Finnmark will be given the right to **exploit natural resources** on Finnmarkseiendommen's land, including hunting, fishing and cloudberry picking. The extent of such rights is dependent on how closely one is associated with the resources. For example, one has a greater right to exploit natural resources in the municipality where one resides. Persons who reside outside the county shall also have access to hunt and trap small game, to fish and to pick cloudberries for their own domestic use.

The Finnmark Act is **ethnically neutral** in the sense that individual legal status is not dependent on whether one is a Sami, Norwegian or Kven or belongs to another population group.

In matters concerning changed use of uncultivated land, both the public authorities and Finnmarkseiendommen shall assess the significance of the change for Sami interests. The Sami Parliament may issue **guidelines** to be followed in making this assessment, but these guidelines are not binding for the balance between Sami interests and other considerations.

The Finnmark Act has **no provisions concerning fishing in the sea**. In June 2005, the Storting therefore requested the Government as soon as possible to review the rights of the Sami people and others to fish in the sea outside Finnmark, and to submit a report on this to the Storting. The Government is in process of following up the Storting's request.

ANSWERS TO SOME FREQUENTLY ASKED QUESTIONS CONCERNING THE FINNMARK ACT

(page 4)

Who shall decide over the land in Finnmark?

A special body, Finnmarkseiendommen, is being set up, that will hold the right of ownership to the land in Finnmark that has hitherto been administered by Statskog (section 49). Finnmark County Council and the Sami Parliament shall elect members to the board of Finnmarkseiendommen (section 7). It is thus the population of Finnmark that will decide over the administration of the land in the county. However, Finnmarkseiendommen must pay regard to statutes and regulations in the same way as any other landowner.

Will Finnmarksvidda (the Finnmark Mountain Plateau) be privatized?

No. The Act does not entail the assignment of any new rights. Those who have already acquired the right of use or ownership to an area will have this right recognized through the Finnmark Commission's investigations (section 5). The Commission is unlikely to find that individual rights of ownership have been acquired to any extent. It is more probable that various forms of rights of use exist, for example the right to use an area for reindeer husbandry, limited felling of trees, cutting of peat or the like.

Does the Finnmark Act apply equally to everyone in Finnmark?

Yes. The Act is ethnically neutral. This means that it provides equal rights regardless of whether one is Sami, Norwegian, Kven or has another ethnic affiliation. However, the Act contains some guarantees that sufficient regard shall be paid to Sami interests before making decisions that may have significance for Sami culture, reindeer husbandry and the like in uncultivated areas (sections 4 and 10).

Can I hunt in Finnmark?

Yes. Everyone – including persons who do not reside in Finnmark – have access to hunt and trap small game on Finnmarkseiendommen's land (section 25). People who live in Finnmark also have the right to hunt big game (section 23). Finnmarkseiendommen may also issue permits for hunting outside of these limitations, for example for hunting of big game by persons who do not reside in the county (section 27).

Can I fish in the rivers in Finnmark?

Yes. Everyone can fish with a rod and line in the watercourses on Finnmarkseiendommen's land (section 25). People who live in Finnmark may in addition fish with nets in watercourses in the municipalities where they live (section 22).

Can I pick cloudberries in Finnmark?

Yes. Everyone can pick cloudberries on Finnmarkseiendommen's land (sections 23 and 25). Persons who do not reside in Finnmark may only pick cloudberries for their own

domestic use (section 25).

Must I hold a permit to hunt and fish on Finnmarkseiendommen's land?

Yes. For hunting and fishing, you must hold a permit issued by Finnmarkseiendommen. The permit may be issued in the form of a hunting or fishing card, and a fee may be charged for it (section 27).

Can Finnmarkseiendommen impose further conditions on hunting, fishing and cloudberry picking on its land?

Yes. Finnmarkseiendommen may issue further rules concerning exploitation of natural resources on its land, among other things, that one must have a permit for such exploitation. If, for example, there is short supply of game or cloudberry picking in a specific area, Finnmarkseiendommen may decide that hunting or cloudberry picking shall be limited in the area concerned. The decision may be appealed to the Ministry (section 27).

Have I the right to fish in the sea outside Finnmark?

The Finnmark Act has no provisions concerning this. Everyone has the right to fish in the sea with a rod and line and with small nets and lines (section 4a of the Act relating to sea-water fisheries, etc.). In order to engage in commercial fishing you must have a fishing quota.

No interference with existing rights (page 5)

The Finnmark Act involves no changes in **rights of use and ownership** to the land in Finnmark (other than the transfer of property from Statskog SF to Finnmarkseiendommen). If someone has acquired the right of use or ownership through prolonged use of an area (*prescription* or *immemorial usage*), the Finnmark Act will not change this. If, for example, one has for several decades felled trees in a forest or used a specific area for grazing in the belief that one had a right to this, one may have such a right of use recognized. This applies in Finnmark in the same way as in the rest of Norway. Nor does the Act interfere with rights based on other grounds, for example an existing contract.

The Act establishes that the Sami people through prolonged use of land and water have acquired rights to the land in Finnmark (section 5, first paragraph). This follows from ordinary Norwegian law (prescription and immemorial usage). It was nevertheless important to establish this in the Act. The provision is a fundamental and political recognition of the existence of such acquired rights in Finnmark.

The principle that the Act does not interfere with established rights applies also to Norwegians, Kvens and other residents of Finnmark. The rights of individuals will be recognized and, if appropriate, officially registered as the rights are identified through the investigations to be carried out.

PRESCRIPTION AND IMMEMORIAL USAGE (textbox page 5)

According to Norwegian law, one may on specific conditions acquire both rights of use and right of ownership to an area through using or disposing of it for a long time. "Prescription" and "immemorial usage" are terms for means by which one may acquire

such rights.

The conditions for *prescription* follow from the Act of 9 December 1966 No. 1 relating to prescription. In order to claim *right of ownership* one must have disposed of an area for at least 20 years. One must have good reason for believing that one owns the area. (This is called being “in good faith”.)

In order to claim *rights of use* one must have exercised a certain use for at least 20 years. The use must have taken place in the belief that one had a right to it. If the use is not manifested in the form of permanent installations in the area (for example that one has built a house there) one must have used the area for at least 50 years in order for rights of use to be recognized.

The doctrine of *immemorial usage* has been developed through legal usage. On the basis of immemorial usage, one may acquire the right of use or ownership to an area even if the conditions for prescription are not met. A total assessment is made, where the most important factors are:

- Use of the area over a long period. Since the remaining conditions are not as stringent as for prescription, an extremely long period of use is required, perhaps as long as 100 years and at least 50 years.
- The person who has used or disposed of the area must have done so in good faith. The requirements regarding good faith are not equally stringent if the period of use is extremely long.

It is generally easier to acquire *rights of use* than *rights of ownership*. In order to have recognized right of ownership on such grounds, one must, among other things, have used an area to such a great extent that one was perceived to be the landowner and have had reason to believe that one actually owned the area.

Investigation of existing rights (pages 6-7)

Investigation and recognition of existing rights is an important element of the Finnmark Act. A commission and a special court are to be established for this purpose. The rights shall be investigated regardless of ethnic affiliation. Similar investigations have previously been conducted in uncultivated areas of other parts of the country.

The Finnmark Commission will investigate the rights to the land that Finnmarkseiendommen takes over from Statskog SF. The Finnmark Commission shall not assign rights that do not already exist. The investigation shall be conducted on the basis of current national law as this has been developed through long legal usage.

Before the Finnmark Commission begins its investigation of an area, it shall make an **announcement** requesting potential right holders to make themselves known to the Commission. The announcement shall be made in local media and in other appropriate ways. The Commission will issue more detailed information concerning the procedure for notification of claims.

The purpose of the Commission is to obtain a more rapid and complete clarification of rights in Finnmark than could be achieved through the ordinary courts, whereby each individual claimant would have had to initiate legal proceedings in order to put forward

his claim. This is often costly, and may have resulted in only those persons who could afford litigation obtaining clarification of their acquired rights to land in Finnmark.

The Finnmark Commission is not a court, and is therefore not dependent on the parties initiating legal action in order to be able to investigate an area. The Commission is itself responsible for investigating rights in respect of Finnmarkseiendommen's land. The Commission also holds responsibility for ensuring that the matter is sufficiently elucidated, as opposed to ordinary legal proceedings, where it is the parties that are responsible for providing the court with all necessary information.

The Commission may appoint representatives for various interest groups that may monitor the Commission's work. In this way, it is ensured that the interests of the parties are safeguarded without the need for each party to be represented by his own lawyer or the like. The costs of the parties' representatives will be covered by the state. The arrangement constitutes a form of legal aid provided by the state.

When the Commission has completed its investigation of an area, it will issue a report indicating who, in the view of the Commission, owns the land and whether there are others who have rights of use there. Finnmarkseiendommen is obliged to issue a written statement concerning its views on the Commission's report.

Finnmarkseiendommen shall also arrange for official registration of the identified rights that it agrees exist. If the parties do not agree that the Finnmark Commission's conclusion is correct, they may request the Commission to mediate between them.

If there is still disagreement concerning rights in areas investigated by the Finnmark Commission, the parties may bring the case before **the Uncultivated Land Tribunal for Finnmark**. This is a special court that passes legally binding judgments. It is up to the private parties to request that the case be reviewed by the Tribunal. The Tribunal will only consider disputes concerning rights to Finnmarkseiendommen's land.

As in an ordinary court, it is up to the parties to produce evidence to support their claims. The state covers necessary costs incurred by the parties in cases where Finnmarkseiendommen has opposed a conclusion of the Commission that other parties have rights to the land. If two private parties bring a case before the Tribunal, the ordinary rules concerning coverage of legal costs apply. This means that, in principle, each party must cover its own costs unless one of the parties loses the case entirely. Regardless of this, no court fee shall be paid for bringing a case before the Uncultivated Land Tribunal.

Judgments of the Uncultivated Land Tribunal may be appealed. In such cases, appeals are made directly to the Supreme Court.

Finnmarkseiendommen (pages 8-9)

When the Finnmark Act enters into force, **all land in Finnmark** currently administered by Statskog SF will be transferred to a new body called Finnmarkseiendommen (*Finnmárkkuopmodat*). The Government has decided that the name of Statskog SF shall be changed to Norsk Utmark SF (Norwegian Uncultivated Land SF) This change will have no consequence for the transfer of land in Finnmark to Finnmarkseiendommen.

Finnmarkseiendommen is to be governed by a **board** consisting of six persons. Finnmark

County Council and the Sami Parliament will each elect three board members. All board members must reside in Finnmark. The board itself decides who shall be chairman and vice-chairman. If none of the members obtains a majority of votes, which of the six members shall be chairman and vice-chairman shall be decided by Finnmark County Council in years ending on an odd number and by the Sami Parliament in years ending on an even number.

In most cases, the board's decisions are made on the basis of a simple majority. In the event of tied votes, the chairman shall have the casting vote.

In addition to the board, Finnmarkseiendommen shall have a **Control Committee** consisting of three members. Among other things, the Control Committee will control that the activities of Finnmarkseiendommen are carried out in compliance with the Finnmark Act and other legislation, and approve loans and distribution of surplus assets. Finnmark County Council, the Sami Parliament and the King appoint one member each.

Finnmarkseiendommen is an independent legal entity and will, in principle, **own the land in the same way as a private landowner**. This means that Finnmarkseiendommen can, as the basic principle, decide how the land is to be utilized.

However, there are a number of important **exceptions** from this. Firstly, **the Finnmark Act** itself contains important provisions concerning the administration of the land owned by Finnmarkseiendommen. According to the provisions of chapter 3, residents of Finnmark shall have certain rights for, among other things, hunting, fishing and cloudberry picking on this land. (See the section on management of renewable resources.)

The state may also designate areas of Finnmarkseiendommen's land as national parks (section 19). This kind of decision entails the prohibition of certain types of activity in the areas to which the decision applies. In addition, there are special procedural rules for Finnmarkseiendommen's decisions concerning changes in the use of uncultivated areas (section 10). All of these rules involve restrictions on Finnmarkseiendommen's right to decide over the land it owns.

Secondly, all **public management tools** apply to the same extent on Finnmarkseiendommen's land as they do on other private land, for example the right of the municipality to land-use planning pursuant to *the Building and Planning Act*. Finnmarkseiendommen may not oppose regulation of the use of land in this way by individual municipalities.

Prohibition of certain types of activity by public authorities applies on Finnmarkseiendommen's land in the same way as it does everywhere else. Examples of this are prohibition of motor traffic on uncultivated land and prohibition of hunting of protected animal species. The same applies to the *public right of access to and passage through uncultivated land*. The state, the county authority and the municipality may also expropriate land from Finnmarkseiendommen to the same extent as from other private landowners. To sum up, one can say that Finnmarkseiendommen as a landowner is in no exceptional position in relation to the state's or the municipality's freedom to make decisions restricting a landowner's right of disposal.

The Finnmark Act has separate provisions concerning decisions relating to *changed use of uncultivated land* (section 10). Before the board of Finnmarkseiendommen makes decisions in such cases, an assessment shall be made of the significance of the change for Sami culture, reindeer husbandry, use of uncultivated areas, commercial activity and social life. The *Sami Parliament's guidelines* for changed use of uncultivated land shall

be followed when making this assessment. Furthermore, special voting rules apply to the board's consideration of such cases (see section 9 and section 10, second and third paragraph). In this way, the Act ensures that Sami interests are safeguarded when the board makes decisions of significance for uncultivated areas where Sami interests are represented.

THE BUILDING AND PLANNING ACT (textbox page 8)

The Building and Planning Act contains provisions concerning land-use planning and processing of applications for building permits. The Act is the municipalities' most important instrument for management of land use in the municipality. The Municipal Council may adopt overall land-use plans and more detailed zoning plans that provide the framework for the types of activity that may take place in the various areas of the municipality. The state too may adopt a zoning plan if necessary in order to implement initiatives of major social importance.

Conditions may also be stipulated for activities that may be carried out in the various parts of the municipality. For example, the municipality may decide that industrial activities may take place in a specific area, while stipulating limitations on emissions and noise levels for the industries subsequently established in the area.

The county authority, neighbouring municipalities and the competent state authorities may raise objections to the municipality's proposals for land-use plans and zoning plans. In such case, the land-use plan or zoning plan must be sent to the Ministry for final approval. The right to raise objections does not imply the right to refuse adoption of the zoning plan, but it may be demanded that the matter be decided by the Ministry. The Sami Parliament has a right to raise objections in matters that affect the protection of Sami cultural heritage.

RIGHT OF ACCESS TO AND PASSAGE THROUGH UNCULTIVATED LAND (first textbox page 9)

Section 2, paragraph 1, of the Act relating to outdoor recreation reads as follows:

“Any person is entitled to access to and passage through uncultivated land on foot at all times of year, provided that consideration and due care is shown.”

By “uncultivated land” is meant land that is not tilled, typically mountain areas, forest, etc. The Act relating to outdoor recreation will fully apply on Finnmarkseiendommen's land. Everyone – including persons resident outside Finnmark – will therefore have free access to uncultivated areas on Finnmarkseiendommen's land.

On the other hand, there is a general ban on motor traffic on uncultivated land (section 3 of the Act relating to motor traffic on uncultivated land and in watercourses). This Act will also fully apply on Finnmarkseiendommen's land. Finnmarkseiendommen may not permit motor traffic on uncultivated areas of its land in violation of this Act. The municipality may however permit this on certain conditions.

WHAT IS MEANT BY “CHANGED USE OF UNCULTIVATED LAND”? (second textbox page 9)

In order that an initiative shall be regarded as “changed use of uncultivated land” it must

have marked physical and practical consequences for the use of uncultivated areas. Such an initiative must also be of a certain duration in order that it may be stated that the use of the uncultivated land has been “changed”. Typical examples are building of houses and cabins, roadbuilding, initiation of mining operations and construction of windmill parks.

It is not regarded as “changed use” if rules are adopted that only concern the use of uncultivated land as uncultivated land. For example, it does not constitute “changed use of uncultivated land” if Finnmarkseiendommen adopts rules concerning distribution of the resources of uncultivated land between various groups or concerning restrictions on hunting and fishing.

Management of renewable resources (pages 10-11)

One of the most important purposes of the Act is to give the population of Finnmark greater influence on the administration of the land in the county. Chapter 3 of the Finnmark Act provides rules concerning *the management of renewable natural resources on Finnmarkseiendommen’s land*.

The local population should have the right to exploit local natural resources to a greater extent than anyone else. Several levels of rights have therefore been set up, defined according to how closely people are associated with the various resources.

All residents of the municipality concerned are entitled to exploit certain natural resources within the municipal boundaries, including gathering of eggs and down and limited felling of trees. This is the most extensive level of rights. At the next level, all residents of Finnmark have the right, among other things, to hunt, fish and pick cloudberries. At the most general level of rights, the public, including persons not resident in Finnmark, have access to hunt and trap small game, to fish with a rod and line and to pick cloudberries for their own domestic use.

The provisions of the Finnmark Act concerning management of natural resources are restricted by the provisions of other Acts, such as the Wildlife Act and the Act relating to salmonids and fresh-water fish, etc., which, for example, include provisions concerning prohibition of fishing with nets and hunting at different times of the year.

Besides this, Finnmarkseiendommen has broad authority to control and to issue further rules concerning exploitation and administration of natural resources on its land (see text box). For example, a local fishermen’s association may be assigned the right to manage fishing in a river. Finnmarkseiendommen may also decide that exploitation of natural resources requires individual permits, and may issue permits entitling exploitation of natural resources in excess of the rights granted by the Act. A permit is always required for hunting, trapping and fishing, for example in the form of a hunting or fishing card. A fee may be charged for the permit, which may vary in size for residents of the municipality, for residents of other parts of Finnmark and for other members of the public.

THE GUIDELINES OF THE SAMI PARLIAMENT (textbox page 10)

The Sami Parliament may issue guidelines for assessment of the effects of decisions concerning changed use of uncultivated land on Sami culture, reindeer husbandry, use of uncultivated areas, commercial activity and social life (section 4). The Sami Parliament's guidelines shall be followed when making such assessments.

The guidelines only regulate assessment of the effects of the different initiatives on Sami interests. The guidelines are not binding for what decisions may be made by the public authorities or Finnmarkseiendommen. They do not decide how regard for Sami interests shall be balanced against other interests, such as business development or the need for development of infrastructure. The municipality may, for example, adopt a zoning plan pursuant to the Building and Planning Act entailing reallocation of the resources of uncultivated land even if this may be at the expense of Sami interests.

The Sami Parliament's guidelines are of importance to all public authorities that plan initiatives in Finnmark entailing reallocation of uncultivated areas that may have significance for Sami interests. For example, the municipality must follow the guidelines if it wishes to adopt a rezoning of uncultivated land that may have significance for Sami reindeer husbandry or other commercial activity. The state must follow the guidelines if a national road development is planned on uncultivated land, that may have an impact on Sami interests. The board of Finnmarkseiendommen must also pay regard to the guidelines if it wishes to decide changed use of uncultivated areas of its land (section 10).

MANAGEMENT OF RENEWABLE RESOURCES ON FINNMARKSEIENDOMMEN'S LAND (textbox page 11)

All residents of an individual municipality have the right to:

- fish for freshwater fish with nets
- fish for anadromous salmonids with fixed gear in the sea
- gather eggs and down
- fell deciduous trees for domestic fuel
- cut peat for fuel and other domestic purposes
- remove deciduous trees for use as fence posts and poles for hay-drying racks in the reindeer husbandry and agriculture industries

All residents of Finnmark have the right to:

- hunt big game
- hunt and trap small game
- fish in watercourses with a rod and line
- pick cloudberries
- remove timber for home crafts

Everyone – including persons resident outside of Finnmark – have access to:

- hunt and trap small game
- fish in watercourses with a rod and line
- pick cloudberries for their own domestic use

A permit is always required for hunting, trapping and fishing. Permits to fish for anadromous salmonids in the sea is preferably reserved for persons associated with primary industries who are permanently resident in the area.

The municipality may for 10 years at a time grant individuals or groups the right to exploit individual resources in specific areas close to the rural district concerned. The municipality's decision may be appealed to Finnmarkseiendommen.

Finnmarkseiendommen may:

- assign local organizations for 10 years at a time the right to manage exploitation of natural resources in specific areas
- give other groups or the general public permission to exploit natural resources in excess of the rights granted by the Act
- issue further rules concerning exploitation of renewable resources, including the granting of individual permits and charging of fees for such permits
- stipulate restrictions on exploitation of resources in specific areas. The decision may be appealed to the Ministry.

Amendments to other Acts (page 12)

The Finnmark Act contains certain amendments to other Acts of significance for Finnmarkseiendommen's right of disposal over the land it is to take over. The most important amendments are to **the Mining Act**. Before beginning to search for mineral deposits in Finnmark, Finnmarkseiendommen, the Sami Parliament and the local reindeer husbandry boards shall be notified in writing. When the mining authorities assess applications for the right to exploit the mineral deposits in a specific area, a major emphasis shall be placed on the regard for Sami interests. The Sami Parliament, the county authority and the municipality shall be given the opportunity to express their views on the matter. If the Sami Parliament or Finnmarkseiendommen objects to the application being granted, the matter shall be decided by the Ministry of Trade and Industry.

It has also been provided that the King may issue provisions stipulating higher fees to the landowner for mining operations on Finnmarkseiendommen's land than apply in the case of other landowners.

Entry into force of the Act (page 13)

The provisions of the Act shall not apply until they enter into force. This takes place following a decision by the King in Council. The individual parts of the Act may be brought into force on different dates. It is the aim of the Government, the Sami Parliament and Finnmark County Council that the Finnmark Act shall enter into force as soon as possible. However, a certain amount of preparatory work must be carried out before this can take place.

Before Statskog's land can be transferred to **Finnmarkseiendommen** and the provisions concerning Finnmarkseiendommen be brought into force, Finnmarkseiendommen must be established and able to take over the administration of the large land areas. A board or the like must therefore be established that is able to make all the necessary practical preparations for Finnmarkseiendommen to function fully when the land areas are transferred.

Transitional provisions must be adopted deciding the authority that this board shall have. Among other things, the board must be able to enter into agreements that are binding for Finnmarkseiendommen, for example concerning renting or purchase of premises, hiring of necessary labour, etc. It is intended that such a board and transitional provisions shall be in place by 1 January 2006.

The board must be allowed a certain amount of time for necessary preparations before Statskog's land is transferred to Finnmarkseiendommen. It is intended that the provisions that apply to Finnmarkseiendommen shall be brought into force during the second quarter of 2006 (chapters 1 to 3).

More work must be done before the provisions concerning the **Finnmark Commission** and the **Uncultivated Land Tribunal** can be brought into force so that the Commission can commence its investigations. Agreements must be entered into regarding the renting of premises, etc., and a secretariat must be set up. Detailed guidelines for the work of the Commission must be drafted, and the Storting has stipulated that these shall be circulated for comments. Persons qualified to sit as members of the Commission and the Uncultivated Land Tribunal must also be found. The chairman of the Commission shall fulfil the requirements regarding Supreme Court judges. In the Tribunal, at least three of the members shall fulfil these requirements. The members must also be well informed concerning the conditions obtaining in Finnmark.

It is important that these matters are attended to without haste, using the necessary time to find the persons best qualified to sit on the Commission and the Tribunal. It is intended that the provisions concerning the Commission and the Tribunal (chapter 5) shall enter into force on 1 January 2007.

Outline of the Act (page 14)

The Act consists of six chapters.

Chapter 1 provides general provisions of significance for interpretation and application of the whole Act. The Act applies to real property and watercourses in Finnmark. It applies as far out to sea as the private right of ownership extends, i.e. to an approximate depth of two metres.

Chapter 2 provides rules concerning the new body Finnmarkseiendommen, including the composition of the board and Control Committee and concerning procedures.

Chapter 3 contains provisions concerning the administration of renewable resources, including hunting, fishing and felling of trees for firewood on Finnmarkseiendommen's land.

Chapter 4 concerns fishing in the Tana and Neiden watercourses. The Finnmark Act will not interfere with existing rights to fish in these watercourses. The King may issue

regulations prescribing further rules concerning the administration and exercise of such fishing.

Chapter 5 concerns the two new bodies, the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark. The Finnmark Commission shall examine the whole area transferred to Finnmarkseiendommen from Statskog and investigate what rights of use and ownership exist there. Disputes concerning rights in the areas investigated by the Finnmark Commission may be brought before the Uncultivated Land Tribunal for Finnmark.

Chapter 6 contains provisions concerning the entry into force of the Act, the transfer of the land from Statskog to Finnmarkseiendommen and provisions concerning amendments to other Acts.

MILESTONES IN THE HISTORY OF THE FINNMARK

ACT: (first textbox page 14)

The work on the Finnmark Act originated in the need to clarify the state's relationship to the Sami people, and to recognize the Sami people's right to use and exploit natural resources consistent with its culture. The following milestones in the development of Sami law form the basis of the work on the Finnmark Act:

- The dispute concerning the development of the Alta-Kautokeino watercourse in 1980
- The Sami Rights Commission appointed in 1980
- The Sami Parliament established pursuant to the Sami Act of 12 June 1987
- Adoption of section 110a of the Constitution concerning the Sami people on 27 May 1988
- The report of the Sami Rights Commission NOU 1997: 4 The natural resource base for Sami culture, submitted January 1997
- The Government's Finnmark Bill submitted 4 April 2003 in Proposition No. 53 (2002-2003) to the Odelsting
- The Finnmark Act adopted by the Storting on 24 May 2005 (Odelsting) and 8 June 2005 (Lagting), and sanctioned by the King in Council on 17 June 2005

In the two years during which the Storting's Standing Committee on Justice worked on the Act, the Committee held public hearings in June 2003 and visited Finnmark in autumn 2003.

The Committee also held four consultations with the Sami Parliament and Finnmark County Council to discuss the Government's Bill. The Standing Committee's Bill was submitted for comment to the Sami Parliament and Finnmark County Council. A unanimous Sami Parliament and a large majority of Finnmark County Council supported the Bill, which was then finally adopted by the Storting.

Further information: (second textbox page 14)

The website of the Ministry of Justice: www.jd.dep.no

The text of the Act can be found at Lovdata's website: www.lovdata.no (*)

The Recommendations of the Standing Committee on Justice to the Odelsting, Innst. O. No. 80 (2004-2005): www.stortinget.no

Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act) (pages 15-26)

Chapter 1 General provisions

Section 1 The purpose of the Act

The purpose of the Act is to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life.

Section 2 Scope

The Act shall apply to real property and watercourses with natural resources in the county of Finnmark. On the shoreline, the Act shall apply as far out to sea as private right of ownership extends.

Section 3 Relationship to international law

The Act shall apply with the limitations that follow from ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing in transboundary watercourses.

Section 4 The guidelines of the Sami Parliament regarding changes in the use of uncultivated land

The Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines shall be approved by the Ministry. The Ministry shall examine whether the guidelines lie within the framework laid down in the first sentence and whether they have been drawn up in an appropriate manner.

In matters concerning changes in the use of uncultivated land, state, county and municipal authorities shall assess the significance such changes will have for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines of the Sami Parliament shall be followed in the assessment of Sami interests pursuant to the first sentence.

Section 5 *Relationship to established rights*

Through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark.

This Act does not interfere with collective and individual rights acquired by Sami and other people through prescription or immemorial usage. This also applies to the rights held by reindeer herders on such a basis or pursuant to the Reindeer Herding Act.

In order to establish the scope and content of the rights held by Sami and other people on the basis of prescription or immemorial usage or on some other basis, a commission shall be established to investigate rights to land and water in Finnmark and a special court to settle disputes concerning such rights, cf. chapter 5.

Chapter 2 Finnmarkseiendommen (“the Finnmark Estate”)

Section 6 *The legal position of Finnmarkseiendommen*

Finnmarkseiendommen (Finnmárkkkuopmodat) (“the Finnmark Estate”) is an independent legal entity with its seat in Finnmark which shall administer the land and natural resources, etc. that it owns in compliance with the purpose and other provisions of this Act.

Section 7 *The board of Finnmarkseiendommen*

Finnmarkseiendommen shall be governed by a board consisting of six persons.

Finnmark County Council and the Sami Parliament shall each elect three members, each with a personal deputy. The members and deputies shall be resident in Finnmark. Among the members elected by the Sami Parliament at least one board member and that person’s deputy shall be representatives for reindeer husbandry. Both as members and as deputies, both bodies shall elect both women and men. The body shall elect members and deputies collectively. Employees of Finnmarkseiendommen, Finnmarkseiendommen’s auditor and members and deputies of the Control Committee may not be elected as board members or deputies.

The board members and deputies are elected for a term of up to four years at a time. No-one may be a board member for longer than ten years consecutively.

Board members and deputies may be removed by the body that elected them. The body shall in such a case elect new members and deputies collectively.

Board members and deputies have a right to withdraw before their period of service expires if there are special reasons for so doing. The board and the body that has elected the member concerned shall be given reasonable notice. The fourth paragraph, second sentence, shall apply accordingly.

The board shall itself elect a chairman and vice-chairman from among its members. If no-one obtains a majority of votes, which of the six members shall be chairman and vice-chairman shall be decided by Finnmark County Council in years ending on an odd number and by the Sami Parliament in years ending on an even number.

Section 8 *Proportionally representative elections*

Elections of board members and deputies shall be held as proportionally representative

elections as mentioned in section 37 of the Local Government Act if so required by at least one member of the body.

If in connection with proportionally representative elections it is necessary in order to fulfil the requirement that among the members and deputies there shall be both women and men, candidates of the under-represented sex shall move up on the list with fewest votes of the lists that shall be represented. In the event of tied votes, the list on which candidates of the under-represented sex are to move up shall be decided by drawing lots.

If in connection with proportionally representative elections in the Sami Parliament it is necessary in order to fulfil the requirement that one of the board members and that member's deputy shall be representatives for reindeer husbandry, representatives for reindeer husbandry shall move up on the list that has received fewest votes of the lists that shall be represented and that have such candidates. If there is no such list, the last place on the board shall be given to the representatives for reindeer husbandry on the list that has received most votes of the lists that have such candidates. In the event of tied votes, the list that shall be regarded as having received most or fewest votes shall be decided by drawing lots.

Section 9 The duties and procedures of the board

The board is responsible for management of Finnmarkseiendommen. The board shall ensure that the body is satisfactorily organized. The board shall to the extent necessary provide plans, budget, guidelines and instructions for the body. The board shall implement the investigations it finds necessary for performance of its duties. The board shall implement such investigations if so required by a board member.

The chairman of the board shall ensure that appropriate matters are dealt with by the board and that board meetings are convened in an appropriate manner and with reasonable notice. A board member may require that specific matters be dealt with by the board.

The board shall deal with matters in meetings unless the chairman finds that a matter may be submitted to the board in writing or be dealt with in another satisfactory manner. A board member may require that a matter be dealt with at a meeting of the board.

The board may make decisions when at least five members are present. Such decisions are made by simple majority unless otherwise provided by section 10. In the event of tied votes, the chairman shall have the casting vote.

The board shall submit an annual report to the Control Committee concerning Finnmarkseiendommen's activities. This annual report shall include a particular account of changes in the use of uncultivated land and an assessment of the significance of these changes for the natural resource base for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life.

The board shall fix its own fees. Such fees are to be covered by Finnmarkseiendommen.

Section 10 Matters concerning changes in the use of uncultivated land and transfer of real property, etc.

In matters concerning changes in the use of uncultivated land, Finnmarkseiendommen shall assess the significance a change will have for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines of the Sami Parliament pursuant to section 4 shall be followed in the assessment of Sami interests

pursuant to the first sentence.

Decisions concerning changes in the use of uncultivated land require the support of at least four board members if the whole minority bases its opinion on consideration for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament. If the majority consists of four or less, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. If the Sami Parliament does not ratify the decision of the majority or does not consider the matter within a reasonable time, a collective majority of the board may demand that Finnmarkseiendommen place the matter before the King, who shall then decide whether the decision shall be approved. Such approval of the decision has the same effect as such a decision by the board.

If a proposal concerning changes in the use of uncultivated land that either applies only to Karasjok, Kautokeino, Nesseby, Porsanger and Tana municipalities or only to the remainder of Finnmark is supported by three and only three members of the board, three members of the board may collectively demand that the matter be reconsidered by the board. The last member elected by Finnmark County Council shall not take part in this reconsideration if the matter concerns changes in the use of uncultivated land in Karasjok, Kautokeino, Nesseby, Porsanger or Tana municipalities. If the matter concerns changes in the use of uncultivated land in the remainder of Finnmark, the last board member elected by the Sami Parliament who does not represent reindeer husbandry shall not take part. The matter shall be decided by a simple majority. If changes in the use of uncultivated land are decided with the support of three and only three members of the board and the whole minority bases its opinion on consideration for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life assessed on the basis of the guidelines of the Sami Parliament, a collective minority may during the board meeting demand that the matter be placed before the Sami Parliament. The second paragraph, third and fourth sentence, shall apply correspondingly.

The second and third paragraphs shall apply correspondingly for authorization of employees and other persons to make decisions concerning changes in the use of uncultivated land.

The first to fourth paragraphs shall apply correspondingly in respect of matters concerning transfer and leasing of uncultivated land or rights to uncultivated land. The provisions of this section shall not apply to matters pursuant to chapter 3.

Decisions concerning transfer of real property adopted with the support of less than four members of the board are subject to the approval of the Sami Parliament and Finnmark County Council. The first sentence shall not apply to transfer of properties that have been partitioned by public division proceedings and that have been designated for development in plans pursuant to the Planning and Building Act or sites that have been parcelled out and developed.

Section 11 Matters concerning the employees' working conditions and legal position

A representative shall be elected by and from the employees of Finnmarkseiendommen, who shall attend meetings of Finnmarkseiendommen's board when considering matters concerning the employees' working conditions or legal position. The employees' representative shall be entitled to speak and to submit proposals, but not to vote.

The employees' representative shall not be entitled to take part in the consideration of matters concerning the employer's preparations for negotiations with employees, labour

disputes, legal disputes with employee organizations or termination of collective pay agreements.

Section 12 Representation

The board represents Finnmarkseiendommen externally and signs on its behalf.

The board may assign to one or more board members or other named persons the right to sign on behalf of Finnmarkseiendommen. The right to sign on behalf of Finnmarkseiendommen may be withdrawn at any time.

If any person who represents Finnmarkseiendommen externally pursuant to this provision has exceeded his or her authority, the transaction shall not be binding for Finnmarkseiendommen when Finnmarkseiendommen establishes that the contracting party understood or should have understood that the authority was exceeded and that it would be contrary to fair practice to uphold the transaction.

Section 13 Accounts, audit and registration

Finnmarkseiendommen shall keep accounts in compliance with the provisions of the Accounting Act.

The accounts shall be audited by a state authorized public accountant. The auditor shall for each accounting year submit an auditor's report to the board of Finnmarkseiendommen.

Finnmarkseiendommen shall be registered in the Register of Business Enterprises.

Section 14 Mortgage and debt proceedings

Real property owned by Finnmarkseiendommen and limited rights held by Finnmarkseiendommen in real property owned by others may not be offered as security for debt or other commitments and may not be subject to attachment by creditors. This shall not however apply to properties and limited rights to properties that have been partitioned by public division proceedings and that have been designated for development in plans pursuant to the Planning and Building Act or sites that have been parcelled out and developed.

Bankruptcy or debt settlement proceedings may not be instituted regarding Finnmarkseiendommen.

Section 15 Distribution of surplus assets

If Finnmarkseiendommen in bank deposits, cash and the like holds assets which, less any liabilities, exceed reserves necessary for ensuring continued operations, the board may decide that such a surplus shall wholly or partly be paid to the county of Finnmark or the Sami Parliament or used for the common good of the county's inhabitants.

Section 16 The Control Committee

Supervision of the board's activities is conducted by a Control Committee consisting of three members. Finnmark County Council, the Sami Parliament and the King shall each appoint a member and a personal deputy. As member and deputy, each body shall appoint a man and a woman. The member and deputy appointed by the state shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The members

and deputies shall be appointed for a period of four years at a time. No-one may be a member for longer than ten years consecutively. The member appointed by the state shall chair the Committee.

The Control Committee shall:

- a) control that the activities of Finnmarkseiendommen are carried out in compliance with the Finnmark Act and other legislation,
- b) select one or more state authorized public accountants to audit Finnmarkseiendommen's accounts,
- c) approve Finnmarkseiendommen's annual accounts, annual report and auditor's report,
- d) approve the fees payable to the board,
- e) approve loans and guarantees and
- f) approve distribution of surplus assets.

In the event of disagreement, decisions shall be made by the majority. Decisions concerning (e) and (f) in the second paragraph require unanimity.

The Control Committee shall have access to all available information held by Finnmarkseiendommen that it needs in order to perform its duties pursuant to this section.

The Control Committee shall submit an annual report to Finnmark County Council, the Sami Parliament and the Ministry. In the report, the Control Committee shall provide an account of its control activities, an assessment of the board's annual report and the matters dealt with there and an assessment of how the present Act functions and whether any amendments to the Act are desired.

The expenses of the Control Committee are to be covered by Finnmarkseiendommen. The fees of members and deputies are to be covered by the body that appointed them.

Section 17 Criminal liability and liability for compensation of board members and others

Members of the board, persons authorized to sign on behalf of Finnmarkseiendommen, auditors, senior employees authorized to make decisions on behalf of Finnmarkseiendommen within restricted areas of responsibility or members of the Control Committee who show gross lack of judgment in the execution of their responsibilities in respect of Finnmarkseiendommen shall be liable to fines or under aggravating circumstances to imprisonment for a term not exceeding one year.

Members of the board who wilfully or negligently have inflicted a loss on Finnmarkseiendommen during the performance of their duties are obliged to compensate the loss. The Control Committee shall decide whether a claim for compensation shall be made.

Section 18 Relationship to the Freedom of Information Act and the Public Administration Act

To Finnmarkseiendommen, chapter II of the Public Administration Act concerning disqualification, section 11 concerning duty to provide guidance, section 11a concerning

time spent on dealing with a case and provisional replies and sections 13 to 13f concerning duty of secrecy shall apply correspondingly. Finnmarkseiendommen shall give the right holders in an area prior notification and the opportunity to express their opinions pursuant to the provisions of section 16 of the Public Administration Act before Finnmarkseiendommen makes a decision that may have legal or actual consequences for them.

Finnmarkseiendommen's case documents are public pursuant to the provisions of the Freedom of Information Act. In the event of a rejection of a request for access to a document, an appeal on the question of the power to exempt the document from public disclosure lies to the County Governor of Finnmark.

Section 19 National parks on Finnmarkseiendommen's land

Land owned by Finnmarkseiendommen may be designated as national parks pursuant to the provisions of the Nature Conservation Act. When drafting rules of use, emphasis shall be placed on the possibility of continuing traditional use. Finnmarkseiendommen and affected holders of rights of use may demand compensation for financial loss pursuant to the provisions of section 20b of the Nature Conservation Act.

Section 20 Relationship to future legislation

Finnmarkseiendommen has no protection against change, reduction or revocation of its legal position or rights by statute.

Chapter 3 Renewable resources on Finnmarkseiendommen's land

Section 21 Main principles for management

Finnmarkseiendommen shall manage the renewable resources on its land in compliance with the purpose of this Act and within the frameworks provided by the Wildlife Act, the Act relating to salmonids and fresh-water fish and other legislation. The diversity and productivity of nature shall be preserved.

The provisions of this chapter shall not apply in so far as otherwise established by special legal relations.

Section 22 Rights of the persons resident in municipalities

Pursuant to the provisions of this chapter and within the frameworks provided by other legislation, residents of a municipality in the county of Finnmark have on Finnmarkseiendommen's land in the municipality the right to:

- a) fish for freshwater fish with nets,
- b) fish for anadromous salmonids with fixed gear in the sea,
- c) gather eggs and down,
- d) fell deciduous trees for domestic fuel,
- e) cut peat for fuel and other domestic purposes and

- f) remove deciduous trees for use as fence posts and poles for hay-drying racks in the reindeer husbandry and agriculture industries.

Reindeer herders have the same right as the persons resident in the municipality for the period during which reindeer husbandry takes place there.

Section 23 Rights of persons resident in Finnmark

In compliance with the provisions of this chapter and within the framework provided by other legislation, persons residing in the county of Finnmark have on Finnmarkseiendommen's land the right to:

- a) hunt big game,
- b) hunt and trap small game,
- c) fish in watercourses with a rod and line,
- d) pick cloudberries and
- e) remove timber for home crafts.

Agricultural holdings shall have grazing rights for as large a herd as can be winter-fed on the holding.

Section 24 Special rights to local utilization

Individuals or groups of persons who are associated with a rural district and whose livelihood is wholly or partly associated with the utilization of renewable resources in the vicinity of the rural district may for up to ten years at a time be assigned special rights by the municipality to utilize renewable resources as mentioned in sections 22 and 23 in specified areas of the municipality. When establishing the area and the specific conditions, the use traditionally made of the area by people associated with the rural district shall be taken into consideration. The area shall preferably constitute a uninterrupted area in the vicinity of the rural district.

Finnmarkseiendommen may issue general rules concerning the procedures and assessment of matters pursuant to this section. Finnmarkseiendommen shall be the appeal body for decisions made by the municipality. The procedures followed by the municipalities and Finnmarkseiendommen are subject to the Public Administration Act.

This section does not apply to hunting of large and small game, fishing in watercourses with a rod and line and fishing with fixed gear in the sea for anadromous salmonids.

Section 25 Access for other persons

In compliance with the provisions of this chapter and within the frameworks provided by other legislation, all persons have the access to hunt and trap small game and to fish with a rod and line in watercourses on Finnmarkseiendommen's land and to pick cloudberries for their own domestic use.

Finnmarkseiendommen may grant other persons than those resident in the municipality or county further access to renewable resources as referred to in sections 22 and 23.

Section 26 Local management of hunting and fishing

For up to ten years at a time, Finnmarkseiendommen may grant special rights to administer hunting, trapping and fishing in specific areas of Finnmarkseiendommen's land to local organizations and associations whose purpose lies in the general promotion of hunting, trapping and fishing.

Section 27 Further conditions for utilization of renewable resources and restrictions on such utilization

Finnmarkseiendommen may issue further rules for utilization of renewable resources as mentioned in section 22 (a) to (f) and section 23 (a) to (e). Finnmarkseiendommen may stipulate that utilization is subject to issue of a permit. Conditions may be provided in the permits.

For hunting, trapping and fishing, permission is always required. Persons who are granted permission shall be issued cards or the like indicating that they have permission. With the consent of the Ministry, Finnmarkseiendommen may make exceptions to the provisions of this paragraph.

For permission to hunt, trap and fish, Finnmarkseiendommen may claim a fee. The fee for persons resident in Finnmark shall not exceed double the fee charged to the persons resident in a municipality. Fees may not be charged in connection with assignment of special rights pursuant to section 24.

Fishing for anadromous salmonids in the sea with fixed gear may only be carried out at places indicated by Finnmarkseiendommen.

For specified areas, Finnmarkseiendommen may lay down restrictions on access to exploitation of renewable resources as referred to in the first paragraph if due consideration for any such resource so indicates. Municipalities, authorities with responsibility for wildlife, fisheries, etc. and organizations for the affected users shall be consulted in advance.

In connection with restrictions on the exploitation of renewable resources as referred to in the first paragraph, due consideration shall be taken as regards the use of the resource by the various user groups.

Finnmarkseiendommen's decisions concerning restrictions as referred to in the fifth and sixth paragraphs may be appealed to the Ministry pursuant to the provisions of the Public Administration Act chapter VI. The decision of the Ministry may not be appealed.

Chapter 4 Tana and Neiden

Section 28 Fishing in the Tana and Neiden watercourses

In the Tana and Neiden watercourses, the local population holds special rights to fishing on the basis of statutes, immemorial usage and local customs.

The King may issue regulations prescribing further rules concerning administration and exercise of the fishing. Such regulations shall make provision for a local, rights-based administration of fishing resources consistent with agreements with Finland concerning fishing in the Tana and Neiden watercourses.

The preparation of regulations and negotiations with Finland concerning fishing in the Tana and Neiden watercourses shall be conducted in consultation with the Sami

Parliament, affected municipalities and holders of special rights to fishing in these watercourses.

Chapter 5 Survey and recognition of existing rights

I The Finnmark Commission

Section 29 The Finnmark Commission

A commission (the Finnmark Commission) shall be established, which, on the basis of current national law, shall investigate rights of use and ownership to the land to be taken over by Finnmarkseiendommen pursuant to section 49.

The King shall appoint the members of the Finnmark Commission. The Finnmark Commission shall consist of a chairman and four other members. The chairman shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. Two of the other members shall fulfil the requirements regarding district court judges. At least two members shall be resident in or otherwise have a strong affiliation to the county of Finnmark.

Section 30 Delimitation of fields of investigation, etc.

The Finnmark Commission shall establish the fields for investigation and decide the order of investigation. When so deciding, emphasis shall, inter alia, be placed on due regard for a natural and appropriate delimitation of the field as regards extent and legal and historical contexts and the need to clarify the legal relations.

The Finnmark Commission may restrict or extend a field after initiating the investigation if this is necessary for the creation of a natural and appropriate delimitation.

The Finnmark Commission may omit to investigate rights that are clearly inappropriate for investigation by the Commission. When so deciding, emphasis shall, inter alia, be placed on the nature of the right and the basis on which it is founded.

Section 31 Notification of potential right holders

Investigation in respect of a field shall be announced with a request to potential right holders to make themselves known. Such announcement shall be made in the Norwegian Gazette, in a newspaper that is generally read at the place concerned and locally in any other appropriate manner.

Reindeer husbandry organizations and other representatives for user interests in the field concerned as well as the Sami Parliament, Finnmark County Council, Finnmarkseiendommen and affected municipalities shall be notified separately.

Section 32 Responsibility for obtaining information concerning a matter

The Finnmark Commission is itself responsible for obtaining sufficient information concerning a matter. The Commission may in the manner it finds appropriate obtain statements, documents and other material and conduct surveys and investigations, etc. concerning actual and legal circumstances that may be significant for the Commission's conclusions.

The parties have the right to give an account of the actual circumstances and provide

evidence significant for the Commission's conclusions. The parties may request the implementation of measures pursuant to the first paragraph. The Finnmark Commission may refuse such a request if it finds it to be unfounded or that it would involve excessive delays or costs to comply with it.

In order to safeguard the interests of the parties, the Finnmark Commission may appoint representatives from various interest groups to monitor the work of the Commission. The costs shall be covered by the state.

Section 33 *The Finnmark Commission's report*

After investigating a field, the Commission shall issue a report containing information concerning:

- a) who, in the view of the Commission, are owners of the land
- b) what rights of use exist in the Commission's view
- c) the circumstances on which the Commission bases its conclusions

The report shall state whether the conclusions are unanimous. If this is not the case, it shall be stated who disagrees and which points the disagreement concerns. Grounds shall be given for the conclusions of both the majority and the minority.

Following submission of the report, it shall be announced in the manner described in section 31. It is sufficient that an announcement pursuant to section 31, first paragraph contains a brief summary of the conclusions and information concerning where interested persons can obtain the report in its entirety. In such an announcement notification shall be given of the final date for bringing disputes before the Uncultivated Land Tribunal.

Section 34 *Consideration by Finnmarkseiendommen*

Finnmarkseiendommen shall without undue delay assess the Commission's conclusions. In the case of decisions to accept the conclusions of the Commission that other parties hold rights, section 10, sixth paragraph shall apply correspondingly.

To the extent that Finnmarkseiendommen agrees with the Commission that other parties hold rights, Finnmarkseiendommen is obliged to state this in writing, and without undue delay ensure that the right is officially registered or, if appropriate, bring the matter before the Land Consolidation Court pursuant to section 45.

Section 35 *Negotiations*

Parties that are not in agreement with the Commission's conclusions, or that need assistance in ensuring that the conclusions are laid down in a binding agreement may request the Finnmark Commission to mediate. The Commission's obligation to mediate ceases to apply when the time limit for bringing the dispute before the Uncultivated Land Tribunal has expired.

II The Uncultivated Land Tribunal for Finnmark

Section 36 *The Uncultivated Land Tribunal for Finnmark*

A special court (the Uncultivated Land Tribunal for Finnmark) shall be established, which shall consider disputes concerning rights that arise after the Finnmark Commission

has investigated a field.

The members of the Uncultivated Land Tribunals shall be appointed by the King. The Uncultivated Land Tribunal shall consist of a chairman, a vice-chairman, three permanent members and two deputy members. The chairman, the vice-chairman and one of the other members shall fulfil the requirements of the Courts of Justice Act regarding Supreme Court judges. The same applies to one of the deputy members, who shall function as a deputy for these three members.

Matters pertaining to the jurisdiction of the Uncultivated Land Tribunal, may not be brought before the ordinary courts or the Land Consolidation Court unless the Uncultivated Land Tribunal has rejected a case pursuant to section 40 or the limit for instituting legal proceedings pursuant to section 38, first paragraph, has expired and the Uncultivated Land Tribunal shall not consider the case pursuant to section 38, second paragraph.

Section 37 Absence

If any of the permanent members is absent, one of the deputy members is summoned to serve instead of the permanent member who is absent. If the chairman is absent, the vice-chairman shall serve as chairman.

If any of the members of the Uncultivated Land Tribunal is absent after consideration of a case has commenced, proceedings may continue without summoning a deputy member provided that four members are present during the proceedings. In the event of a tied vote, the chairman shall have the casting vote.

Section 38 Summonses

Disputes may be brought before the Uncultivated Land Tribunal by means of written summonses at the latest one year and six months following submission of the report of the Finnmark Commission. The summons shall be signed and shall contain:

- a) the full name and address of the party
- b) a list of the claims made by the party and the circumstances on which they are based
- c) the claim for judgment submitted by the party
- d) the opposite party against whom the claim is made

Even if the time limit pursuant to the first paragraph has expired, the Uncultivated Land Tribunal shall nevertheless deal with cases brought before it before all cases from the same field have been brought to conclusion if it finds such cases appropriate for such consideration and that they can be considered without considerable delay to the court's proceedings. Decisions made pursuant to this paragraph may not be challenged by way of an interlocutory appeal or an appeal proper.

Section 39 Dismissal of cases

Cases found inappropriate for consideration by the Uncultivated Land Tribunal may be wholly or partly dismissed by the court. When so deciding, consideration shall be paid, inter alia, to the nature of the claim and to the basis on which it is made.

Before dismissing a case, the plaintiff shall be given the opportunity to make a statement. The case may be dismissed without summoning the parties to a sitting of the Tribunal.

Dismissal pursuant to this section may not be challenged by way of an interlocutory appeal or an appeal proper.

Section 40 Consolidation of cases, separation, etc.

The Uncultivated Land Tribunal may:

- a) consolidate two or more cases for joint consideration and, in such case, joint decision
- b) separate the proceedings and judgment of one or more claims that are consolidated in a single case or individual issues in dispute concerning the same claim
- c) decide the order in which cases brought will be heard

When making decisions pursuant to the first paragraph, emphasis shall be placed, *inter alia*, on paying due consideration to a natural and appropriate delimitation of the areas of dispute as regards extent, legal and historical context and the need to clarify the legal relations.

Before making decisions pursuant to the first paragraph, the parties shall be given the opportunity to express their views unless this is found to be unnecessary or would result in disproportionate delay or expense.

Decisions pursuant to this section may not be challenged by way of an interlocutory appeal or an appeal proper.

Section 41 Responsibility for obtaining information concerning a case, etc.

The parties are responsible for giving an account of the actual circumstances and evidence significant for deciding the case. The Uncultivated Land Tribunal shall of its own motion obtain the report of the Finnmark Commission and use this as a basis for its consideration of the case. The parties may in addition produce as evidence documents received by, submitted to or issued by the Finnmark Commission.

The Uncultivated Land Tribunal may not receive testimony from the members of the Finnmark Commission or from persons who have carried out work for the Commission in connection with the case.

Court sittings for examination of parties and witnesses outside the main hearing may be held by two members of the Uncultivated Land Tribunal, of which at least one must hold the qualifications required of Supreme Court judges. The Uncultivated Land Tribunal may request that the examination be made by the appropriate district court.

Section 42 Appeals and interlocutory appeals

Decisions of the Uncultivated Land Tribunal may be appealed to the Supreme Court. Section 357 of the Civil Procedure Act shall not apply.

Decisions that, pursuant to the provisions of the Civil Procedure Act, are subject to interlocutory appeal may in a corresponding manner be lodged with the Appeals Committee of the Supreme Court except in cases where an appeal is excluded pursuant to the present Act.

Section 43 Costs of the case

The state shall cover the costs of the Uncultivated Land Tribunal's own activities. The

state shall also cover the necessary costs of the parties in cases concerning claims for rights opposed by Finnmarkseiendommen.

When deciding the question of whether the costs were necessary, the Uncultivated Land Tribunal shall, inter alia, bear in mind that parties with similar interests that are not in conflict with each other should use the same legal and technical assistance. The court shall as early as possible, of its own motion, raise the question where appropriate.

When special grounds so indicate, the Uncultivated Land Tribunal may order a party wholly or partly to carry his costs in conjunction with the case himself. Section 177 of the Civil Procedure Act shall otherwise apply correspondingly.

No fee shall be paid for consideration of cases by the Uncultivated Land Tribunal. Section 8 of Act of 17 December 1982 No. 86 concerning court fees shall apply to appeals and interlocutory appeals against decisions of the Uncultivated Land Tribunal.

III Joint provisions

Section 44 Sami language

Chapter 3 of the Sami Act shall apply to use of the Sami language. Section 3-4, first paragraph, of the Sami Act shall also apply to the Finnmark Commission.

Section 45 Delineation of boundaries and official registration

Legally enforceable judgments by the Uncultivated Land Tribunal and declarations and agreements issued or entered into in accordance with the conclusions of the Finnmark Commission may be brought before the Land Consolidation Court pursuant to section 88 of the Land Consolidation Act. The Land Consolidation Court carries out boundary marking on the ground, fixing of coordinates and survey of the boundaries in accordance with the judgment, declaration or agreement. The provisions concerning land consolidation shall apply correspondingly in so far as they are applicable. The Land Consolidation Court shall sit without lay land consolidation judges. Section 88, fifth paragraph, and section 89, second paragraph, of the Land Consolidation Act shall not apply. In the event of appeal, section 72 shall apply. The court fee pursuant to section 74, first paragraph, shall not be paid. Nor shall the parties pay for the costs of boundary marking, fixing of coordinates and survey of the boundaries. Section 24 of the Land Consolidation Act shall apply to official registration as far as it is applicable.

In respect of rights established by a legally enforceable judgment of the Uncultivated Land Tribunal or by a declaration or agreement in accordance with the conclusions of the Finnmark Commission, the limitations of public law as regards the right to establish or transfer such rights shall not preclude their being officially registered. No fee or document duty shall be paid in connection with the official registration.

Section 46 Relation to other legislation

Chapter 6 of the Courts of Justice Act concerning disqualification and the Freedom of Information Act shall apply to the activities of the Finnmark Commission in so far as they are applicable. In the event of a rejection of a request for access to a document, an appeal on the question of the power to exempt the document from public disclosure lies to the County Governor of Finnmark. The Public Administration Act does not apply to the activities of the Finnmark Commission.

Unless otherwise provided by the present Act, the Courts of Justice Act and the Civil Procedure Act shall apply in so far as they are applicable to the activities of the Uncultivated Land Tribunals.

Section 47 Authority to issue further provisions

The King may issue further provisions concerning the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark, including provisions concerning organization and financial matters, etc.

Chapter 6 Final provisions

Section 48 Entry into force

The Act shall enter into force on the date decided by the King. The King may bring into force the various provisions on different dates.

Section 49 Transitional provisions

The real property in the county of Finnmark to which Statskog SF holds the registered title or which it owns without holding the registered title shall be transferred to Finnmarkseiendommen as soon as chapter 2 of the Act comes into force. This applies correspondingly to restricted rights to real property. Re-registration in the real property register shall be effectuated by means of a change of name. Fiscal continuity shall be maintained in connection with the transfer and the transfer shall entail no tax liability for Statskog SF pursuant to section 5-2 of the Taxation Act.

Finnmarkseiendommen shall take over the personal responsibility from Statskog SF for mortgages and other encumbrances for monetary claims on the properties or rights taken over by Finnmarkseiendommen. Finnmarkseiendommen shall also take over the responsibility for agreements concerning rights of use, leases and the like in respect of the transferred properties and rights. Finnmarkseiendommen will take over concessions and licences etc. held by Statskog SF in connection with the properties and rights taken over.

By agreement with Statskog SF, Finnmarkseiendommen has the right to take over agreements entered into by Statskog SF concerning activities in Finnmark.

Persons who, on the entry into force of chapter 2, are employees of Statskog SF with their place of work in the county of Finnmark, with the exception of employees attached to Statskog SF's Mountain Service, will be regarded as employees of Finnmarkseiendommen from the date of entry into force with the same pay and working conditions as they had in Statskog SF unless the employee concerned has notified that he or she does not so wish. From the date of entry into force, employees of Statskog SF with their place of work in Finnmark are no longer employees of Statskog SF unless by special agreement.

The Ministry shall convene the first board meeting of Finnmarkseiendommen. The board shall ensure that Finnmarkseiendommen is registered in the Register of Business Enterprises not later than six months after the entry into force.

Persons who, on the entry into force of chapter 2, are employees of Statskog SF with their place of work in the county of Finnmark and are attached to Statskog SF's Mountain

Service will be regarded as employees of the Norwegian Nature Inspectorate from the date of entry into force. The fourth paragraph shall otherwise apply correspondingly.

The King may provide that property other than real property associated with activities in Finnmark shall be transferred from Statskog SF to Finnmarkseiendommen and the Norwegian Nature Inspectorate. The King may also provide that agreements as referred to in the third paragraph may be taken over by the Norwegian Nature Inspectorate.

The King may issue further transitional provisions.

Section 50 Amendments to other legislation

From the date decided by the King, the following amendments shall be made to other legislation:

1. The Act of 12 March 1965 relating to the state's unregistered land in the county of Finnmark is repealed.
2. In the Act of 30 June 1972 No. 70 relating to mining, the following amendments shall be made:

In chapter 2, a new section 7a shall read as follows:

Special provisions concerning preliminary examination of minerals in Finnmark

In connection with preliminary examination of minerals in the county of Finnmark, a person wishing to conduct such preliminary examination of minerals shall not later than one week prior to the commencement of such preliminary examination provide written notification to the Sami Parliament, the landowner and the appropriate area and district boards for reindeer husbandry. If the person wishing to conduct such preliminary examination intends to make an impact on the land, the location of such impact shall be indicated.

In chapter 3, a new section 22a shall read as follows:

Special provisions concerning licensed prospecting in Finnmark

Applications for licensed prospecting in the county of Finnmark may be rejected if general considerations contraindicate granting of the application. When considering such applications, significant emphasis shall be placed on due consideration of Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. If the application is granted, conditions may be stipulated in order to safeguard such considerations.

When considering the application the Commissioner of Mines shall give the landowner, the Sami Parliament, the County Governor, the county authority, the municipality and the appropriate area and district boards for reindeer husbandry an opportunity to comment.

If the Sami Parliament or Finnmarkseiendommen as landowner oppose granting of the application, the application shall be decided by the Ministry.

If the Ministry grants the application in cases mentioned in the third paragraph, an appeal to the King from the Sami Parliament or from Finnmarkseiendommen as landowner will have suspensive effect.

In chapter 4, a new section 39b shall read as follows:

Special provisions concerning patenting of claims in Finnmark

In connection with applications for patenting of claims in the county of Finnmark, the provisions of section 22a shall apply correspondingly. In cases mentioned in section 22a, third paragraph, the Ministry shall decide whether patenting of claim proceedings shall be held before or after the Ministry considers the application.

Section 42, first paragraph, new second sentence shall read as follows:

In the case of mines on Finnmarkseiendommen's land, the King may by regulations stipulate a larger fee.

3. In the Act of 9 June 1978 No. 49 relating to reindeer husbandry, the following amendments shall be made:

Section 13, third paragraph, new fourth sentence shall read as follows:

Finnmarkseiendommen may not claim payment pursuant to the provisions of this paragraph.

Section 14, first paragraph, first sentence shall read as follows:

In connection with the lawful practice of reindeer husbandry in reindeer herding areas, the right to hunt, trap and fish covers hunting, trapping and fishing on state-owned common land, on state-owned land that is not specifically registered *and on Finnmarkseiendommen's land* in the reindeer herding district where reindeer husbandry is practised on the same conditions as apply for persons who are permanent residents of the municipality, rural district or neighbourhood where the common land, state-owned land or *relevant part of Finnmarkseiendommen's land* is situated.

4. In the Act of 29 May 1981 No. 38 relating to wildlife and wildlife habitats, section 44, second paragraph, is repealed.

5. In the Act of 15 May 1992 No. 47 relating to salmonids and freshwater fish, etc. the following amendments shall be made:

Section 19, third paragraph, shall read as follows:

When *real property in the county of Finnmark* is sold by the state or by *Finnmarkseiendommen*, the fishing rights may be withheld for the benefit of the general public.

Section 22, fourth and fifth paragraph, are repealed.

6. In the Act of 21 June 1996 No. 38 relating to a government nature inspectorate, section 2, new fourth paragraph, shall read as follows:

On Finnmarkseiendommen's land, the Inspectorate shall conduct further control as agreed between the Ministry and Finnmarkseiendommen.