

H.B. 16, 2019.]

FOREST AMENDMENT BILL, 2019

MEMORANDUM

This Bill will amend the Forest Act [*Chapter 19:05*], principally:

- (a) to enhance the protection of forests from veld fires through the introduction of mandatory and hence deterrent sentences;
- (b) to specifically recognise aggravating consequences of veld fires, such as death and damage to property and make provision for their prosecution in terms of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*];
- (c) to introduce a multi-sectoral and decentralised approach to fire management that includes local authorities, AREX officials, the transport sector, gender structure and traditional leaders, among others;
- (d) to enhance the regulatory responsibilities of the Forestry Commission.

In more detail, the individual provisions of the Bill are as follows—

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause seeks to give specificity and guide the Minister on the composition of the Commission. More importantly the amendment requires the inclusion of persons "holding recognised qualifications or demonstrable knowledge in forestry" amongst other important qualifications in environmental planning and management, finance and management, business and administration, ecology and law. It further seeks to harmonise the Forest Act [*Chapter 19:05*], with the principles of gender balance as provided for under section 17 of the Constitution.

Clause 3

Clause 3 seeks to improve the protection of forests by empowering the Forestry Commission to issue orders to persons acting *ultra vires* the provisions of the Forest Act [*Chapter 19:05*], to undertake or adopt such measures as are specified in the orders.

Clause 4

The spirit of the Constitution to promote gender balance is further espoused under this Clause, in so far as it applies to the appointment of the Chief Executive Officer of Commission and the deputy.

Clause 5

This Clause seeks to enhance gender balance in the appointment of other members of staff.

Clause 6

Section 68 currently provides that all disputes between land owners or occupiers, regarding the sufficiency of land cleared for the creation of fire guards, are referred to the Secretary responsible for environment. This Clause seeks to decentralise the dispute resolution mechanism to forest officers who should work with environmental officers.

Clause 7

In terms of section 69, in its current form, where vegetation on any land, is such that the prescribed boundary fireguard of eighteen metres width is not sufficient to protect adjoining properties from the risk of fire, the Minister, may, in addition to other measures, issue an order to increase the size of the fireguard. In recognition of the high risks posed by veld fires and the need for immediate action, this Clause seeks to decentralise such authority to forest and environmental officers. The office of the Minister will become an appeal authority. Clause 7 further seeks to criminalise any failure to comply with the orders.

Clause 8

While section 70 requires any person who kindles a fire on the land of another or vacant land to extinguish such fire, it does not criminalise the failure to do so. This Clause makes such conduct an offence and subjects it to section 78, which provides for major offences and penalties under the Act.

Clause 9

Section 72 provides for liability of either the servant who acts under the directive of an employer in contravention of Part VIII (Control of Fires and Burning of Vegetation), the employer of both of them. Clause 9 seeks to place such an offence under section 78.

Clause 10

Section 75 requires a person who has good reason to believe that a fire on another person's land may be dangerous to life or property, to warn such owner or occupier of the belief. Subsection (2) criminalises the failure to heed such warning, whether or not the fire does endanger life or property. Clause 10 seeks to clarify the provision to ensure that criminal penalties ensue only when the fire actually causes harm to life or property.

Clause 11

This Clause seeks to remove the option of a fine in preference of a minimum mandatory sentencing system for wilfully lighting fires on State or private forests that cause damage.

Clause 12

Clause 12 seeks to introduce a mandatory fine for fire offences resulting from smoking or the negligent use of matches.

Clause 13

This Clause seeks to specify, for purposes of clarity, powers of police officers, as conferred upon forest officers under section 86, including powers of arrest.

Clause 14

This Clause introduces a multi-disciplinary approach to the management of veld fires by giving the Minister powers to consult other Ministers when coming up with regulations. It further gives precedence to the Forest Act, over other laws, in so far as the relevant matters hinge on the management and control of veld fires.

Clause 15

In line with section 4 of the Act, which establishes the Commission as a body corporate, this Clause seeks to emphasise the Commission's power to institute and maintain proceedings in courts of law, on behalf of the State. The proposed amendment is premised on paragraph 22 of the Third Schedule of the Environmental Management Act [*Chapter 20:27*], in order to increase environmental protection mechanisms.

BILL

To provide for the amendment of the Forest Act [*Chapter 19:05*] and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

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PART I

PRELIMINARY

1 Short title

This Act may be cited as the Forest (Amendment) Act, 2019.

2 Amendment of section 5 of Cap. 19:05

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Section 5 (“Constitution of Commission and terms of Office of commissioners”) of the principal Act is amended by the insertion of the following—

(a) after subsection 1—

“(1a) The Minister shall appoint members of the Commission as follows—

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(a) a chairperson;

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- (b) a deputy chairperson who shall be of the opposite gender to the chairperson;
 - (c) a person holding a recognised qualification or demonstrable knowledge in forestry;
 - (d) persons recognised for their qualification, ability or experience in the following—
 - (i) environmental planning and management;
 - (ii) finance;
 - (iii) business and administration;
 - (iv) ecology;
 - (e) a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*]; and
 - (f) a representative from the Ministry responsible for environment.
- (b) after subsection (7)—
- “(8) In appointing commissioners, the Minister shall endeavour to ensure that at least half of the membership so appointed comprises of women.”.

3 Amendment of section 8 of Cap. 19:05

Section 8 (“Duties of the Commission”) of the Forest Act [*Chapter 19:05*] (hereinafter called the principal Act) is amended by the insertion of the following after paragraph (h)—

“(h1) the serving of orders on any persons requiring such persons to undertake or adopt such measures as are specified in the orders to protect the forest;”.

4 Amendment of section 27 of Cap. 19:05

Section 27 (“Appointment and Functions of chief executive officer of Commission”) of the principal Act is amended by the insertion of the following after subsection (7)—

“(8) In appointing the chief executive officer and any deputy, the Commission shall endeavour to ensure that the chief executive officer and the deputy are persons of the opposite gender.”.

5 Amendment of section 27A of Cap. 19:05

Section 27A (“other staff of Commission”) of the principal Act is amended by the insertion of the following after subsection (3)—

“(4) In appointing members of staff, the Commission shall endeavour to ensure equitable gender distribution.”.

6 Amendment of section 66 of Cap. 19:05

Section 66 (“Power of Commission to make by-laws”) of the principal Act is amended in subsection (2) by the insertion of the following paragraph after (c)—

“(d) the development of forest conservation and demarcation programmes.”.

7 Amendment of section 68 of Cap. 19:05

Section 68 (“Provision and maintenance of fireguards on common boundaries”) of the principal Act is amended—

(a) by the repeal of subsection (4) and the substitution of the following—

5 “(4) If any fireguard is of the width required by subsection (3),
 but its sufficiency for the purposes of this section is disputed on the
 ground that such fireguard is not sufficiently cleared of inflammable
 matter, the dispute shall be referred for decision to the designated forest
 officer, who shall consult the local environmental officer, as referred
 10 to in the Environmental Management Act [*Chapter 20:27*]. Appeals,
 shall lie, firstly with the General Manager of the Forestry Commission,
 thereafter to the Secretary as defined in section 2 of the Environmental
 Management Act [*Chapter 20:27*] whose decision thereon shall be
 final.”.

15 (b) by the repeal of subsection (6) and the substitution of the following—

 “(6) If a dispute arises as to the boundaries of the land in respect
 of which an occupier who is a miner is liable, under the provisions
 of this section, to assist in the establishment of a common fireguard
 or to contribute labour or towards the cost necessary to provide and
 20 maintain fireguards, such dispute shall be referred for decision to the
 designated forest officer who shall consult with a local environmental
 officer, as defined in section 2 of the Environmental Management Act
 [*Chapter 20:27*]. Appeals, shall lie, firstly with the General Manager
 of the Forestry Commission, and thereafter to the Secretary as defined
 25 in section 2 of the Environmental Management Act [*Chapter 20:27*]
 whose decision thereon shall be final:

Provided that the Secretary may consult the Secretary
 responsible for mines in the determination of the matter.”;

(c) by the insertion of the following after subsection (6)—

30 “(7) The General Manager, may, in the consideration of an
 appeal, consult the Director General of the Environmental Management
 Agency.”.

8 New section substituted for section 69 of Cap. 19:05

35 Section 69 (“Orders in relation to fireguards”) of the principal Act is repealed and
 the following is substituted—

“69 Orders in relation to fireguards

(1) A forest officer, may after due consideration of the surrounding
 environment and any fire suppression measures put in place by the owner
 or occupier of land, order that the owner or occupier—

- 40 (a) construct a fireguard on the boundary of his or her land, of
 at least nine metres in width from the boundary line with
 adjacent property;
- (b) undertake any other preventative measures as the forest
 officer may deem fit under the circumstances.

(2) No order shall be valid until it is approved by the General Manager of the Forestry Commission, who may, if he or she deems it fit, liaise with the Director General of the Environmental Management Agency established under the Environmental Management Act [*Chapter 20:27*] before making a final decision. 5

(3) Any owner or occupier in receipt of an order made in terms of subsection (1) may appeal to the Minister on any of the following grounds that the—

- (a) circumstances do not justify the making of the order;
- (b) terms of the order are unreasonable. 10

(4) The Minister shall make an appropriate order.

(5) Any person who fails to comply with an order made in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not less than three months for each hectare or to both such fine and such imprisonment: 15

Provided that the extent of the danger posed by the size of the land and vegetation on the land shall be of paramount consideration, in any case the fine shall not exceed level 11 and the period of imprisonment shall not exceed five years.

(6) An appeal from the decision of the Minister shall lie with the Administrative Court and Part IX of the Environmental Management Act [*Chapter 20:27*] shall apply, *mutatis mutandis*, accordingly. 20

(7) If the Minister considers that such a course of action is necessary or expedient for the conservation or protection of the natural resources within the area of a rural district council he or she may— 25

- (a) authorise the concerned council to prepare a plan, dealing with such matters as may be prescribed, for the prevention of fires within that area; and
- (b) after the consultation with the Secretary as defined in section 2 of the Environmental Management Act [*Chapter 20:27*], authorise that the Secretary give written orders to the owners, occupiers or users of any land within that area to act in accordance with the plan prepared in terms of paragraph (a).” 30

9 Amendment of section 70 of Cap. 19:05 35

Section 70 (“Fires kindled on land of another to be controlled and extinguished”) of the principal Act is amended by the insertion of a new subsection, the existing section becoming subsection (1)—

“(2) Failure to take appropriate action, in terms of subsection (1), shall constitute an offence and the provisions of section 78 shall apply, *mutatis mutandis*, to this section.” 40

10 Amendment of section 72 of Cap. 19:05

Section 72 (“Liability of servant acting under direction of employer”) of the principal Act is amended by the insertion of a new subsection, the existing section becoming subsection (1)— 45

“(2) The provisions of section 78 shall apply, *mutatis mutandis*, with regards to this section.”.

11 Amendment of section 75 of Cap. 19:05

5 Section 75 (“Procedure in regard to extinguishing a fire”) of the principal Act is amended—

- (a) in subsection (2) by the deletion of the words “Any such owner or occupier who fails to comply with the provisions of this subsection shall be guilty of an offence” and the substitution of “Any such owner or occupier who fails to comply with the provisions of this subsection, and the fire becomes dangerous to life and property, shall be guilty of an offence and the provisions of section 78 shall apply, *mutatis mutandis*”; 10
- (b) in subsection (5) by the deletion of the words “not exceeding level 5” and the substitution of “not less than level 4 and not exceeding level 6”; 10
- (c) by the addition, after, “forest officer” of “environmental officer or inspector, or traditional leader, or an official of a local authority or other authority” wherever it appears. 15

12 Amendment of section 78 of Cap. 19:05

Section 78 (“Major offences”) of the principal Act is amended—

- (a) in subsection (2)—
 - (i) by the repeal of paragraphs (a) and (b) and the substitution of the following—
 - “(a) where damage has been wilfully caused, to imprisonment for a period not less than five years; 20
 - (b) in any other case, to imprisonment for a period not less than one year.”; 25
 - (ii) in subsection (3) by the repeal of paragraphs (i) and (ii) and the substitution of the following—
 - “(i) where damage has been wilfully caused, to a fine not less than level 6 or to imprisonment for a period not less than two years or to both such fine and such imprisonment; 30
 - (ii) in any other case, to a fine not less than level 4 or to imprisonment for a period not less than six months or to both such fine and such imprisonment.”; 30
- (b) by the insertion of a new subsection after subsection (3) as follows—
 - “(4) The Court shall take into account such aggravating factors as loss of human life, livestock, wildlife and other property: 35
 - Provided that penalties for such offences shall apply as is provided for under the Parks and Wildlife Act [*Chapter 20:14*] or the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] whichever is greater.”. 40

13 Amendment of section 81 of Cap. 19:05

Section 81 (“Offences relating to smoking or negligent use of matches”) of the principal Act is amended by the deletion of the words “not exceeding level 4 or to imprisonment for a period not exceeding three months” and the substitution of “of not less than level 7 or to imprisonment for a period of not less than three months”. 45

14 Amendment of section 86 of Cap. 19:05

Section 86 (“Special powers of various officers”) of the principal Act is amended in subsection (2), by the insertion after “police officers” of “including but not limited to, powers of arrest, search, issuance of fining tickets and seizure of any item used in the commission of an offence under this Act.

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15 Amendment of section 89 of Cap. 19:05

Section 89 (“Powers of Minister”) of the principal Act is amended by the insertion of the following after subsection (2a)—

“(2b) In making regulations under subsection (1) and where the matter concerns the management and control of veld fires, the Minister may consult Ministers responsible for agriculture, local government, transport, energy, women affairs, mines or any other relevant Ministry as the Minister may determine from time to time:

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Provided that in all matters which have a bearing on the management and control of veld fires and involves the application of any other law, this Act shall take precedence.”.

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16 Amendment of (Second) Schedule to Cap. 19:05

The Second Schedule (“Powers of Commission”) of the principal Act is amended by the insertion of the following paragraph after paragraph 24—

“24A On behalf of the State, to institute and maintain proceedings in any Court or tribunal for the recovery of revenues, and to take such other steps as may be necessary to recover revenues.”.

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