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Act (No. 2C)

MALAWI GOVERNMENT

(Published 19th June, 2020)

Act

No. 7 of 2020

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
11TH JUNE, 2020

ARRANGEMENT OF SECTIONS

SECTION

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3. Amendment of s. 5 of the principal Act
4. Amendment of s. 6 of the principal Act
5. Replacement of s. 25 of the principal Act
6. Replacement of s. 36 of the principal Act
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19. Replacement of s. 81 of the principal Act
20. Amendment of s. 86 of the principal Act

An Act to amend the Forestry Act

ENACTED by the Parliament of Malaŵi as follows—

- Short title 1. This Act may be cited as the Forestry (Amendment) Act, 2019.
- Amendment of section 2 to Cap.63:01 2. The Forestry Act (hereinafter, referred to as the “principal Act”) is amended, in section 2, in the definition of the word “forest produce”, by inserting the word “charcoal” immediately after the word “sawdust”.
- Amendment of s. 5 of the principal Act 3. Section 5 of the principal Act is amended, by deleting the word, “.” at the end of paragraph (n) and substituting it with the following new word, “;” and by inserting immediately after paragraph (n), the following new paragraphs (o) and (p)—
- “(o) ensuring that there is a proper collection, organization and maintenance of information, data or records relating to forests in Malaŵi and that such information, data or records are easily accessible by the public; and
- “(p) establishing mechanisms to promote informed stakeholder and public consultation and participation in forest-related decision-making process.”.
- Amendment of s. 6 of the principal Act 4. Section 6 of the principal Act is amended—
- (a) by deleting the words, “an officer” in side note and substituting them with the word, “officers”;
- (b) in line 1, by deleting the word “and” and substituting it with the word “an”;
- (c) at the end of sub-paragraph (iv) of paragraph (b), by deleting the word, “.” and substituting it with the following new word, “; and,”
- (d) by inserting a new paragraph (c) as follows—
- “(c) carry and use firearms in the process of conducting an inspection and other law enforcement activities.”; and
- (e) by renumbering the current provision as subsection (1) and inserting new subsections (2) and (3) as follows—
- “(2) When acting in accordance with his duties under this Act, an officer shall be deemed to be a person in the service of the Government under section 2 of the Firearms Act.
- “(3) The Minister shall, by order published in the *Gazette*, specify, by name or rank, officers or class of officers who shall be authorized to carry or use firearms under this Act.”.
- Cap 14:08

5. Section 25 of the principal Act is repealed and replaced with the following new section 25—

Replacement
of s. 25 of the
principal Act

"25.—(1) The Director of Forestry may enter into agreements with local communities, local government authorities, non-governmental organizations or private sector partners for the development and implementation of management plans for the principal purpose of forestry conservation.

Co-
management
of forest
reserves

(2) The Director of Forestry shall only enter into an agreement referred to in subsection (1), if—

(a) the agreement does not permit the extraction of natural resources for commercial purposes;

(b) the uses in the agreement are lawful and the other party has obtained the necessary permit or licences for the uses as required under this Act or any other written law; and

(c) the uses in the agreement are specifically described in an existing management plan for the area."

6. Section 36 of the principal Act is repealed and replaced with the following new section 36—

Replacement
of s.36 of the
principal Act

"36.—(1) Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to enter into a forest plantation agreement with a non-governmental organization, local community or private party to plant trees in public land.

Forest
plantation
agreement

(2) The agreement referred to in subsection (1) shall—

(a) only permit the growing and management of the tree species specified in the agreement and in accordance with plantations management plan for the area;

(b) convey the right to harvest the forest plantation in accordance with the terms of the agreement;

(c) specify the obligations of the parties; and

(d) only allow the other party to utilize the land for commercial purposes of planting, managing and harvesting trees, if—

(i) the parties agree to a partnership that fosters conservation, sustainable use, equitable access and sharing of the benefits arising from the trees;

(ii) the uses in the agreement are lawful and the other party has obtained the necessary permit or licences for the uses as required under this Act or any other written law; and

(iii) the uses in the agreement are specifically described in an existing management plan for the area.

(3) In all agreements entered into pursuant to this section, the State shall retain all rights of ownership of public land and the natural resources and shall not convey to the other party a leasehold title, easement or ownership in fee, except for rights to planted trees as provided under section 37.

(4) The Director of Forestry may, before the commencement of an agreement under this section, require the other party to pay rent, royalty or a fee as consideration in the agreement and the money realized from such rent, royalties or fees shall be paid into the Fund."

Amendment of s. 55 of the principal Act 7. Section 55 of the principal Act is amended, in subsection (2),—

(a) in the first line, by deleting the word, "the" and substituting it with the word, "The";

(b) at the end of paragraph (f), by deleting the word, "." and substituting it with the following, "; and"; and

(c) after paragraph (f), by inserting a new paragraph (g) as follows—

"(g) such sums as may be received as a result of agreements entered into in accordance with sections 25 or 36."

Replacement of s. 64 of the principal Act 8. Section 64 of the principal Act is repealed and replaced with the following new section 64—

Offences relating to forest reserves and protected forest areas

"64.—(1) Any person who, without authority under this Act—

(a) fells, cuts, takes, destroys, removes, collects, uproots any tree and other vegetation or forest property in a forest reserve or protected forest area,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for a term of ten years;

(b) connives with or causes another person to fell, cut, take, destroy, remove, collect, uproot any tree and other vegetation or forest property in a forest reserve protected forest area, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for a term of fifteen years;

(c) squats, resides, erects a building, hut, livestock enclosures or any structure in a forest reserve or protected area, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for a term of ten years;

(d) clears, cultivates, digs or breaks up land for any road or for any purpose whatsoever and grazes livestock in a forest reserve or protected areas, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for a term of ten years; or

(2) In addition to the penalty provided under subsection (1), any crop, structure or equipment involved in the commission of the offence shall be confiscated and forfeited to the State.”.

9. Section 65 of the principal Act is repealed and replaced with the following new section 65—

“65.—(1) A person who lights, or causes to be lit, a fire in a forest reserve, protected forest area, village forest area or plantation in contravention of section 39, commits an offence and shall, upon conviction, be liable to twenty years imprisonment with no option of a fine.

(2) A person who permits a fire to burn out of control in, or to spread to, a forest reserve, a protected forest area, a village forest area or a plantation, commits an offence and shall, upon conviction, be liable to ten years imprisonment with no option of a fine.

Offences
relating to
fire

Replacement
of
s. 65 of the
principal Act

(3) A person who, without reasonable cause, refuses to assist in averting or extinguishing a fire when required to do so as required under section 41, commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for a term of one year.”.

Amendment
of s. 66 of the
principal Act

10. Section 66 of the principal Act is amended by—

(a) deleting the figure “10,000” and substituting it with the figure “5,000,000”; and

(b) deleting the word, “five” and substituting it with the word, “ten”.

Amendment of
s. 67 of the
principal Act

11. Section 67 of the principal Act is amended, by deleting the figure, “10,000” and substituting it with the figure, “2,000,000”.

Amendment
of s. 68 of the
principal Act

12. Section 68 of the principal Act is amended by—

(a) deleting the figure “10,000” and substituting it with the figure “5,000,000”; and

(b) inserting a new subsection (3), as follows—

“(3) A person who, without a licence or permit—

(a) engages in the production, possession, trafficking or sale of charcoal commits an offence and shall be liable, upon conviction, to a fine of K5,000,000 and to imprisonment for a term of ten years; or

(b) possesses, trafficks or sells round wood commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for a term of twenty years.”.

Amendment
of s. 69 of the
principal Act

13. Section 69 of the principal Act is amended, by deleting the figure, “10, 000” and substituting it with the figure, “2,000,000”.

Amendment of
s. 70 of the
principal Act

14. Section 70 of the principal Act is amended by—

(a) deleting the figure, “10,000” and substituting it with the figure, “5,000,000”; and

(b) deleting the word, “five” and substituting it with the word, “ten”.

Amendment of
s. 71 of the
principal Act

15. Section 71 of the principal Act is amended, by deleting the figure “10, 000” and substituting it with the figure “5,000,000”.

Replacement of
s. 72 of the
principal Act

16. Section 72 of the principal Act is repealed and replaced with a new section 72 as follows—

"72.—(1) A person who contravenes the provisions of section 44 commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for a term of ten years.

Offences
relating to
deposition of
litter and
waste

(2) In addition to the penalty provided under subsection (1), the person convicted of the offence shall also be responsible for the cost of the removal of the deposited litter or noxious waste from the forest reserve, protected forest area or village forest area concerned."

17. Section 73 of the principal Act is amended by—

(a) deleting the figure, "10,000" and substituting it with the figure, "10,000,000"; and

Amendment
of s. 73 of the
principal Act

(b) deleting the word "five" and substituting it with the word "fifteen".

18. Section 74 of the principal Act is amended by inserting a new subsection (3) as follows—

Amendment
of s. 74 of the
principal Act

"(3) Any property forfeited to the Government pursuant to sub-section 1 (a), shall be dealt with in the manner that the Minister responsible for Natural Resources shall direct."

19. Section 81 of the principal Act is repealed and replaced with a new section 81 as follows—

Replacement
of s. 81 of the
principal Act

"81.—(1) A person shall not make or sell charcoal from indigenous timber or tree, except pursuant to a licence issued under this section.

Charcoal
licensing

(2) Notwithstanding any provision of this Act, any officer shall not be allowed to issue a charcoal licence under this section other than the Director of Forestry.

(3) Upon application in the prescribed form, the Director of Forestry may, where he finds that the making of charcoal shall utilize plantation timber or indigenous timber or trees consistent with the applicable forest management agreement plan or forest management agreement or forest plantation agreement or concession agreement issue a licence to an applicant to make charcoal in such quantity and from such timber or trees as may be specified in the licence.

(4) The Director of Forestry shall not issue any licence under this section where the applicant has not submitted a reforestation plan or a forest management plan approved by the Director of Forestry.

(5) A person shall not import or export charcoal or a charcoal product without a licence or permit issued by the Director of Forestry.

(6) The Minister may, in consultation with the Minister responsible for Finance, make regulations providing for incentives in the energy sector, as a way of promoting alternative sources of energy and energy saving technologies, in order to reduce over-dependence on charcoal and firewood.

(7) Without prejudice to the generality of subsection (6), the regulations made thereunder may prescribe—

(a) the type of alternative sources of energy and energy saving technologies to be promoted;

(b) the kind of taxes to be waived and the length of the period within which the taxes may be waived; and

(c) anything that may require to be prescribed.”.

Amendment
of s. 86 of the
principal Act

20. Section 86 of the principal Act is amended—

(a) numbering the paragraph as a subsection (1); and

(b) by inserting a new subsection (2) as follows—

Cap. 1:01

“(2) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, the regulations made pursuant to this section may create offences in respect of any contravention to the regulations or a condition of any licence issued under this Act, and may for any such contravention, prescribe penalties for up to K5,000,000 and to imprisonment for a period of up to ten years.”.

Passed in Parliament this fourteenth day of February, two thousand and twenty.

FIONA KALEMBA
Clerk of Parliament