

CHAPTER 38:02
HERBAGE PRESERVATION (PREVENTION OF FIRES)

ARRANGEMENT OF SECTIONS

SECTION

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Act 37, 1977,
S.I. 8, 1978.

An Act to prevent and control bush and other fires.

[Date of Commencement: 1st February, 1978]

1. Short title

This Act may be cited as the Herbage Preservation (Prevention of Fires) Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"boundary firebreak" means a firebreak never less than six metres in width one edge of which, throughout the length of the firebreak, is contiguous to a land boundary;

"firebreak" means a strip of land cleared of inflammable matter to prevent the spread of fire;

"Herbage Preservation Committee" means the Principal Herbage Preservation Committee or a Subordinate Herbage Preservation Committee established by or under section 3;

"vegetation" means growing or standing vegetation, and includes any tree or part thereof and any bush, shrub, brushwood, undergrowth, grass, crops or stubble.

3. Establishment of Herbage Preservation Committees

(1) There is hereby established a body called the Principal Herbage Preservation Committee which shall consist of such persons or body of persons as the Minister shall, by notice published in the *Gazette*, appoint.

(2) The Minister may, by notice published in the *Gazette*, establish such number of bodies called Subordinate Herbage Preservation Committees as he thinks appropriate which shall each consist of such persons or body of persons as the Minister shall, by such notice, appoint.

(3) The area of authority of the Principal Herbage Preservation Committee shall be the whole of Botswana and the area of authority of a Subordinate Herbage Preservation Committee shall be such area as the Minister shall, by order published in the *Gazette*, specify.

(4) The Minister shall appoint a chairman of each Herbage Preservation Committee from among the members of that Committee.

(5) The Principal Herbage Preservation Committee may give directions to a Subordinate Herbage Preservation Committee, or to such Committees generally, as to the carrying out of its or their functions under this Act and every such Committee to whom such directions have been given shall comply with those directions.

(6) The Principal Herbage Preservation Committee may appoint any person to be a fire ranger.

4. Prohibition of burning vegetation

(1) No person shall, without the permission in writing of a Herbage Preservation Committee, set fire to any vegetation on land of which he is not the owner or in lawful occupation.

(2) No person shall wilfully or negligently light a fire which by spreading damages or destroys, or threatens to damage or destroy, the property of another person.

5. Duty to extinguish fires

Every person shall carefully and properly extinguish any fire lit or used by him on any land of which he is not the owner or in lawful occupation.

6. Notice to be given before burning vegetation

(1) Every person, before burning vegetation on land of which he is the owner or on which he is permitted or authorized to burn vegetation, shall give reasonable notice of his intention to do so and, as nearly as possible, of the time at which the burning is to begin to all owners or occupiers of adjoining land and, where reasonably practicable, to a police officer or headman.

(2) In subsection (1) "**headman**" has the same meaning as in the Chieftainship Act.

(3) If a fire lawfully lit after notice has been given in accordance with this section spreads to

adjoining land, the fact that such notice was given shall-

- (a) to the person who lit or was responsible for lighting the fire, be a sufficient defence to any charge of contravening section 4, unless it is proved that he wilfully or by the negligence of himself, his servant or agent caused or permitted the fire to spread across the boundary of the land on which the fire was lit to the adjoining land; and
- (b) not affect the right of any person aggrieved to recover damages by civil action for any loss thereby sustained by him.

7. Power to prohibit burning of vegetation

(1) A Herbage Preservation Committee may, by order, prohibit the burning of vegetation within its area of authority either generally or subject to such exceptions as the order may specify.

(2) An order under this section shall-

- (a) apply to the whole area of authority of the Committee or to such area or place as the order may specify;
- (b) specify the date on which the order is to come into operation; and
- (c) be published in the *Gazette* and by public exhibition at an office of the District Commissioner or of the local authority, if any, situated within the area or place to which the order applies, not less than 14 days before the date of commencement of the order.

8. Prohibition of burning of vegetation by servants

No servant of the owner or occupier of any land shall burn any vegetation on the land except with the consent and under the personal direction of the owner or occupier or with the consent and under the personal direction of some other person authorized by the owner or occupier in that behalf.

9. Firebreaks

(1) Any owner or occupier of land who desires to guard against fires spreading beyond the boundaries of the land may, by notice in writing served upon the owner or occupier of any adjoining land on or near the common boundary of which sufficient firebreaks have not in his opinion been constructed and maintained, require the owner or occupier of the adjoining land-

- (a) to construct and maintain on the adjoining land a boundary firebreak along the whole length of the common boundary or along such stretches of the common boundary as the notice may specify; or
- (b) to contribute one half of the cost or labour necessary to construct and maintain-
 - (i) on both sides of the common boundary, boundary firebreaks along the whole

length of the common boundary or corresponding boundary firebreaks along such stretches of the common boundary as the notice may specify; and

- (ii) on either side of the common boundary such other firebreaks as may have been agreed upon.

(2) Every notice under subsection (1)(b) shall be deemed to contain a requirement that the owner or occupier upon whom the notice is served shall permit all reasonable access to the adjoining land to enable the owner or occupier serving the notice to construct and maintain or to contribute to the construction and maintenance of such of the firebreaks referred to in the notice as are or are to be on the adjoining land.

(3) Any owner or occupier upon whom a notice has been served under subsection (1) may appeal in writing against the requirements contained or deemed to be contained in the notice, within 30 days after its service upon him, to the Principal Herbage Preservation Committee:

Provided that where the land in question lies wholly within the area of authority of a Subordinate Herbage Preservation Committee the appeal shall lie to that Committee.

(4) The Herbage Preservation Committee to whom an appeal has been made under subsection (3) shall give every party to the appeal the opportunity to make written or oral submissions to it and shall then either-

- (a) allow the appeal in which case the requirements contained in the notice shall be void; or
- (b) dismiss the appeal and, subject to subsection (5), order the owner or occupier on whom the notice was served to comply with the requirements contained or deemed to be contained in the notice.

(5) Before making an order under subsection (4)(b) the Herbage Preservation Committee may alter or vary the requirements contained or deemed to be contained in the notice.

(6) The decision of a Herbage Preservation Committee on appeal under this section shall be final.

(7) Every owner or occupier upon whom a notice has been served under subsection (1) shall comply with the requirements contained or deemed to be contained in the notice unless he appeals against the requirements in accordance with subsection (3), in which case he shall comply with any order made by the Herbage Preservation Committee under subsection (4)(b).

(8) Where the owner or occupier of adjoining land fails to comply with a requirement to construct and maintain or to contribute one half of the cost or labour necessary to construct and maintain a boundary firebreak on that land or to permit reasonable access to that land in respect of the construction and maintenance of a boundary firebreak, in contravention of subsection (7), the owner or occupier who served the notice in question may-

- (a) enter upon the adjoining land, without thereby incurring any liability for trespass, and

there construct and maintain the boundary firebreak; and

- (b) recover from that owner or occupier the reasonable cost of such construction and maintenance.

(9) Where a Herbage Preservation Committee is of the opinion that an owner or occupier has failed to comply, either wholly or in part, with a requirement to construct and maintain a boundary firebreak, in contravention of subsection (7), it may, by notice in writing served upon that owner or occupier, give him such directions as are in the opinion of the Committee necessary for the purpose of remedying the default.

(10) Every owner or occupier upon whom a notice has been served under subsection (9) shall comply with the directions contained in the notice.

10. Herbage Preservation Committees may order compulsory firebreaks

(1) A Herbage Preservation Committee may, by order, require the construction and maintenance of firebreaks by the owners or occupiers of land within its area of authority.

(2) An order under this section shall-

- (a) apply to the whole area of authority of the Committee or to such area or place as the order may specify;
- (b) specify the extent and location of the firebreaks;
- (c) specify the date on which the order is to come into operation; and
- (d) be published in the *Gazette* and by public exhibition at an office of the District Commissioner or of the local authority, if any, situated within the area or place to which the order applies, not less than 14 days before the date of commencement of the order.

(3) Where an owner or occupier of land fails to construct or maintain a boundary firebreak on that land in contravention of an order made by a Herbage Preservation Committee under this section, the Committee, or the owner or occupier of any adjoining land, with the permission in writing of the Committee, may-

- (a) enter upon that land, without thereby incurring any liability for trespass, and there construct and maintain the boundary firebreak; and
- (b) recover from that owner or occupier the reasonable cost of such construction and maintenance.

11. Power to require assistance in putting out fire

(1) Where a fire is burning and a member of a Herbage Preservation Committee, an administrative officer, an agricultural officer, a fire ranger, a forest official, a police officer, a traditional authority, or an owner or occupier of the land on which the fire is burning, or such

owner's or occupier's servant, reasonably believes that the fire may become a danger to life or property, he may require any person present at or in the vicinity of the fire to render assistance or to do any act or perform any service he reasonably considers necessary or expedient to control, extinguish or prevent the spread of the fire.

(2) In subsection (1)-

"fire ranger" means a person appointed to be a fire ranger under section 3(6);

"forest official" has the same meaning as in the Forest Act.

(3) Any person acting in good faith may, either alone or with persons under his control, enter upon any land for the purpose of controlling, extinguishing or preventing the spread of a fire which he reasonably believes is not under control or may become a danger to life or property.

12. Protection of life, person or property by counter-firing

Nothing in this Act shall prohibit any person, when life, person or property is in danger of loss or injury from an approaching fire, from lighting and burning vegetation, in the manner commonly known as counter-firing, in order to prevent such loss or injury; but he shall take reasonable care that the fire so lit does not spread beyond the limits necessary to prevent such loss or injury.

13. Liability of servant and employer

Where a servant contravenes any provision of this Act or of an order made by a Herbage Preservation Committee under section 7 or section 10 while acting under the directions or command of his employer, the employer shall be deemed also to have contravened that provision and may be prosecuted under this Act for that contravention either alone or jointly with his servant.

14. Offences and penalty

(1) Any person who-

- (a) contravenes any provision of this Act or of an order made by a Herbage Preservation Committee under section 7 or section 10; or
- (b) fails, without reasonable excuse, to comply with a requirement made under section 11(1),

shall be guilty of an offence and liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding 12 months, or to both and to corporal punishment.

(2) In any prosecution for failure to comply with a requirement made under section 11(1) the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

15. Civil remedy preserved

Nothing in this Act shall affect the right of any person aggrieved to recover damages by civil action for any loss sustained by him unless it is provided to the contrary.

16. Regulations

The Minister may make regulations-

- (a) to regulate the procedure of Herbage Preservation Committees; and
- (b) generally for the better carrying into effect of the purposes and provisions of this Act.