

ENVIRONMENTAL ASSESSMENT (AMENDMENT) ACT, 2020

No. 11



of 2020

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Environmental Assessment Act to provide for shorter times for assessments, to provide for reviewers including private reviewers and other related matters.

Date of Assent: 02.11.2020

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Environmental Assessment (Amendment) Act, 2020 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Environmental Assessment Act ("the Act") is amended in section 2 —

Amendment of section 2 of Cap. 65:07

(a) by inserting in their correct alphabetical order, the following new definitions —

"environmental management plan" means a basic environmental assessment which excludes the development of a scoping report but may include the requirement for public review;

"private reviewer" means a person appointed as such by the Director under section 62 (2);

"rehabilitation plan" means an outline of measures for the treatment or management of disturbed land, air or water for the purpose of establishing a safe and stable environment;

"reviewer" means an officer who is designated as such under section 62 (1);

"waste management plan" means an outline of waste streams and treatment options comprising of the collection, temporary storage and safe disposal of the waste streams associated with an activity and includes provisions for the recovery, re-use and recycling of waste; and

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Cap.03:07 “working day” means any day other than a Saturday, Sunday or any day which is a public holiday under the Public Holidays Act; and

(b) in subsection (3) by substituting for that subsection with the following new subsection –

“(3) The Minister may, in writing, upon application for exemption by a person implementing an activity referred to under subsection (2), exempt the activity from the provision of this Act if in the opinion of the Minister it is desirable in the interest of the public that such exemption be granted.”.

Insertion of Part I A

3. The Act is amended by inserting the following new part immediately after Part I –

“Part I A – Institutional arrangements

Establishment of Department 5A. (1) There is hereby established, in accordance with the laws governing the public service, a department to be known as the Department of Environmental Affairs.

(2) Subject to the Public Service Act, there shall be appointed a Director and such other officers of the Department as may be necessary.

(3) The Director shall oversee the implementation of this Act.

(4) The Director Shall –

(a) be a person capable of being admitted as a practitioner; and

(b) have specialised qualifications in the areas of environmental science and environmental management.”.

Amendment of section 6 of the Act

4. Section 6 of the Act is amended by deleting subsections (3), (4), (5) and (6) and substituting for them, the following new subsections –

“(3) The competent authority shall review an application made under subsection (1) (a) within 3 working days .

(4) Where the competent authority finds that information provided for in the application is insufficient, the competent authority shall require and specify to the applicant in writing, the additional information to be provided by the applicant.

(5) Where the competent authority is satisfied that all relevant information is available in the application and that the activity can be carried out without any adverse environmental impact, the competent authority shall –

(a) authorise the implementation of the activity;

(b) require the applicant to submit a –

(i) waste management plan,

(ii) rehabilitation plan, or

(iii) other plan as may be prescribed; or

(c) require the applicant to submit an environmental management plan.

(6) Where the competent authority is satisfied that the plan submitted under subsection (5) (b) sufficiently ensures environmental integrity, it shall authorise the activity.

(7) The competent authority shall review an application made under subsection (5) (b) within 5 working days.

(8) Where, upon consideration of all the information submitted by the applicant, the competent authority is of the view that in carrying out the activity an adverse environmental impact will or is likely to arise, the competent authority shall require the applicant to undertake an environmental impact assessment or a strategic environmental assessment.

(9) Where the competent authority requires an environmental management plan under subsection (5) (c) the competent authority may —

- (a) request the developer to consult stakeholders; or
- (b) request the developer to prepare a statement in terms of section 9 (4).

(10) Where the competent authority requests for an environmental impact assessment or a strategic environmental assessment to be undertaken under subsection (8), the competent authority shall, in writing, require the developer to —

- (a) carry out a scoping exercise in terms of section 7; and
- (b) prepare terms of reference in terms of section 8.”.

5. Section 7 of the Act is amended —

- (a) by deleting subsection (1) and substituting it with the following new subsection —

“(1) Where the competent authority has required an applicant to carry out a scoping exercise under section 6 (10) (a), the applicant shall engage a practitioner to undertake the assessment”; and

- (b) in subsection (2) by substituting for the words “21 days” wherever they appear in the subsection, the words “10 working days”.

6. Section 8 of the Act is deleted and substituted with the following new section —

“Terms of reference

8. (1) A practitioner shall prepare the terms of reference required under section 6 (10) (b) at the applicant’s own expense.

(2) The terms of reference shall be in the prescribed form.”.

7. The Act is amended by inserting, immediately after section 8, the following new section —

“Assessment of scoping report

8A.(1) An applicant shall, after complying with sections 7 and 8, submit the terms of reference and the results of the scoping exercise to the competent authority.

(2) In considering the terms of reference, the competent authority shall consult with relevant technical departments or local authorities, and may —

Amendment of section 7 of the Act

Amendment of section 8 of the Act

Insertion of section 8A into the Act

- (a) conduct such investigation as it considers necessary to ascertain the validity of the scoping exercise; or
- (b) request the applicant to provide additional information to clarify the terms of reference.

(3) Where the competent authority is satisfied that the terms of reference will adequately assist in guiding the environmental impact assessment or a strategic environmental assessment of the proposed activity, the competent authority shall approve the terms of reference within 10 working days of receipt of the terms of reference and the scoping report.”

Amendment
of Section 9
of the Act

8. Section 9 of the Act is deleted and substituted with the following new section —

“Environmental
assessment
and statement 9. (1) Where —

- (a) upon consideration of all the information, the competent authority determines that the proposed activity is likely to have a significant adverse environmental impact, it shall require that such activity undergo environmental impact assessment, the costs of which shall be borne by the developer; or
- (b) a proposed activity under paragraph (a) is a programme, plan or policy and the competent policy determines that is likely to have a significant adverse environmental impact, it shall require that such activity undergo a strategic environmental assessment, the costs of which shall be borne by the developer.

(2) An environmental impact assessment or a strategic environmental assessment shall identify and evaluate the environmental impact of an activity with particular reference to the —

- (a) health, safety or quality of life of people;
- (b) archaeological, aesthetic, cultural or sanitary conditions of the environment; and
- (c) configuration, quality and diversity of natural resources.

(3) Where the competent authority determines that an environmental impact assessment or a strategic environmental assessment be made under subsection (1), upon being informed in writing about the decision, the developer shall, before undertaking or implementing the activity, engage a practitioner to prepare a statement which shall be submitted by the developer to the competent authority within the period of time stipulated in the approved terms of reference.

(4) Where the competent authority determines that an environmental management plan be made under section 6 (5) (c), upon being informed in writing about the decision, the developer shall, before undertaking or implementing the activity, engage a practitioner to prepare a statement which shall be submitted by the developer to the competent authority within the period of time stipulated by the competent authority.

(5) The statement prepared under subsections (3) and (4) shall be in the form prescribed by the Minister.

(6) A person who contravenes subsections (3) and (4) commits an offence and is liable to a fine not exceeding P1 000 000, or to a term of imprisonment not exceeding 15 years, or to both.”.

9. Section 10 of the Act is deleted and substituted with the following new section —

“Review of statements

Amendment of section 10 of the Act

10. (1) The competent authority shall, upon receipt of a statement from a developer as required under —

(a) section 9 (3) in relation to an environmental impact assessment or a strategic environmental assessment; or

(b) section 9 (4) in relation to an environmental management plan,

examine the statement to determine whether such statement complies with the requirements prescribed by the Minister.

(2) Where a statement relating to an environmental impact assessment or a strategic environmental assessment complies with the requirements prescribed by the Minister, the competent authority shall —

(a) place, at the developer’s expense, a notification in the *Gazette* and in a newspaper circulating at least once weekly using the official languages, for two consecutive weeks, inviting comments or objections from those persons who are most likely to be affected by the proposed activity and other interested persons, stating the —

(i) nature and of the activity,

(ii) location of the activity,

(iii) anticipated environmental impact of the activity, and

(iv) proposed mitigation measures to respond to the negative environmental impact; and

(b) in its decision making, consider the comments or objections raised by persons who are likely to be affected by the proposed activity and other interested persons.

(3) The competent authority shall review a statement relating to an environmental impact assessment within 14 working days.

(4) The competent authority shall review a statement relating to an environmental management plan within 10 working days.

(5) The competent authority shall review a statement relating to a strategic environmental assessment within one month of receipt.

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(6) A review under subsections (3), (4) or (5) shall be carried out by a reviewer, or where the competent authority has determined that it is necessary to do so, by a private reviewer, appointed.

(7) The competent authority shall pay for the costs of any review carried out by a private reviewer under this section.”.

Insertion of
section 41A
into the Act

10. The Act is amended by inserting the following new section immediately after section 41 —

“Effect of
registration

41A. Every person whose name has been entered in the register as a practitioner shall, as long as his or her name remains on the register, be entitled to —

- (a) adopt and use the word and title “Practitioner” or “Registered Practitioner” or such other style or title as may be approved by the Board; and
- (b) offer his or her services to the public for gain or reward based on fee scales provided in the conditions of engagement and such fees as may be prescribed by the Board.”.

Amendment
of Part X of
Act

11. Part X of the Act is amended by deleting sections 61 to 73 and replacing them with the following —

“Part X – Administration and enforcement

Officers of
competent
authority

61. (1) For purposes of the administration of this Act, the Director shall designate competent officers of the Department of Environmental Affairs to be officers of the competent authority.

(2) The Director shall issue officers appointed under subsection (1) with identification cards for purposes of carrying out their functions under this Act.

Reviewers
and private
reviewers

62. (1) The Director may designate any officer of the competent authority as a reviewer for purposes of carrying out the review functions under Part III of this Act.

(2) Where it is expedient or necessary to do so, the Director may appoint such number of persons as may be necessary as private reviewers for purposes of Part III of this Act.

(3) The Director shall specify the terms and conditions of a private reviewer appointed under subsection (2) in his or her instrument of appointment.

(4) The Director shall issue a certificate to —

- (a) an officer designated as a reviewer under subsection (1); and
- (b) a person appointed as a private reviewer under subsection (2).

Powers of
entry

- (5) A certificate issued under subsection (4) —
 - (a) shall be affixed with the seal of the Director.
 - (b) shall be valid for 12 months from the date of issue unless earlier suspended or cancelled.
- (6) A person who is engaged as a reviewer under this section shall not simultaneously carry out any work as a practitioner.

63. (1) For purposes of the administration of this Act, an officer of the competent authority who has been authorised by the Director, in writing, may, without previous notice and at any time —

- (a) enter upon any land, premises or vessel for the purposes of undertaking investigations and inspections to ensure compliance with this Act;
 - (b) stop, search and seize any vehicle, vessel, boat or aircraft, which the officer believes to have been used in the commission of an offence or to contain anything which might provide evidence of the offence; or
 - (c) require the driver of the vehicle, the person in charge of the vessel, boat, or the pilot of the aircraft, referred to in paragraph (b), to furnish the officer with details of any licence, permit, authority or permission issued to him or her under this Act.
- (2) An officer mentioned under subsection (1) shall, if required, produce the written authorisation given to him or her by the Director.

(3) Any person who wilfully obstructs an officer authorised to exercise the powers under this section, or who gives information which he or she knows or ought reasonably to have known is false, commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding five years, or to both.

(4) Any power conferred by this section shall be construed as including power to search for the purpose of ascertaining the environmental impact of an activity.

Powers to
require
information

64. (1) An officer authorised under section 63 may, for the purpose of ensuring compliance with this Act, require the owner or occupier of any premises to provide any information which may be required for the purposes of this Act.

- (2) Any person who —
 - (a) refuses to give the information required under subsection (1); or

(b) gives information which is false or misleading, commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding five years, or to both.

Confidentiality 65. (1) No person or officer appointed, employed or duly authorised by the competent authority, Director or Board, shall disclose any information which the person or officer acquired in the performance of any duty, or the exercise of any function under this Act, except for the purposes of the performance of a duty or the exercise of a function or when lawfully required to do so by a court.

(2) Any person or officer who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.

Conflict of interest 66. (1) A practitioner or private reviewer shall not engage in a consultancy where the engagement in the consultancy may give rise to a conflict of interest.

(2) A practitioner shall not simultaneously carry out work as a reviewer under this Act.

(3) A practitioner or private reviewer shall, where a conflict of interest is likely to arise during the consultancy, disclose such interest to the competent authority.

(4) A practitioner or private reviewer who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.

Protection from personal liability 67. An officer, employee or agent of the competent authority shall not be subject to any liability, action, claim or demand, for an act done by the officer, employee or agent, *bona fide* for the purposes of carrying the provisions of this Act into effect.

Enforcement of provisions 68. If a person alleges that any provision of this Act has been, is being, or is likely to be contravened in relation to him or her, or any other person or group of persons who have a substantial interest, that person may apply to the High Court for redress.

Trans-boundary environmental impact 69. (1) Where a proposed activity is likely to have a significant adverse environmental impact in another country, the competent authority shall consult the Minister.

(2) The Minister shall, through the Minister responsible for foreign affairs, inform the country concerned about the intended activity, by sending to that country's Minister responsible for foreign affairs, the terms of reference or a statement, and any other relevant information.

- (3) This section applies to any country —
 - (a) in respect of which the Minister, having regard to any reciprocal provisions under the laws of that country, so directs; or
 - (b) that is a party to an international agreement or treaty to which Botswana is a party, where the parties to the international agreement or treaty are obliged to inform one another.

Part XI — *Miscellaneous*

Offence and
penalty

70. (1) Any person who is not a practitioner, or private reviewer who —

- (a) performs the work of a practitioner or private reviewer for gain;
- (b) practises or carries on business under any name or style which contains the word “Reviewer”, “Private Reviewer” or “Practitioner”;
- (c) uses by way of advertisement, description, document, drawing or other means, any name, title, addition, description, letters, motto, emblem, symbol, badge, seal or other insignia which indicates or is calculated to lead persons to assume that he or she is a practitioner, reviewer or private reviewer; or
- (d) pretends or by any means whatsoever, holds himself or herself out to be a practitioner, reviewer or private reviewer,

commits an offence.

(2) A practitioner who knowingly employs or engages in the capacity of a practitioner any person who was registered and —

- (a) whose name has been removed from the register and has not been restored; or
- (b) who has been suspended from practice in terms of this Act, during the period of suspension, save with the prior written consent of the Board, which consent may be given for such period and subject to such conditions as the Board may determine,

commits an offence.

(3) A person convicted of an offence under subsection (1) or (2) is liable on a first conviction to a fine not exceeding P50 000, or to imprisonment for a term not exceeding two years, or to both.

(4) For the purposes of subsection (1), a person shall be deemed to be performing the work of a practitioner or private reviewer for gain if he or she or a partnership of which he or she is a member or an employee including a director in relation to a company —

- Exemptions
- (a) performs the work of a practitioner or private reviewer for or in expectation of a fee, gain or reward, direct or indirect to himself or herself or to any other person; or
 - (b) holds himself or herself out as prepared in expectation of a fee, gain or reward, direct or indirect to himself or herself or to any other person, to perform the work of a practitioner or a private reviewer.
71. (1) Without prejudice to the generality of section 70, it shall be lawful for —
- (a) a person who is —
 - (i) in the *bona fide* employment of a practitioner, to perform the work of a practitioner under the direction and control of such practitioner, or
 - (ii) engaged by a practitioner to provide a specific service for such practitioner, to perform, in accordance with the instructions of such practitioner, the work of a practitioner, other than the supervision of such work;
 - (b) a body corporate, firm or partnership which carries on business which involves the performance of the work of a practitioner, to perform the work of a practitioner or to describe or hold itself out to be a practitioner where —
 - (i) the business of the body corporate, firm or partnership, in so far as it relates to the works of a practitioner, is under the direct control and management of a principal who is a practitioner and who does not act at the same time in a similar capacity for any other body corporate, firm or partnership, or
 - (ii) the business referred to in subparagraph (i) is carried on and is not personally conducted by the said principal, such business is being conducted under the direction of the said principal by an assistant who is a practitioner; or
 - (c) a person in the *bona fide* employment of a body corporate, firm or partnership referred to under paragraph (b) to perform the work of a practitioner under the direction and control of a principal or assistant referred to under paragraph (b).
- (2) It shall be a defence to any charge of contravening subsection (1) (a) for a person to show that he or she performed the work of a practitioner for his or her employer whilst in the *bona fide* full time employment of his or her employer and that his or her remuneration was by way of a wage or salary and not a fee or commission.

General
penalty

72. Any person who contravenes the provisions of this Act for which no penalty is otherwise provided and is convicted of an offence shall be liable to a fine not exceeding P50 000, or to a term of imprisonment not exceeding two years, or to both.

Regulations

73. (1) The Minister may make regulations for any matter which under this Act is to be prescribed or for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may provide for —

- (a) the governance of environmental impact assessment issues;
- (b) a list of activities, locations and thresholds or environmentally sensitive areas for which a statement is mandatory;
- (c) qualifications to conduct an environmental impact assessment;
- (d) contents of —
 - (i) a project brief,
 - (ii) an environmental impact statement,
 - (iii) a strategic environmental assessment report,
 - (iv) an environmental management plan,
 - (v) terms of reference, or
 - (vi) any other report or document to be submitted to the competent authority;
- (e) the manner of carrying out reviews of —
 - (i) the terms of reference,
 - (ii) the statement,
 - (iii) the monitoring programme, and
 - (iv) the evaluation report;
- (f) the manner of holding public hearings;
- (g) revoking or modifying an authorisation issued under this Act;
- (h) the manner in which entry into premises may be achieved to investigate or evaluate an environmental impact, or to monitor and audit the environmental impact of an activity;
- (i) the code of conduct of practitioners registered and private reviewers appointed under this Act;
- (j) fees charged by reviewers and practitioners for the provision of services under this Act;
- (k) fees charged by the competent authority for the provision of services under this Act;
- (l) forms to be used under this Act;

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- (*m*) criteria for —
 - (i) registration and certification of practitioners,
 - (ii) appointment and certification of reviewers; and
- (*n*) criteria for certification of private reviewers.”.

PASSED by the National Assembly this 17th day of September, 2020.

BARBARA N. DITHAPO,
Clerk of the National Assembly.