

LIGHTING OF FIRES (RESTRICTION) BILL, 2019

(Bill No. 17 of 2019)

OBJECTS AND REASONS

The Bill seeks to regulate the lighting of open fires and charcoal kiln and to provide for matters connected therewith or incidental thereto. The Bill also seeks to repeal the existing Lighting of Fires (Restriction) Act (Cap 114).

The Bill is divided into 4 parts.

Part I provides for preliminary matters such as the Short title, Interpretation and Non-application of the Act in certain specified matters.

Part II provides for permit and other matters such as Lighting of Barbecue or cooking fire, Prohibition to light open fire or charcoal kiln without permit, Prohibition to remove burnt trees, Permit for lighting of fire, Grant or refusal of permit and Appointment or designation of authorised officer.

Part III provides for Fire Restriction, Offences, Penalties and Appeal i.e., Declaration of fire restricted area, Imposition of fire ban, Spot check to monitor, Offences and fixed penalty, Liability, Protection of action taken in good faith, Penalty for causing damage to environment and Compounding of offences.

Part IV provides for Miscellaneous Provisions such as power to make Regulations and Repeal and Savings.

Dated this 12th day of November, 2019.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

LIGHTING OF FIRES (RESTRICTION) BILL, 2019

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ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

Sections

1. Short title
2. Interpretation
3. Non-application of Act

PART II - PERMIT

4. Lighting of barbecue or cooking fire
5. Prohibition to light open fire or charcoal kiln without permit
6. Prohibition to remove burnt trees
7. Permit for lighting of fire
8. Grant or refusal of permit
9. Appointment or designation of authorised officer

**PART III - FIRE RESTRICTION, OFFENCES, PENALTIES
AND APPEAL**

10. Declaration of fire restricted area
11. Imposition of fire ban
12. Spot check to monitor
13. Offences and fixed penalty
14. Liability
15. Protection of action taken in good faith
16. Penalty for causing damage to environment
17. Compounding of offences

PART IV - MISCELLANEOUS PROVISIONS

18. Regulations

19. Repeal and Savings

SCHEDULES

- Schedule 1** - Application Form for permit to light an open fire
- Schedule 2** - Form of permit granted under section 8
- Schedule 3** - Fixed Penalty Notice

SCHEDULE 3



Section 13

LIGHTING OF FIRES (RESTRICTION) ACT, 2019

MINISTRY OF ENVIRONMENT, ENERGY AND CLIMATE CHANGE

FORESTRY SECTION

FIXED PENALTY NOTICE

To.....

Residing at.....

I have reason to believe that on at
am/pm at.....

you committed an offence under section 13(1)/ (2) of the Lighting of Fires (Restriction) Act, 2019.

You may discharge your liability to prevent prosecution by paying a fixed penalty of SCR500/SCR1,500 to the Registrar of the Supreme Court at, Palais de Justice, Ile du Port within 5 working days of the date of this notice.

Dated this day of

.....
Authorised Officer

SCHEDULE 2



(Section 8)

LIGHTING OF FIRES (RESTRICTION) ACT, 2019

MINISTRY OF ENVIRONMENT, ENERGY AND CLIMATE CHANGE

FORESTRY SECTION

FORM OF PERMIT GRANTED UNDER SECTION 8

I certify that residing at is hereby permitted to light fire for the purpose of*...../charcoal kiln on said property with Parcel Number situated at

The permit issued is subject to the following terms and conditions—
.....
.....

This permit is valid for a period of month(s) from..... to

Date

Authorised Officer

* Strike off whichever is not applicable

LIGHTING OF FIRES (RESTRICTION) BILL, 2019

(Bill No. 17 of 2019)



A BILL

OF

AN ACT to regulate the lighting of open fires and charcoal kiln and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Lighting of Fires (Restriction) Act, 2019. Short title

Interpretation

2. In this Act, unless the context otherwise requires —

“authorised officer” means an officer appointed or designated as such by the Minister under section 9 of this Act and includes an authorised officer appointed or designated under the Environment Protection Act, 2016 (Act 18 of 2016);

“environment” means air, water and land and the inter-relationship which exists among and between air, water and land, and human beings, other living creatures, plants, micro-organisms and property;

“charcoal kiln” means a chamber or retort of metal or brick construction, or earth pits for carbonising wood to produce charcoal;

“open fire” means any outdoor fire or outdoor smoke producing process or the lighting of any outdoor flame producing devices from which air contaminants are emitted directly into the outdoor atmosphere”

“fire restricted area” means any area or any part thereof declared under section 10;

“Minister” means the Minister responsible for environment and Ministry shall be construed accordingly;

“permit” means a permit issued under section 8 to light an open fire or charcoal kiln;

“tree” includes palms, timber, shrubs, brushwood, bushes of all kinds, seedlings, saplings and re-shoots of all ages, all wood whether cut up or fashioned for any purpose or not, and any part of a tree, whether dead or alive;

PURPOSE OF LIGHTING FIRE:

Charcoal Agriculture Municipal waste Construction clearing

Other (please specify).....

Details of fees paid.....

Note 1.— For agricultural open fire please attach copies of the relevant agricultural documents/Lease Agreement

Note 2.— For Construction clearing please attach a copy of the planning authorisation from Town and Country Planning Authority and Environment Authorisation from the Department of Environment of the Ministry

Note 3.— For all purposes to light an open fire, please submit a copy of your title deeds. If on state land the form should be endorsed by an authorised officer of the relevant Ministry/Department responsible for the land and stamped with the official stamp of that Ministry.

DECLARATION

I hereby declare that the information given herein is true and correct and I accept all responsibilities for any liability that may arise as a result of lighting open fire or charcoal kiln or as a result of providing falsified or incorrect information to the Forestry Section.

Signature of Applicant:.....Date:.....

Signature of Landowner/Lessee/Tenant/Usufructuary/Others.....

.....Date:.....

FOR OFFICIAL USE

Inspection report:

Inspected by:.....Date.....

SCHEDULE 1



(section 1)

LIGHTING OF FIRES (RESTRICTION) ACT, 2019

MINISTRY OF ENVIRONMENT, ENERGY AND CLIMATE CHANGE
FORESTRY SECTION

APPLICATION FORM FOR PERMIT TO LIGHT AN OPEN FIRE

(This form should be duly completed and submitted to the Forestry Unit of the Ministry accompanied by the fee specified under section 7, prior to 10 days from the date proposed to light an open fire or charcoal kiln)

Name of applicant.....NIN.....

Applicant's interest in the land Owner Lessee Tenant
 Usufructuary Others

Address of applicant.....

Telephone number

(Mobile).....(Office).....(Home).....

Location of Site..... District.....

State Land Private Property

Name of Landowner.....Plot number.....

If the Applicant is not a Owner/Lessee of the land, the letter of consent of the owner shall be required.....

3. This Act shall not apply to lighting of open fire for the purpose of —

Non-application of Act

- (a) barbecue;
- (b) cooking fire;
- (c) cremation as provided in the Public Health Act, 2015 (Act 13 of 2015);
- (d) destruction of any articles for the purposes of disinfection or otherwise, as authorised by the Ministry responsible for health;
- (e) burning of a controlled drug or any other exhibits under the Misuse of Drugs Act, 2016 (Act 5 of 2016).

4. Notwithstanding section 3, a person shall not light, cause or authorise a barbecue or a cooking fire, in the open, unless —

Lighting barbecue or cooking fire

- (a) there is adequate supervision;
- (b) it is adequately contained, has a low risk of spreading or otherwise does not constitute or likely to constitute a danger to any vegetation, person or property; and
- (c) water supply or any other materials used to put out the fire is immediately available.

PART II - PERMIT

5. A person shall not light, cause or authorise to light any open fire or any charcoal kiln anywhere in Seychelles, without a written permit issued by the Ministry.

Prohibition to light open fire or charcoal kiln without permit

6. In the event of a fire or charcoal kiln being lit in a fire restricted area with or without a permit, results in any tree being destroyed, no person shall without permission from the

Prohibition to remove burnt trees

Minister remove, cause or authorise to be removed any tree from a burnt area, or replant the land except on a written authorisation issued by the Minister.

Permit for
lighting of
fire

7. A person who intends to light an open fire or charcoal kiln shall apply, in the form set out in Schedule 1 accompanied by prescribed fee for a permit to the Minister, ten working days prior to lighting of the fire.

Grant or
refusal of a
permit

8.(1) The Minister may, after verifying the application and after an enquiry, grant or refuse to grant a permit within a period of 8 days from the date of application for permit.

(2) The permit granted under this section shall be subject to such terms and conditions as may be specified in the permit.

(3) A permit shall be issued in the form set out in Schedule 2.

(4) Where an application for a permit is refused, an authorised officer shall notify the applicant with reasons for the refusal.

(5) The Minister may renew or cancel a permit when it is necessary and expedient to do so and shall notify the applicant in writing.

(6) Any person aggrieved by the decision of the Minister under this section may appeal to the Appeals Board established under the Environment Protection Act, 2016 (Act 18 of 2016).

Appointment
or designation
of authorised
officer

9. The Minister may, by signed instrument, appoint or designate any officer of the Ministry as an authorised officer for the purposes of this Act.

PART IV - MISCELLANEOUS PROVISIONS

18.(1) The Minister may make regulations for carrying out the provisions of this Act, and in particular — Regulations

- (a) to grant exceptions for lighting of an open fire or charcoal kiln in specific circumstances;
- (b) to regulate lighting of an open fire or charcoal kiln due to climatic variability;
- (c) to prescribe additional safeguards for lighting of open fire or charcoal kiln; and
- (d) to prescribe fees for an application, processing of an application or for a permit.

(2) The Minister may by regulations amend the Schedules.

19.(1) The Lighting of Fires (Restriction) Act (Cap. 114) is hereby repealed. Repeal and savings

- (2) Notwithstanding the repeal under subsection (1), —
 - (a) the protected areas declared under the repealed Act shall be deemed to be the fire restricted area under section 10;
 - (b) any permit issued under the repealed Act, shall be valid until it is revoked under this Act or until the expiry of the date specified in the permit, as the case may be.

pay the compensation ordered by the court on the basis of the evaluation report produced by the Ministry and the court shall, while fixing the compensation, take into consideration the expenses to be incurred to restore the damage caused to the environment.

Protection of action taken in good faith

15. No civil or criminal liability shall lie against the Ministry or an officer of the Ministry, for any act done or intended to be done in good faith in the exercise of their functions under this Act.

Penalty for causing damage to environment

16.(1) A person who lights or authorises to light an open fire or charcoal kiln without a permit and thereby causes damage to any forest, plantation, field or the environment, commits an offence and shall be liable on conviction to a fine not less than SCR25,000 and not exceeding SCR1,000,000 and imprisonment to a term not exceeding 7 years or to both such fine and imprisonment.

(2) The court may, while convicting a person under subsection (1), make an order for compensation payable by the convicted person to the affected persons and also the costs to be incurred for restoring the damage caused to the environment.

(3) The court in determining the compensation or the cost under subsection (2) shall take into consideration the valuation report of the Ministry, the cost of restoration of the environment and the costs of mobilisation of resources to contain, control and put an end to the fire.

Compounding of offences

17.(1) Where a person agrees in writing to the compounding of an offence under this Act, the Minister may, in consultation with the Attorney General, compound the offence as prescribed by regulations.

(2) In any proceedings brought against any person for an offence against this Act, it shall be a defence if the person proves that the offence has been compounded under this section.

PART III - FIRE RESTRICTIONS, OFFENCES AND PENALTIES

10. The Minister may, if he or she is satisfied that it is necessary and expedient to regulate the lighting of open fire and charcoal kiln in any area in Seychelles, by notice published in the Gazette declare that area to be a fire restricted area.

Declaration of fire restricted area

11.(1) The Minister may, if he or she is satisfied that it is necessary and expedient to regulate the lighting of open fires during dry season, by notice published in the Gazette and in a local newspaper, impose a ban on lighting of fire for such period as may be specified in the notice.

Imposition of fire ban

(2) The Minister shall, upon being satisfied that the dry season is over, lift the ban imposed under subsection (1) by notice published in the Gazette and a local newspaper.

(3) Notwithstanding the publication of a notice under subsection (1), the Minister may, in exceptional circumstances, grant permission to light open fire subject to such special conditions, restrictions and fees following the procedure for granting a permit under sections 7 and 8.

(4) Any permit that has already been issued and in force during the fire ban, shall be deemed void and the applicant shall be notified and the fee, if any, paid shall be adjusted in extending the permit after the expiry of the period of fire ban.

(5) For the purpose of this section "dry season" means the period of the year, when there is generally low rainfall and strong south east trade winds.

12.(1) Where a permit has been issued, an authorised officer may undertake spot checks at the area where the lighting of an open fire is to take place, or is taking place to monitor the activities specified in the permit and ensure that the terms and conditions specified therein are being adhered to.

Spot check to monitor

(2) A person who lights, causes or authorises an open fire, or charcoal kiln, shall show the permit when requested by an authorised officer.

Offences and
fixed penalty

13.(1) A person who lights or authorises to light an open fire or a charcoal kiln without a permit issued under this Act, commits an offence and shall be liable on conviction to a fine of not less than SCR5,000 and not exceeding SCR 500,000 or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(2) A person who lights an open fire during the fire ban under section 11(1), commits an offence and shall be liable on conviction to a fine not less than SCR5,000 and not exceeding SCR500,000 or imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(3) Where a person commits an offence for the second or subsequent time, he or she shall be liable on conviction to a fine of not less than SCR10,000 and not exceeding SCR 500,000 or imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

(4) Where an authorised officer finds a person committing an offence or has reason to believe that a person has committed an offence under subsection (1) or subsection (2), the authorised officer may issue a fixed penalty notice of SCR500 in the form set out in Schedule 3;

(5) Where a person commits the offence for a second or subsequent time, the fixed penalty shall be SCR 1,500.

(6) Where a person is given a fixed penalty notice under this section, no prosecution shall be instituted for that offence before the expiry of the period specified in the notice for payment of the fixed penalty.

(7) A fixed penalty notice under this section shall —

- (a) give the particulars of the circumstances alleged to constitute the offence;
- (b) specify the amount of fixed penalty;
- (c) specify the name and address of the person to whom the fixed penalty notice is issued;
- (d) specify the address at which the fixed penalty shall be paid; and
- (e) specify the period within which the fixed penalty shall be paid.

14.(1) For the purpose of this section hazardous substance and hazardous waste shall have the respective meaning assigned under the Environment Protection Act, 2016 (Act 18 of 2016).

Liability

(2) A person who holds a permit shall ensure that —

- (a) the fire can be well contained and controlled within a specified area;
- (b) the fire shall not produce excessive amount of smoke so as to cause nuisance or disturbance to the neighbours;
- (c) the fire does not contain hazardous substance or hazardous waste, or any other materials stated in the conditions of the permit;
- (d) the weather condition is conducive; and
- (e) the terms and conditions imposed in the permit are complied with.

(3) Where the holder of a permit breaches any of the conditions specified in subsection (2) or such other terms and conditions specified in the permit, he or she shall be liable to