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THE FORESTS (AMENDMENT) ORDINANCE, 2001

DATE OF COMMENCEMENT

In exercise of the powers conferred by section 1(2) and (3) of the Forests (Amendment) Ordinance, 2001 [*Cap. A88*], the Chief Minister and Minister of Planning and Resource Management has appointed the 1st day of July, 2002, as the date on which that Ordinance, except section 7, shall come into force.

Dated this 18th day of June, 2002.

DATUK PATINGGI

TAN SRI (DR) HAJI ABDUL TAIB BIN MAHMUD,
Chief Minister
Minister of Planning and Resource Management

LAWS OF SARAWAK**Chapter A88****FORESTS (AMENDMENT) ORDINANCE, 2001**

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Enacted by the Legislature of Sarawak—

Short title and commencement

1.—(1) This Ordinance may be cited as the Forests (Amendment) Ordinance, 2001.

(2) This Ordinance shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

(3) The Minister may appoint different dates for the coming into force of different provisions of this Ordinance.

Amendment of section 16 and 33

2. The Forests Ordinance [*Cap. 126 (1958 Ed.)*] (hereinafter referred to as “the Principal Ordinance”) is amended—

(a) by deleting the word “or” in line two of section 16;

and

(b) by deleting the word “to” appearing after the word “constitute” in subsection (1) of section 33.

Amendment of section 35

3. Section 35 of the Forests Ordinance is amended by substituting the words “forest reserve” in line three of subsection (2) thereof with the words “protected forest”.

Amendment of section 47

4. Section 47 of the Principal Ordinance is amended by adding immediately after subsection (2) thereof, the following new subsection (3)—

“(3) A member of the community shall be presumed to be taking forest produce for sale, exchange or direct profit unless he can

prove to the satisfaction of a court or the Director or any officer authorized by the Director to investigate an offence under section 69, that he requires the forest produce as firewood or for the construction, repair or extension of his dwelling house or for the making of any boat, furniture or any other household goods or utensils for the use of himself or his immediate family, and that the forest produce was taken by himself or a member of his family.”.

Amendment of section 50

5. Section 50 of the Principal Ordinance is amended—

(a) by substituting the figures “65” in line one thereof with the figures “65(1)”; and

(b) by deleting the words “the terms of” appearing in the second last line thereof.

Amendment of section 54A

6. Section 54A of the Principal Ordinance is amended—

(a) by adding immediately after the word “section” in line one of subsection (1) thereof, the words “and section 54B”; and

(b) by adding immediately after the words “alienated land” in line seven of subsection (1) thereof in respect of the definition of “employer”, the words “or the establishment and management of any planted forest”.

New section 54B

7. There shall be inserted immediately after section 54A of the Principal Ordinance the following new section 54B:

“Employment of trained workmen

54B.—(1) No employer shall hire, engage or appoint any workman under a contract of service or of apprenticeship or under any other arrangement whatsoever, to carry out, undertake or perform any forestry activity unless that workman has successfully completed a course of training in such forestry activity which is conducted by an institution approved by the Director in consultation with the Minister.

(2) For the purpose of this section, “forestry activity” means any activity relating to the logging or transportation of timber or other forest produce, or associated with the sustainable management of any forest or the establishment and management of any planted forest and which is prescribed as a forestry activity by the Director with the

approval of the Minister, by notification in the *Gazette*, for reason that the carrying out, undertaking or performance of any such forestry activity may endanger the health and safety of the workman or any other persons.

(3) Any employer who contravenes the provisions of subsection (1) shall be guilty of an offence: Penalty, a fine not exceeding five thousand ringgit or imprisonment not exceeding two years, or both such fine and imprisonment; and upon conviction, any timber licence or any permit issued to him under this Ordinance may be cancelled or suspended in accordance with section 51A.”.

Substitution of section 65

8. Section 65 of the Principal Ordinance is substituted by the following new section:

“Timber, etc., from State land forests for domestic use

65.—(1) Subject to section 57 and to any rules made under section 95, and any other written law, any resident of the State of Sarawak may—

(a) without a licence or permit, collect and remove from any State land which is not a forest reserve or protected forest, any forest produce other than timber which is required exclusively for his own domestic use and not for sale, barter or profit; or

(b) with the prior written permission of the Director or any other forest officer duly authorized by him, cut and remove timber from any State land forest which is required exclusively for his own domestic use.

(2) For the purpose of this section—

(a) “domestic use” means any use for the purpose of construction, repair or extension of a dwelling-house or for use as firewood or for the making of furniture or any other household goods or utensils in a person's own dwelling house; and

(b) “State land forest” means any permanent forest in the State other than a forest reserve, protected forest, communal forest, Government reserve and planted forest.

(3) Any person who—

(a) contravenes subsection (1); or

(b) having obtained written permission of the Director or any other forest officer under subsection (1)(b), uses or allows any timber to be used for purposes other than his own domestic use, or who sells or otherwise dispose of the timber for barter or profit,

shall be guilty of an offence: Penalty, a fine not exceeding thirty thousand ringgit or imprisonment not exceeding two years, or both such fine and imprisonment.”.

Substitution of section 65A

9. Section 65A of the Principal Ordinance is substituted by the following new section:

“Power to declare protected tree or species of tree

65A.—(1) The Director may, with the approval of the Minister, declare, by notification in the *Gazette*, any tree or species of tree found on any State land or in any forest reserve, protected forest or communal forest, as a protected tree or species of tree on account that the tree or the species thereof has medicinal compound or properties upon which research could be carried out for the development or production of medicinal or pharmaceutical products.

(2) Upon the publication of the notification made under subsection (1), no person shall cultivate, propagate or germinate any tree or species of tree specified therein or remove such tree or species of tree from their natural habitat or locality where the same is found, except with the written approval of the Director and in accordance with rules made under section 95(1).

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence: Penalty, a fine not exceeding thirty thousand ringgit or imprisonment not exceeding two years or both fine and imprisonment.”.

Amendment of section 67A

10. Section 67A of the Principal Ordinance is amended by substituting the words “or his duly authorized forest officer” appearing in lines two and three of subparagraph (c) of subsection (7) thereof with the words “or any person duly authorized by him”.

Substitution of section 68

11. Section 68 of the Principal Ordinance is substituted by the following new section:

“Power of arrest

68.—(1) Any offence under section 65(3), 66, 83, 85, 86, 90B(1) or 90B(3) or under rule 22(1), (2) or (5) of the Forests Rules [*G.N. 107 of 1953*] or under rule 3(2) of the Forests (Planted Forests) Rules, 1997 [*Swk. L.N. 6/97*] shall be a seizable offence within the meaning of the Criminal Procedure Code [*Act 593*].

(2) Any forest officer authorized by the Director or any police officer may, without a warrant, arrest any person reasonably suspected of having been concerned in any such seizable forest offence or if the person refuses to give his name and residence, or gives a name and residence which there is reason to believe is false, or if there is reason to believe that he will abscond.

(3) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested to the officer in charge of the nearest police station or, if the offence is compoundable under section 70, to an officer empowered under that section to accept compensation:

Provided that, in the latter case, if the arrested person refuses to compound the alleged offence, he shall forthwith be sent to the officer in charge of the nearest police station.

(4) Where the person arrested under this section is required, for purposes of investigation, to be detained for more than twenty hours the provisions of section 69c shall apply.

(5) Whenever any forest officer authorized by the Director has reasonable cause to suspect that a *forest offence* has been committed, he may search any conveyance, building or facility *under the control* of the suspect, his agents or servants.”.

Substitution of section 69

12. Section 69 of the Principal Ordinance is substituted by the following new section:

“Power to Investigate

69.—(1) The Director or any forest officer duly authorized by him or any police officer not below the rank of Sergeant or any police officer in charge of a police station (referred to in this section collectively as an “authorized officer”) may carry out investigation into any forest offence, and in carrying out such investigation; the authorized officer may exercise all or any of the special powers in relation to police investigation in seizable cases provided in the Criminal Procedure Code [*Act 593*].

(2) Any authorized officer may by order in writing require the attendance before himself of a person who appears to be acquainted with the facts and circumstances of that case or is suspected of being concerned with the forest offence under investigation.

(3) If the person who is ordered to attend fails to comply therewith, the authorized officer may report such failure to a Magistrate who shall issue a warrant to secure the attendance of that person.”.

New sections 69A, 69B and 69C

13. There shall be inserted immediately after section 69 of the Principal Ordinance the following new sections 69A, 69B and 69C—

“Examination of person acquainted with case

69A.—(1) An authorized officer making an investigation under section 69 may examine orally any person who may be acquainted with the facts and circumstances of the case.

(2) The person shall be legally bound to answer all questions relating to the case put to him by the authorized officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(4) The authorized officer obtaining information from a person shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

Admissibility of statement to evidence

69B.—(1) If any person is charged with a forest offence, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Ordinance or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an authorized officer referred to in section 69 and whether or not interpreted to him by another officer or any other person, shall be admissible in evidence at his trial and, if the person charged tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching him.

(2) No statement referred to in subsection (1) shall be admissible or used in any criminal proceedings—

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(b) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned by any forest officer authorized by the Director or a police officer of or above the rank of Inspector in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence”.

(3) A statement made by a person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible after that.”.

Where investigation cannot be completed within twenty-four hours

69C.—(1) Whenever any person who is arrested under section 68 or whose attendance is secured by a warrant under section 69(3) in connection with a forest offence, and the investigation cannot be completed within the period of twenty four hours and there are reasonable grounds for believing that the accusation or information against him is well-founded, the authorized officer investigating the case under section 69 may deliver him to the nearest police station to be released on a bond or police bail or to be detained thereat pending arrangement to produce the person before a Court competent to try the forest offence.

(2) Where a person is brought before a Court under subsection (1), the authorized officer investigating the case shall comply with section 117(1) of the Criminal Procedure Code [*Act 593*] and the Court shall have such powers over that person as are prescribed in section 117(2) of that Code.”.

Amendment of section 70

14. Section 70 of the Principal Ordinance is amended by adding immediately after the word “section” in line one and after the figures “80,” in line two of subparagraph (a) of subsection (1) thereof, the figures “65(3),” and “83(3),” respectively.

Amendment of section 71

15. Section 71 of the Principal Ordinance is amended by adding immediately after the word “conveyances” in line three thereof, a comma and the word “documents”.

Amendment of section 90B

16. Section 90B of the Principal Ordinance is amended—

(a) in paragraph (a) of subsection (1), by adding after the words “other article” in line two the words “or dig or create a trench or cavity” and by adding after the word “timber” in line four thereof the words “or for the establishment or maintenance of a planted forest”;

(b) by substituting subsection (1A) with the following new subsection:

“(1A) In the prosecution of an offence under paragraph (a) of

subsection (1), where it is proved that the person charged was, at the time of his arrest, present at any structure, stone, log, tree or any other article or trench or cavity which has been laid, erected, set up or dug on any road used or intended to be used for logging or transportation of timber or for the establishment or maintenance of a planted forest, it shall be presumed, until the contrary is proved, that the person charged had so laid, erected, set up or dug that structure, stone, log, tree or any other article or trench or cavity, as the case may be.”; and

(c) by deleting subsections (4), (5) and (6) thereof.

Substitution of section 92A.

17. Section 92A of the Principal Ordinance is substituted by the following new section:

“Conduct of prosecution

92A. Prosecution of any offence under this Ordinance or any subsidiary legislation made hereunder may be conducted by the Public Prosecutor or any person authorized by him under section 377(b) of the Criminal Procedure Code [*Act 593*].”.

Amendment of section 95

18. Section 95 of the Principal Ordinance is amended—

(a) by deleting the word “and” at the end of paragraph (w) of subsection (1) thereof;

(b) by substituting the full stop at the end of paragraph (x) of subsection (1) thereof with a semi colon and by adding thereafter, the word “and”; and

(c) by inserting immediately after paragraph (x) of subsection (1) thereof, the following new paragraph:

“(y) providing for the training of workmen employed by any employer under sections 54A and 54B in the felling, collection, removal, handling or transportation of timber or other forest produce or any other activity required for the sustainable management of any forest or the establishment and maintenance of planted forests; the nature and contents of courses prescribed by the Director for the training of such workmen; the approval of institutions for the conduct of the training courses; the qualification of persons conducting such training courses; and the award of certificates to persons who successfully completed the prescribed training courses.”.