

Zambia

Fencing Act, 1949

Chapter 190

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1949/19/eng@1996-12-31

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Fencing Act, 1949
Contents

1. Short title 1

2. Application 1

3. Interpretation 1

4. Fence between lands of different owners to be at cost of each 2

5. Notice to any person required to contribute towards construction of fence 2

6. Arbitration provided for 2

7. Construction of fence on failure to carry out agreement or award 2

8. When contributions may be paid by instalments 3

9. Proceedings in case of absent owners 3

10. Tenants to pay interest on cost of fences 4

11. Tenant, with right to purchase, to pay cost of fence in addition to purchase money 4

12. Repairs 4

13. Notice of required repairs to owner of adjoining land 4

14. Bush may be cleared for fencing 4

15. Construction of certain fences 5

16. Provision when river is boundary between lands 5

17. Damages against person neglecting to clear inflammable matter from boundary line 5

18. Right of way to construct fences 5

19. Landlord may defend proceedings against tenant 6

20. Subordinate courts to have jurisdiction 6

21. Penalty for wilful damage to fence or gate 6

22. Accidental injury 6

23. Regulations 6

24. Existing contracts not affected by this Act 6

25. Existing fences 6

First Schedule (Section 8) 7

Second Schedule (Section 8) 8

Third Schedule (Section 8) 10

Fourth Schedule (Section 3) 12

Fifth Schedule (Section 6) 16

Zambia

Fencing Act, 1949 Chapter 190

Commenced on 1 October 1949

[This is the version of this document at 31 December 1996.]

An Act to regulate the erection and maintenance of dividing fences; and to provide for matters incidental thereto or connected therewith.

1. Short title

This Act may be cited as the Fencing Act.

2. Application

- (1) This Act shall apply to such areas as the Minister may, by statutory notice, declare.
- (2)
 - (a) Before this Act is applied to any area, the Minister shall cause to be published in the *Gazette* notice of the intention to apply the provisions of the Act to that area.
 - (b) The Minister shall not apply this Act to any area unless the majority of owners of occupied farms in the area present and voting have expressed themselves in favour of such application at a meeting convened in accordance with the provisions of subsection (3).
- (3) On the publication of such notice the District Secretary of the area concerned shall forthwith convene a meeting of all owners of occupied farms in the area concerned by serving a written notice by hand or registered post on such owners fixing a time and place for the holding of the meeting and setting forth the object of the meeting. The notice shall be given at least thirty days before the date fixed for the meeting.
- (4) At the meeting the following provisions shall apply:
 - (a) the District Secretary, who shall have no vote, shall act as chairman;
 - (b) each owner shall be allowed one vote in respect of each farm occupied by him in the area concerned;
 - (c) each owner may vote either in person or by proxy;
 - (d) when the majority of owners present so desire a vote shall be by secret ballot; and
 - (e) a resolution shall be passed if a majority of the owners present in person or by proxy vote in favour thereof.
- (5) The District Secretary shall transmit to the Minister a certificate under his hand setting forth the result of the meeting.

[As amended by G.N. No. 319 of 1964]

3. Interpretation

- (1) In this Act, unless the context otherwise requires—

"**arbitration**" means arbitration in accordance with the provisions of the Arbitration Act or any Act substituted therefor;

"**dividing fence**" means a fence separating the lands of different owners and of a type which such owners may agree upon, or, in the event of disagreement, which may be settled by arbitration;

"**owner**" means—

- (a) any person holding land in fee simple or directly from the President under any grant, lease, licence or similar title;
- (b) a city council, a municipal council or township council in respect of land vested in it or set aside for its use;
- (c) any person lawfully holding land in accordance with the provisions of an agreement which entitles such person to obtain title thereto on the fulfilment by him of the conditions prescribed by such agreement;
- (d) the President in respect of unalienated State land and the roads or portions of roads set out in the Fourth Schedule;
- (e) the President in respect of unalienated * former Trust Land.

*Now referred to as customary area. See Lands Act of 1995.

- (2) The Minister may, by statutory notice, add to or amend the Fourth Schedule.

[As amended by No. 32 of 1950, G.N. No. 319 of 1964 and No. 69 of 1965]

[Cap. 40]

4. Fence between lands of different owners to be at cost of each

The owners of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands in equal proportions.

5. Notice to any person required to contribute towards construction of fence

Any person desiring any other person to contribute to the construction of a dividing fence under the provisions of section four may serve on such person a notice in writing to fence, which shall specify the boundary to be fenced and the type of fence proposed to be constructed, and shall contain a proposal for fencing the same.

6. Arbitration provided for

If within three months after the service of any notice to fence under the provisions of section five, the person serving and the person served with such notice do not agree as to the type of fence to be erected, and the position thereof, any of such matters as to which there is no agreement shall be settled by arbitration. In making any award, the arbitrator shall be guided, as to which type of fence such arbitrator may order or award to be constructed, by the minimum standard fence described in the Fifth Schedule.

[As amended by No. 37 of 1953]

7. Construction of fence on failure to carry out agreement or award

If the person serving and the person served with such notice agree as to the matters aforesaid relating to the construction of such fence, or if, in default of such agreement, an arbitrator is appointed and makes an award, and if in either case either of such persons fails within the time named in that behalf in such agreement or award, or, if no such time is named, within three months after the date of such agreement

or award, to perform his part of such agreement or to comply with such award, then the other of such persons may construct the whole fence as agreed upon or awarded by such agreement or award, and may recover in any court of competent jurisdiction such part of the cost of constructing the same as may have to be contributed by the other of such persons.

8. When contributions may be paid by instalments

- (1) If any person is called upon under this Act to join in or contribute to the construction of any dividing fence, and such person is unable or unwilling to pay forthwith the amount or any part thereof which he is or becomes liable to pay, and within one month after the amount which he is liable to pay has been fixed, gives notice to the person calling upon him to join in or contribute as aforesaid that he desires to pay such amount by instalments, the following provisions shall apply:
 - (a) the amount payable by such person, or such part thereof as he is not willing to pay as aforesaid, together with interest thereon at the rate of six *per centum per annum* shall be paid by equal yearly instalments;
 - (b) the instalments shall be so calculated and fixed that the said capital amount and interest shall be paid off in a period of five years if such capital amount does not exceed two hundred kwacha, and of ten years if it does exceed two hundred kwacha;
 - (c) the said periods of five or ten years, as the case may be, shall be calculated from the date of the notice to join in or contribute hereinbefore mentioned;
 - (d) the instalments shall be paid in the manner more particularly set forth in the First and Second Schedules.
- (2) Any owner who has become liable to pay instalments in accordance with the provisions of subsection (1) may at any time during the aforementioned periods of five or ten years, as the case may be, pay the value at that time of the unpaid instalments in one sum as shown in the Third Schedule.

9. Proceedings in case of absent owners

- (1) The owner of any land who requires the construction of a dividing fence between his land and any adjoining alienated land which is unoccupied, or the owner of which cannot be found, shall insert in the *Gazette* and in a newspaper (if any) published or circulating in the district in which such adjoining land is situated, at least once a month during three consecutive months, a notice addressed to the owner of such land, describing him as the owner of such land, requiring him to contribute to the construction of the fence, and may then proceed *ex parte* to obtain from a subordinate court of the first or second class an order authorising the construction of such fence, and specifying the type of fence to be constructed and the position thereof, and may construct a fence in compliance with such order.
- (2) The owner of the land who requires the construction of a fence as aforesaid may, on the completion of such fence as aforesaid and on furnishing to the subordinate court such particulars as may be required by the said subordinate court, request that a certificate be prepared and furnished to him setting out the proportion of the cost of fencing regarded by the subordinate court as properly chargeable to the owner of the adjoining land.
- (3) The Registrar of Deeds, on receiving a certificate from the owner of the land, shall make an entry thereof in respect of the land affected. Such entry shall constitute a charge on the land which shall —
 - (a) rank from the date of entry; and
 - (b) bear interest at six *per centum per annum*.

10. Tenants to pay interest on cost of fences

- (1) When any fence is constructed under the provisions of this Act dividing any lands, held by any person as tenant of any owner, from any adjoining lands, such tenant shall pay to the owner—
 - (a) during the continuance of his lease or for a period of fifteen years, whichever period shall be the shorter, the interest calculated at the rate of six *per centum per annum* upon the proportion of the cost of construction paid by the owner from whom he holds his tenancy; or
 - (b) forthwith a lump sum equal to the annual interest which the tenant would be liable to pay under paragraph (a) multiplied by fifteen:
Provided that no tenant whose unexpired term of lease does not exceed one year shall be liable to pay any such interest or lump sum.
- (2) The interest which a tenant is liable to pay under paragraph (a) of subsection (1) may at any time be redeemed on payment of the sum specified in paragraph (b) of subsection (1), less any sums already paid by way of interest.

11. Tenant, with right to purchase, to pay cost of fence in addition to purchase money

Any tenant having an option to purchase, or obtain an assignment of, any land occupied by him at a fixed rate shall, on completion of the purchase or assignment, pay to the owner, in augmentation and as part of the purchase money, the sum for which he would be entitled to redeem his liability to pay interest in accordance with the provisions of subsection (2) of section ten.

12. Repairs

When any dividing fence, or any fence dividing the land of different owners erected prior to the commencement of this Act, is out of repair or has become insufficient, the owners of land on either side thereof shall be liable for the cost of repairing such fence in equal proportions.

13. Notice of required repairs to owner of adjoining land

- (1) The owner of any land separated from any adjoining land by a dividing fence may serve a notice upon the owner of such adjoining land, requiring him to assist in repairing such fence, and if such owner refuses or neglects after the space of one week after the service of such notice to assist in repairing such fence, such first mentioned owner may repair such fence and demand and recover of and from such owner his portion of the cost of repairing the same.
- (2) If any dividing fence has been destroyed on account of the negligence of one of the adjoining owners, then the owner who has been responsible for such negligence shall be liable for the entire cost of repairing such fence.

14. Bush may be cleared for fencing

Where any fence is to be erected on land covered with bush, the person erecting such fence shall be entitled to clear the bush for a width not exceeding 1.8288 metres on each side of the line of such fence, and may remove any tree standing in the direct line of such fence, and the cost of such clearing shall be added to and form part of the cost of the erection of such fence; and in case the person erecting such fence is entitled to recover in respect of such cost of erection from any other person, the cost of such clearing shall be apportioned accordingly.

15. Construction of certain fences

The owner of any land may, in making a ditch and bank fence dividing his land from any adjoining land, make a ditch on such adjoining land, and use the soil taken therefrom towards making a bank, or he may make the ditch on his own land, and place the bank on such adjoining land. Where a dividing fence is made of posts and rails, or wire, or paling, the posts of such fence shall be placed on or as near as possible to the boundary line.

16. Provision when river is boundary between lands

Where a river, creek, or natural water-course forms the boundary of contiguous lands, but is not capable of resisting the trespass of animals liable to be impounded, it shall be competent for the owners of such contiguous lands to agree upon such a line of fence on either side of such river, creek, or natural water-course as shall secure such fence from the action of floods. If the owners do not agree upon such a line of fence, the line of fence to be erected, and whether any or what compensation in the shape of an annual payment shall be paid to either of the parties owning such contiguous lands in consideration of loss of occupation of land, shall be settled by arbitration:

Provided that the occupation of lands on either side of such line of fence shall not be deemed adverse possession, and shall not affect the title to or possession of any such lands, save for the purposes of this Act.

17. Damages against person neglecting to clear inflammable matter from boundary line

If the owner of any land clears the same of inflammable materials for the space of 9.144 metres from any fence dividing such land from the land of any other owner, and such other owner neglects or omits so to clear his land, and any damage from fire happens to such dividing fence through such neglect or omission, the owner so neglecting or omitting to clear shall, at his own cost and charge, cause such fence to be repaired and re-erected within the space of one month after the same has been so damaged, and in case he refuses or omits to repair or re-erect the said fence within such space of one month, the owner of the land contiguous to the said fence who has cleared the same of inflammable materials as aforesaid may repair or re-erect such dividing fence forthwith, and all sums of money which may be so expended or laid out under the provisions of this section shall be deemed and taken to be money paid to the use of the owner in default:

Provided that nothing herein shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for or in respect of any damage or injury to any fence occasioned by the reckless or negligent use of fire.

18. Right of way to construct fences

Every person engaged in constructing or repairing a fence under this Act, and his agents and servants, may, if there is no available access thereto over the land of such person at all reasonable times during such construction or repair, enter upon the contiguous lands with or without cattle, carts or other vehicles, and do thereupon such acts, matters and things as are necessary or reasonably required to carry into effect the construction or repair of such fence:

Provided that nothing herein contained shall authorise the entry for the purposes aforesaid upon any land in cultivation or in or upon any garden, plantation, or pleasure ground, without the consent of the owner, or shall authorise any person to cut down, lop, or injure any fruit or ornamental tree or shrub without such consent.

19. Landlord may defend proceedings against tenant

Any person may intervene and defend any proceedings under this Act against any tenant of such person, in consequence of which such person may ultimately incur any liability; and any defence which the person originally proceeded against might set up shall be available to the person intervening.

20. Subordinate courts to have jurisdiction

Proceedings for orders and for the recovery of sums of money not exceeding one thousand kwacha may be taken before a subordinate court of the first or second class, notwithstanding that the decision of any such question is beyond the ordinary jurisdiction of such court.

21. Penalty for wilful damage to fence or gate

Any person who wilfully injures or removes any fence, gate or other appliance or contrivance forming part thereof, shall be guilty of an offence and liable to a fine not exceeding two thousand two hundred and fifty penalty units, or in default of payment to imprisonment for a period not exceeding six months, and shall in addition be ordered by the court by which he is convicted to pay the amount of damage sustained by the owner of such fence, gate or other appliance or contrivance, and such order shall be executed in the same way a judgment of such court in a civil case is executed.

[As amended by Act [No. 13 of 1994](#)]

22. Accidental injury

Any person who inadvertently or accidentally injures any fence shall forthwith repair the same, and in the event of his being unable to do so shall forthwith report the damage to the owner and deposit such sum as may be reasonably sufficient to cover the cost of repairing the same, and shall be entitled to receive a receipt therefor. Any person failing to repair such fence or give such notice and make such deposit as aforesaid, or any owner refusing to give a receipt therefor, shall be guilty of an offence and liable to a fine of three hundred penalty units, or in default of payment to imprisonment for a period not exceeding fourteen days, and shall in addition remain liable to pay the cost of repair.

[As amended by Act [No. 13 of 1994](#)]

23. Regulations

The Minister may, by statutory instrument, make regulations relating to the provision of gates and cattle grids in fences adjoining roads and the insertion of cattle grids in roads.

[No. 32 of 1950 as amended by G.N. No. 319 of 1964]

24. Existing contracts not affected by this Act

Nothing in this Act shall be deemed or taken to affect any covenant, contract or agreement made, or hereafter to be made, relative to fencing, between landlord and tenant, or between owners of adjoining land.

25. Existing fences

Nothing in this Act contained, other than the provisions of section twelve, shall affect or apply to any fence erected before the application of this Act to the area in which the fence is erected.

First Schedule (Section 8)

Table of equal instalments payable for five years

Table of equal instalments payable at the end of each year for five years, in accordance with the provisions of [section 8](#):

Amount payable K	Equivalent amounts payable at the end of each year for 5 years K
1	0.24
2	0.48
3	0.71
4	0.95
5	1.19
6	1.43
7	1.66
8	1.90
9	2.14
10	2.38
20	4.75
30	7.12
40	9.50
50	11.87
60	14.25
70	16.62
80	18.99
90	21.37
100	23.74

Yearly instalments for any sum not mentioned in this table, such as K89.25, may be ascertained as follows:

	K
K80.00 gives	18.99
K9.00 gives	2.14
K0.25, or 1/4 of K1	0.06
Therefore K89.25 gives	K21.19

Second Schedule (Section 8)

Table of equal instalments payable for ten years

Table of equal instalments payable at the end of each year for ten years, in accordance with the provisions of section 8:

Amount payable K	Equivalent amounts payable at the end of each year for 10 years K
1	0.14
2	0.28
3	0.41
4	0.55
5	0.68
6	0.82
7	0.95
8	1.09
9	1.23
10	1.36
20	2.72
30	4.08
40	5.44
50	6.80
60	8.16
70	9.51
80	10.87
90	12.23
100	13.59
200	27.18
300	40.76
400	54.35

500	67.94
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Yearly instalments for any sum not mentioned in this table, such as K1,274.50, may be ascertained as follows:

	K
K1,000.00 gives	135.88
K200.00 gives	27.18
K70.00 gives	9.51
K4.00 gives	0.55
K0.50, or 1/2 of K1	0.07
Therefore K1,274.50 gives	K173.19

Third Schedule (Section 8)

Aggregate value of unpaid instalments

Aggregate value of unpaid instalments, each K100 in amount, of which the first is payable at once, and the remainder at yearly intervals:

Number of Instalments K100 each	Aggregate value K
1	100.00
2	194.34
3	283.34
4	367.30
5	446.51
6	521.24
7	591.74
8	658.24
9	720.98
10	780.17

NOTE.-The aggregate value of instalments of any other amount may be readily ascertained from the above table, by simple proportion.

Fourth Schedule (Section 3)
Roads affected by provisions of this Act

Classification of Road	Serial No. of Road	Portion of Road affected
Main	F2	From the junction with Road F1 to the 80.5 kilometre point from Lusaka on the Kabwe Road. (138.46 kilometres.)
Main	F2	From its intersection with the south-west boundary of Farm No. 2112, Kabwe Urban District, that is the 94.99 kilometre point from Lusaka, to its junction with the north-eastern boundary of Farm No. 1453, Kabwe Urban District, that is the 128.8 kilometre point from Lusaka. (33.81 kilometres.)
Main	F2	From its intersection with the northern boundary of Kabwe, that is the 6.44 kilometre point from Kabwe, to its intersection with the Mulungushi River, that is the 22.64 kilometre point from Kabwe. (16.1 kilometres.)
Main	F4	From Lusaka to the Chalimbana turn-off. (49.69 kilometres.)
Main	F1	The portion included in the Monze and Maza-buka Road Board Areas. (159.39 kilometres.)
Main	F1	From the northern boundary of the Livingstone Municipality to its junction with the southern boundary of the Monze Road Board Area.
Main	M9	From the junction of the Great North Road to a point 48.3 kilometres along Road M9. (48.3 kilometres.)
Main	M11	From its junction with Road F1 to where it crosses the Mbabala River. (28.98 kilometres.)

District	D176	From the Chisamba turn-off on Road F2 to Chisamba station. (19.32 kilometres.)
District	D188	From its junction with Road F2 to its junction with Road M9. (24.955 kilometres.)
District	D176	From Chisamba station as far as the turn-off to Farm No. 366a. (11.27 kilometres.)
District	D191	From its junction with Road F2 to its intersection with the southern boundary of Farm No. 962, Kabwe District. (17.71 kilometres.)
District	D392	From its junction with Road D393 to its junction with Road D395. (37.03 kilometres.)
District	D392	From the point where it meets Road D393 to the boundary at Mazabuka Township. (24.15 kilometres.)
District	D392	Remainder of Road D392 from its junction with Road D395 south of Nega Nega for 7.889 kilometres to its junction with Road D391.
District	D391	From Mazabuka Township to Lubombo Siding. (12.88 kilometres.)
District	D393	From Lubombo to the Kafue Railway Bridge Road D392. (9.66 kilometres.)
District	D391	From Lubombo to Road F1. (28.98 kilometres.)
District	D386	From its junction with Road F1 to Mount Kennedy Farm. (40.25 kilometres.)
District	D387	From Road F1 to the turn-off of Road D390. (28.98 kilometres.)
District	D394	From its junction with Road F2 to its junction with Road 391. (10.948 kilometres.)
District and	D189 (part only last 4.3	These four roads which total 24.794 kilometres in ranch length

Branch	kilometres of previously known Road C438 excluded), D605, C30 and C437	follow on each other and start at the junction with Road D188 some 13.041 kilometres west of the junction with Road F2. The first 9.66 kilometres is the first part of Road D189 (the second part of which was previously known as Road C438 being excluded), the second 8.221 kilometres is Road D605, the third 3.703 kilometres is the part previously known as Road C30 and the fourth 3.22 kilometres was previously known as Road C437 which is the extension to the former Lenje Reserve No. XV boundary.
District	D164	From its junction with Road F2 at a point 2.576 kilometres south of the Lusaka Municipal Boundary in a westerly direction for 33.166 kilometres to the boundary between the Lusaka District and the Mumbwa District.
District	D167	From its junction with Road D164 to its junction with Road D166. (10.304 kilometres.)
District	D176	From its junction with Road F2 at a point 5.152 kilometres north of the Lusaka Municipal Boundary in an easterly and north-easterly direction for 33.327 kilometres (excluding 2.415 kilometres through Ngwerere) to the boundary between the Lusaka District and the Chibombo District.
District	D601	From its junction with Road D176 in an easterly direction for 14.8925 kilometres to the Luano-Lala Reserve No. XIV boundary.
District	D166	From the Lusaka Municipal Boundary in a westerly direction for 53.935 kilometres to the Mwembeshi River which forms the boundary between the Lusaka District and the Chibombo District.
District	D176	From the boundary between the Lusaka District and the Chibombo

		District to the turn-off to Farm No. 366a. (19.32 kilometres.)
District	D152	From the Lusaka Municipal Boundary in an easterly direction for 54.74 kilometres to the Soli Wa Manyika Reserve No. XVII boundary.
District	D153	From its junction with Road F4 in a southerly direction for 38.64 kilometres to the Soli Wa Manyika Reserve No. XVII boundary.
District	D162	From its junction with Road F2, 6.118 kilometres south of the Lusaka Municipal Boundary for 10.304 kilometres to its junction with Road D575.
District	D575	From its junction with Road D162 in an easterly and southerly direction for 33.005 kilometres to the Kafue Township Boundary.
District	D379	From Monze Township to the Magoye River. (9.66 kilometres.)
District	D365	From Monze Township to the Keemba Hill turn-off, Road D372. (12.88 kilometres.)
District	D381	From the railway crossing near Tambero Siding to the Magoye River. (6.0375 kilometres.)
District	D374	From its junction with Road F1 in a westerly direction for a distance of 8.533 kilometres.
District	D384	From Magoye Siding to the eastern boundary of Farm No. 214a "Dora". (17.71 kilometres.)
District	D359	From its junction with Road F1 in a southerly direction for 13.041 kilometres to the Tonga (Choma) Reserve No. XXI boundary.
District	D354 and D355	From its junction with Road F1 in a westerly direction to its junction with Road BR27 and continuing westwards as Road D355 for a total distance of 21.735 kilometres to the Trust Land No. I boundary.

District	D370	From its junction with Road D368 to a point where it enters Trust Land No. XIII on the boundary of Farm No. 262a R.E. (4.43 kilometres.)
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[No. 32 of 1950 as amended by G.N. Nos. 87 and 203 of 1961, G.N. Nos. 129 and 333 of 1963, S.I. Nos. 431 and 443 of 1966 and S.I. No. 277 of 1969]

Fifth Schedule (Section 6)

Minimum standard fence

For the purpose of [section 6](#), a minimum standard fence shall consist of—

- (a) four strands of barbed or plain galvanised iron or steel wire of not less than 427.5 kg breaking strain, the top strand being a minimum of 1220 mm from the ground;
- (b) poles or standards of wood or iron placed at intervals of not more than 13.725 metres and substantially and well planted with a minimum of 450 mm deep in soil, with droppers placed at regular intervals of not more than 3.66 metres between such poles or standards in such a way that such droppers are at all times well clear of the ground; and
- (c) substantial straining posts not more than 366 metres apart; with recognised iron frames erected where necessary.

Where wooden poles are used—

- (a) poles made from trees known as—
 - Afrormosia angolensis* (mubanga),
 - Colophospermum mopane* (mopani),
 - Baikiaea plurijuga* (mukusi),
 - Diospyros mespiliformis* (muchenje),
 - Dichrostachys cinerea* (katenge),
 - Erythrophleum africanum* (kayimbi, kabulwebulwe),
 - Monotes* sp. (mutembo),
 - Swartzia madagascariensis* (mukuleti),
 may be used provided that:
 - (i) poles shall be at least 1.524 metres in diameter under bark at the narrowest part;
 - (ii) all bark shall be removed before planting; and
 - (iii) poles shall be notched to the depth of the hard core and the wire of the fence shall be fastened in the notches with wire of at least fourteen gauge or with fencing staples;
- (b) poles made from trees of the Eucalyptus species may be used, provided that:
 - (i) poles shall be chemically treated so as to be effectively protected against attack by termites, other insects and fungus;
 - (ii) poles shall be at least 75 mm in diameter under bark at the narrowest part;

- (iii) all bark shall be removed before chemical treatment;
 - (iv) poles shall be notched to such depth as is necessary to secure the wire of the fence adequately and such wire shall be fastened in the notches with wire of at least fourteen gauge or with fencing staples; and
 - (v) the notches shall not enter the wood beyond the depth of penetration of the chemical used in treatment;
- (c) poles made from trees other than those specified in (a) and (b) above may be used, provided that:
- (i) poles shall be chemically treated so as to be effectively protected against attack by termites, other insects and fungus;
 - (ii) poles shall be at least 125 mm in diameter under bark at the narrowest part;
 - (iii) all bark shall be removed before chemical treatment;
 - (iv) poles shall be notched to such depth as is necessary to secure the wire of the fence adequately and such wire shall be fastened in the notches with wire of at least fourteen gauge or with fencing staples; and
 - (v) the notches shall not enter the wood beyond the depth of penetration of the chemical used in treatment.

[No. 61 of 1963]