

WATERS ACT 1920 (Revised 1989)

ACT 418

Preamble

An Act to provide for the control of rivers and streams.

1. Short title, application and construction.

(1) This Act may be cited as the Waters Act, 1920.

(2) This Act shall only apply to the States of Negeri Sembilan, Pahang, Perak, Selangor, Malacca, Penang and Federal Territory.

(3) Nothing in this Act shall affect any other Enactment and no prohibition or restriction in this Act contained shall apply to the Government of the States of West Malaysia or of any of them or to the agents or servants of any of the said Governments.

2. Interpretation.

In this Act unless the context otherwise requires-

"river" includes

(a) a tributary of a river and any other stream or natural water course; and

(b) any canal declared by the State Authority of the State in which such canal is situated by notification in the Gazette to be subject to this Act;

"State land" and "alienated land" have the same meaning as defined in the National Land Code;

"State Authority" has the same meaning as defined in the Local Government Act 1976.

3. Property in rivers.

Subject to the terms of any express grant made by or on behalf of the Ruler of a State, the entire property in and control of all rivers in any State is and shall be vested solely in the Ruler of such State; provided that in the case of lands held by the Government under grant or lease or reserved for a public purpose and maintained by a Government Department, such control may be exercised by the Head of such Department, under the direction of the State Authority.

4. Restoration of river banks.

Any person who shall in any State interfere with the bank of any river may by order of the State Authority be required to restore the same to the condition in which it was immediately prior to such interference or to remake the same in such manner as may be specified in such order.

5. Prohibition of acts affecting rivers, except under license.

(1) No person shall, except under and in all accordance with the terms of a licence under this Act,

(a) fell any tree so that it falls into a river;

(b) in any manner obstruct or interfere with any river;

(c) build and bridge, jetty, or landing stage (other than a bath-house) over or beside any river at a point where the width of such river exceeds twenty feet.

(2) Licenses to do in any district any of the acts specified in subsection (1) may be issued by the District Officer of such district with the approval, in each case, of the State Authority, any such license may be subject to such conditions and restrictions as the State Authority approves; all such conditions and restrictions shall be set out in the licence.

(3) Nothing in subsection (1) shall be deemed to apply to any bridge, jetty or landing stage in existence at the commencement of this Act or to the repair or renewal thereof.

6. Presumptions.

Where the bank of a river is interfered with, or where any felling, obstruction, interference, or building takes place in contravention of section 5, the owner and the occupier of the land wherein the bank so interfered with or any part thereof is included and the owner and occupier of the land whereon such tree was felled or which is nearest to such obstruction, interference or building shall in any proceedings under this Act be presumed, in the absence of proof to the contrary, to have interfered with the bank, or effected the felling, obstruction, interference, or building, as the case may be.

7. Prohibition of diversion of water from rivers, except under license.

(1) Save as may be expressly authorised under the provisions of any other law no person shall, except under and in accordance with the terms of a licence under this Act, by means of any ditch, drain, channel, pipe, or otherwise divert water of any river from its natural course.

(2) Whenever any such diversion shall have been made, the occupier or occupiers of the lands (if any) benefited by such diversion shall, in the absence of proof to the contrary, be presumed to have made it.

(3) Licenses to divert water from a river in any State for use in the generation of electricity may be granted by the State Authority of such State.

(4) Licenses to divert water from a river in any district for use:

(a) for private or domestic purposes;

(b) in the cultivation of rice;

(c) for industrial and other purposes,

may be granted by the District Officer of such district with the approval, in each case falling under paragraph (a) or (c) of this subsection, of the State Authority.

(5) Every license granted under this section shall set out the purpose for which the same is granted and shall be for such period and subject to such conditions and restrictions as may be stated therein.

7A. Prohibition of pollution of rivers.

(1) Save as may be expressly authorised under any written law or the terms of any express grant made by or on behalf of the State Authority no person shall except under and in accordance with

the terms and conditions of licence issued under this section cause to enter or discharge into any river-

(a) any poisonous, noxious or polluting matter that will render or is likely to render or contribute to rendering such river or part thereof harmful or detrimental or injurious to public health, safety or welfare, or to animal or vegetable life or health or to other beneficial uses of such river;

(b) any matter which by virtue of its temperature, chemical or biological content or its effect in discolouring the waters makes or contributes to making such river or part thereof a potential danger to public health, safety or welfare or to animal or vegetable life or health, or affects other beneficial uses of such river;

(c) any matter which by virtue of its physical nature, or its effect in discolouring waters, makes or contributes to making such water, difficult to treat; or

(d) oil of any nature, used, waste or otherwise.

(2) For purpose of this section the word "river" shall without prejudice to section 2 be deemed to further include-

(a) any inland waters whether or not such inland waters fall within the DEFINITION of "river" in section 2;

(b) any subterranean water resources; and

(c) any water in an estuary or  adjacent to the coast of the State.

(3) Whenever any such entry or discharge shall have been made, the owner or occupier of the property from which such entry or discharge originates shall, in the absence of proof to the contrary, be presumed to have made it.

(4) Licence to enter or discharge into a river any of the matter described in subsection (1) of this section may be granted by the State Secretary in which the river or part thereof is located.

(5) Every licence granted under this section shall set out the purpose for which the same is granted and shall be for such period and such conditions and restrictions as may be laid down in the licence.

(6) The State Secretary shall have power at any time without cause assigned to-

(a) refuse to grant a licence;

(b) revoke any licence issued under this section; or

(c) alter or vary the period, term and conditions of any such licence.

Provided that where an appeal pursuant to subsection (7)(a) is brought against the revocation of any licence or the alteration or variation of the period, term and condition of any such licence made by the State Secretary under the preceding paragraphs (b) and (c), such licence shall remain in force until the appeal is disposed of in accordance with the decision of the appeal board referred to in subsection (7)(c).

(7) (a) Any person aggrieved by the decision of the State Secretary within twenty-one days of the receipt of the notification of such decision appeal to an appeal board in which the application for a licence under this section was originally made.

(b) An appeal board referred to in the preceding subparagraph (a) shall comprise the following members from the State of Perak:

(i) Menteri Besar.

(ii) State Legal Advisor.

(iii) State Director of Lands and Mines.

(iv) State Director of Medical and Health Services.

(v) State Director of Drainage and Irrigation.

(vi) Two members to be appointed by the State Authority from nomination made by the manufacturing and planting interests.

(c) Every member appointed under paragraph (b)(vi) above shall, unless he sooner resigns or his office or his appointment revoked, or his office shall otherwise become vacant, hold office for a period not exceeding two years from the date of appointment but shall be eligible for reappointment.

(d) On receipt of an appeal, the appeal board shall convene a meeting and adopt such procedure and make such decision as it deems fit and its decision shall be final.

(8) No compensation shall be payable to any licensee whose licence is revoked, altered or varied in accordance with subsection (6).

(9) The State Authority may for the purpose of determining the conditions and restrictions to be prescribed on licences issued under subsection (4) appoint a committee consisting of such persons as may be prescribed.

(10) The State Authority in appointing such Committee shall take into consideration the need to protect public health, safety and welfare and animal and vegetable health and life as well as the need to promote industrial growth and to protect other beneficial uses of rivers.

8. License to divert water may authorise interference with State land or alienated land.

(1) A licence under this Act to divert water from a river in any State may extend to authorising the licensee to erect, cut, or construct and maintain upon or through any State lands or alienated lands specified in that behalf in the licence any pump, line of pipes, flume, race, drain, dam, or reservoir and, subject to such conditions and restrictions as may be specified in the licence, to take and use the water therefrom in such quantities and in such manner as in the opinion of the State Authority of such State may be necessary for carrying out the purpose of the licence.

(2) A licensee so authorised as aforesaid may enter upon the State lands or alienated lands so specified as aforesaid for the purposes expressed in such license and carry out all or any of the works thereby sanctioned and exercise all or any of the rights thereby granted; provided that he shall be liable to make compensation to the owner or lawful occupier of any alienated land upon which such work shall be carried out or such rights exercised.

9. Revocation and alteration of licenses.

(1) There shall be power at any time-

(a) without cause assigned to revoke or alter, or to vary the period, terms, or conditions of, any license granted under this Act upon payment to the licensee of compensation for any damage which he may sustain in respect of such revocation, alteration, or variation;

(b) to revoke without compensation any license on breach by the licensee of any condition or restriction to which the license is subject or on conviction of the licensee of any offence punishable under this Act.

[NOTE-In its application of this subsection (1) to the States of Perak, Malacca and Negeri Sembilan, insert the following proviso thereto:

"Provided that this subsection shall not apply to the revocation, alteration or variation of a licence issued under section 7A of this Act".

See Perak Enact. No. 11/1973.] Malacca Enact. No. 16/1971 and N.S. Enact. No. 12/1971.]

(2) The power in subsection (1) referred to may in the case of a license granted by the State Authority be exercised by the State Authority and in the case of a license granted by a District Officer be exercised by the District Officer; provided that in the case of a license to the granting whereof the approval of the State Authority is required, such approval shall also be necessary to the exercise by a District Officer of the power in subsection (1) referred to.

10. Assessment of compensation.

The amount of any compensation payable under either of the two last preceding sections shall, if not settled by agreement between the parties concerned, be claimed and determined by suit in the appropriate court.

11. Record of license on titles affected.

Where alienated land is affected by any authority under section 8 contained in a license to divert water from a river, the Land Administrator or Registrar, as the case may be, having custody of the Register wherein the title to such land is recorded shall, on production to him of such license, make in the said Register an entry of the grant of the license and of the period thereof and shall certify on the license that such entry has been made and shall on proof to his satisfaction of the revocation of any license whereof an entry has been made as aforesaid make in the said Register an entry of such revocation.

12. Fees for licenses.

(1) There shall be payable in respect of every licence under this Act in any State such annual fee as may be prescribed, or if no such annual fee be prescribed then, such annual fee as the State Authority may impose.

(2) The amount of the annual fee, with the date on which payment is due, shall be set out in every licence.

(3) Notwithstanding the foregoing provisions of this section, in the case of any licence to divert water for use in the generation of electricity, there shall be payable in respect thereof, either the annual fee or such other payments as the State Authority may impose, which shall be payable at such rates, on such dates, and in such manner, as may be set out in the licence.

(4) Any licence in respect whereof the fee or other payment shall remain unpaid for sixty days after the same falls due may without notice to the licensee be revoked, and no compensation shall be payable in respect of revocation.

13. Liability for damage.

No license under this Act shall exempt any person from liability in respect of any damage occasioned by such person to the property of the Government or of any person.

14. Restriction on construction of walls and buildings on banks of rivers or within flood channels.

(1) Save as may be expressly authorised under the provisions of any other law no person shall in any State after the commencement of this Act erect or build any wall or construct any revetment along the bank or any river or erect any building or structure within fifty feet of any such bank, or within any flood channel declared under this section, except under and in accordance with the terms of a written permission in that behalf from the State Authority; any such permission may be subject to such conditions and restrictions as the State Authority thinks fit to impose.

(2) Where the State Authority is satisfied that the bed of any river in such State is insufficient to contain the waters thereof in time of such floods as may be reasonably expected, he may by notification in the Gazette declare any land abutting on such river and extending to such a distance from either or both banks as may be specified in such notification to be a flood channel for such river, and may at any time in like manner revoke or vary any such declaration.

(3) The District Officer or any person authorised thereto by him in writing may enter upon and inspect any buildings or premises to which a permission given under subsection (1) relates.

(4) Any person who contravenes this section shall be liable to a fine of two thousand ringgit; and any building or construction built or erected in contravention of this section may be removed by order of the State Authority and the cost of such removal shall be recoverable from such person by the State Authority, or any person authorised in that behalf by the State Authority, by civil suit.

(5) Nothing in this Section shall be deemed to apply to any wall, revetment, building, or structure in existence or in course of construction at the commencement of this Act or the renewal or repair thereof.

15. Penalties; sanction for prosecution.

(1) Any person who fails to obey any order given under section 4 shall be liable to a fine of five hundred ringgit and additionally to a fine of ten ringgit a day for every day during which such disobedience shall continue.

(2) Any person who shall contravene section 5 or 7 shall be liable to a fine of one thousand ringgit.

(3) No prosecution shall be instituted in respect of any offence punishable under this section except with the written sanction of the District Officer of the district wherein the offence is alleged to have been committed.

(4) Where a conviction is had before the Court of a Magistrate of the First Class of any offence referred to in subsection (1) or (2) such court may impose any penalty provided by this Act.

16. Powers to put a stop to and remedy illegal acts.

(1) Where in any State any such person interferes with the bank of a river or contravenes section 5 or 7, the State Authority of such State may do and cause to be done all such things as may in his opinion be necessary or expedient for remedying such interference or contravention or the results thereof, and the cost thereby incurred shall be recoverable from such person by State Authority, or any person authorised in that behalf by the State Authority, by civil suit.

(2) In amplification and not in derogation of the generality of the foregoing powers the State Authority may cause the bank of any river which has been interfered with to be restored or remade, any tree, which on being felled has fallen into a river, or any obstruction in or interference with a river, or any bridge, jetty, or landing stage (other than a bath house) over a beside any river to be removed or destroyed, and any ditch, drain, channel, pipe, or other means of diverting the water of any river from its natural course to be filled in, closed, destroyed, or removed.

(3) For the purpose of any work or thing about to be or being carried out or done under this section, entry may be made upon any land owned or occupied by any person whose interference with the bank of a river or contravention of section 5 or 7 has given occasion for such work or thing; provided that nothing herein contained shall authorise entry into any dwelling-house and that before entry upon land owned or lawfully occupied by any person not less than twenty-four hours previous notice in writing shall, except in any case where the District Officer otherwise directs, be given to such owner or occupier.

(4) Nothing in this section contained shall affect any liability of any person to prosecution and punishment under section 15.

17. Liability of employer.

For the purpose of this Act every person shall be liable for every act and omission of any agent or servant employed by him and acting within the scope of such employment in the same manner and to the same extent as if such act or omission were done or committed by such first mentioned person; but so that nothing in this section shall affect the liability of such agent or servant.

18. Rules.

(1) In any State the State Authority may from time to time, make rules, not inconsistent with this Act,

(a) to prescribe fees payable in respect of licenses granted under this Act;

(b) to restrict to particular areas or rivers the issue by District Officers of licenses, or specified kinds of licenses under sections 5 and 7;

(c) generally for the purpose of carrying into effect the provisions and purposes of this Act.

(2) All such rules shall be published in the Gazette and shall thereupon have the force of law.