

THE WATER ACT

REGULATIONS (under section 65)

THE WATER (NON-RIPARIAN USE) REGULATIONS, 1949

(Made by the Governor in Executive Council on the 4th day of April, 1949) L.N. 27/49

1. These Regulations may be cited as the Water (Non-Riparian Use) Regulations, 1949.

2. In these Regulations "applicant" means a person who makes an application to the Minister under section 11 or section 13 of the Act.

3.—(1) No application under section 11 or section 13 of the Act shall be granted except after the publication of a notice that the Minister intends to grant the application unless, on or before a date to be specified in such notice, any riparian owner requests (in the manner hereinafter provided) that the application be referred to a Water Court for investigation and report.

(2) Every notice under paragraph (1) shall contain the particulars and be in the form specified in the Schedule and shall be published in not less than three issues of a daily newspaper with a circulation in the area to which the application relates. Such notices shall be published at such intervals as the Minister shall direct. Schedule.

(3) Every request by a riparian owner under paragraph (1) for reference to a Water Court shall be in writing and shall be addressed to the Minister.

4.—(1) The Minister may—

- (a) in any case where no riparian owner has requested reference to a Water Court, at any time after the date specified in the notice under paragraph (1) of regulation 3; or
- (b) in any case where the application has been referred to a Water Court, at any time after the Water Court has reported thereon.

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by order published in the *Gazette* grant the application and authorize and allow the use of any public water in the manner, for the purposes and subject to the conditions specified in such order.

(2) An order made under paragraph (1) may, in any case in which the Minister thinks fit, contain provision for the Minister, for and on behalf of the applicant, to appropriate any land required for the purposes of the undertaking or of the necessary works appurtenant thereto to which the application relates.

5. In every case in which an order under regulation 4 contains a provision for appropriation of any land the following provisions shall apply—

- (a) the applicant or any agent authorized by him shall be entitled, after notice as hereinafter provided, to enter upon any such land for the purpose of surveying, taking levels, digging or boring into the sub-soil, doing any other act necessary to ascertain whether the land is adapted for the purpose for which it is required, setting out the boundaries of the land proposed to be taken, marking levels and boundaries by cutting trenches and placing marks, and cutting down and clearing away any crop, tree, fence, bush or woodland for any of the purposes aforesaid:

Provided, however, that the applicant shall pay to any person prejudiced thereby such compensation for any damage done as may be agreed upon or failing agreement as may be determined by a Water Court;

- (b) every notice under paragraph (a) shall be in writing and shall be served on the person in occupation of the land by delivering the same to him personally or to any adult person found occupying the land or if no adult person be found occupying the land then by placing the same on some conspicuous place on the said land. Every such notice shall be served not less than seven clear days before entry on the land is made;
- (c) the applicant shall thereafter prepare a plan showing the land which is required to be appropriated for the purposes of the undertaking and the necessary works appurtenant thereto, and shall submit the same to the Minister who may approve of the same with or without modification;
- (d) if the Minister approves of such plan the applicant shall lodge two copies thereof with the Permanent Secretary to the

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Minister and shall forward one copy thereof to the Registrar of Titles and one copy thereof to the Island Record Office. The Registrar shall at all times keep one copy thereof at the principal office for the time being of the applicant and shall make the same available for inspection by any member of the public at any reasonable times free of cost;

- (e) the Minister may, at any time after approval of the order, published in the *Gazette*, declare that the lands on the plan shall, on payment by the applicant of such compensation as may be agreed upon with the respect to the lands, or failing such agreement as may be made by a Water Court, be appropriated on behalf of the applicant for the purposes of the undertaking;
- (f) forthwith upon the making of an order under paragraph (e) the Minister shall cause to be published, at the expense of the applicant, in a daily newspaper a notice to the effect that an order has been made and every such notice shall state the name and address of the applicant, the nature of the undertaking, and the places at which copies of the plan shall be inspected and every such notice shall be published in more than three issues of a newspaper at such intervals as the Minister shall determine;
- (g) the applicant may at any time after the expiration of the period of three years from the date of the first publication of the notice referred to in paragraph (f) upon and take possession of the lands;
- (h) where the applicant takes possession of any land pursuant to the provisions of paragraph (g) any person (hereinafter referred to as "the claimant") having any estate or interest in the land or any part thereof may by notice in writing require the applicant to agree upon the amount of compensation to be paid to him by the applicant in respect of his estate or interest in the land; if the applicant fails so to agree within a period of two months after the service of the notice referred to, the claimant may at any time thereafter require that the matter be referred to a Water Court for the amount of compensation to be determined;
- (i) if the applicant fails within one month after any compensation has been agreed upon or has been determined by a Water Court (as the case may be), to pay such compensation to the claimant, the claimant shall be entitled if, but for the provisions of paragraph (g), to take possession of the land.

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of these Regulations he would have been entitled to possession thereof, to recover possession of the land to which such compensation relates, and also to recover damages from the applicant for any loss suffered as a result of the possession thereof by the applicant and of his failure to pay the compensation therefor within the time limited by this paragraph. Except as provided in this paragraph no claimant shall be entitled to recover possession of or to bring proceedings against the applicant in respect of his estate or interest in any part of the lands;

- (j) where the applicant satisfies the Minister that the compensation payable in respect of any lands or any part of any such lands has been paid by him but that any person having any estate or interest in such land or part thereof has failed to convey or transfer to the applicant his estate or interest in the land or part thereof, the Minister may by order published in the *Gazette* vest in the applicant the estate or interest of such person in the said land;
- (k) nothing contained in this regulation shall prejudice or affect any rights arising by reason of the Limitation of Actions Act save and except that the rights reserved to a claimant by this regulation shall be deemed to be an estate or interest in land.

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**SCHEDULE (Regulations)
THE WATER ACT**

NOTICE

Take notice that application has been made by.....
to the Minister under section.....of the Water Act,
authorized and allowed to use for the generation of power the wa
the.....in the parish of.....
between.....and.....

The above application has been referred to a competent engineer wh
reported in favour of the grant of such application.

Take further notice, therefore, that the Minister proposes to grant
application unless on or before the.....day of.....
19....., any riparian owner whose rights are likely to be affected requ
notice in writing addressed to the Minister, that the matter be referred to a
Court for investigation and report.

Kingston....., 19..... . Permanent Secretary