



CHAPTER 14.08

UNDERGROUND WATER ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 14.08
UNDERGROUND WATER ACT

(Act 7 of 1967)

AN ACT TO PROVIDE FOR THE OWNERSHIP, CONTROL AND EXPLOITATION OF UNDERGROUND WATER IN MONTSERRAT AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH.

Commencement

[3 April 1967]

Short title

1. This Act may be cited as the Underground Water Act.

Interpretation

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

“**Minister**” means the Minister charged for the time being with the responsibility for the subject of water;

“**Permanent Secretary**” means the Permanent Secretary or other senior officer directly responsible to the Minister;

“**surface water**” means water flowing continuously or intermittently in natural water-courses and water flowing through or into lakes, ponds, marshes, swamps and springs;

“**underground water**” means any body of water under the surface of the earth in Montserrat, but does not include surface water;

“**works**” means any structure, apparatus, contrivance or device for abstracting, diverting, obstructing or using underground water.

Underground water vested in the Crown

3. Subject to the provisions of this Act all underground water in Montserrat shall hereinafter vest absolutely in the Crown.

Exemption for parties to an agreement with Government

4. Nothing in this Act shall affect the rights of any person who, before the commencement of this Act has been a party to a written agreement with the Government in relation to the abstraction, diversion, obstruction or use of any underground water.

Other persons abstracting etc. underground water

5. (1) Any person, not being a person to whom the provisions of the last preceding section apply, who has, before the commencement of this Act, abstracted, diverted, obstructed or used underground water, or erected any works and who has ceased doing so, shall within three months of the commencement of this Act, give notice in writing to the Permanent Secretary of his operations in relation to underground water, and shall furnish, in relation to those operations, such information, data, documents and plans as the Minister may, from time to time, require.

(2) Any person not being a person to whom the provisions of the last preceding section apply, who has, before the commencement of this Act, abstracted, diverted, obstructed or used underground water, or erected any works and who continues doing so, shall—

- (a) within 28 days of the commencement of this Act, give such notice and furnish such information as is set out in the preceding subsection;
- (b) keep such records of his operations as may be required by the Minister and produce such records for inspection whenever required to do so by the Permanent Secretary;
- (c) take such measures and comply with such directions the Minister may, from time to time require for the conservation of underground water;
- (d) pay the prescribed charges and licence fee; and
- (e) comply with such conditions, including conditions for the distribution of underground water, as the Minister may deem advisable.

(3) Any person failing to comply with the provisions of this section shall be guilty of an offence and be liable on summary conviction to a fine not exceeding \$500 or imprisonment for a period not exceeding six months.

Owners of certain wells exempted

6. This Act shall not apply to any person on whose premises any well has been excavated and which has been in existence fifteen years or more prior to the commencement of this Act and who—

- (a) uses such well for the same purpose and in the same manner as it was used before the commencement of this Act; and
- (b) within six months of the commencement of this Act gives notice in writing to the Permanent Secretary of the existence of such well:

Provided that if, after the commencement of this Act, any such person wishes to alter the purpose for which or the manner in which he uses such well, he shall comply with the provisions of the next succeeding section.

Licence to abstract etc. underground water

7. (1) Subject to the provisions of this Act no person shall abstract, divert, obstruct or use underground water unless he has obtained a licence so to do:

Provided that the provisions of this subsection shall not apply to any person acting for or on behalf of the Government.

(2) Any person wishing to obtain or to renew a licence shall apply in writing to the Permanent Secretary and furnish such information, data, documents and plans as the Minister may require:

Provided that applications for the renewal of a licence shall be made not later than six months prior to the expiry thereof.

(3) If the conditions of the preceding subsection are fulfilled, the Permanent Secretary shall cause particulars of any application to be published in the *Gazette* and in a local newspaper.

(4) Any person wishing to object to the grant or renewal of a licence shall, within 21 days of the publication under the last preceding subsection, lodge his objection with the Permanent Secretary and state in writing the reasons for his objection.

(5) The Minister may, after considering the merits of any application and any objections thereto, and on payment of the prescribed fee, authorise the grant or renewal of a licence for such period of not less than twelve months and subject to such conditions, including conditions for the distribution of underground water, as the Minister may deem advisable.

(6) The Permanent Secretary shall communicate in writing to the applicant and to any objector the Minister's decision on the application, and in the case of a refusal to grant a licence the Permanent Secretary shall also state in such communication the Minister's reasons therefor.

(7) Any person aggrieved by the Minister's decision on an application may, within 21 days of the notification of such decision, appeal against such decision to a Judge of the High Court sitting in Chambers.

(8) For the purpose of an appeal the Permanent Secretary shall submit to the Registrar of the High Court the application, and any objections made in pursuance of subsection (4) of this section.

Penalties

8. Any person, who abstracts, diverts, obstructs or uses any underground water without being the holder of a licence to that effect or in breach of any condition attached to his licence shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a period not exceeding six months:

Provided that the Court may further order the offender to remove or pull down any works erected or caused to be erected by him within such time as the Court may fix and, if the offender fails to comply with any such

order of the Court, the Permanent Secretary may cause the works to be removed or pulled down, as the case may be, at the offender's expense:

Provided also that the Court may further order the cancellation of the offender's licence.

Power of entry to search and explore for underground water

9. (1) It shall be lawful for any person authorised in writing by the Governor to search or explore any land whatsoever in Montserrat for underground water:

Provided that such person shall not search or explore within 50 feet of any building except with the consent of the owner or occupier of such building:

Provided further that the person so authorised shall give at least seven day's notice in writing of his intended operations to the owner or occupier of such land.

(2) Any person authorised under the provisions of the preceding subsection may together with workmen and equipment necessary for the purpose of drilling or boring into land for searching or exploring for underground water enter any land as provided by the preceding subsection and dig or bore such land for such purpose.

Compensation for damage

10. (1) The Crown shall pay to any owner or occupier of land upon which any operations are undertaken by virtue of section 9 of this Act compensation for any disturbance of his surface rights and for any damage done to the surface of the land or to any live or dead stock, crops, trees, buildings or works as a result of such operations.

(2) Application for compensation shall be made to the Permanent Secretary, and if there is a failure to reach agreement as to the amount of compensation, the applicant may sue the Crown under the provisions of the Crown Proceedings Act.

Compulsory acquisition of land

11. Whenever the Governor is satisfied that underground water exists under any land and the abstraction, diversion, obstruction or use of such underground water would be beneficial to such land and to other lands or to the public, such abstraction, diversion, obstruction or use of underground water shall be deemed a public purpose in accordance with the provisions of section 3 of the Land Acquisition Act and it shall be lawful for the Crown to acquire such property or part thereof in accordance with the provisions of that Act.

Power of entry

12. It shall be lawful for any person authorised in writing by the Permanent Secretary to enter upon and inspect any land to ascertain whether any offence against the provisions of this Act is being or has been committed and generally for carrying into effect the purposes of this Act.

Person striking underground water to notify Ministry

13. (1) Any person who, in the course of digging, boring or drilling operations on any premises, strikes underground water shall immediately notify the Permanent Secretary in writing.

(2) The owner of such premises, or if the owner is unknown, the occupier thereof shall thereafter take such measures and comply with such directions as the Minister may, from time to time, require for the conservation of underground water:

Provided that, if any such person satisfies the Minister that he has no sufficient means to comply with any such direction the Minister may cause such steps as he may deem advisable to be taken at the Government's expense for the conservation of underground water:

Provided also that any such owner or occupier may apply for a licence under section 7 of this Act.

(3) Any person failing to comply with the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$50 or to imprisonment for a period not exceeding three months.

Charges

14. Such charges as may be prescribed shall be levied for the use of underground water.

Regulations

15. (1) The Governor may make regulations for carrying this Act into effect and for prescribing anything which by this Act may be prescribed.

(2) Any person contravening the provisions of any such regulations shall be guilty of an offence against this Act and liable on summary conviction to a fine not exceeding \$25.
