

The Beach Control Act

[1st June 1956]

Regulation

ARRANGEMENT OF SECTIONS

Laws 63 of 1955 | 11 of 1957 | 12 of 1958 | 5 of 1959 | 25 of 1960 | Acts 14 of 1964 | 42 of 1969 3rd Sch. | 14 of 1971 S. 8 and 2nd Sch., | 9 of 1991 3rd Sch., | 33 of 1991 S. 22. | 5 of 2000 | 17 of 2004

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1. Short title.

1. This Act may be cited as the Beach Control Act.

2. Interpretation.

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

"adjoining land" means land adjoining the foreshore of this Island and extending not more than one hundred yards beyond the landward limit of the foreshore;

"Authority" means the Natural Resources Conservation Authority established under the Natural Resources Conservation Authority Act;

"commercial enterprise" includes –

- (a) the business of carrying on a hotel or a proprietary club or the business of letting premises whereby the facilities mentioned in section 4 may be enjoyed; and
(b) the commercial use of a bathing beach to which the public are admitted for bathing or recreation upon payment of a fee; and
(c) the erection, construction or maintenance of any dock, wharf, pier, jetty or other form of encroachment;

"Commission" means any Commission appointed under section 27;

"Court" means the Supreme Court;

"dock" means an enclosure for the reception of vessels, including structures for loading and unloading or repairing vessels;

"fishing" includes purposes incident to fishing;

"floor of the sea" means the soil and subsoil off the coasts of the Island between low water mark and the outer limits of the territorial sea of the Island and shall be deemed to include the water column superadjacent to the floor of the sea and the natural resources therein and the Exclusive Economic Zone;

"foreshore" means that portion of land, adjacent to the sea, that lies between the ordinary high and low water marks, being alternately covered and uncovered as the tide ebbs and flows;

"interested party" includes every person claiming an interest in compensation to be paid on account of the compulsory acquisition of any land under this Act, but does not include a tenant by the month or at will;

"jetty" means a structure extending into the sea to protect or defend a harbour or to facilitate the loading and unloading of vessels;

"land" includes rights and interests of any nature or description whatever in or over land;

"Local Authority" means -

(a) in relation to the Corporate Area as defined in the Kingston and St. Andrew Corporation Act, the Council of the Kingston and St. Andrew Corporation; and

(b) in relation to the parishes not within the Corporate Area, the Parish Councils of such parishes in their respective parishes;

"the Minister" means the Minister responsible for beach control;

"owner" means owner of an estate in fee simple in the land or beach in relation to which the expression is used;

"pier" means a structure raised on piles or any other form of support extending into the sea for use as a landing place.

"the public" includes any class of the public;

"vessel" includes every description of water craft, including a non-displacement craft, seaplane and a jet ski equipped with an inboard or outboard motor, used or capable of being used as a means of transportation on water;

"water sports equipment" means any equipment used in connection with board sailing, boating, parasailing, scuba diving, sunfish sailing, water skiing, jet skiing or other water related recreational sports;

"wharf" means a quayside structure erected in a harbour or river for the loading or unloading of vessels.

3. Foreshore and floor of the sea declared to be vested in the Crown.

3. (1) Subject to the provisions of this section, all rights in and over the foreshore of this Island and the floor of the sea are hereby declared to be vested in the Crown.

(2) All rights in or over the foreshore of this Island or the floor of the sea derived from, or acquired under or

by virtue of the Registration of Titles Act or any express grant or licence from the Crown subsisting immediately before the commencement of this Act are hereby expressly preserved.

(3) Except as provided in section 7, nothing in this Act contained shall be deemed to affect -

(a) any rights enjoyed by fishermen engaged in fishing as a trade, where such rights existed immediately before the 1st June, 1956, in or over any beach or adjoining land; or

(b) the enjoyment by such fishermen of the use of any part of the foreshore adjoining any beach or land in or over which any rights have been enjoyed by them up to the 1st June, 1956.

(4) No person shall be deemed to have any rights in or over the foreshore of this Island or the floor of the sea save such as are derived from or acquired or preserved under or by virtue of this Act.

4. Use of foreshore for private domestic purposes.

4. Any person who is the owner or occupier of any land adjoining any part of the foreshore and any member of his family and any private guest of his shall be entitled to use that part of the foreshore adjoining his land for private domestic purposes, that is to say, for bathing, fishing, and other like forms of recreation and as a means of access to the sea for such purposes:

Provided that where any land as aforesaid is let, the letting of which is in pursuance of a commercial enterprise, the right to the use of the foreshore for private domestic purposes shall only be by virtue of a licence granted to the lessor under this Act.

5. Prohibition of use of the foreshore or the floor of the sea without a licence.

5. (1) From and after the 1st June, 1956, no person shall encroach on or use, or permit any encroachment on or use of, the foreshore or the floor of the sea for any public purpose or for or in connection with any trade or business, or commercial enterprise, or in any other manner (whether similar to the foregoing or not) except as provided by sections 3, 4 and 8, without a licence granted under this Act.

(2) Any person who contravenes the provisions of subsection (1) shall be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding twelve months, or to a fine not exceeding five hundred thousand dollars and in default of payment of any such fine to imprisonment with or without hard labour for a term not exceeding twelve months, or to both such imprisonment and fine.

(3) Where a company is guilty of a contravention of the provisions of subsection (1), every director, manager, agent and officer of the company in this Island who is knowingly a party to the contravention, shall be liable to the penalty prescribed by subsection (2).

6. Application for licence by persons using the foreshore or the floor of the sea at the 1st June, 1956.

6. (1) Where at the 1st June, 1956, any person is encroaching on or using or permitting any encroachment on or user of the foreshore or the floor of the sea except as authorized by this Act, such person may continue or may continue to permit such encroachment or user for a period not exceeding six months after the 1st June, 1956, but such person shall, if he intends to continue or to permit the continuance of such encroachment or user for any longer period, apply to the Authority for a licence under this Act within the aforesaid period of six months.

(2) Any person who applies for a licence pursuant to subsection (1) shall not be deemed to be acting in contravention of subsection (1) of section 5, between the date of application for the licence and the date on which the application is finally disposed of by the grant of the licence or otherwise, by reason only of the continuance of any encroachment or user prohibited by subsection (1) of section 5.

7. Protected areas and prohibited activities.

7. (1) Notwithstanding anything to the contrary in this Act, the Minister may, upon the recommendation of the Authority, make an order declaring -

(a) any part of the foreshore and the floor of the sea defined in the order together with the water lying on such part of the floor of the sea to be a protected area for the purposes of this Act; and

(b) such activities as may be specified in the order to be prohibited activities in the area defined in the order, being any or all of the following activities -

(i) fishing by any means specified in the order;

(ii) the use of vessels, other than boats propelled by wind or oars, or of water sports equipment, where such vessels or equipment are used for purposes other than for the doing of anything which may be lawfully done under the Harbours Act, the Marine Board Act, the Wrecks and Salvage Law, The Fishing Industry Act or the Exclusive Economic Zone Act;

- (iii) the disposal of rubbish or any other waste matter;
- (iv) water-skiing;
- (v) the dredging or disturbance in any way of the floor of the sea;
- (vi) the destruction or removal of coral, seafans and sedentary marine animals;
- (vii) the searching for or removal of any treasure or artefact from the floor of the sea.

(2) Any order made under this section may contain provisions for the constitution of a Board or the appointment of persons to undertake the conservation, protection or rehabilitation of the area defined in such order.

(3) The provisions of subsection (5) of section 9 (which relate to the laying of regulations before the House of Representatives and the Senate) shall apply to orders made under this section as they apply to regulations made under the said section 9.

(4) The Minister may, if he thinks fit, grant to any person applying therefor, in such form and subject to such conditions as the Minister may think fit, a licence to carry on in any area defined in an order made under this section any prohibited activity specified in such order.

(5) Every person, not being a person appointed to undertake the conservation, protection or rehabilitation of any area defined in an order made under this section, who without a licence from the Minister carries on within such area any activity specified in such order shall be guilty of an offence against this Act and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

8. Patents, licences, permits and rights already granted.

8. Every patent, licence, permit and right expressly granted by the Crown before the 1st June, 1956, for taking up of shoal water and for the erection, construction or maintenance of any dock, wharf, pier, jetty, structure or other form of encroachment (whether similar to the foregoing or not) on the foreshore or the floor of the sea shall be deemed valid, and it shall not be necessary to obtain any licence therefor under the provisions of this Act during the continuance of such patent, licence, permit or right or during the period of any extension of such patent, licence, permit or right in accordance with the provisions of the original grant.

9. Future encroachments to be authorized by licence from the appropriate Minister.

9. (1) Subject to the provisions of section 8, no person shall erect, construct or maintain any dock, wharf, pier or jetty on the foreshore or the floor of the sea, or any structure, apparatus or equipment pertaining to any dock, wharf, pier or jetty and encroaching on the foreshore or the floor of the sea, except under the authority of a licence granted by the Minister on behalf of the Crown.

(2) Subject to subsection (2A) the Minister may, if he thinks fit, grant to any person applying therefor, in such form and subject to such conditions as he may think fit, a

licence to erect, construct or maintain any dock, wharf, pier or jetty or any structure, apparatus or equipment as aforesaid.

(2A) Any licence affecting the exclusive economic zone shall be subject to the provisions of the Exclusive Economic Zone Act or any order made under section 11 of that Act.

(2B) A licence shall not be granted under this section unless the Authority has certified that the issue of the licence is not likely to conflict with the public interest in regard to fishing, bathing, recreation or the protection of the environment.

(3) The Minister may make regulations with respect to -

(a) the form and manner of application for licences to be granted under this section;

(b) the fees to be paid in respect of such licences;

(c) the grant or refusal of such licences; and

(d) the terms, conditions and restrictions that may be imposed upon the grant of such licences.

(4) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this section may prescribe greater penalties than those specified in the said section 29, so, however, that the maximum penalty that may be imposed by any such regulations shall be a fine of two hundred thousand dollars or imprisonment with or without hard labour for a term of twelve months.

(5) All regulations made under this section shall be subject to negative resolution.

(6) The decision of the Minister to grant or refuse a licence under this section shall be final and shall not be questioned in any legal proceeding.

(7) Every grant or refusal of a licence by the Minister shall be published in the *Gazette*.

(8) In this section "the Minister" means the Minister responsible for harbours.

10. [Deleted by Act 9 of 1991, 3rd Sch.]

10. [Deleted by Act 9 of 1991, 3rd Sch.].

11. Authority to grant licences for use of foreshore or floor of the sea-publication of grant or refusal.

11. (1) Subject to the provisions of sections 3, 4 and 9, and of subsection (2), the Authority may, on application made in such manner as may be prescribed under section 18, grant licences (whether exclusive in character or not) for the use of the foreshore or the floor of the sea for any public purpose, or in connection with any business or trade or for any other purpose (whether similar to the foregoing or not) to any person, upon such conditions (including the payment of an annual fee) and in such form as they may think fit.

(2) Where an application is made for a licence under subsection (1), the Authority shall consider what public interests in regard to fishing, bathing or recreation, in regard to the protection of the environment or in regard to any future development of the land adjoining that part of the foreshore in respect of which the application is made, require to be protected, and they may provide for the protection of such interests by and in the terms of the licence or otherwise in accordance with the provisions of this Act.

(3) Every grant or refusal of a licence by the Authority shall be published in the *Gazette*.

(4) Where application is made under this section to the Authority for a licence for any use of the foreshore or floor of the sea, which involves the erection, in a harbour, of an encroachment not referred to in section 9, the Authority shall not issue the licence unless the Port Authority certifies-

(a) that the encroachment is not likely to have an adverse impact on vessel traffic or other activities related to harbours; and

(b) the plans or other documents relating to the structure of the encroachment.

(5) The Authority may by notice in writing require an applicant for a licence under this section-

(a) to furnish to the Authority such documents or information as the Authority may require to assist it in making a decision whether or not to grant the licence; and

(b) where it is of the opinion that the use in relation to which the licence is sought is having, or is likely to have, an adverse effect on the environment, to submit to the Authority an environmental impact assessment in respect of the use, containing such information as maybe specified in the notice.

(6) The Authority shall keep at its offices a register of licences granted and applications refused under this section and such register shall-

(a) contain such particulars as shall be prescribed; and

(b) be open to inspection by the public during the normal office hours of the Authority.

(7) The Authority shall, on the request of any person and upon the payment by that person of such fee as may be prescribed, supply to the person a copy of any entry contained in the register.

(8) The Authority may require, as a condition of the grant of any licence under this section, that the licensee enter into an undertaking or provide an indemnity against any damage caused by the licensee's use of the foreshore or floor of the sea.

11A. Revocation, suspension or variation of licences.

11A.-(1) Subject to subsection (2), the authority may, by notice addressed to the person to whom a licence is granted under this Act -

- (a) revoke;
- (b) suspend; or
- (c) vary the terms or conditions of,

the licence, if the Authority is satisfied that there is a breach of any term or condition of such licence.

(2) Except as provided in subsection (3), the Authority shall, before revoking, suspending or varying any licence, serve on the person to whom the licence is granted a notice in writing-

(a) specifying the breach on which the Authority relies and requiring him to remedy it within such time as shall be specified in the notice; and

(b) informing him that he may apply to the Authority to be heard on the matter within such time as shall be specified in the notice.

(3) The Authority shall not be obliged to serve a notice pursuant to subsection (2) in relation to any breach if an order pursuant to section 19 is in effect in relation to that breach.

12. Duty to determine certain needs of public and power to acquire land therefor.

12. (1) The Authority shall from time to time determine the needs and requirements of the public in relation to the use of -

- (a) any portion of land, whether such portion of land adjoins the foreshore or not; and
- (b) the foreshore,

for or in connection with bathing or any other form of lawful recreation or for the purpose of fishing as a trade or otherwise or for any other purpose in the interest of the economic development of the beaches of the Island.

(2) Where the Authority acting in accordance with their duty under subsection (1) consider it necessary or desirable to acquire any portion of land, or rights of user over the same, whether such portion of land adjoins the foreshore or not, the Authority may, with the approval of the Minister and by agreement with the owner or any other person having power to dispose of such portion of land, acquire for any purpose specified in the said subsection such portion of land by lease or purchase, or rights of user over such portion of land.

(3) Any lease taken by the Authority pursuant to this section shall be for such period, and subject to subsection (5) shall reserve such annual rent payable yearly in advance and include such covenants and conditions as may be determined by agreement between the Authority and lessor and approved by the Minister, and any such lease may at the option of the Authority, be renewed from time to time as often as it expires.

(4) Where any right in or over land is acquired by the Authority otherwise than by purchase -

(a) the Authority may with the leave of the Minister and by agreement with the owner or other person having power to dispose of such land, terminate such right at any time;

(b) the owner or other person having power to dispose of the land which is subject to the right or his nominee may, where such land adjoins the foreshore, at any time apply to the Authority for a licence under this Act to use that part of the foreshore and floor of the sea which such land adjoins, and the Authority shall consider the application and may, in accordance with the provisions of this Act, grant or refuse the licence; and upon the grant of any such licence the rights of the Authority or of any person exercising any rights under the Authority, in or over such land, shall cease and determine save to the extent that such rights may be expressly reserved in and by the terms of the licence.

(5) Where pursuant to this section the Authority have acquired land otherwise than by purchase the Authority may at any time by agreement with the owner or other person having power to dispose of such land and subject to the approval of the Minister vary the annual rent payable in respect thereof.

13. Authority to maintain, use and develop beaches for benefit of the public.

13. The Authority may maintain, use and develop any beach or land vested in them or may make provision for the maintenance, use or development of such beach or land by any person, body or authority, on such terms as they may think fit.

14. Power of Authority to take steps for the establishment of right of public to use beach or to gain access thereto.

14. (1) The Authority may, upon receipt of a petition from not less than five persons concerned in any dispute with respect to the right to use any beach, or any land, road, track or pathway to gain access to such beach, lodge a plaint in the appropriate Court pursuant to section 9 of the Prescription Act with a view to establishing such right; and the Authority shall for the purposes of that section be deemed to be a person concerned in the dispute.

(2) Where the public or any class of the public have used any beach, land, road, track or pathway in the manner and for the period specified in subsection (1) of section 4 of the Prescription Act and such user is not disputed, the Authority may, if they think it expedient so to do, make an application to the Supreme Court by motion for a declaration of the right of the public to use such beach, land, road, track or pathway, and the Court, upon being satisfied that the user is not disputed, shall have power to make such order as the Court may think fit.

(3) The provisions of section 10 of the Prescription Act shall apply to an application under subsection (2) as they apply to a plaint pursuant to section 9 of the said Act, and references in section 10 of the said Act to the Clerk of the Court and to the judgment of the Court shall be construed as references to the Registrar of the Supreme Court and to the order of the Supreme Court, respectively.

15. General powers of Authority.

15. Subject to the provisions of this Act, the Authority shall have power, for the purpose of the discharge of their functions and duties under this Act -

(a) to carry on all activities, the carrying on whereof appears to them to be requisite, advantageous or convenient for or in connection with the discharge of their said functions and duties;

(b) to do anything and to enter into any transaction (whether or not involving expenditure, borrowing, granting of loans or investment of money, the acquisition of any property or rights or the disposal of any property or rights) which in their opinion is calculated to facilitate the proper discharge of their functions and duties or is incidental or conducive thereto.

16. [Deleted by Act 9 of 1991, 3rd Sch.]

16. [Deleted by Act 9 of 1991, 3rd Sch.]

17. [Deleted by Act 9 of 1991, 3rd Sch.]

17. [Deleted by Act 9 of 1991, 3rd Sch.]

18. Power to make regulations.

18. (1) The Authority may, with the approval of the Minister, make regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular but without prejudice to the generality of the foregoing may make regulations -

(a) with respect to the form and manner of application for licences to be granted under this Act by the Authority, the fees to be paid in respect of such licences, and the grant or refusal of such licences;

(b) providing for the imposition of fees or charges in such cases as may be determined by the Authority for services rendered by the Authority, their servants or agents in carrying out the provisions of this Act;

(c) providing for the registration of all persons licensed under section 11 and for the manner and method of registration and the particulars to be registered;

(d) for securing the observance of sanitary and cleanly conditions and practices, or the protection of the environment, at and in respect of parts of the foreshore and adjoining lands and parts of the sea to which members of the public habitually resort;

(e) providing for the prevention of danger, obstruction or annoyance to members of the public using any part of the foreshore or adjoining land;

(f) providing for the employment of lifeguards at beaches to which members of the public habitually resort and for the qualifications of such lifeguards;

(g) for the preservation of order and good conduct among members of the public using the foreshore or adjoining land;

(h) for controlling the erection or placing on any beach or adjoining land to which the public habitually resort of bath-houses or huts, booths, tents, sheds, stands and stalls (whether fixed or movable);

(i) governing the use of public recreational beaches or any of such beaches;

(j) for prohibiting or regulating the use in or upon the water lying on any part of the floor of the sea in respect of which a licence has been granted by the Authority -

(i) of spears or other instruments likely to cause danger to members of the public for the taking or pursuit of fish; and

(ii) of vessels or water sports equipment of any class specified in such regulations, so, however, that nothing in such regulations shall affect anything which may be lawfully done under the Harbours Act, the Marine Board Act, the Wrecks and Salvage Law, or the Pilotage Act;

(k) with respect to the constitution and administration of the fund referred to in section 19 (10).

(2) The provisions of subsections (4) and (5) of section 9 shall apply to regulations made under this section.

19. Court orders to protect foreshore.

19. -(1) Where the Authority is of the view that-

(a) a person is, or has been, using the foreshore or floor of the sea without, or in contravention of, a licence issued under section 11;

(b) a person refuses to remove an encroachment erected, or permitted to be erected, by that person on the foreshore or floor of the sea without, or in . contravention of, a licence issued under section 11, after being served with a notice by the Authority requiring that the encroachment be removed within a specified period, upon the expiry of the specified period; or

(c) the public interest in regard to fishing, bathing, recreation or the protection of the environment requires safeguarding by the closure of any beach or other facility owned or operated by any person;

(d) a person, in contravention of this Act or any licence issued under section 11, causes damage to any natural resources situated in the floor of the sea,

the Authority may apply to the Court for an order under subsection (2).

(2) Where an application is made under subsection (1), the Court, if satisfied that the circumstances so warrant, may make an order-

(a) prohibiting the person from using the foreshore or floor of the sea without, or in contravention of, a licence;

(b) requiring the person to remove, within a specified period any encroachment erected or permitted to be erected by that person without, or in contravention of, a licence;

(c) for the closure of any relevant beach or facility owned or operated by that person;

(d) requiring the person to carry out, within a specified period, a rehabilitation of the foreshore or floor of the sea so as to remedy any damage caused by such person; or

(e) in the case of damage to a natural resource, requiring the person to pay to the Authority such sum as the Court may determine by way of an award of damages which may take into account any reasonably foreseeable loss in the economic value of the natural resource to the public.

(3) For the purposes of subsection (2) (e), "economic value" includes-

(a) income from sales of goods and services provided by marine resources;

(b) the value of marine resources used for subsistence;

(c) the value of ecological functions and services provided by marine resources;

(d) the value of potential uses of marine resources and biological assets; and

(e) the value to the public derived from the existence of the resource, independent of the value of any existing or potential use of the resource.

(4) In determining whether an order under subsection (2) is warranted, the Court may take into account-

(a) the level of harm caused to the public interest in regard to fishing, bathing, recreation or the protection of the environment, as a result of the person's use of, or encroachment on, the foreshore or floor of the sea; and

(b) the need to restrain continuation or repetition of the harmful activity.

(5) Where any person fails to comply with an order made under subsection (2) (b) or (d) within the period specified in the order, the Authority-

(a) may apply to the Court for authorization to carry out the removal or rehabilitation, as the case maybe; and

(b) shall be entitled to recover from that person all costs reasonably incurred in such removal or rehabilitation.

(6) A person who fails to comply with an order made under subsection (2) (a), (b), (c) or (d) shall be liable to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

(7) An order for the closure of a beach or facility may contain such directions for notifying the public of the closure, as the Court thinks appropriate in the circumstances.

(8) An application under this section may be made ex parte.

(9) The provisions of this section are without prejudice to any other penalty to which the person maybe liable in respect of his use of, or encroachment on, the foreshore or floor of the sea.

(10) All sums received by the Authority by virtue of subsection (2) shall be paid into a fund, to be constituted and administered by the Authority in such manner as shall be prescribed, for purposes related to the rehabilitation, protection or enhancement of beaches or marine life.

20. [Deleted by Act 9 of 1991, 3rd Sch.]

20. [Deleted by Act 9 of 1991, 3rd Sch.]

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23. [Deleted by Act 9 of 1991, 3rd Sch.]

23. [Deleted by Act 9 of 1991, 3rd Sch.]

24. Application by the Authority.

24. (1) Whenever the Authority consider it necessary or desirable to acquire any land and have failed to arrive at any agreement by negotiation under section 12 with the person entitled to dispose of such land, the Authority may by application in writing seek the approval of the Minister for the compulsory acquisition of such land.

(2) Where the Authority pursuant to section 12 have acquired land otherwise than by purchase and fail at the time of any proposed variation of the annual rent to arrive at any agreement with the owner or other person having power to dispose of such land as to the annual rent to be paid upon such variation, the Authority may in like manner seek the approval of the Minister for the assessment of such annual rent by a Commission.

(3) An application under subsection (1) shall set forth the precise description of the land which the Authority propose to acquire and the purpose for which they propose to acquire it, and shall be in such form, accompanied by such other information and verified in such manner as the Minister may require.

25. Approval of application by Minister.

25. The Minister may, if he thinks fit, approve the application, subject to such conditions (if any) as he may deem fit to impose.

26. Notice of approval to be published in the Gazette before acquisition.

26. The approval by the Minister of the compulsory acquisition of any land by the Authority shall be published in the *Gazette* and thereafter the land may be acquired in accordance with the terms of the approval and the provisions of this Act and not otherwise.

27. Appointment, powers and duty of Commission.

27. (1) Where the Minister is satisfied, after considering the application from the Authority, that the land which the Authority propose to acquire compulsorily should be acquired in the public interest, or, as the case may require that any annual rent should be assessed by a Commission, the Minister shall appoint a Commission of one or more persons -

(a) in the case of a proposal to acquire any land compulsorily, to make recommendations to him, after due enquiry, in relation to the boundaries, definition and description of the land, the compensation to be paid therefor, the persons to whom the compensation should be paid, and in relation to the apportionment of the compensation amongst such persons;

(b) in the case of a request for the assessment of any annual rent, to assess such annual rent after due enquiry.

(2) Every such Commission shall, subject to the provisions of this Act, have all the powers, privileges, duties and obligations of, and shall for all purposes be deemed to be, a Commission appointed under the Commissions of Enquiry Act.

(3) Any person whose interests are or may be prejudicially affected shall be entitled to be heard by himself or by counsel or solicitor before any such Commission.

(4) The Minister shall direct the Commission -

(a) to endeavour to arrange by agreement between the persons concerned and the Authority the compensation or rent to be paid in respect of the land;

(b) (failing such agreement) to assess in accordance with the provisions of section 28 the compensation or rent to be paid in respect of the land,

and the Commission shall include in their recommendations the compensation or rent so agreed or assessed.

28. Determination of compensation.

28. (1) The compensation in respect of any land to be compulsorily acquired under the provisions of this Act shall be assessed on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the land is to be acquired, and the Commission shall in considering what compensation should be paid have regard to the provisions of sections 3 and 4.

(2) In determining the amount of the compensation to be awarded for land acquired compulsorily under this Act -

(i) the following and no other matters shall be taken into consideration -

(a) any increase in the value of the other land of any interested party likely to accrue from the use to which the land acquired will be put;

(b) the damage, if any, sustained by any interested party at the time of the taking possession of the land by the Authority by reason of the severing of such land from the other land of such interested party;

(c) the damage, if any, sustained by any interested party at the time of the taking possession of the land by the Authority by reason of the acquisition injuriously affecting his other property (whether movable or immovable) or the actual earnings of such interested party;

(d) the reasonable expenses, if any, incidental to any change of residence or place of business of any interested party which is necessary in consequence of the acquisition;

(ii) the following matters shall not be taken into consideration -

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the interested party to part with the land acquired;

(c) any damage sustained by the interested party which, if caused by a private person, would not be a good cause of action;

(d) any damage which is likely to be caused to the land acquired after the date of the publication in the *Gazette* of the approval of the Minister under section 26 by or in consequence of the use to which it has been put;

(e) any increase in the value of the land acquired which is likely to accrue from the use to which it will be put;

(f) any outlay or additions or improvements to the land acquired, which was incurred after the date of the publication in the *Gazette* of the approval of the Minister under section 26, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair;

(g) the fact that the land has been compulsorily acquired.

(3) The Commission shall, in assessing any rent in accordance with their duty under section 27, have regard to the provisions of this section so far as such provisions are applicable to the case.

29. Vesting of land by order of the Minister and taking of possession by the Authority.

29. The Minister may, after considering the recommendations of the Commission, by order published in the *Gazette*, vest the land to be acquired in the Authority in fee simple or for any lesser estate or interest, or upon such terms or subject to such conditions or for

such period as he may think fit, and the Authority may at any time after the publication of the order in the *Gazette* take possession of the land.

30. Publication of report of Commission.

30. The report of the Commission shall be published in the *Gazette* and in a daily newspaper circulating in the Island for the information of all interested parties.

31. Reference to Court.

31. (1) Any interested party who is dissatisfied with any award made by the Commission may, by written application to the Commission, require that the matter be referred by the Commission for the determination of the Court, whether his objection be in relation to the boundaries, definition or description of the land or in relation to the compensation or rent to be paid therefor or the persons to whom the compensation should be paid or the manner in which the compensation should be apportioned.

(2) The applicant shall state specifically the grounds on which the objection to the award is taken and at the hearing no other grounds shall be given in argument without the leave of the Court.

(3) Every such application shall be made -

(a) if the person making it was present or represented before the Commission at the time of the enquiry, within six weeks after the publication of the report of the Commission in the *Gazette*;

(b) in other cases, within six months after the publication of the said report in the *Gazette*.

(4) The period within which an application for reference to the Court shall be made shall not be capable of enlargement by any Court.

32. Commission's statement to the Court.

32. (1) In making the reference the Commission shall state for the information of the Court in writing -

(a) the boundaries, definition and description of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons who they have reason to think are interested in the land and the addresses of such persons;

(c) the amount of compensation awarded and the manner of apportionment thereof;

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined;

(e) if the objection be to the amount of the annual rent assessed, the amount of such annual rent and the grounds on which such amount was determined.

(2) There shall be submitted with the statement required under subsection (1) a copy of the notes of all the evidence taken by the Commission certified under the hand of the chairman thereof and all exhibits produced to the Commission.

33. Service of notice.

33. (1) The Court shall thereupon cause to be served of upon -

(a) the applicant;

(b) all persons interested in the objection, except such, if any, of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in relation to the area of the land or to the amount of the compensation, the chairman of the Commission, a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day.

(2) (a) Service of notice under subsection (1) shall be made by delivering or tendering a copy thereof duly signed to the person to whom the notice is addressed.

(b) When the person cannot be found the service may be made on any adult member of his family residing with him; and if no such adult member can be found the notice may be served by affixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by affixing a copy thereof in some conspicuous place in the office of the Authority and also on some conspicuous part of the land to be compulsorily acquired or of the land over which any right is to be compulsorily acquired (as the case may be):

Provided that if the Court so directs a notice may be sent by registered letter addressed to the person named therein at his last known residence or place of business and the service of it may be proved by the production of the registration receipt.

34. Power to appoint assessors if objection is in regard to amount of compensation.

34. (1) If the objection is in regard to the amount of the compensation and the award of the Commission is not less than five hundred thousand, the Court shall appoint two assessors for the purpose of aiding the Court in determining the objection.

(2) Such assessors may also be appointed in any other case in which the Court considers it desirable to make such appointment.

(3) Every person so appointed shall attend and serve as an assessor unless excused by a Judge.

35. Death, etc., of assessor.

35. If an assessor dies or becomes incapable of acting or is excused by a Judge, some other person shall be appointed in his stead.

36. Restriction on scope of enquiry.

36. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the person affected by the objection.

37. Proceedings to be in open Court.

37. Every enquiry by the Court (except under section 45 in relation to the apportionment of compensation) shall take place in open Court.

38. Record of assessor's opinion.

38. The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

39. Difference of opinion between Judge and assessors.

39. (1) In case of a difference of opinion between the Judge and the assessors or either of them upon a question of law or practice or usage having the force of law the opinion of the Judge shall prevail.

(2) In case of a difference of opinion between the Judge and both of the assessors as to the amount of compensation or as to the amount of any item thereof the decision of the Judge shall prevail.

40. Assessor's fees.

40. Every assessor shall receive such fee not exceeding ten thousand dollars as the Judge shall direct for each day upon which he sits as an assessor or upon which he is engaged in inspecting the land the subject of the proceedings, and such fee shall be deemed to be costs in the proceedings.

41. Awards to be in writing.

41. Every award made by the Court shall be in writing signed by the Judge and the assessor or assessors (if any) concurring therein and shall specify the amount of compensation awarded to each person and the grounds upon which each amount has been awarded.

42. Costs.

42. (1) The costs of any proceedings instituted under section 31 shall be in the discretion of the Court.

(2) Any costs payable by an applicant may be recovered as if they were costs incurred in a suit in the Supreme Court.

43. Rules of Supreme Court applicable.

43. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Rules of the Supreme Court shall apply to all proceedings instituted under section 31.

44. Appeal from decision of Court.

44. (1) Any interested party may appeal to the Court of Appeal for an award of compensation or annual rent by the court.

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals by rules governing civil appeals to the Court of Appeal from the Supreme Court.

45. Determination of apportionment of compensation.

45. (1) Where there is any dispute as to the apportionment of any compensation awarded under this Act a Judge in Chambers shall determine the proportions in which any interested parties are entitled to share in the compensation.

(2) An appeal from any such decision shall lie to the Court of Appeal.

(3) Every appeal shall be presented within the time and in the manner provided for civil appeals by the Court of Appeal Rules.

46. Costs of apportionment to be borne by interested parties.

46. The costs of all proceedings in apportioning the amount of compensation shall be borne by such of the interested parties in such proportions as the Judge shall determine.

47. Authority to pay compensation.

47. (1) After an award has been made by the Commission in accordance with this Act, the Authority shall offer in writing to pay the compensation awarded to the interested parties entitled thereto according to the award and shall pay it to such parties unless prevented by one or more of the contingencies mentioned in subsection (2).

(2) If any of the interested parties do not consent to receive such compensation or if there be no person competent to alienate the land or if there be any dispute as to the right to receive the compensation or as to the apportionment of it the Authority shall apply *ex parte* to a Judge in Chambers for an order authorizing them to deposit the amount of compensation in Court.

(3) Every application under subsection (2) shall be supported by affidavit.

(4) Any interested party upon providing sufficient security to the satisfaction of the Court may receive such payment under protest as to the sufficiency of the amount and such receipt shall not be deemed to prejudice his right to make application under section 31:

Provided, however, that no person who has received such payment otherwise than under protest shall be entitled to make application under section 31.

48. Police to enforce surrender.

48. (1) If the Authority are opposed or impeded in taking possession of any land acquired under this Act they shall apply to the Commissioner of Police who shall enforce the surrender of the land to the Authority.

(2) The Commissioner of Police may use such force as may be necessary to enforce such surrender to the Authority.

49. Exemption from stamp duty, etc.

49. No award made by the Commission shall be chargeable with stamp duty and no person claiming under any such award shall be required to pay any fee for a copy of any such award.

50. Commission not to cease to exist until all their functions and duties have been discharged.

50. A Commission shall not to cease to exist by reason of having made their report to the Minister and shall continue in being until all their functions and duties under this Act have been discharged.

51. Bar of suits to set aside awards.

51. No suit shall be brought to set aside any award or apportionment under this Act.

51A. Amendment of penalties by order.

51A. The Minister may, by order subject to affirmative resolution, vary any penalty specified in this Act.

52. Power to declare beach to be a public recreational beach and to define the same.

52. (1) Where any beach is used by the public for fishing, bathing or recreation, upon payment of a fee, the Authority may, after consulting the owner or any person exercising control thereof or receiving any such fee, and subject to the right of such owner or person to appeal to the Minister as provided by section 55, by order published in the *Gazette* -

(a) declare such beach to be a public recreational beach; and

(b) after consultation with the Local Authority of the parish in which the beach is situated, fix the fee to be paid for admission to or for use of the beach,

and such beach shall continue to be open to the public for the aforesaid purposes upon payment of the fee fixed from time to time by any such order.

(2) The Authority may, in any order under subsection (1), define the area of any beach declared under the said subsection to be a public recreational beach and they may include in such definition, as part of such public recreational beach, so much of the adjoining land as they may think necessary.

(3) An order declaring a beach to be a public recreational beach shall not have effect until the expiration of six weeks from the publication thereof in the *Gazette* and, in any event, not until a notification is published in the *Gazette* by or on behalf of the Minister to the effect that there has been no appeal against the order within the period prescribed by section 55 or that every appeal against the order has been dismissed.

(4) Any person who -

(a) hinders or obstructs any member of the public using or attempting to use any beach declared by order under subsection (1) to be a public recreational beach, or any adjoining

land, and properly conducting himself and observing the regulations made by the Authority in relation to the beach or adjoining land;

(b) demands a fee in excess of the fee fixed under the said subsection, or any other form of consideration whatever, for permitting a member of the public to use any such beach; or

(c) ejects or attempts to eject from any such beach, except for misconduct, any member of the public who has paid the fee for admission to or for the use of the beach; or

(d) wilfully causes any member of the public who has paid the fee for admission to or for the use of the beach to leave any such beach, by doing any act calculated to annoy such member of the public while he is lawfully using the beach,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment with hard labour for any term not exceeding six months.

53. Revesting of land for purpose or in furtherance of commercial enterprise.

53. Any person from whom any land has been compulsorily acquired by the Authority under the provisions of this Act may at any time thereafter seek the approval of the Minister by an application in writing for the recovery of the land for the purpose or in furtherance of any commercial enterprise, and the Minister may, if he thinks fit, after consultation with the Authority, by order published in the *Gazette*, vest the land in fee simple or for any lesser estate or interest, having regard to the estate or interest held by such person before the land was acquired by the Authority and subject to such conditions (if any), including the payment of any stipulated consideration, as the Minister may deem fit to impose, in such person for the purpose aforesaid.

54. Revocation of order declaring beach to be a public recreational beach in the interests of development.

54. Any person who is the owner for the time being of any beach declared by an order under subsection (1) of section 52 to be a public recreational beach may, at any time thereafter, request the Authority in writing to revoke the order, to enable him to recover full control over such beach for the purpose or in furtherance of any commercial enterprise, and the Authority may, if they think fit, after consultation with the Local Authority of the parish in which the beach is situated, revoke the order.

55. Appeal to Minister from decision of Authority.

55. (1) Any person aggrieved by any decision of the Authority to grant or refuse a licence under this Act or by any order declaring a beach to be a public recreational beach under this Act may appeal to the Minister by notice in writing addressed to the Minister, within six weeks after publication in the *Gazette* of the grant or refusal of the licence or after the publication of the order in the *Gazette* (as the case may be).

(2) The decision of the Minister as to whether such licence should be granted or refused or as to whether an order should be disallowed or not shall be final and shall not be questioned in any legal proceeding.

56. Application of Act to the Crown.

56. The Crown shall be entitled to the benefit of, and shall be bound by, the provisions of this Act.

SCHEDULE

[Deleted by Act 9 of 1991, 3rd Sch.]