



**BERMUDA
1975 : 53**

WATER RESOURCES ACT 1975

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[14 July 1975]

[preamble and words of enactment omitted]

PART I

INTRODUCTORY

Interpretation

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

"Authority" means the Environmental Authority established by section 3 of the Clean Air Act 1991 [*title 20 item 13*];

"Environmental Engineer" means the Environmental Engineer of the Ministry of the Environment;

"existing water right" means any right to public water —

- (a) which has been lawfully acquired, is possessed by, and is being beneficially exercised by, any person immediately prior to 14 July 1975; or
- (b) lawfully acquired by any person before 14 July 1975 for the purpose of supplying water to the public;

"Minister" means the Minister responsible for the Environment;

"pond" means any place or excavation containing water other than sea water;

"prescribed" means prescribed by regulations under section 39;

"public water" means —

- (a) underground water;
- (b) water in a pond where the removal of water from the pond will occasion the seepage of underground water into the pond,

and includes all such water made available by means of works, but does not include any such water which has been lawfully appropriated for use;

"the specified purposes" means the use of water upon the land in relation to which a water right exists or land adjacent thereto for washing, drinking, flushing closets and the other usual household purposes;

"this Act" includes the regulations under section 39;

"underground water" means water stored below the surface of the ground in the natural strata thereof and not apparent on the surface of the ground;

"water right" means a water right granted or deemed to have been granted under this Act and, subject to section 9, includes an existing water right;

"well" includes any well, borehole, adit, tunnel, gallery or other excavation constructed or used for the abstraction of public water or for the introduction of fluids directly into public water;

"works" include reservoirs, wells, pumping installations, pipelines, filters, sedimentation tanks or other works constructed for or in connection with the abstraction, or storage of public water, or the filtration or purification of water, or the use of public water for any purpose, or the

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introduction of fluids directly into public water whether by means of a well or pipe or otherwise howsoever.

(2) For the purposes of this Act where land is subject to a tenancy at will or to a tenancy for a fixed period of less than one year or to a periodic tenancy from month to month or other period of less than one year the person entitled to the reversion expectant upon the termination of such tenancy shall be deemed to be the person entitled to the possession of the land.

[section 1 amended by 1998 : 19 effective 18 June 1998]

Establishment of a Water Authority

2 [Repealed]

[section 2 repealed by 1998 : 19 effective 18 June 1998]

PART II

WATER RIGHT REQUIRED TO ABSTRACT PUBLIC WATER, CONSTRUCT WELLS ETC.

Power of Minister to give directions to the Authority

3 The Minister may give to the Authority general directions as to the exercise and performance by the Authority of any of their functions and the Authority shall give effect to any such directions.

Prohibition of abstraction of public water and the construction of works without a water right

4 (1) It is an offence for a person unless he is the holder of an existing water right which has not been determined under section 9 to abstract, use or store any public water except in accordance with a water right granted under this Act.

(2) It is an offence for a person, on or after 1 March 1976 to —

(a) construct works otherwise than by way of the reconstruction, replacement or maintenance of works used in connection with the beneficial enjoyment of an existing water right which has not been determined under section 9;

(b) extend any well;

(c) install or modify any machinery or apparatus whereby additional quantities of public water may be abstracted from the ground or from any pond,

except in accordance with a water right granted under this Act.

Punishment on summary conviction: the penalties specified in section 37.

Exceptions from general restrictions

5 (1) The restrictions imposed by section 4(1) do not apply to the doing of anything for fire-fighting purposes or for the purpose of testing apparatus used for those purposes or of training or practice in the use of such apparatus.

(2) The restrictions imposed by section 4 do not apply to the abstraction of water if it is for the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water if such abstraction is carried out with the written consent of the Minister and in compliance with any conditions imposed by the Minister.

No prescriptive right to use of water

6 No person shall, on or after 1 March 1976, acquire or be deemed to have acquired any right to abstract or use any public water by reason of length of use or elapse of time.

PART III

RECORDING OF EXISTING WATER RIGHTS

Application for registration of existing water rights

7 (1) Every person having an existing water right may, within one year from the appointed day, notify the Authority of such right:

Provided that the Authority may, in their discretion in respect of any particular case or class of cases or in respect of any particular area, extend the period within which notification is to be made, either before or after the expiration of that period.

(2) For the purposes of this section "the appointed day" means, in respect of any part of Bermuda, such day as the Minister may, by notice in the Gazette, appoint for that area.

Authority to record existing water right

8 (1) On the receipt by the Authority of a notification under section 7 they shall, after making such investigation as they consider advisable and if they are satisfied that an existing water right has been proved to exist, cause the same to be recorded in the register of water rights and a certificate to be issued that such a right has been recorded; if the Authority is not so satisfied, they shall not cause such right to be recorded.

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(2) On the recording of an existing water right in terms of subsection (1) the person who possesses the right shall be deemed to have been granted a water right under this Act.

Determination of non-registered existing water right

- 9 (1) Every existing water right shall determine —
- (a) if the Authority decides not to record the right in the exercise of its discretion under section 8(1);
 - (b) if the person entitled thereto fails to notify the Authority in accordance with section 7 of the existence of that right before the expiration of the period allowed for notification.

(2) Notwithstanding anything to the contrary in subsection (1), when the Authority is satisfied that an existing water right within the meaning of this Act exists, they may direct that such right be recorded notwithstanding that the person entitled thereto has failed to notify the Authority of the existence of such right, and upon the recording thereof it shall be deemed not to have determined under this section.

Rights conferred by registration

10 (1) Unless the person making application for the recording of an existing water right to abstract water can satisfy the Authority that such right exists for purposes other than the specified purposes, the Authority shall record such right as a right to abstract water for the specified purposes only.

(2) If the person making application for the recording of an existing water right to abstract water can satisfy the Authority that such right extends to purposes other than or in addition to the specified purposes, the Authority shall record such right as a right to abstract water for all such purposes.

(3) An existing water right to abstract water shall not authorize the abstraction of water in excess of the rate and quantity which is reasonably capable of being abstracted by means of works, machinery of [sic] apparatus which were constructed or installed immediately prior to 14 July 1975 or which were in the course of being constructed or installed on 14 July 1975 and the Authority may, if they think fit, estimate such rate and quantity at the time of recording such right and record such estimate in the register of water rights; and such estimate shall, subject to Part VIII, be conclusive evidence of such rate and quantity:

Provided that the Authority shall, prior to exercising their powers under this subsection, give the person seeking to register such existing water right an opportunity of making representations thereon and shall take into consideration any such representations.

PART IV

GRANT OF WATER RIGHTS

Grant of water rights

- 11 (1) The Authority may grant any person the right to —
- (a) abstract, use or store public water from such source, in such quantity, for such period, (being a period of limited duration);
 - (b) construct works;
 - (c) extend any well; or
 - (d) install or modify any machinery or apparatus whereby additional quantities of public water may be abstracted from the ground or from any pond,

for such purpose as may be specified in the water right, subject to such terms and conditions as they may deem fit.

(2) Application for the grant of a water right shall be made to the Authority in such form as they may require or as may be prescribed, by or with the consent of the person entitled to the possession of the land in respect of which the grant is sought; and it shall be the duty of the Authority to give, or require the applicant to give, notice of the same in such manner as they may direct or as may be prescribed either generally or to such persons as the Authority may specify, being persons who, in the opinion of the Authority, may be affected by such grant.

(3) Any interested person may notify the Authority within such period as may be prescribed that he objects to the grant of a water right and shall specify the grounds of such objection, and shall, if he so requires, have a right to be heard thereon by the Authority.

(4) The Authority shall consider every application and any objections made to them in respect thereof and may, after consulting such persons and authorities, if any, as they may, in their sole discretion, decide to consult, grant such right as they may consider appropriate or dismiss the application.

- (5) Every water right shall specify —
- (a) the person to whom it is granted;
 - (b) where the right is for the abstraction of water, the maximum quantity which may be abstracted in any period, the rate of abstraction and the purposes for which the water is to be used;
 - (c) the date when the right expires;

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- (d) the land in respect of which the right is granted;
- (e) works, if any, authorized to be constructed.

(6) The grant of a water right for the construction of any works shall not have the effect of dispensing with the necessity for obtaining planning permission therefor when such permission is required by the Development and Planning Act 1974 [*title 20 item 1*].

(7) Nothing in the grant of a water right shall be deemed to imply any guarantee that the quantity of water therein referred to is or will be available or that, where such water may not be used without the permission of any person or authority under the Public Health Act 1949 [*title 11 item 1*] or other statutory provision, that such permission will be granted, or otherwise derogate from such Act or statutory provision.

Rights may be made appurtenant to land

12 (1) The Authority may, either at the time of the grant of any water right or at any time after the grant of any water right declare that such right shall be appurtenant to the land described in the water right.

(2) Where a water right has been declared to be appurtenant to any land, the benefit of the right shall be enjoyed and the right may be enforced by the person who is for the time being entitled to the possession of the land.

(3) Where in consequence of any transfer, lease, partition or devolution of property, whether by will or on intestacy, or otherwise, any person becomes entitled to the possession of part of or a share in the land to which a water right has been declared appurtenant, he may abstract and use such proportion of the water the abstraction and use of which is permitted by the water right as may be assigned to him in the transfer, lease, partition, or will or is by law apportioned to him or as may be agreed between him and the person entitled to the possession of the remaining parts or shares of or in the land, or in the absence of any such agreement, as may be determined by the Authority.

(4) Where any apportionment of water has been made under subsection (3) in respect of any partition of land, the several quantities of water so apportioned shall be deemed to be appurtenant to the several parts of such land and the benefit thereof shall be enjoyed and all rights thereof may be enforced, in accordance with such apportionment by the persons who are for the time being entitled to the possession of such parts, and such rights shall prevail until the parts shall again become merged with each other or the right is sooner determined.

(5) Any person acquiring a right to abstract and use water by agreement in accordance with subsection (3) shall within thirty days give notice thereof to the Authority, failing which such right shall be unenforceable.

Rights conditional on construction of works

13 (1) Where the Authority has granted a water right subject to the construction of works within a specified period the Authority may, from time to time and at any time, notwithstanding that the period previously allowed may have expired, extend the period for the construction of such works.

(2) At the expiration of the period allowed for the construction of works, the Minister shall cause the works to be inspected by an officer designated by him for the purpose who, if they have been constructed to his satisfaction and in accordance with the terms of the grant of the water right authorizing such construction, shall so certify in writing to the Authority.

(3) No certificate issued under this section shall be deemed to imply any guarantee that the works are properly designed or constructed nor shall support or justify any claim whatsoever against the Crown, the Authority or any public officer in connection with such works.

Discretion of the Authority

14 Without derogating from the generality of the discretion of the Authority under this Part the Authority shall in the exercise of that discretion have regard to the following matters —

- (a) the conservation, augmentation and best use of the water resources of Bermuda;
- (b) the preservation of the natural beauty and character of Bermuda;
- (c) the conservation of geological or physical features and other objects of interest;
- (d) the preservation of objects of historical interest;
- (e) any other matters which appear to them to be relevant.

PART V

REVISION, VARIATION, DETERMINATION AND DIMINUTION OF WATER RIGHTS

Inadequacy of water supply for satisfaction of water rights

15 If at any time in the opinion of the Minister, in any specified area the quantity of water to which rights of use exist is insufficient to satisfy all such water rights, (including any right referred to in Part III) he may direct the Authority to review the use, control and appropriation of public water in that area and in so doing, the Authority may revise the quantity allowed by any right and the terms and conditions of any right to the use

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of water in that area and record such revised quantity, terms and conditions in the register of water rights and so inform the holders' of the rights.

Suspension or variation of rights on account of excessive use

16 Where in the opinion of the Minister the supply of public water from any source or in any area is or is likely to —

- (a) become insufficient for the needs of persons using it on account of excessive use, drought or of an emergency;
- (b) deteriorate in quality on account of abstraction in excessive quantities or at an excessive rate,

the Minister may authorize the Authority at any time and from time to time to suspend or vary, by notice to the holders of water rights (including any right referred to in Part III), all or any rights to abstract or use water from that source, or in that area, for such period as he may deem necessary, and upon notice being given by the Authority as aforesaid, such rights shall cease for the period of suspension or shall be exercisable only as so varied, as the case may be.

Where quantity unspecified Authority may specify quantity

17 Where any right to the use of an unspecified quantity of public water subsists, the Authority may at any time specify the quantity of water for which such right may be valid, and cause the same to be recorded in the register of water rights and so inform the holder of the right:

Provided that the Authority shall, before so specifying, give the holder of the right the opportunity of making representations thereon, and shall take into consideration any such representations.

Variation of water right on application

18 The Authority may from time to time, on the application of the holder of a water right, determine or diminish the right or vary any of the conditions thereof.

Determination for breach of a condition

19 Where the holder of a water right has —

- (a) failed to comply with any condition, express or implied, subject to which the right was granted; or
- (b) abstracted or used public water in excess of that authorized or has used public water for a purpose not authorized by the grant; or
- (c) committed an offence against this Act,

the Authority may by notice in writing addressed to the holder declare the right to be determined:

Provided that where the default is one capable of being remedied, the Authority shall first serve on the holder notice in writing specifying the default and requiring the holder to remedy the same within such time as may be specified in the notice and if the default is so remedied the Authority shall not declare the right to be determined.

Determination or diminution for non-use

20 (1) If any time the Authority has reason to believe that the holder of a water right has not, during the preceding year, made full beneficial use of that right, they may by notice in writing addressed to such holder call upon him to show cause why such right should not be determined or diminished or modified in such respects as may be specified in the notice.

(2) If within three months of the service of such notice no reply has been received by the Authority, the Authority may declare the right determined or diminished or modified as the case may be.

(3) The holder of a water right upon whom a notice has been served under subsection (1) may, within three months of such service, submit to the Authority a statement in writing of reasons why the right should not be determined or diminished or modified, as the case may be, and may require to be heard in the matter.

(4) The Authority shall consider any statement submitted to them under subsection (3) and shall, if so required, give the holder an opportunity of being heard in person or by his legal representative and may thereafter by notice in writing addressed to the holder —

- (a) declare the right determined; or
- (b) declare the right diminished or modified in such respects as may be specified in the declaration; or
- (c) declare the right to be subsisting unchanged.

PART VI

LICENSING OF WELL-DIGGERS

Determination or diminution for public purposes

21 (1) Where the Minister deems it necessary or expedient in the interests of the use of public water in such manner as to promote the public benefit or the utilization of such public water in such manner as to promote the economic well-being of the community he may by notice in writing addressed to the holder of any water right, determine or diminish that right to the extent that such water is required for the aforesaid public purpose, and thereupon the right shall lapse or shall be exercisable only as so diminished, as the case may be.

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(2) The holder of any right determined or diminished under this section shall be entitled to receive compensation from the Government for all loss resulting from the determination or diminution of the right.

(3) The holder of any right determined or diminished under this section may apply to the Supreme Court for the determination of the legality of the Minister's actions under this section, the amount of the compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(4) Proceedings in the Supreme Court under this section shall be deemed to be a civil cause or matter for the purposes of the Court of Appeal Act 1964 [title 8 item 4].

All commercial well-diggers to be licensed

22 (1) No person shall, after the expiration of a period of three months from the coming into operation of this Act, for hire or reward, construct or extend any well unless he holds a valid well-digger's licence issued under this Part.

(2) Any person who for hire or reward constructs or extends any well in contravention of subsection (1) commits an offence:

Punishment on summary conviction: the penalties prescribed in section 37.

Licences

23 (1) Well-diggers' licences shall be granted by the Authority and shall —

- (a) be valid for the calendar year specified therein;
- (b) be in the prescribed form;
- (c) shall not be transferable.

(2) The Authority may refuse to grant a licence to any person whom they have reason to believe has failed to comply with any provision of this Act.

(3) A well-digger's licence may be renewed and the provisions of this section shall apply to the renewal of a licence as they apply to a grant,

Revocation of well-digger's licence

24 The Authority may at any time by order revoke a well-digger's licence on the grounds that the holder thereof has contravened any provision of this Act with which it was his duty to comply, but before exercising their powers under this section the Authority shall give such holder an opportunity of making such representations in regard to such revocation as the holder may think fit.

Duties of well-diggers

25 (1) It shall be the duty of a person holding a well-digger's licence to —

- (a) satisfy himself prior to constructing a well for any other person that such person holds a water right enabling such well to be constructed; and
- (b) make to the Minister such returns relating to the construction of wells by him as may be prescribed, and if such person holding a well-digger's licence fails so to satisfy himself or fails to make such returns or makes any such return which is incomplete or inaccurate in any material particular he commits an offence:

Punishment on summary conviction: the penalties prescribed in section 37.

(2) In any prosecution in which it is alleged that any person holding a well-digger's licence has failed to satisfy himself as provided for in of subsection (1)(a) it shall be evidence of such failure that the person for whom the well is constructed does not hold a water right enabling such well to be constructed.

PART VII

MISCELLANEOUS POWERS

Right to obtain information

26 (1) The Minister may by notice in writing served on any person who is the holder of a water right or entitled to the possession of any land require such person to keep such records and, additionally or alternatively, to furnish in such form and manner and within such time as may be specified in the notice or as may be prescribed such periodical or other estimates or returns —

- (a) as the Minister may specify for the purpose of ascertaining the amount or rate of water abstracted under the authority of a water right;
- (b) relating to such matters as may be prescribed as matters on which a person may be required to give information as being relevant to the conservation and best use of water in Bermuda.

(2) Any person required to keep records or furnish estimates or returns under this section who fails to do so, unless he proves that he had reasonable excuse for such failure, commits an offence:

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Punishment on summary conviction: the penalties specified in section 37.

Power to inspect works, take samples etc

27 (1) A public officer authorized thereto by the Minister shall, on producing, if so required, some duly authenticated document showing his authority, be entitled at all reasonable hours to enter upon any land—

- (a) to inspect any works constructed or under construction thereon;
- (b) for the purposes of ascertaining whether there is, or has been, on or in connection with such land any contravention of this Act;
- (c) to install, maintain, read or test any meter installed for the purposes of this Act.

(2) Any public officer acting in the execution of the powers vested in him by subsection (1) shall be entitled to —

- (a) take measures to ascertain the quantity of water abstracted or capable of being abstracted by means of any works;
- (b) examine records kept for the purposes of this Act;
- (c) take a sample of any water or of any effluent or other substance which may appear to him as being capable of affecting the quality of public water whether by reason of pollution or otherwise.

(3) A public officer authorized thereto by the Minister shall, on producing, if so required, some duly authenticated document showing his authority, be entitled at all reasonable hours to enter upon any land to make such investigations and surveys as the Minister may consider necessary in the interest of the conservation and best use of water in Bermuda, and may establish and maintain on any such land, without other authority than this Act, works for the purpose of obtaining and recording information and statistics as to the hydrological conditions of Bermuda:

Provided that compensation shall be payable for all damage done and for any land occupied for the construction of works. In the absence of agreement such compensation shall be determined by the Supreme Court on the application of the owner or occupier or of the Minister.

(4) Any person wilfully obstructing the Minister or a public officer in the exercise of his powers under this section or interfering with or damaging any works established or maintained under subsection (3) commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

Power to require repair etc

28 If in the opinion of the Minister any works are so constructed, maintained or used or are being so constructed, as to constitute a danger to life, health or property, he may require any person for the time being enjoying the benefit of those works to carry out such repairs or to effect such additions or modifications to such works or to carry out such demolitions or to change the use of the works in such manner as he may consider necessary and may by notice in writing suspend any water right until he is satisfied that such requirement has been fulfilled and, thereupon, the right shall cease for the period of the suspension.

Power to require demolition of unlawful works and stop water abstraction, pollution etc

29 (1) The Minister may by notice in writing require any person—

- (a) who has constructed or extended or caused to be constructed or extended any works contrary to this Act; or
- (b) whose water right or existing water right in respect of which any works are in existence has been determined under this Act or has otherwise come to an end,

to modify, demolish or remove such works within such period, not being less than twenty days after the service thereof, as may be specified in the notice.

(2) The Minister may by notice in writing require any person who causes or knowingly permits —

- (a) the abstraction of public water otherwise than in accordance with a water right;
- (b) to enter any public water or the water of the sea either directly or indirectly any pollutant or waste;
- (c) any public water, or water which is not public water solely by reason of its having been lawfully appropriated for use, to run to waste,

to take such steps as may be specified in the notice either forthwith or within such time as may be so specified to prevent such abstraction, entry or waste.

(3) If any person on whom a notice is served under this section (hereinafter called an enforcement notice) is aggrieved by the notice, he may, at any time within thirty days of the service thereof, appeal against

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the notice to a court of summary jurisdiction; and on any such appeal the court —

- (a) if satisfied that the notice was an unlawful notice quash the enforcement notice to which the appeal relates;
- (b) if satisfied that an enforcement notice is inequitable and it would be appropriate to vary its terms, vary the enforcement notice accordingly;
- (c) in any other case shall dismiss the appeal,

and may make such order as to costs as the court thinks just.

(4) Any person aggrieved by a decision of a court under subsection (3) may appeal against that decision to the Supreme Court.

(5) When, within the period mentioned in subsection (3) appeal is made to the court under this section by a person upon whom an enforcement notice was served —

- (a) the operation of an enforcement notice served under subsection (1) shall be suspended pending the final determination or withdrawal of the appeal, and where the enforcement notice is varied on any such appeal or the appeal is dismissed then the court may, if it thinks fit, direct that the enforcement notice shall not come into force until such date, not being later than twenty-eight days from the determination of the appeal as the court thinks fit;
- (b) the operation of an enforcement notice served under subsection (2) and which is expressed to take effect forthwith shall not be so suspended but shall continue in operation until the court hearing the appeal relating thereto otherwise orders, but where it is not so expressed paragraph (a) shall apply.

(6) The Minister may at the request of the person on whom it is served extend any period specified in an enforcement notice for the taking of any steps.

Supplementary provisions as to enforcement

30 (1) If any steps required by an enforcement notice to be taken have not been taken, as required by the notice, the Minister may enter on the land and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person who is then entitled to possession of the land any expenses reasonably incurred by the Minister in that behalf; and if that person having been entitled to appeal to the court under section 29, failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the

validity of the action taken by the Minister upon any ground that could have been raised by such an appeal.

(2) Subject to this section, where an enforcement notice has been served under section 29(2) on the person who was, when the notice was served on him, the person entitled to the possession of the land to which the enforcement notice relates and within the period specified in the enforcement notice, or within such extended period as the Minister may allow, any steps required by the enforcement notice to be taken have not been taken, that person commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

(3) Compliance with an enforcement notice, whether as respects —

- (a) the demolition, alteration or construction of any works;
or
- (b) the discontinuance of any act; or
- (c) any other requirements in the enforcement notice,

shall not discharge the enforcement notice.

PART VIII

APPEALS

Appeals to the Minister

31 (1) The Environmental Engineer or any person aggrieved by a decision of the Authority may by notice under this section appeal to the Minister.

(2) A notice under this section shall be served within such time and in such manner as may be prescribed.

(3) The Minister, subject to this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the Authority, whether the appeal relates to that part or not, and may deal with the application as if it had been made to him in the first instance.

(4) Before determining an appeal under this section, the Minister shall, if the appellant so desires, afford him an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(5) In the exercise of his functions under this section the Minister shall have regard to the matters specified in section 14.

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[section 31 amended by 1998 : 19 effective 18 June 1998]

Appeals to the Supreme Court.

32 (1) Any party to any proceedings under section 31 who is aggrieved by the decision or direction of the Minister in the matter may appeal to the Supreme Court on a point of law within twenty-one days or such longer period as the Supreme Court may allow after receipt of notification of such decision or direction.

(2) On an appeal under this section the Supreme Court may make such order, including an order for costs, as it thinks fit.

PENALTIES AND SUPPLEMENTARY

Registration

33 (1) Every grant or renewal of a water right made by the Authority and of the variation, determination, diminution, modification or suspension of a water right or existing water right shall be entered by the Environmental Engineer in the register of water rights in such manner as the Minister may determine.

(2) Any person interested shall, on application to the Environmental Engineer, be entitled to receive certified or uncertified extracts from the register of water rights.

(3) Extracts from the register of water rights purporting to be certified under the hand of the Environmental Engineer shall be admissible in evidence in all legal proceedings, civil or criminal without proof that they are under the hand of the Environmental Engineer and shall be prima facie evidence of the facts recorded therein.

[section 33 amended by 1998 : 19 effective 18 June 1998]

Pollution of public water and sea water

34 (1) Any person who, save under the authority of this Act or any other statutory provision, interferes with or pollutes or fouls any public water, commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

(2) For the purposes of this section the polluting or fouling of public water shall include the discharge into, or in the vicinity of, any public water, or in a place where public water is likely to be of any matter or substance likely to affect the quality of public water or to cause injury whether directly or indirectly to livestock, animals, birds or marine life, or to crops, orchards or gardens which are irrigated by such water or to any product in the processing of which such water is used or which occasions, or which is likely to occasion, a nuisance.

(3) For the purposes of this section the polluting of or fouling of public water includes the polluting or fouling of sea water.

Control of waste of abstraction

35 (1) No person shall cause or allow any public water to run to waste from any well or pond except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the well or pond.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

Provided that where water interferes or threatens to interfere with the execution or operation of any underground works it shall not be an offence under this subsection to cause or allow the water to run to waste so far as it may be necessary to enable the works to be executed if no other method of disposing of the water is reasonably practicable.

(3) For the purposes of this section "public water" includes water which is not public water solely by reason of its having been lawfully appropriated for use.

False statement

36 It is an offence for a person to make any statement which he knows to be false for the purpose of procuring, either for himself or any other person, a water right or any other licence or authority granted under this Act:

Punishment on summary conviction: the penalties specified in section 37.

Penalties

37 (1) Where a person commits an offence under sections 4, 22(2), 34(1), or 36:

Punishment on summary conviction: a fine of \$10,000.

(2) Where a person commits an offence under sections 25(1), 26(2), 27(4), 30(2) or 35(1):

Punishment on summary conviction: a fine of \$5,000.

(3) In addition to the penalties which may be imposed in terms of this section the court may, in the event of a continuing offence, impose a fine of \$1,000 for each day during which the offence continues.

[section 37 amended by 1998 : 19 effective 18 June 1998]

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Offences by corporations

38 Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any default on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, he, as well as the body corporate commits that offence and be liable to be proceeded against accordingly.

Power to make rules and regulations

- 39 (1) The Minister may make regulations —
- (a) prescribing anything which is required to be, or which may be, prescribed under this Act;
 - (b) prescribing the registers and records to be kept and the manner in which they are to be kept;
 - (c) providing for the forms to be used in respect of any matter required or permitted to be done under this Act;
 - (d) providing for the advertisement or applications for the use of public water and for the giving of notice to interested persons;
 - (e) providing for and regulating the making of objections and the time within which such objections shall be made;
 - (f) regulating the procedure on appeals to the Minister under this Act;
 - (g) prescribing the manner in which and the matters on which persons may be required to give information as provided in section 26 being matters relevant to the conservation and best use of water in Bermuda;
 - (h) controlling the discharge of matter or substances which are capable of polluting public water or sea water and imposing penalties on persons for failing to comply with such regulation;
 - (i) preventing the waste, misuse and contamination of water and imposing penalties on persons failing to comply with such regulation;
 - (j) requiring the amount of water abstracted under a water right to be metered and for imposing penalties on persons —
 - (i) failing to comply with such regulation;

- (ii) interfering with any public officer in the execution of his duties under any such regulation;
- (iii) damaging or interfering with any meter;
- (k) prescribing standards for determining when a matter or substance is to be treated as polluting for the purposes of any provision of this Act;
- (l) generally for the better carrying out of this Act.

(2) Section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal or application to the Supreme Court under this Act.

(3) No regulation under this section shall authorize the imposition of a penalty in excess of a fine of \$5,000 or imprisonment for a period of three months.

(4) The negative resolution procedure shall apply to regulations made under this section.

[section 39 amended by 1998 : 19 effective 18 June 1998]

Fees

40 Such fees as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*] shall be payable in relation to anything done by the Authority or Minister under this Act and the Authority or Minister as the case may be, may decline to exercise their or his powers under this Act unless such fees are first paid.

Service of documents

41 (1) Any notice, form or other document required or authorized by this Act to be served or given by the Authority or by the Minister shall be deemed to have been duly served or given —

- (a) if delivered personally to, or if left at the last known place of abode or business of the person, on or to whom the certificate, notice, form or document is to be served or given; or
- (b) if sent by prepaid letter post, addressed to the person, on or to whom the certificate, notice, form or document is to be served or given at his last known place of business or abode in or out of Bermuda.

(2) Service of a certificate, notice, form or document by post in accordance with subsection (1) shall prima facie be deemed to have been

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effected at the time when it would be delivered in the ordinary course of post.

(3) Where the notice or other document is required to be served on or given to a person having an interest in or being the person entitled to possession of any land that notice shall be deemed to be duly served on all persons having interests in, and on any person entitled to the possession of the land (other than a person who has furnished an address for the service of notice on him) if it is addressed to him by the description of "the occupier" of the land (describing it) and is affixed conspicuously to some object on that land.

Application of the Act

42 [Repealed]

[section 42 repealed by 1998 : 19 effective 18 June 1998]

Commencement

43 [omitted]

[this Act was brought into operation on 1 March 1976 by SR&O 13/1976]

SCHEDULE

(Section 2)

[Repealed]

[schedule repealed by 1998 : 19 effective 18 June 1998]

[Amended by:

1977 : 35

1988 : 19

1998 : 19]