



MONTSERRAT

CHAPTER 8.03

PHYSICAL PLANNING ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2019

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

This edition contains a consolidation of the following laws—

	Page
PHYSICAL PLANNING ACT	3
Act 4 of 1996 .. in force 9 May 1996	
Amended by Acts:	
9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
12 of 2012 .. in force 18 July 2012	
1 of 2013 .. in force 1 February 2013	
17 of 2014 .. in force 1 September 2014 (S.R.O. 67/2014)	
6 of 2016 .. in force 30 May 2016	
PHYSICAL PLANNING REGULATIONS – Section 65	41
S.R.O. 67/1996 .. in force 1 October 1996	
PHYSICAL PLANNING (FEES) REGULATIONS – Section 65	53
S.R.O. 19/2012 .. in force 1 April 2012	
PHYSICAL PLANNING (SALE OF PRODUCTS AND SERVICES) (FEES) REGULATIONS – Section 65	55
S.R.O. 37/2013 .. in force 1 May 2013	



MONTSERRAT

CHAPTER 8.03

PHYSICAL PLANNING ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2019

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

This edition contains a consolidation of the following laws—

	Page
PHYSICAL PLANNING ACT	3
Act 4 of 1996 .. in force 9 May 1996	
Amended by Acts: 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
12 of 2012 .. in force 18 July 2012	
1 of 2013 .. in force 1 February 2013	
17 of 2014 .. in force 1 September 2014 (S.R.O. 67/2014)	
6 of 2016 .. in force 30 May 2016	
PHYSICAL PLANNING REGULATIONS – Section 65	41
S.R.O. 67/1996 .. in force 1 October 1996	
PHYSICAL PLANNING (FEES) REGULATIONS – Section 65	53
S.R.O. 19/2012 .. in force 1 April 2012	
PHYSICAL PLANNING (SALE OF PRODUCTS AND SERVICES) (FEES) REGULATIONS – Section 65	55
S.R.O. 37/2013 .. in force 1 May 2013	

CHAPTER 8.03
PHYSICAL PLANNING ACT
ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

SECTION

1. Short title
2. Interpretation

PART 2

ADMINISTRATION

3. Planning and Development Authority
4. Liability of Authority and its members

PART 3

DEVELOPMENT PLANS

5. Preparation of Development Plan
6. Representations
7. Draft Development Plan
8. Approved Development Plan
9. Revision and modification of Development Plan
10. Detailed plans
11. Status of Development Plan

PART 4

DEVELOPMENT CONTROL

12. No development without permission
13. Application for development permission
14. Outline application
15. Meaning of development
16. Notification before determination of application for development permission
17. Developments affecting locality
18. Environmental impact assessment
19. Grant of permission
20. Appeal

21. Scope of development permission
22. Development permission to run with the land
23. Revocation or modification of development permission
24. Appeal
25. Compensation
26. Notice of compliance
27. Appeal against compliance notice
28. Determination of appeal
29. Penalty
30. Continuing effect of compliance notice
31. Enforcing compliance notice

PART 5

ENVIRONMENTAL PROTECTION

32. Amenity notice
33. Penalty

PART 6

HISTORIC BUILDINGS, HISTORIC SITES AND ARTIFACTS

34. Listing of historic buildings, historic sites and artifacts
35. Notification of inclusion on list
36. Publication of list
37. Settling of list
38. Review and amendment of list
39. Development works on historic sites
40. Appeal
41. Notice to execute work
42. Authorisation to enter historic site
43. Acquisition of historic building, site or artifact
44. Benefits for restoration of historic building or site
45. Exploration and excavation for artifacts
46. Accidental discovery
47. Inspection and division of artifacts
48. Restriction on export of artifacts
49. Application for permission to export artifacts
50. Customs (Management and Control) Act to apply
51. Enforcement and forfeiture
52. Procedure on conviction
53. Expenses of administration

54. Management, protection and preservation of historic buildings, sites and artifacts

PART 7

APPEALS

55. Establishment of Tribunal
56. Remuneration
57. Determination of matters arising under other legislation
58. Determination of appeals
59. Appeal from Tribunal

PART 8

MISCELLANEOUS PROVISIONS

60. Powers of entry
 61. Service of notices
 62. Power to require information
 63. Planning register
 64. Sale of products and services
 65. Regulations
 66. Act to bind the Crown
 67. Repeals
- FIRST SCHEDULE: Constitution of Planning and Development Authority
- SECOND SCHEDULE: Development excluded from the necessity to obtain development permission
- THIRD SCHEDULE: Development proposals for which an environmental impact assessment is required
- FOURTH SCHEDULE: Matters for inclusion in an environmental impact assessment

CHAPTER 8.03

PHYSICAL PLANNING ACT

*(Acts 4 of 1996, 9 of 2011, 12 of 2012, 1 of 2013,
17 of 2014 and 6 of 2016)*

AN ACT TO MAKE PROVISION FOR THE ORDERLY AND PROGRESSIVE DEVELOPMENT OF LAND, FOR THE ACQUISITION, PRESERVATION AND MANAGEMENT OF HISTORIC BUILDINGS AND SITES, FOR RESTRICTING THE EXPORT OF ARTIFACTS AND FOR MATTERS CONNECTED THEREWITH.

Commencement

[9 May 1996]

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the Physical Planning Act.

Interpretation

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

“**advertisement**” means any notice, device or representation employed wholly or partly for the purpose of calling attention to any person, matter, object or event, and any structure employed in support of such notice device or representation;

“**agriculture**” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock for the production of food, wool, skins or fur or for the purpose of its use in farming the land, the use of land as grazing land, market gardens and nursery grounds but does not include the use of land for fish farming and “**agricultural**” shall have a corresponding meaning;

“**artifact**” means an article or object other than a historic building or site, the preservation of which is desirable by reason of its traditional, cultural, archaeological, paleontological or historical interest;

“**authorised officer**” means a police officer or special constable;

“**Authority**” means the Planning and Development Authority established under section 3 or any body or person acting on its behalf under powers delegated by the Authority under this Act;

“**beach sand**” means sand which is found on a beach, seashore or floor of the sea in Montserrat; *(Inserted by Act 1 of 2013)*

“building” means an erection or structure, including chattels or movable structures in, on, over or under land and any erection or structure permanently attached to the seabed, or temporarily so attached for the purpose only of the exploitation of minerals in, on or under the seabed (but does not include plant or machinery located in the building);

“building operations” includes demolition, rebuilding operations, structural alterations of or additions to buildings;

“development” has the meaning assigned to it by section 15;

“dwelling house” means a building constructed for the purpose of human habitation but does not include a building containing one or more flats, apartments, condominiums or town-houses, or a flat, apartment, condominium or town-house contained in such a building;

“engineering operations” include the laying out, building and maintenance of roads, drains, runways and bridges, the preparation of land for carrying out any development, the clearing of land, the dredging of watercourses or channels, the filling in of any cavity or excavation and the reclamation of land;

“environmental officer” means the person appointed to carry out the functions of environmental officer under the Conservation and Environmental Management Act;

“fish farming” means the breeding, rearing or keeping of fish or shellfish which involves the placing or assembly of any pen, cage, tank, pond or any other structure in any part of inland or coastal waters or in, on or over land;

“floor of the sea” means the soil and subsoil of the sea off the coast of Montserrat between low water mark and so far out to sea as is deemed by international law to be within the territorial sovereignty of the Crown; (*Inserted by Act 1 of 2013*)

“historic site” or **“site”** means an area or site of historical or archaeological interest and includes any monument, ruin or remains located within that area or site;

“intensive agriculture” means the erection or use of buildings, whether or not specifically designed for the purpose, for the raising of crops, produce or livestock, where the production is materially greater than it would normally be without the erection or use of such buildings;

“land” means any corporeal hereditament including a building as defined in this section and other things permanently affixed to land and includes the foreshore, seabed and land covered by water within the boundaries of the territorial jurisdiction and control of Montserrat;

“mineral” means a substance in liquid, solid or gaseous form occurring naturally in or on the earth or on, in or under the seabed and formed by or subject to a geological process, but does not include water;

“mining operation” means—

- (a) to carry out in relation to a mineral, an activity, with a view to working, carrying away, treating or converting that mineral;
- (b) to search or explore for a mineral with a view to carrying out an activity mentioned in paragraph (a) of this definition and to carry out any work necessary for such search or exploration;
- (c) the deposit of waste or refuse materials in consequence of or incidental to an activity mentioned in paragraph (a) or (b) of this definition;

“Minister” means the Minister responsible for Planning except that in relation to Part 6, Minister means the Minister responsible for Culture;

“owner”, in relation to land, means a person who holds the fee simple in the land;

“road” includes a street, square, court, alley, lane, bridge, footpath, track, passage or highway, whether a thoroughfare or not and whether public or private;

“subdivision” means the division of land held under one ownership into two or more parts for the purpose of sale, gift, partition, succession, lease, mortgage or for any other purpose and such subdivision constitutes development whether or not the use for which the subdivided land is intended constitutes development, and **“subdivide”** shall be construed accordingly;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;

“Tribunal” means the Tribunal established under section 55;

“Trust” means the Montserrat National Trust established by the Montserrat National Trust Act;

“waste” includes unwanted surplus substances arising from the application of a process and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoilt.

PART 2

ADMINISTRATION

Planning and Development Authority

3. (1) There is hereby established a Planning and Development Authority (hereinafter referred to as “**the Authority**”) which shall be comprised of the following persons—

- (a) the Director of Public Works;
- (b) the Principal Environmental Health Officer;
- (c) the Director of Agriculture;
- (d) the Director of the Environment;
- (e) the Chief Physical Planner;
- (f) the Chief Surveyor;
- (g) the Permanent Secretary in the Office of the Premier or his representative; (*Substituted by Act 6 of 2016*)
- (h) the Permanent Secretary in the Ministry responsible for the Environment;
- (i) the Managing Director of the Montserrat Utilities Limited (MUL) or a representative nominated by the Managing Director;
- (j) two persons from the private sector, possessing appropriate qualifications and experience, appointed by the Governor acting on the advice of Cabinet for such period as the Governor acting on the advice of Cabinet thinks fit.

(2) The Chairman of the Authority shall be the Permanent Secretary in the Ministry responsible for the Environment.

(3) The members of the Authority appointed under subsection (1)(j) shall be eligible for reappointment.

(4) The members of the Authority appointed under subsection (1)(j) shall be paid such remuneration as may from time to time be prescribed by the Governor acting on the advice of Cabinet by Order and such remuneration shall be charged on the Consolidated Fund.

(5) Subject to the rules contained in the First Schedule the Authority shall have the power to regulate its own proceedings.

(Amended by Acts 9 of 2011, 12 of 2012, 17 of 2014 and 6 of 2016)

Liability of Authority and its members

4. (1) No personal liability shall attach to any member of the Authority in respect of anything done or suffered in good faith under this Act.

(2) Any sums of money, damages or costs which may be recovered against the Authority or any of its members for anything done or suffered in the implementation of this Act shall be paid out of the revenues of the Government.

PART 3

DEVELOPMENT PLANS

Preparation of Development Plan

5. (1) The Authority shall prepare a National Physical Development Plan (hereinafter referred to as the “**Development Plan**”) setting out the scheme of land use and development it proposes for Montserrat.

(2) The Development Plan shall comprise such written statements, diagrams, detailed plans and illustrations as may be necessary to set out the proposed scheme of land use and development.

(3) Without restricting the generality of subsection (2) the development plan shall include—

- (a) a statement of the principal aims and objectives with respect to the development and use of land in each area of Montserrat;
- (b) a report on the existing conditions of each area of Montserrat including and—
 - (i) the principal physical, social, economic and environmental characteristics of each area including the principal purposes for which land is used;
 - (ii) the size, composition and distribution of population;
 - (iii) the communications and transport systems and traffic;
 - (iv) the public services and the physical and social infrastructure provided;
 - (v) any other matters which may affect the development and use of land; and
- (c) a statement of the policies, proposals and programmes for the future development and use of land in each area including principles for regulating and promoting the use and development of land and measures for the maintenance and improvement of the environment.

(4) The statement of policies, proposals and programmes referred to in subsection (3)(c) shall have regard to current economic policies for the development of Montserrat and to the resources likely to be available for the carrying out of such policies, proposals and programmes.

Representations

6. In preparing the Development Plan the Authority shall make known to the public and interested persons or organisations the matters it intends to take into consideration and shall provide adequate opportunities for individuals and organisations to make representations.

Draft Development Plan

7. (1) When the Development Plan has been completed the Authority shall publish the plan as a Draft Development Plan together with a statement of the representations it has received and the responses of the Authority to those representations.

(2) The Authority shall invite further representations on the Draft Development Plan to be submitted within a period of sixty days from the date of its publication.

(3) The Authority shall consider all representations, and after making such revisions to the Draft Development Plan as it considers appropriate, submit the Draft Development Plan for the approval of the Governor acting on the advice of Cabinet through the Minister.

(Amended by Act 9 of 2011)

(4) For the purposes of this section “**publish**” means to display in a prominent place to which the public has access.

Approved Development Plan

8. (1) A Draft Development Plan approved by the Governor acting on the advice of Cabinet shall be referred to as the Approved Development Plan and shall be available for inspection at the offices of the Authority or such other place as the Governor acting on the advice of Cabinet may prescribe. *(Amended by Act 9 of 2011)*

(2) Notification of the Approved Development Plan and any revision or modification thereof shall be published in the *Gazette* and in two successive issues of a newspaper circulating in Montserrat.

Revision and modification of Development Plan

9. (1) The Authority shall keep under review the Approved Development Plan and shall prepare such proposals for its revision and modification as it thinks fit.

(2) A proposal for the revision or modification of the Approved Development Plan shall be subject to the procedures outlined in section 7.

(3) A preliminary Territorial Plan or approved Territorial Plan made in accordance with the Town and Country Planning Act is deemed to be a Draft Development Plan under this Act, and the Authority shall consider its revision and modification in accordance with this Act.

Detailed plans

10. (1) The Authority may from time to time prepare such detailed plans as may be necessary to provide greater detail of the contents of the Approved Development Plan and a detailed plan prepared under this section shall, subject to subsection (2) be a part of the Approved Development Plan.

(2) A detailed plan prepared under subsection (1) which purports to change any of the contents of the Approved Development Plan shall be subject to the procedures outlined in section 7, and if approved by the Governor acting on the advice of Cabinet shall take effect as a modification of the Approved Development Plan. *(Amended by Act 9 of 2011)*

Status of Development Plan

11. The Authority shall, in considering an application for development permission have regard to the Approved Development Plan or, where the Draft Development Plan has not yet been approved, to the Draft Development Plan, and shall, except where the Authority considers it inexpedient so to do, give effect to the Approved Development Plan or to the Draft Development Plan as the case may be.

PART 4

DEVELOPMENT CONTROL

No development without permission

12. Subject to the provisions of this Act, no development shall be commenced on land except with a permission issued in accordance with the provisions of this Act.

Application for development permission

13. (1) Any person, being the owner of land, or a person having a sufficient interest in land may apply to the Authority for permission to develop that land.

(2) For the purposes of subsection (1) a person has a sufficient interest in land where, being a prospective owner, developer, part-owner or lessee of the land he obtains the consent of the owner, other part-owner or lessor as the case may be to develop the land.

(3) An application for the development of land shall be made to the Authority in such form, and shall be accompanied by such plans, drawings and other information as may be prescribed by Regulations made under this Act.

Outline application

14. (1) An application for development may be made in outline only, that is, an application for approval of the purpose for which the land is to be used, and approval may be given respecting the use of land but shall not permit the commencement of development until section 13(3) is complied with.

(2) Where the Authority considers that an outline application should not be considered separately from the detailed information required under section 13(3) it shall notify the applicant in writing within fourteen days of the receipt of the application.

Meaning of development

15. (1) Subject to subsection (2), “**development**” means the carrying out of building, engineering, mining or other operations in, on, over or under land, the making of a material change in the use of any building or land, the sub-division of land and the display of advertisements. (*Substituted by Act 1 of 2013*)

(2) The following operations or uses of land shall not constitute development—

- (a) the carrying out of works for the maintenance, improvement or other alteration of a building, if the works affect only the interior of the building, do not involve structural alterations or do not materially affect the external appearance of the building;
- (b) the use of an existing building or land within the curtilage of a dwelling for a purpose incidental to the enjoyment of that dwelling as a dwelling house;
- (c) the mining of beach sand; (*Inserted by Act 1 of 2013*)
- (d) subject to subsection (3)(a), the use of land for the purposes of agriculture or forestry;
- (e) a development specified in the Second Schedule subject to any conditions set out in that Schedule.

(3) For the avoidance of doubt the following are deemed to constitute development—

- (a) the use of land for the purposes of intensive agriculture and the subdivision of agricultural land;
- (b) the use as two or more separate dwellings of a building previously used as a single dwelling;
- (c) the deposit of waste on land notwithstanding that the land is comprised in a site already used for that purpose; if—
 - (i) the superficial area of the deposit is extended; or

- (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site;
- (d) the use for the display of advertisements of an external part of a building not normally used for that purpose.

Notification before determination of application for development permission

16. (1) Before determining an application for development permission the Authority shall notify all departments of Government, agencies, statutory authorities or persons who may be affected by the proposed development.

(2) A notification under subsection (1) shall contain sufficient information to enable the persons or bodies notified to determine the manner in which their interest may be affected.

(3) A person or body notified under subsection (2) shall forward any comments on the proposed development to the Authority within fourteen days of the receipt of notification or within such longer period as may be agreed by the Authority.

(4) The Authority shall not determine an application for development permission until the period specified in subsection (3) has elapsed and all comments received in respect of the proposed development have been considered.

Developments affecting locality

17. (1) Where it appears to the Authority that a proposed development may affect a large number of persons in a locality it may direct that the applicant publish details of the proposed development in a public place in that locality.

(2) Any person or body of persons who may be affected by a proposed development the details of which were published under subsection (1) may submit comments in writing to the Authority within fourteen days of the publication of the notice.

(3) The Authority shall not determine an application for development permission until the period specified in subsection (2) has elapsed and all comments received in respect of the proposed development have been considered.

Environmental impact assessment

18. (1) Unless otherwise directed by the Authority, an application for development permission in respect of a development specified in the Third Schedule shall be accompanied by an environmental impact assessment of the proposed development.

(2) An environmental impact assessment shall include the matters specified in the Fourth Schedule.

Grant of permission

19. (1) The Authority shall, in respect of an application submitted to it under this Act have regard to—

- (a) the provisions of the Approved Development Plan or the Draft Development Plan in accordance with section 11;
- (b) the proposed development as it affects the interest of a person or body of persons interested, or the interests of residents of a locality;
- (c) the requirements of the Montserrat Building Code or any planning standards, guidelines or regulations that are currently in force;
- (d) the sustainability of the proposed development;
- (e) the content of any environmental impact assessment; and
- (f) any other material planning consideration,

and may grant development permission conditionally or unconditionally or may refuse development permission.

(2) The decision of the Authority shall be notified to the applicant in writing.

(3) Where the Authority refuses to grant development permission, or grants development permission conditionally, notification under subsection (2) shall be accompanied by a statement of the reasons for its decision.

(4) Notification under subsection (2) may be accompanied by recommendations on such revisions or amendments to the proposed development as in the opinion of the Authority may overcome the Authority's objection to the proposed development.

Appeal

20. The applicant or any person aggrieved by a decision of the Authority respecting the grant or refusal of development permission may within sixty days of the making of that decision appeal to the Tribunal setting out the grounds upon which the appeal is based.

Scope of development permission

21. (1) A development for which permission is granted under section 19 shall be commenced within one year of the date of the notice of the grant of permission or within such longer period as the Authority may direct.

(2) For the purposes of this section a development commences when the foundations have been dug prior to concreting, or the change of use has been instituted, or the advertisement has been displayed, as the case may be.

(3) The approval of an outline application under section 14(1) shall be subject to the condition that details of the development be submitted within one year of the date of the grant of the outline permission, or such longer period as may be specified by the Authority.

Development permission to run with the land

22. (1) A development permission granted under this Act shall enure to the benefit of the land in respect of which it is granted.

(2) Except otherwise specified by the Authority where a development permission is granted for a limited period only the purpose for which the land was used prior to the grant of that permission may be resumed without obtaining development permission.

Revocation or modification of development permission

23. (1) The Authority may revoke or modify a development permission where it considers it expedient so to do.

(2) No permission may be revoked or modified where the permission relates to—

- (a) the carrying out of building, engineering or other operations and those operations have been completed; or
- (b) a material change of use and the change has taken place.

(3) A revocation or modification of a development permission granted under this Act shall not affect that part of the development completed at the date of the revocation or modification.

(4) Notification of the decision to revoke or modify a development permission shall be in writing and shall be served on the owner and occupier within seven days of the making of that decision.

(5) A notification under subsection (4) shall set out—

- (a) the reasons for the decision;
- (b) the period within which the decision should take effect, which period shall not be less than twenty eight days from the date on which the notice of the decision is served;
- (c) such directions as the Authority considers necessary for bringing to an end the development to which the decision relates;
- (d) information on any claim for compensation that may arise as a result of the modification or revocation, and the procedure for making a claim for compensation; and
- (e) information as to the owner and occupier's right of appeal under this Act.

(6) Notwithstanding subsection (1), the Authority may, after considering any representations made in respect of its decision, withdraw its decision.

Appeal

24. (1) A person aggrieved by the revocation or modification of a development permission may within twenty eight days of the notice of revocation or modification appeal to the Tribunal setting out the grounds upon which the appeal is based.

(2) The revocation or modification of a development permission shall be suspended pending the final determination of the appeal but no compensation shall be payable under section 25 in respect of any expenditure made or work carried out between the date the notice of revocation or modification was given and the date of the decision of the Tribunal.

Compensation

25. (1) Where a development permission has been revoked or modified under section 23, a person beneficially interested in that permission may submit to the Authority a claim for compensation in respect of—

- (a) expenditure incurred by the claimant in carrying out works (including expenditure incurred in the preparation of plans) which were aborted by the revocation or modification; or
- (b) loss or damage sustained by the claimant which is directly attributable to the revocation or modification.

(2) No compensation shall be payable under this section in respect of—

- (a) work carried out prior to the grant of development permission or prior to the date from which commencement of development was approved;
- (b) any loss or damage arising out of anything done or omitted to be done prior to the date from which commencement of development was approved; or
- (c) work carried out in accordance with a development permission where that permission was obtained on the basis of false information supplied in the application for development permission.

(3) A claim for compensation shall be submitted within two months of the date when the revocation or modification of the development permission takes effect.

(4) In the event of a dispute between a claimant and the Authority the claim may be submitted by either party to a Board of Assessment appointed in accordance with section 12 of the Land Acquisition Act and

the procedures laid down in that enactment relating to enquiries by, and awards of, the Board of Assessment shall apply in like manner to a claim submitted to a Board of Assessment under this Act.

Notice of compliance

26. (1) Where development is carried out without development permission or without complying with the terms of a development permission the Authority may serve on the owner and occupier of the premises a notice of compliance (hereinafter referred to as a “**compliance notice**”) requiring that the contravention be remedied.

(2) A compliance notice shall specify—

- (a)* the matters alleged to constitute the contravention;
- (b)* the steps required to remedy the contravention;
- (c)* the period within which the contravention is to be remedied; and
- (d)* information on rights of appeal.

(3) A compliance notice may require—

- (a)* that the land be restored to its condition before the unauthorised development took place;
- (b)* that the development be discontinued until development permission has been applied for and granted;
- (c)* that conditions or limitations contained in the development permission be complied with; or
- (d)* that the development be demolished.

(4) Where a compliance notice relates to the deposit of waste on land, the notice may require that the contours of the deposit be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(5) The Authority may withdraw a compliance notice without prejudice to its power to issue another.

(6) A compliance notice which relates to a breach of planning control consisting of—

- (a)* the carrying out without a development permission of building, engineering, mining or other operations;
- (b)* the failure to comply with a condition or limitation relating to the carrying out of such operations and subject to which a development permission has been granted;
- (c)* the making without development permission of a change of use of any building to use as a dwelling;

- (d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a dwelling; or
- (e) the display of an advertisement without a development permission,

may only be issued within four years from the date of the breach occurring.

Appeal against compliance notice

27. (1) An appeal against a compliance notice may be made to the Tribunal within twenty eight days of the date of the notice on any of the following grounds—

- (a) that development permission ought to be granted for the development or that a condition or limitation ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) that the breach of planning control alleged in the notice has not taken place;
- (d) in the case of a notice to which section 26(6) applies, that the period of four years from the date of the breach of planning control has elapsed at the date when the notice was issued;
- (e) that copies of the compliance notice were not served as required by section 26(1);
- (f) that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or to achieve the purpose specified in section 26(3);
- (g) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(2) If an appeal is submitted specifying more than one ground of appeal and the appellant fails to give the information required to support each ground of appeal within the prescribed time, the Tribunal may proceed to determine the appeal on the basis of only those grounds in respect of which the information has been provided in support.

(3) Where an appeal is submitted under this section the compliance notice shall be suspended pending the final determination or withdrawal of the appeal.

(4) A person who appeals to the Tribunal against a compliance notice shall not be entitled to claim that he was not duly served with the compliance notice.

Determination of Appeal

28. (1) In considering an appeal made under section 27 against a compliance notice the Tribunal may—

- (a) uphold the notice;
- (b) vary the terms of the notice; or
- (c) quash the notice; and
 - (i) grant a development permission for the development to which the notice relates or for part of that development;
 - (ii) discharge any condition or limitation subject to which a development permission was granted.

(2) A development permission under subsection (1)(c) may be granted subject to such conditions as the Tribunal thinks fit.

Penalty

29. A person on whom a notice of compliance is served and who fails to comply with that notice commits an offence and is liable on summary conviction to a fine of \$1,000 and if the offence of which he is convicted is continued after the conviction, he commits a further offence and is liable in respect thereof to a fine of \$100 for each day on which the offence is so continued.

Continuing effect of compliance notice

30. (1) Compliance with a compliance notice shall not discharge the notice.

(2) Without prejudice to subsection (1), where a development is carried out on land by way of reinstating or restoring buildings or works that have been demolished or altered in compliance with a compliance notice, the compliance notice shall apply in like manner to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered.

Enforcing compliance notice

31. (1) Where a person on whom a compliance notice is served fails to comply with the terms of the notice the Authority may, without prejudice to any proceedings or penalty which may be instituted under this Act, take such steps in relation to the land and the development as may be necessary to enforce compliance with the notice.

(2) Any expenses reasonably incurred by the Authority in exercising the power conferred by subsection (1) may be recovered as a civil debt from the person whose failure to comply with the notice necessitated the exercise of the power.

PART 5

ENVIRONMENTAL PROTECTION

Amenity notice

32. (1) Where it appears to the Authority that the amenity of an area or locality is being seriously injured—

- (a) by the dilapidated, ruinous or incomplete condition of a building;
- (b) by the deposit of waste, derelict vehicles or other refuse on land; or
- (c) by the general appearance or condition of land,

the Authority may serve on the owner and occupier of that land a notice, (hereinafter referred to as an **“amenity notice”**) requiring that the injury be abated.

(2) An amenity notice shall describe the relevant land, indicate the steps required to abate the injury and the period during which such steps are to be completed.

Penalty

33. A person on whom an amenity notice is served and who fails to comply with that notice commits an offence and is liable on summary conviction to a fine of \$1,000 and if the offence of which he is convicted is continued after the conviction, he commits a further offence and is liable in respect thereof to a fine of \$100 for each day on which the offence is so continued.

PART 6

HISTORIC BUILDINGS, HISTORIC SITES AND ARTIFACTS

Listing of historic buildings, historic sites and artifacts

34. (1) The Authority shall, in consultation with the Montserrat National Trust and other bodies or persons knowledgeable in matters respecting the preservation of historic buildings, historic sites and artifacts, compile a list (hereinafter referred to as **“the list”**) of—

- (a) buildings and sites; and
- (b) artifacts,

which appear to be of special architectural, historical, traditional, cultural, archaeological, or paleontological interest.

(2) The list shall identify the historic buildings, historic sites and artifacts by reference to a map and shall include a description of the special

features that are of architectural, historic, traditional, cultural, archaeological or paleontological interest.

Notification of inclusion on list

35. (1) Before a building, site or artifact is included on the list the Authority shall serve written notice on the owner and occupier that the building, site or artifact as the case may be is to be included on the list.

(2) A notice under subsection (1) shall—

- (a)* outline the implications of the building site or artifact being included on the list;
- (b)* specify the date with effect from which the inclusion is to be made; and
- (c)* invite representations to be made in respect of the inclusion of the building site or artifact on the list.

(3) Except with the approval of the Authority, a person on whom notice is served under subsection (1) shall not carry out any alteration, development or demolition works on the building, site or artifact specified in the notice.

Publication of list

36. Notwithstanding section 35(2)(c), the proposed list shall be published by way of notice in a newspaper circulating in Montserrat and the notice shall invite representations to be made in respect of the items contained in the list.

Settling of list

37. (1) The Authority shall consider all representations in relation to the items on the list and shall forward to the Governor acting on the advice of Cabinet through the Minister a summary of those representations along with the recommendations of the Authority in relation to the items to be included in the list.

(2) The Governor acting on the advice of Cabinet shall, after considering the summary of representations forwarded under subsection (1) and the recommendations of the Authority make a final determination of the items to be included on the list.

(Amended by Act 9 of 2011)

Review and amendment of list

38. (1) The Authority shall keep the list under review and may in accordance with this section amend the list.

(2) An amendment under subsection (1) shall be subject to the approval of the Governor acting on the advice of Cabinet and may be made

after inviting and considering representations from the owner or occupier of the building, site or artifact concerned. (*Amended by Act 9 of 2011*)

(3) Notwithstanding this section, where by virtue of damage, variation or other reason a historic site, historic building or artifact no longer retains the special features which warranted its inclusion on the list, the Governor acting on the advice of Cabinet may delete that historic building, historic site or artifact from the list by giving written notice to the owner and the occupier, and upon the publication of a notice to that effect in the *Gazette* this Part shall cease to apply in respect of that building, site or artifact. (*Amended by Act 9 of 2011*)

Development works on historic sites

39. (1) Without prejudice to the provisions of this Act respecting the grant of development permission, the owner or occupier of a historic site or building which is included on the list shall obtain the Authority's prior written approval before carrying out any alteration, development or demolition works to the historic site or building.

(2) The Authority in considering a request for approval under subsection (1) shall have particular regard to preserving those special features that are of architectural or historical merit or interest and that are identified in the description included on the list prepared under section 34.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment of twelve months or to both fine and imprisonment.

(4) Nothing in subsection (1) shall render unlawful the execution of any works which are urgently required in the interests of public safety or health or for the preservation of the building or neighbouring property, if notice in writing of the work is given to the Authority as soon as may be after the necessity for the work arises.

(5) Where the Authority receives notice of proposed works under subsection (1) it shall send a copy of the notice to the Trust inviting comments on the proposed works and no works shall be authorised until the comments of the Trust have been considered.

Appeal

40. The applicant or a person aggrieved by the refusal of the Authority to grant permission to carry out alteration, development or demolition works on a historic building or historic site may appeal to the Tribunal in writing within 28 days of the notification of refusal setting out the grounds on which the appeal is based.

Notice to execute work

41. (1) Where after consultation with the Trust the Authority is satisfied that it is necessary or in the public interest so to do, the Authority may serve upon the owner and occupier of a historic building or historic site a

notice in the prescribed form directing the execution of restorative work on the historic building or historic site, and specifying a date on or before which the work is to be completed.

(2) A person upon whom a notice is served under subsection (1), who without reasonable excuse fails or neglects to ensure that the works prescribed are carried out either on or before the specified date commits an offence and is liable on summary conviction to a fine of \$1,000 and to a further fine of \$100 for each day during which the offence continues.

(3) Where the Authority is satisfied that for any reason a person is unable or unwilling to comply with a notice under subsection (1) the Authority may authorise a person in writing to enter the historic building or site concerned and to do all things necessary for its restoration, and the cost of such restoration shall be paid for out of the Consolidated Fund.

Authorisation to enter historic site

42. (1) The Governor acting on the advice of Cabinet may authorise a person in writing to enter a historic building or site or adjoining land for the purpose of ascertaining the need for restoration and the nature and extent of such restoration. (*Amended by Act 9 of 2011*)

(2) A person who wilfully obstructs or hinders a person acting pursuant to an authorisation under subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

Acquisition of historic building, site or artifact

43. (1) The Governor acting on the advice of Cabinet may, in agreement with the owner or compulsorily, acquire on behalf of the Government of Montserrat any property which appears to the Governor acting on the advice of Cabinet to be a historic building, historic site, or an artifact, the acquisition of which would be beneficial to Montserrat. (*Amended by Act 9 of 2011*)

(2) For the purposes of subsection (1) “**agreement**” means purchase, lease, donation or any other means, not being a compulsory acquisition, by which property becomes subject to the control of the Crown.

(3) The Governor acting on the advice of Cabinet shall, before acquiring any property under subsection (1) consult with the Authority and the Trust, and such other bodies and persons as the Governor acting on the advice of Cabinet thinks fit. (*Amended by Act 9 of 2011*)

(4) The compulsory acquisition of a historic building or site shall be in accordance with the provisions of the Land Acquisition Act and such acquisition is deemed to be an acquisition of land for a public purpose within the meaning of that Act.

(5) The provisions of the Land Acquisition Act shall apply *mutatis mutandis* to the acquisition of an artifact under this Act and without restricting the generality of that application, a requirement by that

enactment for notices to be posted on land shall, for the purposes of this subsection be construed as a requirement for notices to be placed in three consecutive issues of a newspaper circulating in Montserrat.

Benefits for restoration of historic building or site

44. (1) The Governor acting on the advice of Cabinet may by order grant any or all of the following exemptions to a person who restores or repairs a historic building or site in accordance with a notice served under section 42(1)—

- (a) exemption from the payment of property tax for such period of time as may be determined by the Governor acting on the advice of Cabinet; *(Amended by Act 9 of 2011)*
- (b) exemption from customs duties, customs service charges and consumption taxes on materials used for repairs and for restoration;
- (c) professional advice from public officers without charge or fee;
- (d) the use of plant and equipment of the Public Works Department at concessionary rates of payment in accordance with a scheme to be approved by the Governor acting on the advice of Cabinet. *(Amended by Act 9 of 2011)*

(2) No liability shall attach to any public officer or to the Government in respect of professional advice given under this section in good faith.

(3) A person who receives financial or technical assistance under this Act in restoring a historic building or site shall make the historic building or site available for visits by members of the public at such times and subject to such conditions as may be agreed with the Governor acting on the advice of Cabinet after consultation with the Authority and the Trust. *(Amended by Act 9 of 2011)*

Exploration and excavation for artifacts

45. (1) The exploration and excavation for artifacts on, in or under land is prohibited.

(2) Notwithstanding subsection (1), the Governor acting on the advice of Cabinet may in the public interest and after consultation with the Authority and the Trust grant to a person or body of persons having appropriate qualifications and experience a permit to carry out exploratory or excavation operations on land in search of artifacts. *(Amended by Act 9 of 2011)*

(3) No permit shall be granted to carry out exploratory or excavation operations on private land without first obtaining the consent of the owner of the land.

(4) Where the Governor acting on the advice of Cabinet is satisfied that it is necessary in the national interest for exploratory or excavation operations to be carried out on private land in search of artifacts, an acquisition of that land by the Crown is deemed to be an acquisition for a public purpose for the purposes of the Land Acquisition Act. *(Amended by Act 9 of 2011)*

(5) Any or all of the following conditions may be attached to a permit issued under subsection (2)—

(a) that the applicant submit to the Governor acting on the advice of Cabinet free of charge such progress and final reports about the authorised activity and any associated results as may be determined by the Governor acting on the advice of Cabinet in consultation with the Authority and the Trust; *(Amended by Act 9 of 2011)*

(b) that artifacts found as a result of the activities authorised by the permit be delivered to the Minister for inspection and division in accordance with this Act;

(c) such other conditions as the Governor acting on the advice of Cabinet may from time to time prescribe. *(Amended by Act 9 of 2011)*

(6) A person who contravenes this section or the terms or conditions of a permit issued under this section commits an offence and is liable upon summary conviction to a fine of \$1,000, or to imprisonment for a term of three months or to both fine and imprisonment.

Accidental discovery

46. (1) A person who accidentally discovers an artifact shall report such discovery to the Authority through the Cultural Office within seven days of the discovery.

(2) A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of three months.

(3) In any proceedings for an offence under subsection (2), or on the application of the Director of Public Prosecutions, the court may order that any artifacts discovered accidentally and not reported in accordance with subsection (1) be forfeited to the Crown.

(Amended by Act 9 of 2011)

Inspection and division of artifacts

47. (1) Artifacts discovered during an excavation authorised under section 46 are subject to inspection and division by the Governor acting on the advice of Cabinet in accordance with subsection (2).

(2) The Governor acting on the advice of Cabinet shall retain on behalf of the Government of Montserrat all such artifacts that are, in his

opinion after consultation with the Authority and the Trust, important cultural, historic, or archaeological property indispensable for educational or national purposes.

(3) The Governor acting on the advice of Cabinet in consultation with the Authority and the Trust, shall divide the remaining artifacts so far as is possible giving the holder of the permit a fair share of the results of the excavation.

(4) In order to make a fair division, the Governor acting on the advice of Cabinet may, after consultation with the Authority and the Trust, supplement the share to the permit holder with other artifacts which already are the property of Government, or with such compensation as the Governor acting on the advice of Cabinet thinks fit.

(5) Artifacts discovered under section 47 shall be subject to inspection and division by the Governor acting on the advice of Cabinet on such terms as the Governor acting on the advice of Cabinet thinks fit.

(Amended by Act 9 of 2011)

Restriction on export of artifacts

48. (1) Except in accordance with a written permit issued by the Governor acting on the advice of Cabinet, no person shall export an artifact from Montserrat. *(Amended by Act 9 of 2011)*

(2) The Governor acting on the advice of Cabinet may by notice in the *Gazette* exempt any class or classes of artifacts from the provisions of this section where—

- (a) sufficient artifacts of that class or classes are held in public ownership in Montserrat; and *(Amended by Act 9 of 2011)*
- (b) it would not be contrary to the public interest to exempt that class or classes.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence, and is liable on summary conviction to a fine of \$10,000.

(4) This section shall not apply to an artifact lawfully taken and ordinarily kept outside of Montserrat but temporarily within Montserrat.

Application for permission to export artifacts

49. (1) Any person wishing to export an artifact from Montserrat may apply to the Governor acting on the advice of Cabinet through the Minister on such form as may be prescribed by the Governor acting on the advice of Cabinet.

(2) The Governor acting on the advice of Cabinet, in considering an application for the export of artifacts, shall have regard to—

- (a) the historical, archaeological, scientific, cultural, literary, artistic, and national importance of the artifact;

- (b) the spiritual or emotional associations with the people of Montserrat or any group or section of Montserrat;
- (c) the rarity of the artifact;
- (d) the extent to which similar artifacts are held in public ownership in Montserrat;
- (e) the probable effect of its removal on historical or scientific study or research in Montserrat; and
- (f) any other matters which appear to the Governor acting on the advice of Cabinet to be a relevant consideration.

(3) A permit issued by the Governor acting on the advice of Cabinet for the export of artifacts shall contain a full description of the artifact sufficient to identify the artifact and the permit shall be presented to Customs on request.

(Amended by Act 9 of 2011)

Customs (Management and Control) Act to apply

50. (1) Subject to the provisions of this Act any artifact exported or attempted to be exported in contravention of this Act shall be forfeited to the Crown.

(2) Subject to subsection (3) the procedures for the forfeiture of artifacts liable to forfeiture under this section shall be the procedure laid down in the Customs (Control and Management) Act for the forfeiture of goods.

(3) Where an artifact is forfeited to the Crown under this section, it shall be delivered to the Minister and retained in safe custody in accordance with his directions and the Governor acting on the advice of Cabinet may direct that the artifact be returned to the person who was the owner of the artifact before its forfeiture. *(Amended by Act 9 of 2011)*

Enforcement and forfeiture

51. An authorised officer may, where he has reasonable grounds for believing that an offence under Part 6 has been committed—

- (a) stop and search a person, vehicle, or building, but no dwelling house shall be searched without a warrant;
- (b) seize any artifact or other item that appears to be possessed in contravention of the law;
- (c) seize any equipment, vehicle or device of any kind with which such offence appears to have been committed; and
- (d) arrest the person or take such measures as are reasonably necessary to make such arrest.

Procedure on conviction

52. Upon conviction for an offence against this Act—

- (a) any artifact that was the subject of the offence, or trophies or proceeds of sale or any such artifact, shall be forfeited to the Crown to be disposed of as it thinks fit; and
- (b) the Court may order that any device used or involved in the committing of the offence be forfeited to the Crown to be disposed of as it thinks fit.

Expenses of administration

53. All expenses incurred in the administration of Part 6 shall be charged on the Consolidated Fund.

Management, protection and preservation of historic buildings, sites and artifacts

54. (1) The Governor acting on the advice of Cabinet may delegate responsibility for the management, protection and preservation of historic buildings, sites and artifacts listed under this Act to any governmental or non-government body which the Governor acting on the advice of Cabinet thinks fit.

(2) The Authority and the Trust may make recommendations for the protection and preservation of historic buildings, sites and artifacts listed under this Act, to the Governor acting on the advice of Cabinet or to anybody to whom responsibility has been delegated under subsection (1).

(Amended by Act 9 of 2011)

PART 7

APPEALS

Establishment of Tribunal

55. (1) There shall be a Physical Planning and Environmental (Appeals) Tribunal to be called the Physical Planning and Environmental (Appeals) Tribunal (hereinafter referred to as the “**Tribunal**”) consisting of five members appointed by the Governor acting on the advice of Cabinet.

(2) The members of the Tribunal shall consist of a barrister of at least three years standing at the bar, who shall be the Chairman, two persons having experience in building and planning matters and two persons having experience in environmental management matters.

(3) The members of the Tribunal shall be appointed for a period of two years and are eligible for reappointment.

(4) Where a member of the Tribunal which has been appointed under this Act has an interest in an appeal coming before the Tribunal, the

Governor acting on the advice of Cabinet may, for the purpose of that appeal revoke the appointment of that member.

(5) Except as expressly provided in this Act or any other enactment, the Tribunal shall have the power to regulate its own proceedings.

(Amended by Acts 9 of 2011 and 17 of 2014)

Remuneration

56. For each sitting of the Tribunal the members shall be paid such remuneration as may be prescribed by the Governor acting on the advice of Cabinet by order, and such remuneration shall be charged on the Consolidated Fund.¹ *(Amended by Act 9 of 2011)*

Determination of matters arising under other legislation

57. If any other enactment prescribes for the hearing and determination by the Tribunal of matters arising under that enactment, the conduct of the proceedings, composition, jurisdiction and powers of the Tribunal are in accordance with that enactment. *(Inserted by Act 17 of 2014)*

Determination of appeals

58. (1) Where an appeal is made to the Tribunal under this Act, the Tribunal may require the Authority to submit comments, information and copies of all relevant documents within twenty eight days of the request being made.

(2) An appeal made under this Act shall be determined on the basis of oral representations and a party to an appeal may be represented by legal counsel.

(Amended by Act 17 of 2014)

Appeal from Tribunal

59. An appeal against a decision of the Tribunal shall lie to the Court of Appeal and every such appeal shall be made within such time and in such form as may be prescribed by the Rules of Court governing appeals in civil cases from the High Court to the Court of Appeal.

PART 8

MISCELLANEOUS PROVISIONS

Powers of entry

60. (1) A person duly authorised in writing by the Authority may at a reasonable time enter upon land for the purpose of examining any development on or use of the land, or of surveying it, in connection with—

¹ Remuneration Orders are not included in this Revised Edition

- (a) the preparation, approval, making or amendment of any development plan;
- (b) an application for permission, consent or determination in relation to that or any other land;
- (c) a proposal by the Authority to serve or make a notice or order under this Act;
- (d) a claim for compensation payable by the Authority under this Act; or
- (e) determining whether a breach of the provisions of this Act has taken place.

(2) A person authorised under this section to enter upon land shall if so required, produce evidence of his authority before entering, and shall not demand admission as of right to any dwelling that is occupied unless twenty-four hours prior written notice of the intended entry has been given to the owner and occupier.

(3) A person who wilfully hinders or obstructs a person acting in the exercise of powers conferred by subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

(4) Any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein, subject to satisfactory reinstatement.

(5) A person shall not carry out works authorised by subsection (4) unless notice of his intention to do so has been included in the notice required by subsection (2).

Service of notices

61. (1) A notice or other document required or authorised to be served or given under this Act or under any regulation, order, direction or other instrument made under this Act may be served on or given to the person concerned—

- (a) by delivering it to that person;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or, where an address for service has been given by that person, at that address; or
- (d) in the case of a body corporate or other body, by delivering it to the secretary or other officer of that body at its registered or principal office or by sending a registered letter addressed to the secretary or other officer of that body at that office.

(2) Where the notice or document is required or authorised to be served or given to any person and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of land, the notice is deemed to be duly served or given if it is served or given in a manner indicated in subsection (1) and addressed to the person having an interest in the land.

(3) Where the notice or other document is required to be served on or given to all persons having interest in land, and it appears that any part of that land is unoccupied, the notice is deemed to be duly served on all persons having interest in, and on any occupiers of that part of the land (other than a person who has furnished an address for service of the notice on him) if it is addressed to the owners and any occupiers of that part of land (describing it), and is affixed conspicuously to some object on the land.

Power to require information

62. (1) The Authority may, for the purpose of making an order or serving a notice in accordance with this Act, require the owner or occupier of land and any other person who receives rent in respect of land, to state in writing the nature of his interest therein and the name and address of any other person known to him as having an interest therein, whether as freeholder, mortgagee, lessee or otherwise.

(2) A person who has been required in pursuance of this section to give any information, and who fails to give that information within the specified period, or knowingly makes a false statement in respect of that information commits an offence and is liable on summary conviction to a fine of \$1,000.

Planning register

63. (1) The Authority shall maintain a register of all—

- (a) applications for development permission;
- (b) decisions on such applications;
- (c) compliance notices;
- (d) amenity notices;
- (e) modification or revocation orders;
- (f) appeal decisions;
- (g) approved Development Plans;
- (h) Act Survey maps.

(2) The register shall be open for inspection at all reasonable times during normal working hours at a place to be designated by the Authority.

Sale of products and services

64. (1) The Chief Physical Planner is authorised to sell products and services at the prescribed fee.

(2) All fees collected from the sale of products and service shall be paid into the Consolidated Fund.

(Inserted by Act 12 of 2012)

Regulations

65. The Governor acting on the advice of Cabinet may make Regulations—

(a) respecting—

- (i) the form and content of applications for a development permission, including the payment of fees for such applications;
- (ii) the form of notices, orders or other documents authorised or required to be served under this Act;
- (iii) the procedures to be followed in determining appeals against the decisions of the Authority;
- (iv) the preparation scope and content of development plans;
- (v) the procedures to be followed in processing applications for development permission;
- (vi) the scope and content and process of considering environmental impact assessments;
- (vii) the classes of development that are exempt from the provisions of this Act;

(Amended by Act 9 of 2011)

(b) to secure the proper construction of buildings;

(c) to regulate access to and conduct inside the whole or part of any historic building or site and to prescribe fees for access;

(d) to provide for—

- (i) the management and protection of any historic building, site, or artifact acquired by Government; and
- (ii) the control of the environment in or around the immediate surroundings of any historic building or site acquired by Government; and

(e) prescribing the fees for the sale of products and services. *(Inserted by Act 12 of 2012)*

Act to bind the Crown

66. This Act binds the Crown.

Repeals

67. The Town and Country Planning Act (Act 27 of 1975) (hereinafter referred to as the “**repealed Act**”) is repealed:

Provided that—

- (a) anything lawfully done or omitted to be done thereunder shall, to the extent that it is not in conflict with the provisions of this Act, remain unaffected;
 - (b) any offence committed before the entry into force of this Act against any of the provisions of the repealed Act shall continue to be offences against those provisions, and proceedings in respect thereof may be commenced or continued as if the said provisions were still in force;
 - (c) any permission granted under any of the provisions of the repealed Act, shall continue to be operative for the period and under the conditions on which it was so granted, and is deemed to be a permission granted by the Authority;
 - (d) any appeal pending under any of the provisions of the repealed Act shall be determined in accordance with those provisions except that a determination made by the Governor or the Appeals Tribunal under section 9 of the repealed Act is deemed to be a decision of the Tribunal established under this Act and shall be governed by the provisions of this Act; and
 - (e) the rules, regulations and orders made under any of the provisions of the repealed Act and in force immediately before the entry into force of this Act are deemed to have been made under this Act and shall continue in force insofar as the same have not been rendered inapplicable by this Act.
-

FIRST SCHEDULE*(Section 3(5))***CONSTITUTION OF PLANNING AND DEVELOPMENT AUTHORITY**

1. The Authority shall meet at such time and place as the Chairman, in consultation with the Secretary shall decide, but meetings shall be held not less than once in every two months.

2. A quorum of the Authority shall comprise six members provided that, where any member of the Authority is disqualified under paragraph 8 from taking part in any deliberation or decision of the Authority he shall be disregarded for the purpose of constituting a quorum for that purpose.

3. If the Chairman is unable to attend any meeting of the Authority the meeting shall be chaired by a member of the Authority nominated by the Authority.

4. Decisions of the Authority shall as far as possible be by consensus. Where this cannot be achieved, decisions shall be by a majority of votes cast except that where the votes are equal, the Chairman shall have a casting vote in addition to his original vote.

5. The Chief Physical Planner shall be the principal professional and technical adviser to the Authority and shall also act in the capacity of Executive Secretary to the Authority. The Chief Physical Planner shall not be entitled to vote on any matter.

6. The minutes of the meetings shall be recorded by, and the general administration of the Authority shall be the responsibility of, the Executive Secretary.

7. Any member who has a pecuniary interest, direct or indirect, in any matter under consideration by the Authority shall disclose such interest prior to the matter being considered.

8. A member who declares an interest under paragraph 7 shall not participate in any deliberation or decision on that matter, and such declaration shall be recorded in the minutes of the meeting.

9. All minutes of meetings of the Authority shall, after being approved as correct by the next following meeting of the Authority, be duly signed by the Chairman.

10. The Authority may co-opt any person to attend any meeting of the Authority for the purpose of assisting or advising the Authority, but no person so co-opted shall have the right to vote.

SECOND SCHEDULE

(Section 15(2)(d))

**DEVELOPMENT EXCLUDED FROM THE NECESSITY TO
OBTAIN DEVELOPMENT PERMISSION**

1. Garden huts (other than garages) and not used for human habitation.
 2. Gates or fences not exceeding three feet and six inches in height, where such gate or fence abuts onto a road carrying vehicular traffic, and not exceeding six feet in any other case.
 3. Work carried out by the Government for the maintenance or improvement of a road.
 4. Work carried out with the approval of Government or by any statutory agency for the purposes of inspecting, repairing or renewing any sewers, water mains, electric mains, cables or other apparatus, including the excavation of any road or other land for the purpose, and subject to the satisfactory reinstatement of the road or land affected.
-

THIRD SCHEDULE*(Section 18(1))***DEVELOPMENT PROPOSALS FOR WHICH
AN ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED**

1. Hotels of more than fifty bedrooms.
 2. Residential developments (including sub-divisions) where the number of plots or dwellings exceeds fifty.
 3. Industrial developments where the proposed gross floor area exceeds 3000 square metres (32,293 square feet).
 4. Quarrying and other mining activities.
 5. Marinas.
 6. Land reclamation, dredging and filling of ponds.
 7. Airports, ports and harbours (including proposals to extend existing facilities).
 8. Dams and reservoirs.
 9. Hydro-electric, wind turbine and geothermal power plants.
 10. Desalination plants.
 11. Water purification plants.
 12. Sanitary land fill operations, solid waste disposal sites, toxic waste disposal sites and all waste disposal operations and plant.
 13. Gas, oil or petroleum pipeline and depot installations.
 14. Any development involving the storage or processing of hazardous substances.
 15. Any development generating or potentially generating emissions, aqueous effluent, solid waste, noise/vibration or radioactive discharges.
 16. Any development proposed within an environmentally sensitive area defined within an adopted Development Plan or within a designated National Park, Marine Park, Forest Reserve or Protected Forest.
-

FOURTH SCHEDULE

(Section 18(2))

**MATTERS FOR INCLUSION IN
AN ENVIRONMENTAL IMPACT ASSESSMENT**

The following represents a checklist for matters which should be included in an environmental impact assessment. It is unlikely that all the items will be relevant to all development projects. An environmental impact assessment shall comprise a document or series of documents provided for the purpose of assessing the likely impact upon the environment of the development proposed to be carried out. The environmental impact assessment should include the information specified below as it pertains to a development proposal.

1. A description of the development proposed, comprising information about the site and the design and size or scale of the development;
 2. The data necessary to identify and assess the main effects which that development is likely to have on the environment.
 3. A description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on—
 - human beings;
 - flora;
 - fauna;
 - soil;
 - water;
 - air;
 - climate;
 - the landscape;
 - the inter-action between any of the foregoing;
 - material assets;
 - the cultural heritage.
 4. Where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and
 5. A summary in non-technical language of the information specified above.
-

PHYSICAL PLANNING REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Application to construct, alter or extend
4. Application to subdivide
5. Outline application
6. Application to display advertisements
7. Application for change of use of land or buildings
8. Sewage requirements
9. Road requirements
10. Inspections during the course of construction
11. Supply of utilities
12. Miscellaneous application requirements

SCHEDULE: Prescribed Forms

PHYSICAL PLANNING REGULATIONS – SECTION 65

(S.R.O. 67/1996)

Commencement

[1 October 1996]

Short title

1. These Regulations may be cited as the Physical Planning Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“**Act**” means the Physical Planning Act;

“**Advertisement**” means any notice, device or representation, employed wholly or partly for the purpose of calling attention to any person, matter, object or event, and any structure employed in support of such notice, device or representation;

“**Appeal Tribunal**” means the Tribunal established under section 55 of the Act;

“**Application**” means an application to the Authority for permission to carry out development or for any approval required by the Act, or any subsidiary legislation made thereunder;

Application to construct, alter or extend

3. (1) An application for permission to construct, alter or extend any building shall be made in the form set out as Form A of the Schedule and shall be accompanied by the following drawings—

- (a) a location plan at a scale of 1:2500 showing the position of the lot in relation to the adjoining lots;
- (b) a site plan at a scale of between 1" to 10 ft., and 1" to 30 ft.;
- (c) floor plans at a scale of ¼" to 1 ft. showing water supply systems and sanitary drainage systems, electrical layouts and ratings;
- (d) front and rear and side elevations at a scale of ⅛" to 1 ft.;
- (e) cross sections;
- (f) foundation plans;
- (g) structural and framing details including primary connections and concrete reinforcement;
- (h) electrical layout and details;
- (i) drainage layout and details; and
- (j) door and window schedules.

- (2) A site plan under sub-regulation (1)(b) shall show—
- (a) the location, drawn to scale of the proposed building on the site;
 - (b) the location, drawn to scale of existing buildings on the site and on adjacent lands with some indication of whether existing buildings are to be retained or demolished;
 - (c) the front, rear and side set backs from each boundary;
 - (d) the dimensions of the lot;
 - (e) the fronting roads giving their names and widths;
 - (f) the storm water and sanitary drainage systems, including positions of septic tank and soak pits, together with the position of electrical supplies;
 - (g) the north point and scale; and
 - (h) means of access, parking space and a landscaping plan, and in addition for commercial and industrial buildings, loading and unloading areas.

(3) All drawings, specifications and accompanying data and revisions thereto shall bear the name and address of the designers and shall be individually and appropriately numbered for ease of reference.

(4) An application under this regulation shall be signed by the applicant or his duly appointed agent.

Application to subdivide

4. (1) An application to subdivide shall be made in the form set out as Form B of the Schedule and shall state the registration section, block and parcel number of the land and shall be signed by the applicant or his duly appointed agent.

(2) A plan of the proposed subdivision drawn at a scale of 1:1250, or 1:2500 shall be submitted with the application and shall show—

- (a) the location of the site, together with the block and parcel numbers of the adjoining lots;
- (b) the road layout including road widths and access both existing and proposed;
- (c) the lot sizes;
- (d) drainage, water reticulation, earthworks;
- (e) existing and proposed land-use within the subdivision, including land for public purposes; and
- (f) existing topographical detail.

(3) The Authority may require the submission of a separate topographical map.

(4) Each application shall be accompanied by information in relation to—

- (a) water supply and sewage disposal;
- (b) road specifications for roads within the subdivision;
- (c) power and light availability, electrical supply and rating;
- (d) drainage; and
- (e) any restrictive covenants that the applicant proposes to impose on the lots.

Outline application

5. (1) An outline application submitted in accordance with section 14(1) of the Act shall be made in the form set out as Form A of the Schedule, stating the registration section, block and parcel number of the land and shall be signed by the applicant or his duly appointed agent.

(2) The application shall be accompanied by—

- (a) a plan of the land which is the subject of the application, drawn up at a scale of 1:1250 or 1:2500; and
- (b) a statement of—
 - (i) existing and proposed use; and
 - (ii) services to be provided e.g. water supply, electricity, sewage and access.

Application to display advertisements

6. (1) An application for permission to display an advertisement shall be made in the form set out as Form A of the Schedule and shall be signed by the applicant or his duly appointed agent.

(2) The application shall be accompanied by the following information—

- (a) type of material to be used;
- (b) height of the advertisement from existing ground level and details of any projection;
- (c) dimensions of the sign;
- (d) type of illumination (where applicable);
- (e) colour and content of the sign; and
- (f) the exact position of the sign.

Application for change of use of land or buildings

7. (1) An application for permission to change the use of land or buildings shall be made in the form set out as Form A of the First Schedule and shall be signed by the applicant or his duly appointed agent.

(2) The application shall be accompanied by the following details—

- (a) a location plan normally at a scale of 1:2500 showing the location of the lot or building;
- (b) details of the existing and proposed use;
- (c) for change of use of buildings, floor plans showing the existing and proposed layout at a scale of ¼" to 1 ft.;
- (d) if any elevational changes are proposed elevation drawings at ⅛" to 1 ft.;
- (e) the water, electrical and sanitary drainage systems to serve the proposed use; and
- (f) means of access, parking, loading and unloading areas for the proposed use.

Sewage requirements

8. (1) Applications submitted in accordance with Regulations 3, 4, 5 and 7 of these Regulations shall be accompanied by information on the sewage systems proposed to be used in the development.

(2) Buildings intended for human occupation shall be provided with waterborne sanitation draining to a septic tank of accepted design and capacity.

(3) The Authority shall forward for the approval of the Principal Environmental Health Officer information supplied under sub-regulation (1) in relation to the proposed sewage system and the decision of the Principal Environmental Health Officer shall form a part of the decision of the Authority in response to the application.

Road requirements

9. All planning applications involving the provision of new public or private road access, shall comply with the standards and requirements established by the Public Works Department, Ministry of Communications and Works.

Inspections during the course of construction

10. (1) A proposed development which is approved by the Authority shall be subject to inspection at each of the stages set out in sub-regulation (2) and the person responsible for the progress of the development shall not permit the work to proceed to the next stage without the prior approval of the Authority.

(2) An inspection under sub-regulation (1) shall be made at each of the following stages—

- (a) setting out;
- (b) foundations with steel reinforcement before concreting;
- (c) floor ready for casting (with beams);
- (d) structural frame and roof;
- (e) ring beams casing and reinforcement;

(f) completion (including drainage and water installations).

(3) A development may be subject to such other inspections as the Chief Physical Planner may reasonably require.

Supply of utilities

11. An application for the supply of utilities shall be made to the appropriate authority and is independent of an application under these Regulations.

Miscellaneous application requirements

12. (1) All applications submitted in accordance with these Regulations shall comprise two copies of all plans and drawings.

(2) Notwithstanding the provisions of these Regulations, the Authority may require additional information in order to assess an application.

SCHEDULE

FORM A

<i>FOR OFFICIAL USE ONLY</i>	
APPLICATION NO:	DATE RECEIVED:

PHYSICAL PLANNING UNIT
MINISTRY OF AGRICULTURE, TRADE AND THE ENVIRONMENT

PHYSICAL PLANNING ACT, PHYSICAL PLANNING REGULATIONS

APPLICATION FOR PLANNING PERMISSION (FORM A)

TO: THE PLANNING AND DEVELOPMENT AUTHORITY

NAME OF APPLICANT:

ADDRESS: TEL NO:

NAME OF AGENT:

ADDRESS: TEL NO:

<i>SITE SPECIFICATIONS</i>		
Registration Area:	Block:	Parcel:
Existing Use of site:		
.....		

<i>PROPOSED DEVELOPMENT</i>							
Residential	<input type="checkbox"/>	Commercial	<input type="checkbox"/>	Advertisement	<input type="checkbox"/>	Industrial	<input type="checkbox"/>
Change of use	<input type="checkbox"/>	Outline	<input type="checkbox"/>	Extension	<input type="checkbox"/>	Renovation	<input type="checkbox"/>

PROPOSED FLOOR AREA OF NEW DEVELOPMENT (*including paved surfaces*).....Sq. ft.

ESTIMATED COST: \$.....

THE FOLLOWING MAPS/PLANS ARE ATTACHED:

.....
.....

I HEREBY CERTIFY THAT I AM (NOT) THE OWNER OF THE LAND TO WHICH THIS APPLICATION RELATES (*If the land is not owned by the applicant, the application should be accompanied by a letter from the owner indicating that his/her consent is granted for development of the land*).

APPLICANT'S/AGENT'S¹ SIGNATURE: DATE:

¹ Delete where applicable

I HEREBY CERTIFY THAT I AM (NOT) THE OWNER OF THE LAND TO WHICH THIS APPLICATION RELATES (*If the land is not owned by the applicant, the application should be accompanied by a letter from the owner indicating that his/her consent is granted for development of the land*).

DETAILS OF ELECTRICAL SUPPLY:

PROPOSED WATER SUPPLY:

PROPOSED SEWERAGE DISPOSAL:

PROPOSED ROAD SPECIFICATIONS:

PROPOSED DRAINAGE:

APPLICANT'S/AGENT'S¹ SIGNATURE: DATE:

¹ Delete where applicable

PHYSICAL PLANNING (FEES) REGULATIONS – SECTION 65

(S.R.O. 19/2012)

Commencement

[1 April 2012]

Short title

1. These Regulations may be cited as the Physical Planning (Fees) Regulations.

Fees

2. The following fees shall be charged for the processing of planning applications in the Schedule hereto—

SCHEDULE

*BUILDINGS

<i>Size (sq. ft.)</i>	<i>Commercial</i>	<i>Residential</i>
0 - 750	\$150	\$100
751 - 1000	\$200	\$125
1001 - 2000	\$300	\$150
2001 - 3000	\$400	\$175
3001 - 4000	\$500	\$200
4001 - 5000	\$600	\$225
5000 +	\$700	\$250
Re-submissions (new)	\$50	\$25

*Re-submissions: A fee will be charged for each re-submission.

Applications

<i>Item</i>	<i>Fees</i>
Provision of Site Plan	\$50
Advertisements/Signs	\$75
Subdivisions	\$100 (per lot)
Change of Use	\$150
Churches/ NGOs/ Community Organisations	\$250

**PHYSICAL PLANNING (SALE OF PRODUCTS AND SERVICES)
(FEES) REGULATIONS – SECTION 65**

(S.R.O. 37/2013)

Commencement

[1 May 2013]

Short title

1. This Regulations may be cited as the Physical Planning (Sale of Products and Services) (Fees) Regulations.

Fees

2. The fees set out in the Schedule are payable for the corresponding services.

SCHEDULE

Description	Product Type	Paper Size	Public Offices/ Government Departments	Private/ Consultants	
HARD COPY	Customised Maps with Aerial Photography as base	A4 8.5 x 11	\$25	\$35	
		A3 11 x 17	\$35	\$50	
		A2 18 x 24	\$50	\$100	
		A1 24 x 36	\$75	\$150	
		A0 36 x 48	\$100	\$200	
	Additional Requirements Basic Layer (roads, buildings, etc)		add \$5	add \$5	
	Contours		add \$10	add \$10	
	Cadastre		add \$15	add \$15	
	DIGITAL	Digital Outputs .jpg		add \$25	add \$25
		.pdf		add \$25	add \$25
Digital Files .shp			\$50	\$75	
.kmz			\$50	\$75	
.dxf			\$50	\$75	
.tiff - Aerial Images			\$200 (per sq km)	\$200 (per sq km)	

Description	Product Type	Paper Size	Public Offices/ Government Departments	Private/ Consultants
	Medium on flash drive/hard disk		add \$5	add \$5
	on CD		add \$10	add \$10
	on DVD		add \$20	add \$20
	Special/Custo m Work Development of new theme/layer/ addition of new features/ annotation		\$100 (per hour)	\$150 (per hour)

PRINTING SERVICES PRICE LIST

Description	Product Type	Paper Size	Price \$	Price \$ (with paper supplied)	
		A4	8.5 x 11	\$5	\$4
	PRINTING	A3	11 x 17	\$10	\$5
	YOUR OWN	A2	18 x 24	\$20	\$10
	WORK	A1	24 x 36	\$50	\$25
		A0	36 x 48	\$75	\$50

WEBSITE SUBSCRIPTIONS:

- (a) Silver @ US\$3.50;
 - (b) Gold @ US\$4.50; and
 - (c) Platinum @ US\$5.50;
- per lodging for each credit provided.
-