

# **BUILDING ACT**

Cap 263 – 25 October 1919

## **ARRANGEMENT OF SECTIONS**

### **PART I – PRELIMINARY**

1. Short title
2. Interpretation
3. —
4. Exemption from Act
5. Application of Act
6. Amendments to buildings

### **PART II – PROVISIONS APPLICABLE TO BUILDINGS IN GENERAL**

7. No building without permit
8. Requirements for permit
9. Appeal from Ministry of Health's decision
10. No place of entertainment without permit
11. Conditions for giving permit
12. Appeal from decision of Authority
13. Saving clause
14. Notice
15. —
- 15A. Accessibility and parking
16. Inspection of buildings
17. Safety and ventilation of buildings
18. Permit void after 24 months
19. No building to be used before approval
20. Penalties
21. Unauthorised habitation of rooms

### **PART III – DANGEROUS BUILDINGS**

22. Dangerous building to be surveyed
23. State of building to be certified
24. Safety of inhabitants
25. Failure to comply with order of Mayor
26. Occupier to recover expenses from owner
27. Sale of materials
28. Ruinous buildings
29. How sale to be conducted
30. Notice of repairs
31. Provisions relative to dangerous buildings
32. Fees to surveyor of dangerous buildings
33. Power of President to remit fees

### **PART IV – FORGES AND FURNACES**

34. Restriction on forges and furnaces
35. Exemption in special cases
36. Licence to be obtained from Authority
37. Notice of application for licence
38. Time for objection
39. Chimneys

40. Petroleum and other engines

#### **PART V – LEGAL PROCEEDINGS**

41. Service of orders or notices  
42. Unoccupied premises and absent owner  
43. Form of order or notice  
44. Penalties before whom recovered  
45. Penalties by whom recovered  
46. Application of penalties  
47. Liability to penalty not exclusive  
48. Limitation  
49. Private rights not affected  
50. Obligation to make discovery  
51. Several offenders  
52. Restriction on proceedings  
53. Recovery of costs and expenses  
54. Proceedings against joint defaulters  
55. Enforcement of order to close premises  
56. Furnishing of security  
57. Where appeal is allowed  
58. Before whom appeal to be made  
59. Form of appeal  
60. Time for appeal  
61. Suspension pending appeal  
62. Power of Magistrate  
63. – 71. —  
72. Enforcement of orders or notices  
73. – 75. —

#### **PART VI – MISCELLANEOUS**

76. – 77. —  
78. Regulations  
79. Jurisdiction  
80. Offences and penalties  
Schedule

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### **BUILDING ACT**

#### **PART I – PRELIMINARY**

##### **1. Short title**

This Act may be cited as the Building Act.

##### **2. Interpretation**

(1) In this Act—

“architect” has the same meaning as in the Professional Architects’ Council Act;

“Authority” means a local authority referred to in section 117 of the Local Government Act;

“Building and Land Use Permit” or “permit” means a Building and Land Use Permit issued under section 117 of the Local Government Act;

“local authority” has the same meaning as in the Local Government Act;

“Ministry” means the Ministry responsible for the subject of public infrastructure;

“new building” includes the conversion into a dwelling house of any building not originally constructed for human habitation, or the conversion into more than one dwelling house only;

“occupier” means every person in actual occupation of any premises, and includes the owner of any premises when in actual occupation or the tenant, and also the agent or representative of the owner or tenant;

“owner” means the person receiving, or who would be entitled to receive, the rent of any premises, if they were let whether for his own behalf or that of any other person, or, where the owner cannot be ascertained, the occupier;

“premises” means all lands or tenements whether built on or not, and includes all buildings built thereon;

“regulations” means regulations made under this Act;

“street” means a public road including its footpaths and the houses erected on one or both sides or it.

(2) Reference in this Act or any other enactment to a building permit shall be construed as reference to a Building and Land Use Permit issued under section 117 of the Local Government Act.

[S. 2 amended by Act 12 of 1999; s. 146 (2) (a) of Act 32 of 2003 w.e.f. 7 August 2004; s. 2 (a) of Act 21 of 2006; s. 48 (a) of Act 7 of 2011 w.e.f. 1 March 2012; s. 165 (3) (a) of Act 36 of 2011 w.e.f. 15 December 2011.]

### 3. —

[S. 3 amended by Act 48 of 1991; repealed by s. 146 (2) (b) of Act 32 of 2003 w.e.f. 7 August 2004.]

## 4. Exemption from Act

(1) This Act shall not apply to any immovable property which belongs to, and is occupied solely by, Government or a local authority.

(2) The Prime Minister may exempt from this Act any immovable property which is leased by Government or a local authority for a development purpose approved by him.

[S. 4 amended by s. 165 (3) (b) of Act 36 of 2011 w.e.f. 15 December 2011.]

## 5. Application of Act

(1) This Act shall apply to all new buildings and, whenever mention is made of a building, the word shall be taken to mean a new building unless the contrary appears from the context.

(2) The rebuilding of any building blown down, burnt or pulled down, to an extent equal to 75 per cent of its value, shall be deemed the erection of a new building, and every portion of the old building that is not in conformity with this Act shall, unless the portion is habitable or may in the opinion of the Authority be easily made habitable, be taken down.

## 6. Amendments to buildings

All extensive repairs, reconstructions, alterations and additions shall be subject to this Act, so far as the part repaired, reconstructed, altered or added is concerned, and all such repairs, reconstructions, alterations and additions shall be carried out in such manner as to cause the building to be, when finished, as far as practicable, in accordance with the general intent and meaning of this Act.

## **PART II – PROVISIONS APPLICABLE TO BUILDINGS IN GENERAL**

### **7. No building without permit**

(1) Subject to subsection (2), no person shall commence the construction of a building, or extensive alterations, additions or repairs to an existing building, without having obtained a Building and Land Use Permit from a local authority under section 117 of the Local Government Act.

(2) Subsection (1) shall not apply to the construction of—

- (a) a building used for keeping animals for domestic purposes;
- (b) a shed of a temporary nature used for storage purposes in connection with the construction of a building.

[S. 7 amended by Act 42 of 1992; s. 2 (b) of Act 21 of 2006; s. 165 (3) (c) of Act 36 of 2011 w.e.f. 15 December 2011.]

### **7A. Building and Land Use Permit under LPES**

Notwithstanding this Act and section 117 of the Local Government Act, an application for a Building and Land Use Permit by a person registered under section 40F of the Planning and Development Act shall be made through the LPES Technical Committee in accordance with section 40D (2) of that Act.

[S. 7A inserted by s. 5 of Act 20 of 2011 w.e.f. 16 July 2011.]

### **8. Requirements for permit**

No permit for the construction of a building or for extensive alterations, additions or repairs to a building shall be granted by the Authority unless the applicant for the permit produces to the Authority—

- (a) a certificate in writing from the Permanent Secretary of the Ministry responsible for the subject of health, to the effect that the proposed construction, alterations, additions or repairs are in accordance with sanitary requirements;
- (b) in respect of a building having a floor area of more than 200 square metres, plans or drawings for the proposed construction, alterations, additions or repairs drawn up and signed by an architect;
- (c) in the case of any agricultural land as defined in the Sugar Industry Efficiency Act, the authority granted under Part V of the Sugar Industry Efficiency Act;
- (d) a certificate in writing from the Controller, Fire Services to the effect that the proposed construction or extensive alterations, additions or repairs are in accordance with fire safety requirements;
- (e) in respect of a building having more than 3 levels, plans referred to in paragraph (b) and showing in addition that the proposed construction makes provision for adequate parking space.

[S. 8 amended by Act 12 of 1999; s. 35 (1) of Act 20 of 2001 w.e.f. 17 September 2001; s. 2 (a) of Act 29 of 2004 w.e.f. 1 December 2004; s. 4 of Act 14 of 2005 w.e.f. 21 April 2005; s. 48 (b) of Act 7 of 2011 w.e.f. 1 March 2012.]

### **9. Appeal from Ministry of Health's decision**

Any person aggrieved by a decision of the Permanent Secretary of the Ministry responsible for the subject of health under section 8 may appeal to the Magistrate under section 58.

## **10. No place of entertainment without permit**

No person shall commence the construction of any building to be used as a theatre, cinema hall, or other place of public entertainment, or make any addition or alteration, external or internal, to any existing building for the purpose of converting the building into, or using the building as, a theatre, cinema hall or other place of public entertainment without a permit from the Authority.

## **11. Conditions for giving permit**

(1) No permit shall be granted by the Authority under section 10 except after a notice has been served by the applicant for a permit on contiguous owners and published on 3 successive occasions in 3 daily newspapers with adequate specification of the locality, street or road, or place where the building is to be constructed, and the purpose for which it is to be constructed or the locality, street or road, or place where the building is situated, which it is intended to convert into, or use as a theatre, cinema hall or other place of public entertainment.

(2) Within 15 days from the publication of the notice under subsection (1), any contiguous owner or any person residing in the neighbourhood of the place concerned or any other interested person may notify by writing addressed to the Authority his objections to the issue of the permit and the Authority may, after considering the application and the objections, grant or refuse the certificate.

(3) The Authority may, whether or not an objection has been notified to the Authority, refuse to grant a permit under this Act, where it is satisfied that the construction or the conversion of the building concerned will interfere with public convenience or comfort.

## **12. Appeal from decision of Authority**

Any person aggrieved by a decision of the Authority under section 11 may appeal to the Magistrate under section 58.

## **13. Saving clause**

Sections 10 to 12 shall be in addition to, and not in derogation from, the provisions of this Act relative to the issue by the Authority of permits for commencing the construction of any building, or for the making of any extensive alterations, additions, or repairs to any existing building.

## **14. Notice**

(1) The owner or occupier of the land on which a building is to be constructed, altered or repaired shall give notice to the Authority of his intention to build, or make extensive alterations, additions or repairs, and shall submit plans of the property to be built and a statement of the materials of which the buildings, alterations, additions or repairs are to be made, together with such other information as may be specified in such guidelines as may be issued by the Authority.

(2) A notice given under subsection (1) shall be given in accordance with such guidelines as may be issued by the Authority and shall indicate, in particular, the manner in which the building, alteration, addition or repair complies with sanitary and the safety requirements.

(3) The guidelines referred to in subsection (2) shall be—

- (a) available for consultation at the main office of the Authority; and
- (b) posted on the websites of the Authority, the Ministry responsible for the subject of health and fire services respectively.

[S. 14 amended by s. 2 (b) of Act 29 of 2004 w.e.f. 1 December 2004.]

## **15. —**

[S. 15 amended by Act 42 of 1992; s. 146 (2) (c) of Act 32 of 2003 w.e.f. 7 August 2004; repealed by s. 2 (c) of Act 21 of 2006.]

## **15A. Accessibility and parking**

(1) The Authority may, in respect of the construction of a building, or extensive alterations, additions or repairs to a building, to which the public may have access, impose such conditions as it thinks fit for the provision of suitable means of access to any part of the building, car park or curtilage for the use of the building and its facilities by disabled persons.

(2) The Authority may, in respect of any new building, impose such conditions as it thinks fit for the provision of parking spaces.

[S. 15A inserted by Act 12 of 1999.]

## **16. Inspection of buildings**

The Authority may enter all buildings which are being built, altered, repaired and added to, for the purpose of seeing and ascertaining whether this Act is complied with.

## **17. Safety and ventilation of buildings**

(1) The Authority may, in respect of any new building or any existing building which—

- (a) is, or which may be, made accessible to the public; or
- (b) may accommodate more than 20 persons,

cause the building or the works made in connection with the building to be inspected, and impose upon the owner or occupier or upon both of them such conditions with respect to the safety and ventilation of the building and proper means of entry and exit as the Authority may deem fit.

(2) The Authority may also order the building to be closed while the conditions imposed are being carried out.

(3) Where the owner or occupier fails to comply with any written order duly served upon him under subsection (1), the Authority may order the building to be closed, or the erection to be stopped, and the person who fails to comply with the order of the Authority shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and a further fine not exceeding 500 rupees for each day during which he contravenes the order.

[S. 17 amended by Act 12 of 1999; s. 146 (2) (d) of Act 32 of 2003 w.e.f. 7 August 2004.]

## **18. Permit void after 24 months**

A permit shall be acted upon so that the external walls of the building are raised at least 2 feet above the ground, within 24 months of the date of the permit, or it shall be deemed null and void.

[S. 18 amended by s. 2 (d) of Act 21 of 2006; s. 6 of Act 17 of 2007 w.e.f. 22 August 2007.]

## **19. No building to be used before approval**

(1) No new building shall be inhabited, used or occupied, until it has been inspected and approved by the Authority.

(2) Any person who allows any new building to be used, occupied or inhabited in breach of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees for every day during which the building is used, occupied or inhabited.

(3) Any violation of this section shall give to the Authority the right to close the building forthwith.

[S. 19 amended by Act 42 of 1992; s. 146 (2) (e) of Act 32 of 2003 w.e.f. 7 August 2004.]

## **20. Penalties**

(1) Any person who—

- (a) contravenes section 7 or 10;
- (b) having obtained a permit for erecting a building, does not comply with any condition imposed upon him or with any part of the plan or specification upon which the permit has been granted,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 15,000 rupees and not more than 20,000 rupees.

(2) In case of conviction under subsection (1), the Court may further order the demolition of the building or part of the building which contravenes the provisions of this Act.

[S. 20 amended by Act 42 of 1992; s. 146 (2) (f) of Act 32 of 2003 w.e.f. 7 August 2004.]

## **21. Unauthorised habitation of rooms**

Any person who knowingly suffers any room, not constructed in conformity with this Act to be inhabited shall, in addition to any other liabilities he may be subject to under this Act, commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees for every day during which the room is inhabited and any room in which any person passes the night shall be deemed to be inhabited within the meaning of this Act.

[S. 21 amended by s. 146 (2) (g) of Act 32 of 2003 w.e.f. 7 August 2004.]

## **PART III – DANGEROUS BUILDINGS**

### **22. Dangerous building to be surveyed**

Where, in the town of Port Louis, it is made known to, or considered by, the Mayor or the Permanent Secretary of the Ministry or the Commissioner of Police, that any structure (including in such expression any building or wall) is in a dangerous state to passers-by, or to the occupiers, or to the neighbouring buildings, the Mayor shall, upon receiving the report or information, or upon the application of the Permanent Secretary of the Ministry or the Commissioner of Police, direct the Town Architect or some competent architect or building surveyor to survey the structure.

[S. 22 amended by Act 12 of 1999.]

### **23. State of building to be certified**

Upon the completion of this survey, the Town Architect, or architect or building surveyor employed, shall certify to the Mayor his opinion as to the state of the structure.

### **24. Safety of inhabitants**

(1) Where a certificate issued under section 23 is to the effect that the structure to which it relates is not in a dangerous state, no further proceedings shall be had in respect thereof.

(2) Where a certificate is to the effect that the structure is in a dangerous state, the Mayor shall cause—

- (a) the structure to be shored up or otherwise secured, and a proper hoarding or fence to be put up for the protection of passers-by; and



- (b) notice in writing to be given to the owner or occupier of the structure requiring him forthwith to take down, remove, secure, or repair the structure, as the case may be.

## **25. Failure to comply with order of Mayor**

(1) Where an owner or occupier, to whom notice is given under section 24, fails to comply, as speedily as the nature of the case permits, with the requisition of such notice, the Mayor may make complaint to one of the Magistrates of Port Louis.

(2) The Magistrate may order the owner, or, in his default, the occupier, of any such structure, to take down, remove, repair or otherwise secure, to the satisfaction of the architect or building surveyor who gave the certificate under section 23, such structure or such part thereof as appears to him to be in a dangerous state, within a time to be fixed by such Magistrate.

(3) Where the structure is not taken down, removed, repaired or otherwise secured, within the time so limited, the Mayor, may, with all convenient speed, cause all or so much of the structure as is in a dangerous condition to be taken down, removed, repaired or otherwise secured in such manner as may be requisite.

(4) All expenses incurred by the Mayor in respect of any structure by reason of sections 22, 23 and 24 shall be paid by the owner or occupier of the structure, even where he has complied with the notice under section 24, without prejudice to the owner's right to recover the expenses from any occupier legally liable for such repairs.

## **26. Occupier to recover expenses from owner**

(1) Subject to subsection (3), where an occupier who is not liable for the expenses of such repairs, has, upon the requisition of the notice given under section 24, complied with such requisition in default of the owner, he shall, where he has given previous notice to the owner, receive from the owner the cost of such repairs and collateral expenses.

(2) The Mayor's written requisition shall before every Court be deemed to be the best evidence that such structure was in a dangerous state and that such repairs were required.

(3) The cost and collateral expenses of the repairs effected to the dangerous structure claimable from the owner shall be limited to 6 months' rent.

## **27. Sale of materials**

(1) Where any house or building or any part of it is pulled down by virtue of the powers under section 25, the Mayor may sell the materials thereof, or so much of the house or building as is pulled down, by public auction, and apply the proceeds of the sale in payment of the expenses incurred in respect of the house or building.

(2) The Mayor shall restore any surplus arising from the sale to the owner of the house or building on demand.

(3) The owner shall remain liable for the payment of so much of the expenses as may remain due after the application of the proceeds of the sale.

## **28. Ruinous buildings**

Where any house, building, tenement or area has become waste and ruinous within the town of Port Louis, or become the receptacle for filth and other nuisances, or unsafe and unfit for use and occupation, and, being held by 2 or more owners, cannot be rebuilt or disposed of without the consent of all the parties interested therein, and is allowed to continue in a waste and ruinous or unsafe state in consequence of the parties being unable or unwilling or delaying to agree as to the sale or rebuilding thereof, the Mayor may, after notice given under section 24 to all the owners severally, if the said notice is not complied with and after the expiration of the time fixed in such notice, apply to a Judge in Chambers



for an order for the sale of the house, building, tenement or area.

### **29. How sale to be conducted**

(1) The Judge shall issue an order calling all parties interested therein to appear before him, and if the said parties have not, within a period not exceeding one month to be fixed by the Judge, agreed to sell or repair the house, building, tenement or area, the Judge shall authorise the Mayor to prosecute the sale before the Registrar.

(2) The sale shall be carried on at the suit of the Mayor and in such manner and form as is provided for the sale of any small immovable property belonging to a bankrupt and sold by public auction before the Registrar, and one of the conditions of the sale shall be that the purchaser shall either pull down, rebuild or repair the house, building or tenement, or shall make it fit for use and occupation, in such manner and form as had been required of the owners thereof, to the satisfaction of the municipal council, and within the time fixed in the said conditions.

### **30. Notice of repairs**

(1) The notice containing the Mayor's requisition to take down, remove, repair or otherwise secure any dangerous structure shall simply and clearly convey the intent of the Mayor, and, in case of repairs, describe the repairs required to be effected, and it shall be signed by the Mayor or Deputy Mayor, and served by an usher personally upon the owner and occupier.

(2) Where the owner cannot be found, or is not represented in Mauritius, it shall be sufficient, on affidavit of the facts being sworn and filed in the District Court, to serve the notice on the occupier and on the Curator and to affix a copy on the main entrance of the structure deemed dangerous.

### **31. Provisions relative to dangerous buildings**

(1) Sections 22 to 30 shall apply to all tenements and structures in Mauritius.

(2) Any reference in section 25 to a Magistrate of Port Louis shall, in respect of tenements and structures to be found outside Port Louis, be interpreted as a reference to the District Magistrate of the area where the tenement or structure is to be found.

(3) Any reference to "Mayor" or "Deputy Mayor" in sections 22 to 30 shall be interpreted as a reference to the Lord Mayor, Mayor or Chairperson of a District Council, or the Deputy Lord Mayor, Deputy Mayor or Vice-Chairperson of a District Council, as the case may be.

[S. 31 repealed and replaced by s. 146 (2) (h) of Act 32 of 2003 w.e.f. 7 August 2004;  
s. 165 (3) (d) of Act 36 of 2011 w.e.f. 15 December 2011.]

### **32. Fees to surveyor of dangerous buildings**

Fees to be fixed by the Authority shall be paid in respect of the services of the architect or building surveyor employed to survey structures deemed dangerous and shall accrue to the Municipal City Council, Municipal Town Council or District Council of the area within which the structures are to be found, as the case may be.

[S. 32 amended by s. 146 (2) (i) of Act 32 of 2003 w.e.f. 7 August 2004; s. 165 (3) (e) of Act 36 of 2011 w.e.f. 15 December 2011.]

### **33. Power of President to remit fees**

The President may remit or reduce, on good cause shown, any of the fees referred to in section 32.

[S. 33 amended by Act 48 of 1991.]

## **PART IV – FORGES AND FURNACES**

### **34. Restriction on forges and furnaces**

Subject to section 35, no forge, fireplace, oven or furnace, used for the working of engines by steam, or in any factory, workplace, dye house, brewery, bake house or gas work, or in any manufacturing or trade process, shall be built, erected or established in such parts of Port Louis, as may be specified in regulations made under this Act.

### **35. Exemption in special cases**

The Authority may authorise a forge, fireplace, oven or furnace, to be built, erected or established in any prohibited part of Port Louis, but only in cases and for purposes of public utility and with the sanction of the President.

[S. 35 amended by Act 48 of 1991.]

### **36. Licence to be obtained from Authority**

(1) No forge, fireplace, oven or furnace, shall be built, erected or established in any part of Mauritius, except in pursuance of a written licence given by the Authority and signed by the Authority and under such conditions as the Authority may consider expedient to annex to such licence for the prevention of fire or for the protection of the public health or for public convenience or comfort or for the protection of the health, or for the safety, of any worker employed in or about such forge, fireplace, oven or furnace.

(2) Such licence shall issue on payment of the appropriate fee specified in section 122 (1) of the Local Government Act.

(3) A contravention of this section or of section 34 or 35 shall be punishable by a fine of not less than 5,000 rupees and not more than 50,000 rupees.

(4) The Authority may also cause any forge, fireplace, oven or furnace, as specified in subsection (1) and sections 34 and 35 to be pulled down or removed, as the Authority thinks fit, at the expense of the offender.

(5) The conditions imposed by the Authority under subsection (1) may be disallowed or amended by the Minister upon a petition to that effect from any person alleging himself to be aggrieved by such conditions.

[S. 36 amended by s. 146 (2) (j) of Act 32 of 2003 w.e.f. 7 August 2004; s. 165 (3) (f) of Act 36 of 2011 w.e.f. 15 December 2011.]

### **37. Notice of application for licence**

No licence shall be granted by the Authority under section 36, except after a notice has been served by the applicant on contiguous owners and published in 2 newspapers, stating the street and the number of the premises, or, in the case of rural districts, the locality and situation of the place where the forge, fireplace, oven or furnace is to be established and the purpose of manufacture or trade for which it is to be established.

### **38. Time for objection**

A period of 15 days shall be allowed to elapse from the service and publication of the notice under section 37, during which any party interested may write to the Authority and object to the licence.

### **39. Chimneys**

(1) Every forge, fireplace, oven or furnace shall have a chimney, the height of which shall be determined by the Authority, regard being had to the position and circumstances of the adjoining houses.

(2) The Authority may in any case require, by notice, the owner of the premises where a forge, fireplace, oven or furnace is established, to erect in connection with it, and within a reasonable time to be specified in such notice, a proper chimney to the satisfaction of the Authority.

(3) Where the owner fails to comply with a notice under subsection (2), the Authority may, at the expiration of the time specified in the notice, order the use of the forge, fireplace, oven or furnace to be discontinued, and any person using the forge, fireplace, oven or furnace after the notice shall commit an offence, and shall, on conviction, be liable to a fine of not less than 5,000 rupees and not more than 50,000 rupees and to a further fine not exceeding 2,000 rupees for each day during which he continues to use the forge, fireplace, oven or furnace.

[S. 39 amended by s. 146 (2) (k) of Act 32 of 2003 w.e.f. 7 August 2004.]

#### **40. Petroleum and other engines**

(1) No petroleum, electric or internal combustion engine shall be built or established except under a valid licence.

(2) Sections 36, 37 and 38 shall apply to every licence issued under this section.

(3) A licence issued under this section shall lapse—

- (a) where it has not been implemented within 2 years of its date of issue; or
- (b) where operation under the licence is suspended for a period of 2 years.

(4) A licence issued under this section shall at all times be subject to such terms and conditions as the Authority may impose, whether at the time of issue or renewal of the licence or during its currency.

### **PART V – LEGAL PROCEEDINGS**

#### **41. Service of orders or notices**

Where under this Act any order or notice is required or has to be given to the owner or occupier of any premises or to any other party in reference to the purposes of this Act, such order or notice, addressed to such owner or occupier or party, shall be signed by the Authority, and shall be served by a municipal inspector or a building inspector, as the case may be, by delivering a copy, certified to be a true copy, to the owner or occupier or other party in person or at his domicile or to his agent.

[S. 41 amended by Act 42 of 1992.]

#### **42. Unoccupied premises and absent owner**

Where the premises are not occupied, and where the owner, after diligent search, cannot be found, or is absent from Mauritius and has no known agent, the order or notice shall be served by delivering a copy to the Attorney-General, by affixing another copy upon some conspicuous part of the premises, and by one notification in 2 newspapers.

#### **43. Form of order or notice**

Every such order or notice shall—

- (a) specify the section of this Act under which the order or notice is given;
- (b) clearly and explicitly specify what work is to be executed, or what building or part thereof is to be secured, repaired, pulled down or removed, or what infringement of this Act is to be discontinued;
- (c) contain an injunction to the person to whom the order or notice is addressed to execute the work and shall state what building or part thereof is to be

secured, repaired, pulled down or removed, or what infringement of this Act is to be discontinued;

- (d) fix a reasonable time within which the works are to be executed, what building or part thereof is to be secured, repaired, pulled down or removed, or what infringement of this Act is to be discontinued.

#### **44. Penalties before whom recovered**

Notwithstanding anything to the contrary, a District Magistrate shall have jurisdiction to impose any penalty provided by this Act.

[S. 44 repealed and replaced by s. 146 (2) (l) of Act 32 of 2003 w.e.f. 7 August 2004.]

#### **45. Penalties by whom recovered**

Any fine, penalty and forfeiture shall be sued for and recovered by the Authority.

[S. 45 repealed and replaced by s. 146 (2) (m) of Act 32 of 2003 w.e.f. 7 August 2004.]

#### **46. Application of penalties**

All penalties or fines recovered or any forfeitures incurred on account of offences committed under this Act or regulations made under this Act shall be paid to the Authority at whose instance the action is commenced.

[S. 46 amended by s. 146 (2) (n) of Act 32 of 2003 w.e.f. 7 August 2004.]

#### **47. Liability to penalty not exclusive**

Notwithstanding the liability of any person to any penalty under this Act or regulations made under this Act, he shall not be relieved from any other liability to which he may be subject on account of the commission of any crime or misdemeanour (*délit*) punishable under the Criminal Code.

#### **48. Limitation**

No information shall be laid and no proceedings entered for the recovery of any fine or forfeiture under this Act, except within 24 months of the commission of the offence.

[S. 48 amended by Act 42 of 1992.]

#### **49. Private rights not affected**

(1) The provisions of this Act concerning any act or any proceeding, judgment or conviction, for any act hereby declared an offence, shall not take away, diminish, or prejudicially affect any suit, process, proceedings, right or remedy, to which any person aggrieved by such act or complaining of any prejudice may be entitled.

(2) A licence obtained under this Act shall not be a bar to, diminish or affect any right, remedy or process to which any person aggrieved by any act of any other person may be entitled.

#### **50. Obligation to make discovery**

(1) No provisions of this Act shall excuse or exempt any person from answering or making discovery upon examination as a witness or upon interrogatories or otherwise in any suit or other civil proceeding.

(2) No statement, evidence or discovery which any person is compelled to make shall be admissible in evidence against that person in support of any prosecution on account of any proceeding under this Act or otherwise.

#### **51. Several offenders**

Where proceedings under this Act are to be taken against several persons in respect of one offence caused by their joint act or default, such persons may be jointly included in one complaint or information or be prosecuted severally.

## **52. Restriction on proceedings**

(1) Subject to subsection (2), no complaint, conviction, notice, certificate, order, or other proceeding, matter or thing, made or done in the execution of this Act shall be removable by *certiorari*, or by any other writ or process into any Court, or be quashed or set aside for want of form.

(2) Where under this Act any person is condemned to pay a fine of 200 rupees or more, or to imprisonment, except where the imprisonment is awarded for non payment of a fine, an appeal shall in every case lie to the Supreme Court against such conviction, and the formalities to enter and prosecute, hear and determine the appeal shall be the same as are provided for by the District and Intermediate Courts (Criminal Jurisdiction) Act.

[S. 52 amended by Act 29 of 1992.]

## **53. Recovery of costs and expenses**

(1) All costs and expenses which may be incurred by the Authority under this Act, in or on account of the execution of any work or the doing of any act or the enforcement of this Act, shall be recovered against the person who has made default in making any work or doing any act lawfully required of him under this Act before the Court having jurisdiction to entertain the suit.

(2) The sum adjudicated to be recoverable by any judgment on account of such costs and expenses shall, subject to subsection (3), be a privileged claim upon the premises in respect of which such costs and expenses have been incurred and be allocated in first rank upon the sale price of such premises if and when they are sold, if the privilege is inscribed within 15 days from the date of the final judgement given in the matter.

(3) A privileged claim shall not exceed one year's rent of such premises, the letting value of which shall, if there is no written lease to refer to, be fixed finally and without appeal to recourse of any kind by writ or otherwise, by the Registrar.

## **54. Proceedings against joint defaulters**

Proceedings for the recovery of any costs and expenses incurred under section 53 may be taken against several persons in respect of their joint default, either jointly or severally.

## **55. Enforcement of order to close premises**

(1) Where the Authority, in the execution of this Act and under or in virtue of any power vested in it by this Act, has ordered any premises or part of premises to be closed (and in case of appeal to the Magistrate under section 58, if the order has been confirmed), the Commissioner of Police shall, upon application made by the Authority, compel the execution of the order, eject the inmates from the premises or part of the premises, remove into the street the goods, chattels and effects of the inmates, nail up and effectually close the openings of the premises or part of the premises, and arrest and afterwards as soon as possible take before any Magistrate competent under this Act any person obstructing the execution of such order.

(2) Any person guilty of such obstruction shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and a further fine not exceeding 2,000 rupees for each day during which he persists in such obstruction.

[S. 55 amended by s. 146 (2) (o) of Act 32 of 2003 w.e.f. 7 August 2004.]

## **56. Furnishing of security**

(1) Where any premises have been ordered to be closed under this Act, they shall remain so closed until the owner or occupier has furnished 2 joint securities for the sum of 50,000 rupees to the satisfaction of the Authority, or, where the order has been given or confirmed by the Magistrate on appeal under section 58, to the satisfaction of such Magistrate.

(2) The security, required to be furnished under subsection (1), shall be to the effect that the works or things required to be executed and done in respect of such premises and which have not been executed or done shall be executed or done in strict compliance with any previous notice or order or with any new order or notice of the Authority or of the Magistrate.

(3) Where after the reopening of such premises, the owner or occupier neglects or refuses to comply with the notice or order, the premises shall be closed again and the sum of 50,000 rupees shall become forfeited to the Authority to whom the security has been furnished, and the owner or occupier, as the case may be, shall be sued for damages before the competent Court by the Authority, without prejudice to any penalty to which he may be liable for having contravened this Act.

[S. 56 amended by Act 42 of 1992.]

### **57. Where appeal is allowed**

An appeal may be made against any order or notice given or issued by the Authority under this Act for the enforcement or execution of such provisions, where such order or notice directs—

- (a) the execution of any structural work;
- (b) the closing of any premises or part of premises;
- (c) the removal, alteration, reconstruction or destruction of any house or building;
- (d) the refusal of a licence under section 36.

### **58. Before whom appeal to be made**

In every case in which an appeal may be made under this Act, the appeal shall be heard and determined by the Magistrate of the District where the premises built or to be built upon are situated.

### **59. Form of appeal**

(1) Every appeal before the District Court shall be by plaint with summons, and shall be heard and determined according to the procedure prescribed by the District and Intermediate Courts (Civil Jurisdiction) Act.

(2) The plaint shall state the grounds of appeal, and the applicant shall not be allowed to adduce evidence of any ground which is not included in the plaint.

### **60. Time for appeal**

The plaint shall be lodged with the District Clerk within 10 days after notification to or service upon the appellant of the decision, notice or order complained of.

### **61. Suspension pending appeal**

Every decision, notice or order appealed against, in any case where an appeal is allowed, shall, pending the appeal, be suspended.

### **62. Power of Magistrate**

(1) In giving his judgment in any appeal, the Magistrate may either dismiss the appeal



absolutely or he may reverse and annul the decision, order or notice appealed against, or he may amend the decision, order or notice, or the conditions and periods contained in it as he considers expedient and proper for the execution of this Act.

(2) (a) Subject to paragraph (b), any of the parties aggrieved by the judgment of the Magistrate may appeal to the Supreme Court according to the procedure prescribed by section 37 of the District and Intermediate Courts (Civil Jurisdiction) Act.

(b) Where the Permanent Secretary of the Ministry responsible for the subject of health or the Authority appeals, he shall not be bound to furnish security to cover the costs of appeal.

**63. – 71. —**

## **72. Enforcement of orders or notices**

(1) Where the order or notice appealed against is not amended, execution shall ensue against the order or notice as provided in this Act.

(2) Where the order or notice is amended, it shall be served upon the appellant and notice of it shall also be given to the Authority.

(3) The Authority may execute the amended order or notice as if it were an original order or notice.

(4) A copy of the amended order or notice, signed by the District Clerk, shall be a sufficient warrant for—

- (a) the Commissioner of Police to enforce its compliance;
- (b) the Authority to execute the works or carry out anything required of any person to be performed or done by the amended order or notice at the expense of the person in default.

**73. – 75. —**

## **PART VI – MISCELLANEOUS**

**76. —**

**77. —**

[S. 77 amended by Act 12 of 1999; repealed and replaced by s. 146 (2) (p) of Act 32 of 2003 w.e.f. 7 August 2004; repealed by s. 2 (c) of Act 21 of 2006.]

## **78. Regulations**

The Minister may make such regulations as he deems fit for the purposes of this Act.

[S. 78 amended by Act 42 of 1992.]

## **79. Jurisdiction**

Notwithstanding—

- (a) section 114 of the Courts Act; and
- (b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence under this Act or any regulations made under this Act and may impose any penalty provided by this Act or any regulations made under this Act.

[S. 79 added by Act 42 of 1992.]



## **80. Offences and penalties**

(1) Any person who contravenes any provision of this Act or any regulations made under this Act shall commit an offence.

(2) Any person who commits an offence under this Act, for which no specific penalty is provided, shall, on conviction, be liable to a fine not exceeding 20,000 rupees.

(3) The Court may, in addition to any penalty, order the pulling down or removal of any building or part of any building at the expense of the offender where the offender has not complied, within a reasonable period to be fixed by the Authority, with the notice served upon him to pull down any building or part of any building erected or made in contravention of this Act or any regulations made under this Act.

[S. 80 added by Act 42 of 1992.]

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### **Schedule**

[Sch. inserted by s. 146 (2) (q) of Act 32 of 2003 w.e.f. 7 August 2004; repealed by s. 2 (e) of Act 21 of 2006.]

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