



MONTSERRAT

## **CHAPTER 9.08**

# **AGRICULTURE ACT**

### **Revised Edition**

showing the law as at 1 January 2013

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—

### **AGRICULTURE ACT**

Act 13 of 1958 .. in force 1 August 1958

Amended by Acts: 26 of 1958

9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

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**CHAPTER 9.08**

**AGRICULTURE ACT**

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## CHAPTER 9.08

### AGRICULTURE ACT

*(Acts 13 of 1958, 26 of 1958 and 9 of 2011)*

#### Commencement

*[1 August 1958]*

#### Short title

1. This Act may be cited as the Agriculture Act.

#### Interpretation

2. In this Act—

“**agriculture**” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands when that use is ancillary to the farming of land for other agricultural purposes, and “**agricultural**” shall be construed accordingly;

“**agricultural land**” means land used for agriculture, which is so used for the purposes of a trade or business:

Provided that, this expression shall not extend to land used as pleasure grounds or private gardens;

“**the Authority**” means the Agricultural Lands Authority constituted in accordance with section 11;

“**Commissioner**” means the person appointed as Agricultural Lands Commissioner under section 3;

“**relevant circumstances**”, in relation to an owner or occupier, includes all circumstances affecting management or farming, other than the personal circumstances of the owner.

#### Appointment of Agricultural Lands Commissioner

3. The Governor shall appoint an Agricultural Lands Commissioner for the purposes of this Act.

#### Duties of good estate management and good husbandry

4. The provisions of this Act shall have effect for the purpose of securing that owners and occupiers of agricultural land fulfil their responsibilities to the community to manage and farm the land so as to prevent erosion and ruination of the soil.

## Good estate management

5. (1) For the purposes of this Act, an owner of agricultural land shall be deemed to have fulfilled his responsibilities to the community as mentioned in the preceding section, if the management of the land by him is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances, to enable an occupier of the land reasonably skilled in husbandry to prevent erosion and ruination of the soil.

(2) In determining whether the owner or occupier of agricultural land is fulfilling his responsibilities as aforesaid, regard shall be had to the character and situation of the land and to the extent to which steps are being taken—

- (a) to terrace sloping land under cultivation;
- (b) to prevent or check the formation of gullies;
- (c) to prevent surface water from causing erosion on adjoining land;
- (d) to protect water courses or public roads;
- (e) to preserve forest and vegetation on ridges and steep slopes;
- (f) to control, or where necessary prevent, the grazing of animals on steep slopes.

## Power of Commissioner to supervise management and farming

6. (1) Where the Commissioner is satisfied that the owner or occupier of any agricultural land is not fulfilling his responsibilities as aforesaid, the Commissioner may apply to the Governor acting on the advice of Cabinet to make an order (hereinafter referred to as a “**supervision order**”) placing the owner or occupier of the said land under the supervision of the Commissioner in so far as it relates to the management and farming of the land in question. (*Amended by Act 9 of 2011*)

(2) Before a supervision order is made in pursuance of the preceding subsection, the Authority shall, examine the Commissioner’s application and make recommendations thereon to the Governor acting on the advice of Cabinet, and the Authority shall, in examining the application, afford the owner or occupier of the said land an opportunity of being heard in opposition to such application. (*Amended by Act 9 of 2011*)

(3) If an owner or occupier does not appear at the time and place fixed for the hearing of the application, or on any adjournment thereof granted by the Authority, the Authority may on proof of service of a summons or notice on him requiring his attendance hear the application in his absence.



### **Duties and powers of Commissioner under supervision order**

7. (1) While a supervision order is in force, the Commissioner, or any of his officers authorised by him in writing in that behalf, may at all reasonable times enter upon the land to which the order relates, for the purpose of inspecting the way in which it is being managed and farmed.

(2) Where a supervision order is in force and the Governor acting on the advice of Cabinet is satisfied that, by reason of the standard of management and husbandry, as the case may be, attained by the person to whom it relates, it is no longer necessary that the order should continue in force, the Governor acting on the advice of Cabinet shall revoke the order: Provided that, the revocation of an order shall not affect any direction given thereunder in so far as it is in force immediately before the revocation of the order. (*Amended by Act 9 of 2011*)

(3) Forthwith after the making of supervision order the Governor shall cause a copy of the said order to be served upon the person to whom it relates, and forthwith after the revocation of such an order the Governor shall cause notice of such revocation to be served upon the person to whom it relates.

### **Supervision order affected by change of owner or occupier**

8. Where a supervision order is in force in respect of an owner or occupier any disposition of land to which the order relates, whereby some other person becomes the owner or occupier of that land, shall not affect the continued operation of the supervision order and the said order shall continue in force so far as it relates to that land as if it had been made so as to relate to the new owner or occupier, as the case may be, as well as to the former owner or occupier.

### **Directions to secure good management of land and to avoid soil erosion**

9. (1) Where a supervision order is in force, the Commissioner shall by notice in writing served on the person to whom the order relates give to that person such directions as he is satisfied are required to secure that the said person fulfils his responsibilities to manage and farm the land so as to avoid erosion and ruination of the soil.

(2) Such directions may impose requirements, restrictions or prohibitions as to the carrying out of work and as to the manner in which the land is to be used.

(3) If any person to whom a direction is given under this section, contravenes or fails to comply with the direction, he shall be liable on summary conviction to a fine of \$100 and in default of payment thereof to imprisonment for a period not exceeding three months.

(4) Without prejudice to the bringing of proceedings under the last foregoing subsection, where a direction under this section to carry out any work is not complied with, any person authorised by the Commissioner in that behalf may enter upon the land to which the direction relates and carry

out the work required by the direction, and the reasonable cost of carrying out such work shall be recoverable from the person to whom the direction was given.

(5) Any person who obstructs a person acting in the exercise of powers conferred by subsection (4) shall be liable on summary conviction to a fine of \$100 and in default of payment thereof to imprisonment for a period not exceeding three months.

(6) Where a direction under this section provides for the doing of anything within a specified time and (whether before or after the expiration of the said time) the Commissioner is satisfied that it is reasonable that the said time should be extended, he may extend it accordingly.

### Reference of notice to the Authority

10. (1) Any person upon whom a notice is served under the provisions of the preceding section may within 21 days of the service of such notice request the Commissioner to refer his case to the Authority.

(2) Upon the receipt of this request the Commissioner shall inform the Authority who shall, after giving the person an opportunity of being heard, decide whether the notice shall stand or be modified or cancelled.

### Establishment of Authority

11. (1) There shall be established for the purposes of this Act a body to be called the Agricultural Lands Authority.

(2) The Authority shall consist of seven persons to be appointed by the Governor.

(3) No person may be appointed as a member of the Authority unless the Governor is satisfied that such person has had experience in agriculture and a practical working knowledge thereof.

(4) Not more than two public officers may be appointed as members of the Authority. (*Amended by Act 9 of 2011*)

(5) Members of the Authority shall, subject to the provisions of this section, hold office for a period not exceeding two years, but each member shall be eligible for re-appointment.

(6) Any member of the Authority may, at any time resign his office by Instrument in writing addressed to the Governor and transmitted through the chairman and from the date of the receipt by the Governor of such Instrument such member shall cease to be a member of the Authority.

(7) The Authority shall elect one of their number to be the chairman of the Authority and in the case of the absence or inability to act of the chairman the remaining members of the Authority shall elect one of their number to act as chairman temporarily.

(8) The Governor may appoint a secretary of the Authority at such remuneration and upon such terms and conditions as he may determine.

(9) The Authority shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such day as the chairman may determine.

(10) The quorum of the Authority shall be three including the chairman or person elected to act as chairman as aforesaid.

(11) Every question before the Authority shall be decided by a majority vote of the members present and, in the event of an equality of votes, the chairman shall have a casting vote.

### **Powers of Authority**

12. (1) The Authority shall have all such powers, rights and privileges as are vested in a Magistrate under the Magistrate's Court Act on the occasion of any hearing, in respect of the following matters—

- (a) enforcing the attendance of witnesses and examining them on oath, or affirmation;
- (b) issuing summonses under the hand of the chairman;
- (c) authorising the representation before them of any person appearing to them to be interested by counsel, or solicitor, or otherwise if they consider that any injustice would ensue if that person were not so represented.

(2) The procedure at a hearing before the Authority, the remuneration of witnesses for attendance thereat and all questions incidental to the hearing shall be in accordance with the practice and procedure of a Magistrate's Court in civil proceedings in so far as the same are applicable.

### **Appeals**

13. (1) Any person aggrieved by a decision of the Authority may, subject to such conditions as may be prescribed by regulations under this Act, appeal against such decision to the Governor.

(2) Upon receipt of a notice of appeal, the Governor shall appoint three persons other than members of the Authority (the said three persons are hereinafter called the referees) for the purpose of hearing the appeal.

(3) The Governor shall appoint one referee to be chairman of the referees.

(4) The referees may confirm, vary or set aside the decision of the Authority or make such other order as in their opinion the justice of the case requires.

(5) The referees shall be paid from the public revenue of Montserrat such remuneration as shall be prescribed by regulations made under this Act.

### Maintenance of anti-erosion works

**14. (1)** Where any anti-erosion works have been established by the owner or occupier of any land in pursuance of a direction issued by the Commissioner, or by any person authorised by the Commissioner on a failure to obey such direction, the owner or occupier of such land shall at all times maintain the said anti-erosion works in a fit and proper condition to the satisfaction of the Commissioner.

**(2)** Any person who fails to maintain the said anti-erosion works shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine of \$100 and, in default of payment thereof, to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

### Application for advances

**15.** Where any person is required, under the provisions of section 9, to do any act or thing which may involve him in the expenditure of any money, he may, subject to the provisions of any regulation made under the provisions of section 20, apply to the Commissioner for an advance of money to enable him to do such act or thing, and the Commissioner in making the advance shall state the terms and conditions under which the advance is made and such advance shall be recoverable as a civil debt in the name of the Commissioner from the person to whom the advance is made.

### Source, interest on and payment of advances

**16.** Any advances under the provisions of this Act shall—

- (a)* be made from funds provided for the purpose by the Legislative Assembly of Montserrat; *(Amended by Act 9 of 2011)*
- (b)* bear interest at such rate per annum as the Governor acting on the advice of Cabinet may from time to time determine; *(Amended by Act 9 of 2011)*
- (c)* be repaid in equal yearly instalments of capital and interest within such period, not exceeding thirty years, as may be agreed upon between the applicant and the Commissioner: Provided that, nothing in this paragraph contained shall preclude any person from repaying any balance due from him to the Commissioner at any time before the expiration of the period so agreed upon.

### Advance to be charge on land

**17.** All moneys advanced under the provisions of this Act, together with any interest thereon and all charges incidental thereto and to the repayment thereof, shall be a charge upon the land in respect of which the advance or payment has been made: Provided that—

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- (a) where the Commissioner proposes to make an advance on land which is subject to a statutory or contractual mortgage or charge; or
- (b) where the Commissioner proposes to make an advance on land which is the subject of a lease or licence and the lessee or licensee (not being a lessee or licensee from the Crown) is in possession,

the Commissioner shall in writing advise the mortgagee or chargee or lessee or licensee, as the case may be, who shall, if he objects to the making of the advance, be given an opportunity of being heard by the Commissioner before the advance is made.

### Registration of advances

**18. (1)** As soon as possible after an advance has been approved by the Commissioner, the Commissioner shall prepare a notification in the form in the Schedule and shall—

- (a) when the land to be charged has not been brought under the Title by Registration Act, forward the same signed to the Registrar of Deeds to be registered under the Registration and Records Act, and as soon as such notification has been registered by the Registrar of Deeds he shall inform the Commissioner who shall pay the advance to the applicant in accordance with the terms contained in such notification;
- (b) when the land to be charged has been brought under the Title by Registration Act, forward the same duly signed to the Registrar of Titles to be noted as a mortgage upon the duplicate certificate of title placed on the register in respect of the land in like manner as is provided for the noting of mortgages under section 39 of the Title by Registration Act, and as soon as the said noting has been made by the Registrar of Titles he shall inform the Commissioner who shall pay the advance to the applicant in accordance with the terms contained in such notification. As soon as practicable thereafter the Registrar of Titles shall make a similar noting on the certificate of title issued to the registered proprietor and for this purpose, the Registrar of Titles shall have the power to direct any person to produce such duplicate certificate of title, and any person who fails to comply with such direction shall be dealt with in the manner and be subject to the same penalty as is provided in section 140 of the Title by Registration Act.

**(2)** No fees under the Title by Registration Act and no stamp duties under the Stamp Act shall be payable in respect of anything required to be done by the Registrar of Deeds or the Registrar of Titles under this section.

### Right of a lessee to compensation for work done

19. Where a lessee holding land under a lease from any other person has, in complying with any order or direction issued under the provisions of this Act, done at his own expense any work on such land, such lessee shall be entitled at the termination of his lease to obtain from the lessor as compensation such sum as fairly represents the residuary value of such work to the lessor.

### Power to make Regulations

20. The Governor acting on the advice of Cabinet may make regulations for carrying into effect the provisions of this Act, and without prejudice to the generality of the foregoing, for all or any of the following purposes—

- (a) prescribing the manner in which applications for advances shall be made;
- (b) prescribing the purposes for, and the terms and conditions on which, advances may be made;
- (c) prescribing the maximum amount of, and the rate of interest to be charged on advances;
- (d) appointing an advisory board or boards to consider and report upon, and to make recommendations in regard to applications for advances under this Act.

*(Amended by Act 9 of 2011)*

### Service of notices

21. (1) Any notice or other document required or authorised by or under this Act to be given or served on any person shall be duly given or served if it is delivered to him, or left at his proper address, or where this is not known, his last known address, or sent to him by post in a registered letter.

(2) Any such document required or authorised to be given to or served on an incorporated company or body shall be duly given or served if given to or served on the secretary or clerk of the company or body at the registered or principal office of the company or body.

(3) Where any document is to be given to or served on a person as being the person having any interest in land, and it is not practicable after reasonable inquiry to ascertain his name or address, the document may be given or served by addressing it to him by the description of the person having that interest in land (naming it) and delivering the document to some responsible person on the land, or by affixing it, or a copy of it, to some conspicuous object on the land.

**SCHEDULE**

*(Section 18)*

**NOTIFICATION OF ADVANCE**

- (a) Name and Address of Applicant .....
- (b) Name, extent, description and  
boundaries of land against which  
advance is made .....
- (c) Amount of advance .....
- (d) Date of payments or dates and  
amounts of instalments of  
repayment .....

.....  
Signature of Applicant

- (e) Approved .....

.....  
Signature of Commissioner

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