

THE BEACH AUTHORITY (AMENDMENT) BILL

(No. IV of 2022)

Explanatory Memorandum

The main object of this Bill is to amend the Beach Authority Act so as to broaden the functions and powers of the Beach Authority with regard to the management and control of public beaches within the islands comprised in the Republic of Mauritius.

2. The Beach Authority has been faced with various challenges in meeting with demands for services at public beaches on one hand and the need to mitigate the adverse effects of climate change on the other hand. With a view to meeting with those demands and considering that the number of public beaches and beach users would increase in the coming years, the Beach Authority will be responsible for the preparation and implementation of Beach Management Plans so as to ensure proper enforcement of all activities carried out on public beaches.

3. Moreover, to have a proper management and control of activities on public beaches, the Bill empowers officers of the Beach Authority and beach enforcement officers, as the case may be, to, inter alia –

- (a) serve a Fixed Penalty Notice on a person in relation to specific offences committed on public beaches;
- (b) enter any commercial premises, tuckshop or any other commercial structure found on a public beach;
- (c) serve a stop order prohibiting any person from carrying out any illegal development or activity on a public beach;
- (d) serve a pulling down order ordering the pulling down of any illegal sign or structure on a public beach.

4. The Bill further provides for matters connected, incidental and related thereto.

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08 April 2022

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ARRANGEMENT OF CLAUSES

Clause

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|---|---|
| 1. Short title | 10. Section 11 of principal Act amended |
| 2. Interpretation | 11. Parts IIA and IIB inserted in principal Act |
| 3. Section 2 of principal Act amended | 12. Part IV of principal Act amended |
| 4. Section 4 of principal Act repealed and replaced | 13. Section 18 of principal Act repealed |
| 5. Section 5 of principal Act repealed and replaced | 14. Section 20 of principal Act repealed |
| 6. Section 6 of principal Act amended | 15. Part V of principal Act amended |
| 7. Section 6A of principal Act amended | 16. Section 21A inserted in principal Act |
| 8. Section 7 of principal Act amended | 17. Section 22 of principal Act amended |
| 9. Section 8 of principal Act amended | 18. Commencement |

A BILL

To amend the Beach Authority Act so as to broaden the functions and powers of the Beach Authority with regard to the management and control of public beaches within the islands comprised in the Republic of Mauritius

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Beach Authority (Amendment) Act 2022.

2. Interpretation

In this Act –

“principal Act” means the Beach Authority Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of “beach enforcement officer”, by repealing paragraph (a) and replacing it by the following paragraph –

(a) means an authorised officer; and

- (b) in the definition of “Minister”, by deleting the words “subject of local government” and replacing them by the words “Beach Authority”;
- (c) in the definition of “public beach”, by repealing paragraph (b) and replacing it by the following paragraph –
 - (b) includes the space between the high-water mark up to a distance of 100 meters from the low-water mark;
- (d) by inserting, in the appropriate alphabetical order, the following new definitions, the full stop at the end of the definition of “public beach” being deleted and replaced by a semicolon –

“activity” means such activity as may be prescribed;

“authorised officer” means an officer of the Authority authorised as such by the Authority;

“commercial premises” means a building or fixed structure used as a tuckshop, snack, restaurant, foodcourt, café or shop;

“financial institution” has the same meaning as in the Banking Act;

“Ministry” means the Ministry responsible for the Beach Authority;

“tuckshop” means a fixed structure, specifically adapted for trading purposes.

4. Section 4 of principal Act repealed and replaced

Section 4 of the principal Act is repealed and replaced by the following section –

4. Object of Authority

The object of the Authority shall be to ensure proper management and control of public beaches in the Island of Mauritius, Rodrigues, Agaléga, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diégo Garcia, and any other island comprised in the Republic of Mauritius.

5. Section 5 of principal Act repealed and replaced

Section 5 of the principal Act is repealed and replaced by the following section –

5. Functions of Authority

The Authority shall, in respect of the management of public beaches, have such functions as are necessary to further most effectively its object, and in particular, shall –

- (a) regulate and monitor activities on public beaches;
- (b) issue beach trader's licence for activities to be undertaken on public beaches;
- (c) ensure the security and safety of users of public beaches;
- (d) prepare and implement beach management plans;
- (e) be responsible for the day to day cleaning of public beaches;
- (f) implement projects relating to –
 - (i) the conservation and protection of the environment of public beaches;
 - (ii) the upliftment and landscaping works on public beaches;
 - (iii) infrastructural development, including provision of amenities for the use of public and their maintenance, on public beaches;
 - (iv) provision of leisure facilities on public beaches;
 - (v) the enhancement of the quality of sea water;
 - (vi) the restoration of native vegetation on public beaches; and
 - (vii) replenishment of public beaches;
- (g) set standards and guidelines for beach management so as to

enable users of public beaches to derive maximum enjoyment for clean, safe and well-equipped beaches whilst safeguarding the environment;

- (h) advise the Minister on all matters relating to the management and development of public beaches.

6. Section 6 of principal Act amended

Section 6 of the principal Act is amended –

- (a) in subsection (2), by deleting the words “in Mauritius or Rodrigues”;
- (b) in subsection (3), in paragraph (b), by deleting the words “in Mauritius or Rodrigues”;
- (c) by adding the following new subsection –

(4) The Authority may, with the approval of the Minister –

- (a) borrow money and raise loans from a financial institution;
- (b) construct and lease commercial premises.

7. Section 6A of principal Act amended

Section 6A of the principal Act is amended, in subsection (2), by repealing paragraph (a) and replacing it by the following paragraph –

- (a) in the case of an authorised officer;

8. Section 7 of principal Act amended

Section 7 of the principal Act is amended, in subsection (1) –

- (a) in paragraph (a), by deleting the words “who shall also be the Chairperson of the Authority and”;
- (b) by inserting, after paragraph (a), the following new paragraph –
 - (aa) a representative of the Ministry;

(c) by repealing paragraph (g) and replacing it by the following paragraph –

(g) a representative of the Ministry responsible for the subject of outer islands;

(d) in paragraph (k), by deleting the words “2 other members” and replacing them by the words “3 other members”.

9. Section 8 of principal Act amended

Section 8 of the principal Act is amended, in subsection (3), by deleting the words “Seven members” and replacing them by the words “Nine members”.

10. Section 11 of principal Act amended

Section 11 of the principal Act is amended –

(a) by numbering the existing provision as subsection (1);

(b) in the newly numbered subsection (1) –

(i) by repealing paragraph (a);

(ii) in paragraph (b), by deleting the words “200,000 rupees” and replacing them by the words “500,000 rupees”;

(c) by adding the following new subsection –

(2) The General Manager may delegate any of his powers to an officer of the Authority.

11. Parts IIA and IIB inserted in principal Act

The principal Act is amended by inserting, after Part II, the following new Parts –

PART IIA – REGULATION OF ACTIVITIES ON PUBLIC BEACH

12A. Activities on public beach

(1) No person shall –

- (a) carry out an activity on a public beach without the authorisation of the Authority;
- (b) trade on a public beach without a beach trader's licence;
- (c) erect a structure or display a sign, or cause to be erected a structure or a sign to be displayed, on any public beach without the authorisation of the Authority.

(2) Notwithstanding subsection (1), the Authority may, to ensure the security and safety of users of public beaches, prohibit the carrying out of an activity, or the erection of a structure or display of a sign, on a public beach.

(3) An application for an authorisation or a beach trader's licence under subsection (1) shall be made in such form and manner as may be prescribed.

(4) The Authority may grant or reject an application.

(5) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

PART IIB – ENFORCEMENT POWERS OF AUTHORITY

12B. Fixed Penalty Notice

(1) Where a person commits a prescribed offence, an authorised officer or police officer who detects the offence shall –

- (a) immediately serve a Fixed Penalty Notice (FPN) on that person calling upon him to pay, not later than 28 days after the date of the offence, the prescribed fine to the appropriate District Court;
- (b) where that person refuses the FPN under paragraph (a), serve, not later than 10 days after the date of the offence, the FPN by sending it by registered post to that person's usual or last known place of residence or business address,

calling upon him to pay, not later than 28 days after service of the notice, the prescribed fine to the appropriate District Court.

- (2) The FPN shall be –
 - (a) in such form as may be prescribed; and
 - (b) drawn up in quadruplicate.

(3) The authorised officer or police officer who detects the offence shall –

- (a) serve or cause to be served the original of the FPN on the offender;
- (b) forward one copy of the FPN to the Commissioner of Police;
- (c) forward one copy of the FPN to the appropriate District Court; and
- (d) retain the fourth copy of the FPN.

12C. Payment of fixed penalty

(1) A person who is served with an FPN pursuant to section 12B shall, not later than 28 days after service of the notice –

- (a) attend the appropriate District Court specified in the FPN;
- (b) produce –
 - (i) the FPN;
 - (ii) his National Identity Card; and
- (c) pay the fine specified in the FPN.

(2) On receipt of payment made under subsection (1), the District Court Officer shall fill in the relevant part of the FPN and, not later than 14 days after the date of payment, return the FPN to the authorised officer or police officer, as the case may be.

12D. Non-payment of fixed penalty

Where a person who has been served with an FPN under section 12B fails to pay the appropriate fine within the time limit specified in the FPN and criminal proceedings are instituted against him for the offence in respect of which he was served with the FPN, he shall, notwithstanding this Act or any other enactment, be liable, on conviction, to a fine which shall not be less than twice the fixed penalty in respect of that offence.

12E. Notice of contravention

(1) Where –

- (a) the Authority has reason to believe that any provision of this Act or regulations made under this Act has been, is being or is likely to be, contravened;
- (b) any eyesore or littering is detected on any public beach,

an authorised officer may serve a notice on that person requiring him to ensure, within such time as may be specified in the notice, that such contravention does not occur or continue, as the case may be.

(2) Any notice served pursuant to subsection (1) –

- (a) shall indicate the provision of this Act or the regulations that is likely to be, or is being, contravened;
- (b) shall be in such form as may be prescribed; and
- (c) shall not preclude any prosecution for any offence.

(3) Any person who fails to comply with any notice served under subsection (1) shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

12F. Stop order

(1) Where a person carries on an activity, or erects a structure or displays a sign, without the relevant authorisation granted, or licence issued, under this Act, an authorised officer may cause to be served, on that person, or any person responsible for the giving of instructions for the carrying out of such activity, or the erection of such structure or display of such sign, a stop order prohibiting the activity, erection or display.

(2) A stop order shall be in such form as may be prescribed.

(3) Any person who fails to comply with a stop order issued under subsection (1) shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

12G. Pulling down notice

(1) Where a person erects a structure or displays a sign without an authorisation under this Act, an authorised officer shall serve on that person a pulling down notice ordering the pulling down of the structure or sign.

(2) A pulling down notice shall, inter alia –

(a) specify the conditions that have not been complied with;

(b) specify the period, not exceeding 30 days, within which the structure or sign shall be pulled down; and

(c) be in such form as may be prescribed.

(3) Where a pulling down notice has been served on a person, that person shall not proceed with erection of the structure or display of the sign referred to in the notice.

(4) No person shall be prosecuted for erecting a structure or displaying a sign without an authorisation under this Act so long as the delay granted in the pulling down notice has not lapsed.

(5) Where a person fails to comply with a pulling down

notice, the Authority shall, notwithstanding any other enactment, pull down the structure or sign.

(6) Any person who fails to comply with a pulling down notice issued under subsection (1) shall commit an offence and shall, on conviction, be liable to pay a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

12H. Powers of entry

(1) A beach enforcement officer may, at any time, enter any commercial premises or any other structure found on a public beach for the purpose of determining whether any provision of this Act or regulations made under this Act is being complied with.

(2) A beach enforcement officer may, on entering any commercial premises or any other structure found on a public beach –

- (a) require the owner or occupier to produce any record or document;
- (b) examine any such record or document, and take copies or extracts therefrom;
- (c) make any plan, take any photograph and carry out any inspection;
- (d) secure any record, document or any other object reasonably required for the enquiry purposes or for the prevention of a contravention;
- (e) require the owner or occupier, or any person employed by him, or any other person on the premises, to give to the officer all reasonable assistance and to answer all reasonable questions either orally or in writing.

(3) For the purpose of carrying out his duties under this section, the beach enforcement officer may bring with him any person or equipment he considers necessary.

12J. Police assistance

The Police shall, in the exercise of the powers conferred upon it by the Police Act, intervene promptly to assist the Authority in the execution of all powers conferred upon the Authority under this Act.

12. Part IV of principal Act amended

Part IV of the principal Act is amended by deleting the heading and replacing it by the following heading –

PART IV – MISCELLANEOUS

13. Section 18 of principal Act repealed

Section 18 of the principal Act is repealed.

14. Section 20 of principal Act repealed

Section 20 of the principal Act is repealed.

15. Part V of principal Act amended

Part V of the principal Act is amended by repealing the heading.

16. Section 21A inserted in principal Act

The principal Act is amended by inserting, after section 21, the following new section –

21A. Offences

Any person who otherwise contravenes this Act or any regulations made under this Act shall commit an offence and shall, on conviction, be liable –

- (a) on a first conviction, to a fine which shall be not less than 10,000 rupees and not more than 20,000 rupees and to imprisonment for a term not exceeding 6 months;
- (b) on a second or subsequent conviction, to a fine which shall not be less than 20,000 rupees and not more than 50,000 rupees and to imprisonment for a term not exceeding one year.

17. Section 22 of principal Act amended

Section 22 of the principal Act is amended, in subsection (2)(c), by deleting the words "10,000 rupees" and replacing them by the words "50,000 rupees".

18. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
