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FIRST SCHEDULE

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CHAPTER 355

REGISTERED SUGAR FACTORIES SMOKE CONTROL

An Act to provide a means whereby sugar factories may be safeguarded against actions of nuisance and applications for interlocutory injunctions in respect of nuisances occasioned by the emission of smoke, and to regulate the emission of smoke from sugar factories afforded such protection.

1961-39.
L.N. 168/
1967.
1998-26.

[2nd January, 1962] Commence-
ment.

1. This Act may be cited as the *Registered Sugar Factories Smoke Control Act*. Short title.

2. (1) For the purposes of this Act, the expression Interpretation.

"court" means the High Court;

"functions" includes powers and duties;

"registered sugar factory" means a sugar factory registered in pursuance of this Act;

"smoke" includes soot, ash, grit and gritty particles;

"sugar factory" means any factory solely operated for the purpose of extracting the juice of the cane plant and of converting the same into sugar or any other product.

(2) For the purposes of this Act, a civil action of nuisance that has been lodged with the court or an application for an interlocutory injunction that has been made to a Judge shall not have been determined until there has expired the time within which an appeal may be lodged against any decision in respect thereof.

Establish-
ment of
Sugar
Factory
Smoke
Control
Board.
1998-26.

3. (1) There shall be established a Board to be known as the Sugar Factories Smoke Control Board which shall consist of a Chairman and four members who shall hold office for three years and shall be eligible for reappointment.

(2) The Minister shall appoint the Chairman and two members of the Board and the remaining two members shall be appointed by the Barbados Agricultural Management Company Ltd.

(3) The Minister may grant the Chairman or any member of the Board leave from his duties, and where leave is granted, the Minister or the Barbados Agricultural Management Company Ltd., as the case may be, may appoint a person to be a temporary member of the Board for the period of that leave.

(4) A temporary member appointed under subsection (3) shall, during the period of his membership of the Board, have all the rights and functions of a member appointed pursuant to subsection (1).

(5) Where any member of the Board dies, resigns, is dismissed or for any period exceeding three months absents himself from Barbados without leave granted under subsection (3), or being present in Barbados, fails to attend 3 consecutive meetings of the Board without leave granted under subsection (3), unless such failure was due to some cause approved by the Board, a vacancy shall arise in the membership of the Board and such vacancy shall be filled by the Minister or by the Barbados Agricultural Management Company Ltd., as the case may be:

1998-26.

Provided that the member appointed to fill such vacancy shall hold office only so long as the member whose office is vacant would have held office.

(6) It shall be the duty of the Board so soon as any vacancy arises in the membership of the Board to inform the Minister, or, as the case may be, the Barbados Agricultural Management Company Ltd., that a vacancy has arisen.

1998-26.

(7) Where at any meeting of the Board the chairman is absent, the members present shall appoint one of the members appointed by the Minister to be chairman of the meeting.

(8) Three members of the Board shall constitute a quorum.

(9) Every member of the Board shall have one vote:

Provided that in the case of an equality of votes at any meeting of the Board, the chairman of that meeting shall have a second or casting vote.

(10) The Board shall in each year, not later than the first day of February, submit to the Minister a report dealing generally with the activities of the Board during the preceding year.

(11) Such report shall contain a statement of the revenue and expenditure of the Board in such preceding year and shall in particular state—

- (a) the number of complaints made under section 14 in the year to which the report relates alleging nuisances occasioned by the emission of smoke from sugar factories which were registered sugar factories in that year;
- (b) any findings or comments by the Board in respect to such complaints;
- (c) the number and names of the sugar factories registered with the Board as registered sugar factories for the year in which the report is submitted; and
- (d) such other matters as the Board may think necessary.

(12) Subject to this Act, the Board may regulate their proceedings and conduct their business in such manner as they shall think fit.

(13) The functions conferred on the Board by this Act shall not be affected by reason only of there being a vacancy in the membership thereof.

4. The Board shall have such functions as are prescribed by this Act and for the better exercise of those functions the Board shall have the right, by themselves or any member of them or any other person authorised in writing by them in that behalf, at all reasonable times to enter any registered sugar factory or any sugar factory in respect of which application for registration is made and inspect any plant or machinery therein with a view to determining the measures taken therein to prevent or counteract any nuisance that may be occasioned by the emission of smoke from such factory.

Functions of
the Board.

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Appointment of officers and servants of the Board, their functions and remuneration.

5. (1) The Board may appoint at such remuneration, if any, as they may with the approval of the Minister determine, such officers and servants with such functions as the Board may, with the like approval, determine.

(2) Any remuneration payable to any person appointed under subsection (1) and all expenses of the Board shall be paid by the Board.

Application for registration as a registered sugar factory.

6. (1) At any time between the thirty-first day of July and the first day of December in any year, the owner or occupier of any sugar factory may make application to the Board for the registration of his factory as a registered sugar factory.

(2) Every application for the registration of a sugar factory as a registered sugar factory shall be in the form set out in the First Schedule and such form may from time to time be altered or amended by order of the Minister.

First Schedule.

(3) On the receipt of an application for the registration of a sugar factory as a registered sugar factory, the Board shall cause notice of the receipt of such application to be published in a daily newspaper.

Objections to registration.

7. (1) Any person who has reason to object to the registration of a sugar factory as a registered sugar factory may, at any time within ten days of publication of the notice mentioned in subsection (3) of section 6, file with the Board a notice of objection in duplicate setting forth the precise grounds of his objection to the registration of the sugar factory in question.

(2) A notice of objection in relation to any sugar factory in respect of which there is not in full force and effect a valid certificate of registration issued under this Act may include as a ground of objection that the person objecting has lodged or is about to lodge with the court a civil action in respect of the sugar factory in question alleging that the emission of smoke from the sugar factory occasions a nuisance or has made application or is about to make application to a Judge for the grant of an interlocutory injunction to restrain the working of the sugar factory in question on the ground that the emission of smoke from the sugar factory occasions a nuisance.

(3) Where a notice of objection is received by the Board, the Board shall cause the duplicate copy thereof to be served on the person by whom application for registration of the sugar factory to which such notice relates was made and such person may within ten days of service of such duplicate copy submit in writing to the Board any comments or observations which he thinks fit to make thereon.

8. (1) Before registering a sugar factory as a registered sugar factory, the Board shall—

Considerations to be taken into account before registering a sugar factory.

- (a) take into consideration all notices of objection received by the Board which relate to the sugar factory and all comments and observations made thereon pursuant to subsection (3) of section 7;
- (b) in the case of any sugar factory in respect of which there is not in full force and effect a valid certificate of registration issued under this Act, ascertain from the Registrar of the Island whether any civil action alleging a nuisance occasioned by the emission of smoke from the sugar factory in question has been lodged with the court and has not been determined and whether any application which has not been determined has been made to a Judge in respect of the sugar factory in question for the grant of an interlocutory injunction to restrain the working of the sugar factory on the ground that the emission of smoke from the sugar factory occasions a nuisance;
- (c) have regard to the extent to which the surrounding area in the vicinity of the locality of the sugar factory is inhabited, the kind of buildings situate therein and the nature of the activities, whether industrial or otherwise, carried on by the inhabitants of such area;
- (d) have regard to the measures, if any, taken in respect of the sugar factory by the owners or other persons concerned with the management thereof for preventing or for counteracting any nuisance by smoke caused by the working of the sugar factory.

9. (1) Where, having regard to all the circumstances of the case, the Board are of the opinion that the immunities Registration.

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granted by this Act in respect of sugar factories registered in accordance with this Act should be granted in respect of a sugar factory for which application for registration has been made under section 6, the Board shall at any time after the expiration of ten days from the date of publication of the notice required by subsection (3) of section 6, inform the person by whom such application was made that they are prepared to register the sugar factory:

Provided that the Board shall not so inform such person in any case where they have ascertained from the Registrar of the Island that a civil action alleging a nuisance occasioned by the emission of smoke from the sugar factory in question has been lodged with the court and has not been determined or that an application which has not been determined has been made to a Judge in respect of the sugar factory in question for the grant of an interlocutory injunction to restrain the working of the sugar factory on the ground that the emission of smoke from the sugar factory occasions a nuisance:

Provided further that where a notice of objection given under section 7 sets forth as a ground of objection that the person objecting is about to lodge with the court a civil action alleging a nuisance occasioned by the emission of smoke from the sugar factory or is about to make application to a Judge for the grant of an interlocutory injunction to restrain the working of the sugar factory on the ground that the emission of smoke from the sugar factory occasions a nuisance, the Board shall so inform the person objecting at the same time as they so inform the person by whom application for registration was made.

(2) Where an applicant for the registration of a sugar factory as a registered sugar factory has been notified by the Board pursuant to subsection (1), then upon payment to the Board of a fee of one hundred and fifty dollars or such sum as the Board may, with the approval of the Minister, determine, at any time before the thirty-first day of December of the year in which such application was made, the Board shall, unless they have ascertained from the Registrar of the Island since so notifying the applicant that a civil action alleging a nuisance occasioned by the emission of smoke from the sugar factory in question has been lodged with the court and has not been determined or that an application which has not been deter-

mined has been made to a Judge for the grant of an interlocutory injunction to restrain the working of the sugar factory in question on the ground that the emission of smoke from the sugar factory occasions a nuisance, register on or before that date the sugar factory in the register of sugar factories and shall issue to the applicant a certificate of registration:

Provided that in every case where the notice required by subsection (1) has also been sent to a person objecting to the registration of the sugar factory, then, subject as aforesaid, the Board shall not in any event register the sugar factory to which such objection related nor issue any such certificate at any time before fourteen days have expired after such notice has been sent to the person objecting.

10. (1) It shall be the duty of the Board to cause to be kept a register of sugar factories in which shall be entered the name and address of every sugar factory in respect of which there is in full force and effect a certificate issued under this Act and any complaints of nuisance occasioned by the emission of smoke from a registered sugar factory that may be made to the Board.

Register of
sugar
factories.

(2) Notice of the registration of a sugar factory shall be served by the Board on the Registrar of the Island as soon as a sugar factory is entered in the register of sugar factories and such notice shall state the date of the registration thereof.

11. (1) Subject to section 13, every certificate issued by the Board on the registration of a sugar factory shall be valid and of full force and effect for a period commencing with the date of the issue thereof and ending either on the thirty-first day of December of the year next following the date of issue of such certificate or the date of issue of another such certificate in respect of such sugar factory, whichever shall be the earlier.

Registration
certificates.

(2) Every certificate issued by the Board on the registration of a sugar factory shall be according to the form in the Second Schedule or a form to the like effect, and on issuing such certificate the Board may impose such terms and conditions with respect to the operation of the sugar factory as they think necessary to prevent or counteract any nuisance that may be occasioned by the emission of smoke from the sugar factory.

Second
Schedule.

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Effect of
registration.

12. (1) During such time as there continues in full force and effect a valid certificate issued under this Act in respect of a sugar factory, no civil action claiming that the emission of smoke from such sugar factory constitutes a nuisance may be lodged or brought in respect of such sugar factory, or, if within that time brought, be at any time whilst such certificate is of full force and effect entertained by any court, and no application for an interlocutory injunction to restrain the working of such sugar factory on the ground that a *prima facie* case may be established that the working thereof causes a nuisance by the emission of smoke from such sugar factory may be made to a Judge, or, if within that time made, be at any time whilst such certificate is of full force and effect entertained by any Judge.

(2) The existence in full force and effect of a valid certificate issued under this Act shall not, in determining for the purposes of the Health Services (Nuisances) Regulations, 1969 whether the best practicable means have been taken for preventing or for counteracting the effect of a nuisance occasioned by the emission of smoke from a sugar factory to which such certificate relates, be a defence in any case where a complaint is lodged under those Regulations in respect of such sugar factory.

S.I. 1969
No. 159.

Revocation
of registration
and
certificate.

S.I. 1969
No. 159.

13. (1) Where at any time during the continuance in full force and effect of a certificate issued under this Act, it is proved on the hearing of any complaint lodged under the Health Services (Nuisances) Regulations, 1969, for a nuisance occasioned by the emission of smoke from the sugar factory to which such certificate relates that such nuisance exists or that although abated it is likely to recur on the same premises, or where during such time the Board are satisfied that a registered sugar factory is without reasonable excuse to the satisfaction of the Board being operated in a manner contrary to any terms and conditions imposed by the Board on the issue of a certificate in respect thereof, the Board shall cause such sugar factory to be struck from the register of sugar factories and shall revoke the certificate in respect thereof and shall cause to be published in at least one issue of a daily newspaper a notice stating the date on which the sugar factory in question ceased to be a registered sugar factory and the date on which the certificate in respect thereof was revoked.

(2) It shall be the duty of the clerk of every magistrate's

court, whenever it is proved on the hearing of a complaint lodged under the Health Services (Nuisances) Regulations, 1969, for a nuisance occasioned by the emission of smoke from a registered sugar factory that such nuisance exists or although abated is likely to recur on the same premises, to forward to the Board a copy of the magistrate's decision.

(3) Where a sugar factory is struck from the register of registered sugar factories and the certificate in respect thereof revoked, the Board shall not again register such sugar factory nor issue a certificate of registration in respect thereof until satisfied that measures have been taken in respect of the sugar factory to prevent or further abate any nuisance that may be occasioned by the emission of smoke:

Provided that the Board may, subject to this Act, again register and issue a certificate of registration in respect of a sugar factory struck from the register of registered sugar factories by reason of the decision of a magistrate on a complaint lodged under the Health Services (Nuisances) Regulations, 1969 for a nuisance occasioned by the emission of smoke in any case where such decision is reversed on appeal, and in that event no fee shall be charged for the re-registration of the sugar factory if such re-registration shall be effected within the period in which the certificate of registration in respect of such sugar factory would have continued to be valid and of full force and effect but for the decision of the magistrate.

(4) A copy of every notice published under subsection (1) shall be served by the Board on the holder of the certificate to which such notice relates and on the Registrar of the Island.

14. (1) Any person who has reason to complain of a nuisance occasioned by the emission of smoke from a registered sugar factory may at any time lodge a complaint in writing with the Board. Complaints.

(2) Where any complaint is made under subsection (1), the Board shall as soon as practicable in every case where they think it necessary so to do, inspect or cause to be inspected the sugar factory to which such complaint relates.

15. (1) It shall be the duty of the Registrar of the Island to keep available for public inspection at all reasonable times in Duties of Registrar.

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the Registration Office of the Island a list of the sugar factories for the time being entered in the register of sugar factories and in respect of which there is in full force and effect a valid certificate of registration.

(2) The production in any court of the certificate of the Registrar of the Island stating that the sugar factory specified therein is a registered sugar factory shall be *prima facie* evidence that the same is so registered and that there is in full force and effect in respect thereof a valid certificate of registration.

Disposal of fees.

16. All fees received by the Board in respect of the registration of sugar factories shall be retained by the Board to meet any expenses incurred by the Board under this Act and to repay to the Accountant-General for payment by him into the Consolidated Fund any sums due and owing in virtue of section 17.

Advances to the Board.

17. (1) The Accountant-General may pay to the Board from moneys voted by Parliament for the purposes of this Act such sums as may be required to meet wholly or in part the annual expenses of the Board.

(2) Any sum paid under subsection (1) may be advanced on such terms and conditions as the Minister responsible for Finance may think fit.

Address of the Board.

18. The Board shall by notice published in the *Official Gazette* and a daily newspaper of the Island state an address to which all applications for registration of sugar factories, notices of objection to such registration, complaints in respect of registered sugar factories and the copy of any decision of a magistrate required by this Act to be forwarded to the Board may be addressed to the Board.

FIRST SCHEDULE

s. 6 (2).

FORM OF APPLICATION FOR THE REGISTRATION OF A SUGAR FACTORY

Registered Sugar Factories Smoke Control Act Chapter 355, of the Laws of Barbados

We/I..... of*
.....owner(s)/occupier(s) of the

sugar factory known as.....Sugar Factory and situate at.....in the parish ofin this Island hereby make application to the Sugar Factory Smoke Control Board for the registration under the Registered Sugar Factories Smoke Control Act of the said sugar factory as a registered sugar factory.

We/I hereby certify that the information given in respect of the questions listed below and annexed to this application is to the best of our/my knowledge true and correct.

Signed.....

Dated

Questions in respect of which the information annexed to an Application is to be given:

- (a) What, if any, measures have been taken in respect of the sugar factory by the owners or other persons concerned with the management thereof for preventing or for counteracting any nuisance by †smoke caused by the working of the sugar factory?
- (b) What is the maximum grinding capacity of the sugar factory?
- (c) What was the average tonnage of canes ground in a period of twenty-four hours during the harvest immediately preceding the making of the application for registration of the sugar factory as a registered sugar factory?
- (d) What type of fuel is used for operating the sugar factory?

* If applicant is a body corporate state registered address in this Island of the Company.
 † "Smoke" includes soot, ash, grit and gritty particles.

SECOND SCHEDULE

s. 11 (2).

FORM OF CERTIFICATE OF REGISTRATION

*Registered Sugar Factories Smoke Control Act
 Chapter 355 of the Laws of Barbados*

This is to certify that the sugar factory known as..... Sugar Factory and situate at.....in the parish of.....in this Island was duly registered by the Sugar Factory Smoke Control Board in accordance with the Registered Sugar Factories Smoke Control Act in the register of sugar factories on the.....day of.....19.....

This certificate shall be valid and be of full force and effect until the thirty-first day of December 19..... or the date of issue of another such

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certificate in respect of the said sugar factory, whichever shall be the earlier, unless—

- **(a)* the Sugar Factory Smoke Control Board are satisfied that the said sugar factory is at any time without reasonable excuse to the satisfaction of the Board being operated in a manner contrary to any of the terms and conditions specified below; or
- (b)* on the hearing of a complaint lodged under the Health Services (Nuisances) Regulations, 1969 for a nuisance occasioned by the emission of smoke from the said sugar factory it is proved that such nuisance exists or that although abated it is likely to recur on the said premises.

* The terms and conditions to which this certificate is made subject are the following—

Signed.....
on behalf of the Sugar Factory Smoke Control Board.

Dated

* Delete if inapplicable.