

MONTSERAT

GEOTHERMAL RESOURCES DEVELOPMENT BILL

No. 3 of 2023

ARRANGEMENT OF SECTIONS

PART 1	5
PRELIMINARY	5
1. Short title and commencement	5
2. Interpretation	6
PART 2	10
<i>GEOTHERMAL RESOURCES STEERING COMMITTEE</i>	10
<i>Division 1 - Purpose</i>	10
3. Purpose.....	10
PART 3	11
<i>GEOTHERMAL RESOURCES STEERING COMMITTEE</i>	11
<i>Division 1 - Establishment</i>	11
4. Constitution	11
5. Alternate members	12
6. Persons unqualified and conflict of interest	12
7. Vacancy.....	13
8. Casting vote.....	13
9. Meetings and quorum.....	13
10. Signature	13
11. Remuneration	13
12. Funds.....	13
<i>Division 2 – Functions, Duties and Powers</i>	14

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

13. Functions and objectives	14
14. Sub-committees	15
15. Delegation by Steering Committee	15
16. Civil Liability	15
17. Report.....	15
PART 4.....	16
GEOTHERMAL RESOURCES.....	16
18. Nature.....	16
19. Content.....	16
20. Ownership	17
PART 5.....	17
MANAGEMENT OF GEOTHERMAL RESOURCE DEVELOPMENT	17
<i>Division 1 - General.....</i>	<i>17</i>
21. Physical Planning Act applies	17
22. Licensing of Utility Services Act	17
23. Landholding Control Act does not apply	17
<i>Division 2— Special geothermal zones</i>	<i>18</i>
24. Designation	18
25. Effect of Designation	18
<i>Division 3— Management of Reconnaissance, Exploration, Use and Export.....</i>	<i>19</i>
26. Reconnaissance	19
27. Exploration.....	19
28. Use	20
29. Export.....	20
PART 6.....	21
GEOTHERMAL RESOURCE ALLOCATION.....	21
30. Power of Cabinet to allocate resources	21
31. No additional permits necessary.....	21
32. Rights accorded by Geothermal Exploration Agreement.....	22
33. Rights accorded by Geothermal Resources Concession.....	24
34. Compulsory acquisition rights	26
35. Statutory rights relating to land.....	26
PART 7.....	27
PROCEDURE FOR OBTAINING A GEOTHERMAL RESOURCE DEVELOPMENT AGREEMENT	27
36. Geothermal resource development agreement	27
37. Submission of application	28

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

38.	Determination of application.....	28
39.	Cabinet’s approval	31
40.	Execution of agreement.....	31
41.	Transfer of interests or rights	32
PART 8.....		33
FEES, BONDS AND ROYALTIES.....		33
42.	Cabinet to set fees and royalties	33
PART 9.....		33
RECORD KEEPING AND PUBLICITY		33
43.	Register	33
44.	Publication in the <i>Gazette</i>	34
PART 10.....		34
COMPLIANCE AND ENFORCEMENT.....		34
<i>Division 1—General</i>		<i>34</i>
45.	Responsible authorities	35
46.	Self-monitoring	35
<i>Division 2—Inspections</i>		<i>36</i>
47.	Designation of inspectors	36
48.	Powers of inspectors	36
<i>Division 3—Administrative Monetary Penalties and Other Sanctions</i> ..		<i>38</i>
49.	Commission of violation	38
50.	Notice of intention to impose penalty	39
51.	Penalty notice	40
52.	Appeal to the High Court	41
53.	Publication	41
54.	Debts to the Crown.....	42
55.	Common law principles	42
56.	Time limit.....	42
57.	Invalidation of agreement.....	43
58.	Forfeiture.....	43
<i>Division 4—Alternative Dispute Resolution</i>		<i>44</i>
59.	Dispute settlement.....	44
PART 11.....		45
MISCELLANEOUS		45
60.	Statutory provision obligatory.....	45
61.	Schedule	45
62.	Regulations.....	45
63.	Consequential and transitional provisions.....	47

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

SCHEDULE48

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

I ASSENT

GOVERNOR

DATE:

M O N T S E R R A T

No. 3 of 2023

A BILL FOR

AN ACT TO PROVIDE FOR THE DEVELOPMENT, EXPLORATION AND USE
OF GEOTHERMAL RESOURCES AND FOR RELATED MATTERS.

BE IT ENACTED by The King's Most Excellent Majesty, by and
with the advice and consent of the Legislative Assembly of
Montserrat, and by the Authority of the same as follows—

PART 1

PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Geothermal Resources
Development Act, 2023.

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (2) This Act shall come into force on such date as the Governor may appoint by Order published in the *Gazette*.

2. Interpretation

- (1) In this Act—

“**application fee**” means the application fee set by Order of the Minister under section 42;

“**bid**” means a proposal submitted for carrying out the terms of reference in the tender documents;

“**concession area**” is the land, described by parameters related to its surface area, or the area that the geothermal resource developer is authorised to develop or carry out geothermal resource development under the Geothermal Resources Concession;

“**development**” has the same meaning as in the Physical Planning Act;

“**distribution**” has the same meaning as in the Licensing of Utility Services Act;

“**electricity supply control**” means the terms or conditions required or authorised by the Licensing of Utility Services Act to be imposed on holders of a licence that is referred to in Part 2 of that Act;

“**enhancement**” means an activity performed to improve production or injection capacity of a well;

“**exploration**” means activity that demonstrates the dimensions, positions, characteristics and extent of geothermal resources by geological, geochemical and geophysical studies and surveys and includes drilling, testing and enhancement of shallow temperature-gradient wells or deep exploratory wells;

“**financial year**” means a period of twelve months ending on 31 March;

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

“generation” means production of electrical energy from other forms of energy;

“geothermal energy” means the energy derived or derivable from and produced within the earth by natural heat phenomena, and includes geothermal water;

“Geothermal Exploration Agreement” means a development agreement referred to in sections 30(1)(a) and 32;

“geothermal resource developer” means a person who is authorised to undertake geothermal resource development under a Geothermal Exploration Agreement or Geothermal Resources Concession, and includes an entity referred to in section 30(3);

“geothermal resource development” means exploration or use of geothermal resources;

“geothermal resource development agreement” means a development agreement referred to in section 30(1);

“geothermal resource development application” means an application referred to in sections 37 and 38;

“Geothermal Resources Concession” means a development agreement referred to in sections 30(1)(b) and 33;

“geothermal water” means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius or more, and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena;

“Licensing of Utility Services Act” means the Licensing of Utility Services Act (Cap 18.02);

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

“**Minister**” means the Minister responsible for energy;

“**person not belonging to Montserrat**” means a person other than a person belonging to Montserrat, and includes a corporation incorporated in Montserrat if it is under the control of a person or persons not belonging to Montserrat as defined in, and also every corporation incorporated in any other country; but shall not include any of the subjects or citizens of a foreign State upon whom there has been conferred by treaty the right to hold land in Montserrat;

“**Physical Planning Act**” means the Physical Planning Act (Cap. 8.03);

“**Planning and Development Authority**” means the Planning and Development Authority established under section 3 of the Physical Planning Act;

“**planning and environmental controls**” means the conditions and limitations on developments in general, or geothermal resource developments in particular, required or authorised by the Physical Planning Act or Regulations made under it;

“**reconnaissance**” means activity which has minimal impact on the environment of the land that determines whether the land may be a source of geothermal resources, and does not include drilling;

“**Register**” means the register maintained by the Steering Committee in accordance with section 43;

“**Regulator**” means the Energy Unit or Independent Regulatory Commission;

“**special geothermal zone**” means the land described in terms of its surface area and subsurface land, designated as such under sections 24 and 25;

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

“Steering Committee” means the Geothermal Resources Steering Committee established under section 4;

“sustainable development and use” means managing the use, development, and protection of geothermal resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of geothermal resources to meet the reasonably foreseeable needs of future generations;
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any material adverse effects of activities on the environment;

“tender documents” means the documents containing the terms of reference for, and relevant details of, the tender process;

“tender process” means a competitive selection process, the rules, including selection criteria, of which are issued by the Steering Committee for the purpose of allocating geothermal resource applications in special geothermal zones or if recommended by the Steering Committee, outside a special geothermal zone pursuant to section 39(4);

“testing”, as it relates to wells, means the temporary use of a geothermal resource for the discharge of fluid, steam and gas from wells for the purpose of ascertaining the production capacity of the

well and chemistry of the geothermal well discharge; and

“use of a geothermal resource” means accessing the geothermal resource for the purpose of enjoying it, and drawing from it any of the profit, utility and advantage which it may produce, including geothermal energy.

PART 2
GEOHERMAL RESOURCES STEERING COMMITTEE
Division 1 - Purpose

3. Purpose

- (1) The purpose of this Act is—
- (a) to provide for the economic, orderly, efficient and responsible development in the public interest of geothermal resources on Montserrat;
 - (b) to secure the observance of safe and efficient practices in the public interest in the development of geothermal resources on Montserrat;
 - (c) to provide for the responsible management of wells, facilities, well sites and facility sites throughout their life cycles;
 - (d) to manage the development of geothermal resources as between licensees and in relation to the development and conservation of other energy resources on Montserrat;
 - (e) to control pollution and to ensure the protection of the environment and public safety in the development of geothermal resources on Montserrat; and
 - (f) to provide for the timely and useful collection, appraisal and dissemination of information regarding geothermal resources on Montserrat.

PART 3
GEOHERMAL RESOURCES STEERING COMMITTEE

Division 1 - Establishment

4. Constitution

- (1) There is hereby established a statutory board to be known as the Geothermal Resources Steering Committee, comprising the following seven members—
 - (a) the Permanent Secretary of the Ministry with responsibility for energy;
 - (b) the Director of Energy;
 - (c) the Chief Physical Planner of the Physical Planning Unit;
 - (d) the Director of Public Works;
 - (e) a public officer who is a senior Attorney-at-law nominated by the Attorney General; and
 - (f) a maximum of two other persons appointed by the Minister, being senior technical public officers or other professionals not in the public service, with relevant knowledge or expertise.
- (2) The Permanent Secretary of the Ministry with responsibility for energy shall be the Chairperson.
- (3) The Minister shall appoint a Deputy Chairperson from among the members of the Steering Committee.
- (4) The Minister shall appoint a public officer within the Ministry with responsibility for energy as secretary of the Steering Committee.
- (5) The names of the members and their title, if any, shall be published in the *Gazette*.
- (6) A member appointed under subsection (1) (e) and (f) shall hold office for a term of three years.

- (7) In the case of the absence or inability of the Chairperson to act, the Deputy Chairperson shall exercise the functions of the Chairperson.

5. Alternate members

- (1) The alternate of a member of the Steering Committee under section 4(a), (b), (c) or (d) shall be the member's immediate junior.
- (2) The Minister may appoint persons to be alternate members for the two members appointed by the Minister.
- (3) The alternate of a member of the Steering Committee may act temporarily in the place of that member if that member is absent, incapacitated or ineligible to perform the duties of a member.

6. Persons unqualified and conflict of interest

- (1) A person is not qualified for appointment as a member of the Steering Committee if he or she—
- (a) is of unsound mind;
- (b) is an undischarged bankrupt; or
- (c) has been convicted of a serious offence.
- (2) A member of the Steering Committee shall inform the Steering Committee of any matter in which he or she has, either directly or indirectly, personally or by his or her spouse, partner, business associate or company, any pecuniary or business interest, and the member shall take no part, directly or indirectly, in any consideration or decision of the Steering Committee on that matter.
- (3) For the purposes of subsection (1)(c), “**serious offence**” means an offence for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of an enactment be sentenced on conviction to imprisonment for a term of five years; and the expression includes an attempt to commit such offence.

7. Vacancy

If a vacancy occurs in the membership for a member appointed under section 4(1)(f), an alternate may be appointed to fill the vacant position temporarily until another person is appointed to the vacant position on a permanent basis.

8. Casting vote

The Chairperson has the right to vote at meetings of the Steering Committee, and, in the case of an equal division, also has a casting vote.

9. Meetings and quorum

- (1) The Steering Committee shall meet at the times that it considers necessary or expedient for the transaction of business and such meetings shall be held at the place that the Steering Committee determines.
- (2) A majority of all members constitute a quorum, provided that under no circumstance shall less than four members constitute a quorum.

10. Signature

All decisions made by the Steering Committee shall be signed by the Chairperson and the Secretary or the Deputy Chairperson and the Secretary.

11. Remuneration

A member of the Steering Committee appointed under section 4(1)(f) shall be paid remuneration as may be prescribed by Order of the Governor acting on the advice of Cabinet.

12. Funds

- (1) A budget for the operations of the Steering Committee shall be a charge on the Consolidated Fund.

- (2) The fees, royalties, bonds and administrative monetary penalties paid under this Act shall be paid into the Consolidated Fund.

Division 2 – Functions, Duties and Powers

13. Functions and objectives

- (1) The functions of the Steering Committee are to advise the Minister respecting —
- (a) policy formulation for the promotion, sustainable development and use of geothermal resources including policy relating to regional and international co-operation in such matters;
 - (b) the determination of geothermal resource development applications in accordance with section 38;
 - (c) the allocation and demarcation of geothermal resource blocks;
 - (d) the negotiation of regional and international initiatives and agreements relating to geothermal resources;
 - (e) public education and training on geothermal resources and related matters;
 - (f) setting of fees, royalties and bonds to be charged under this Act; and
 - (g) other functions that the Minister may assign.
- (2) In carrying out its functions the Steering Committee shall seek to promote—
- (a) sustainable development and use of Montserrat’s geothermal resources, for the benefit of the people of Montserrat;
 - (b) provision of low cost, secure energy in Montserrat, at stable prices;

- (c) investment and competition in the development of geothermal resources, where applicable; and
- (d) implementation of best practices in the operation of geothermal facilities.

14. Sub-committees

- (1) The Steering Committee may appoint sub-committees to examine and report to it on any matter relating to any of its functions under this Act.
- (2) A sub-committee shall include not less than two members of the Steering Committee, and may include persons who are not members.
- (3) A sub-committee shall not exceed seven members.
- (4) The Steering Committee shall determine the composition and functions of a sub-committee.

15. Delegation by Steering Committee

The Steering Committee may delegate, in writing, to a sub-committee or to a member, the exercise of any power or the performance of any duty vested in it by this Act, except the power to delegate under this section.

16. Civil Liability

No civil liability shall attach to any member of the Steering Committee or sub-committee in respect of anything done, or omitted, in good faith under this Act.

17. Report

- (1) The Steering Committee shall submit to the Minister any information that the Governor acting on the advice of Cabinet may require regarding its operations.
- (2) The Steering Committee shall submit to the Minister within three months of the end of each financial year a report that includes—

- (a) an assessment of the state of the development of geothermal resources, and its impact and significance for the development of Montserrat;
 - (b) a description of the activities undertaken by the Steering Committee; and
 - (c) any other matter that the Minister may require.
- (3) The Minister shall cause a copy of the report to be laid before the Legislative Assembly within 90 days of the commencement of each financial year.

PART 4

GEOHERMAL RESOURCES

18. Nature

- (1) A geothermal resource is *sui generis* property and the rules relating to it, including the creation, acquisition, transfer, exercise, termination of rights respecting it, are set out in this Act.
- (2) For the avoidance of doubt, a geothermal resource is not a mineral, nor a water resource, nor real property.

19. Content

A geothermal resource comprises geothermal energy and includes—

- (a) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines;
- (b) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;
- (c) heat or associated energy found in geothermal formations; and
- (d) any by-product derived from the products set out under paragraphs (a), (b) and (c).

20. Ownership

Notwithstanding anything contained in any law or title of land, geothermal resources in, or under any land of whatsoever ownership or tenure are deemed to be, and to always have been, vested in, and are subject to the control of, the Crown and the Governor acting on the advice of Cabinet, on behalf of the Crown, may grant rights to a geothermal resource developer.

PART 5

**MANAGEMENT OF GEOTHERMAL RESOURCE
DEVELOPMENT**

Division 1 - General

21. Physical Planning Act applies

For the avoidance of doubt, a geothermal resource development is a development within the meaning of the Physical Planning Act for which development permission shall be obtained in accordance with the procedure of Part 4 of that Act, except to the extent modified or excluded by this Act and Regulations made under this Act.

22. Licensing of Utility Services Act

For the avoidance of doubt, when electricity is derived from a geothermal resource, the generation, transmission or distribution and supply shall be authorised in accordance with Part 1 and 2 of the Licensing of Utility Services Act, except to the extent modified or excluded by this Act and Regulations made under this Act.

23. Landholding Control Act does not apply

(1) A geothermal resource is not land within the meaning of the Landholding Control Act (Cap 8.02) and a geothermal

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

resource developer who is a person not belonging to Montserrat is consequently not subject to the provisions of the Landholding Control Act (Cap 8.02) in respect of his rights in respect of a geothermal resource.

- (2) The Landholding Control Act (Cap 8.02) does not apply to a geothermal resource developer in respect of any interest in land that the developer is authorised to hold under the developer's geothermal resources development agreement.

Division 2— Special geothermal zones

24. Designation

- (1) The Governor acting on the advice of Cabinet may, by notice in the *Gazette*, designate any place, whether surface area or subsurface land or both, to be a special geothermal zone if—
- (a) the Steering Committee advises that, on the basis of the information it possesses, the place is likely to be a source of geothermal resources; and
 - (b) the Governor acting on the advice of Cabinet reasonably believes that it is in the public interest that the right to use geothermal resources in that place be allocated, subject to section 32(5), through a tender process.
- (2) The designation of an area as a special geothermal zone shall remain unchanged until any relevant geothermal resource development agreement is deemed abandoned; and an area that is located outside a special geothermal zone and subject to a geothermal resource development agreement may not be designated as a special geothermal zone until the relevant geothermal resource development agreement is deemed abandoned.

25. Effect of Designation

If a special geothermal zone is designated under section 24—

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (a) subject to section 32(5) or any contrary recommendation of the Steering Committee, no right to explore or use geothermal resources in any part of that zone shall, be allocated except on application in the form of a bid for a geothermal resource development agreement under the tender process described in sections 36 and 38, as applicable; and
- (b) the Planning and Development Authority shall not approve any development in that zone that is inconsistent with uses described in this Act.

Division 3— Management of Reconnaissance, Exploration, Use and Export

26. Reconnaissance

- (1) A person may conduct reconnaissance in any part of Montserrat.
- (2) A person under subsection (1)—
 - (a) is subject to the law relating to trespass and any other law relating to rights of access to, or use of land;
 - (b) obtains no rights or interest in respect of any geothermal resources identified through the activities; and
 - (c) has no entitlement to any privilege or priority in respect of a geothermal resource development agreement.

27. Exploration

A person shall not, in any part of Montserrat, conduct exploration for geothermal resources unless the person is authorised under a Geothermal Exploration Agreement.

28. Use

- (1) A person shall not use any geothermal resources except to the extent authorised under the terms and conditions contained in a Geothermal Resources Concession.
- (2) In accordance with the sustainable development and use of geothermal resources, where practicable and appropriate to the production method, field characteristics and safety considerations, the injection of extracted geothermal fluid shall be required or authorised under the terms and conditions contained in a Geothermal Resources Concession.

29. Export

- (1) A person shall not export electricity generated from geothermal resources except if the Governor acting on the advice of Cabinet, after consultation with the Steering Committee and Regulator, authorises such export under —
 - (a) a geothermal resource development agreement; or
 - (b) a specific contract authorising export of electricity.
- (2) Where the export of electricity generated from geothermal resources is authorised, the export shall be on the terms and subject to the conditions imposed by the geothermal resource development agreement or the specific contract authorising the export of electricity.
- (3) The terms and conditions may include a requirement to pay royalties based on the use of geothermal resources or on the export of electricity, or both, as the Governor acting on the advice of Cabinet, after consultation with the Steering Committee, Regulator, and the Financial Secretary, determines.

PART 6

GEOHERMAL RESOURCE ALLOCATION

30. Power of Cabinet to allocate resources

- (1) Subject to sections 39 and 40 and to this section, the Governor acting on the advice of Cabinet may, on behalf of the Government of Montserrat, enter into any of the following development agreements for geothermal resource development—
 - (a) a Geothermal Exploration Agreement authorising the exploration for geothermal resources; or
 - (b) a Geothermal Resources Concession authorising the use of geothermal resources.
- (2) The Governor acting on the advice of Cabinet may enter into an agreement under subsection (1) only if the application for authorisation to carry on geothermal resource development is made in accordance with Part 7.
- (3) This section applies even though the geothermal resource developer—
 - (a) carries on the development as a contractor of the Government of Montserrat using funds from the Consolidated Fund; or
 - (b) is an entity that is partly owned or controlled by the Government of Montserrat.

31. No additional permits necessary

A geothermal resource development agreement executed in accordance with section 40 constitutes—

- (a) development permission and building permission required by section 12 of the Physical Planning Act for the geothermal resource development, to the extent permitted in the geothermal resource development agreement, and subject to the planning and environmental controls that are set out in the

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

Physical Planning Act, except as modified or excluded by this Act or Regulations made under this Act;

- (b) authorisation required by section 3(1) of the Licensing of Utility Services Act for any one or more of the following activities to the extent authorised in the geothermal resource development agreement, and subject to the electricity supply controls that are set out in the Licensing of Utility Services Act, except as modified or excluded by this Act or Regulations made under this Act—
 - (i) generation;
 - (ii) transmission;
 - (iii) distribution and supply;
- (c) the certificate of approval required by section 17 of the Conservation and Environmental Management Act (Cap. 12.03), for the geothermal resource development to the extent permitted in the geothermal resource development agreement, and subject to the environmental health controls that are set out in the Conservation and Environmental Management Act, (Cap. 12.03), except as modified or excluded by this Act or Regulations made under this Act.

32. Rights accorded by Geothermal Exploration Agreement

- (1) A Geothermal Exploration Agreement entitles the geothermal resource developer the exclusive right to carry on exploration activities for a term, not exceeding three years, stated in the Geothermal Exploration Agreement, subject to the planning and environmental controls that are set out in the Physical Planning Act except as modified or excluded by this Act or Regulations made under this Act, and subject further to the following—
 - (a) the exploration shall be—
 - (i) limited to the area accorded under the Geothermal Exploration Agreement;

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (ii) in accordance with the methodology or technology approved in the Geothermal Exploration Agreement, if any; and
 - (iii) in accordance with any other term or condition not contrary to subparagraphs (i) and (ii), contained in the Geothermal Exploration Agreement;
 - (b) the geothermal resource developer shall pay the fees and bonds set out in the Geothermal Exploration Agreement within the time required and shall comply with the other terms and conditions contained in the Geothermal Exploration Agreement; and
 - (c) the Geothermal Exploration Agreement may be renewed on the application of the geothermal resource developer, for a term, not exceeding two years, set out in the Geothermal Exploration Agreement, if the Steering Committee so recommends in accordance with section 38.
- (2) A Geothermal Exploration Agreement entitles the geothermal resource developer to obtain the land, including easements, acquired under section 34 for the purpose of the geothermal resource development on payment of the price and in accordance with the statutory rights set out in section 35.
- (3) A Geothermal Exploration Agreement shall only require a geothermal resource developer to prepare an environmental impact assessment ahead of a well drilling and testing programme.
- (4) Subject to subsection (5), in a special geothermal zone, or subject to subsection (6), in an area not located in a special geothermal zone, the geothermal resource developer obtains no rights or interest in respect of any geothermal resources discovered.
- (5) In a special geothermal zone, a geothermal resource developer who is authorised to undertake geothermal resource development under a Geothermal Exploration

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

Agreement has the right to apply for and be granted a Geothermal Resources Concession through a non-competitive negotiated process under Part 6.

- (6) If a geothermal resource developer operating under a Geothermal Exploration Agreement in an area not located in a special geothermal zone desires to use any geothermal resource within the area accorded under the Geothermal Exploration Agreement, the geothermal resource developer has the right to apply for and be granted a Geothermal Resources Concession through a non-competitive negotiated process under Part 6.
- (7) The Government of Montserrat shall be represented in the negotiation of any Geothermal Exploration Agreement by the Steering Committee or any other committee appointed by the Governor acting on the advice of Cabinet for that purpose.
- (8) The rights set out in this section are deemed abandoned—
 - (a) in the circumstances set out in the Geothermal Exploration Agreement; or
 - (b) in the absence of contractual provisions in the Geothermal Exploration Agreement referred to under paragraph (a), if there is no exploration for a period of two years or more from the execution of the Geothermal Exploration Agreement.

33. Rights accorded by Geothermal Resources Concession

- (1) A Geothermal Resources Concession entitles the geothermal resource developer the exclusive right to use geothermal resources in a concession area for the term, not exceeding forty years, set out in the Geothermal Resources Concession, subject to the electricity supply controls which are set out in the Licensing of Utility Services Act, except as modified or excluded by this Act or Regulations made under this Act, and subject further to the following—
 - (a) the use shall be—

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (i) limited to geothermal resources located in the concession area accorded under the Geothermal Resources Concession;
 - (ii) for the purposes authorised in the Geothermal Resources Concession;
 - (iii) with the methodology or technology approved in the Geothermal Resources Concession; and
 - (iv) in accordance with any other term or condition not contrary to subparagraphs (i) to (iii), in the Geothermal Resources Concession;
 - (b) the geothermal resource developer shall pay the fees, bonds and royalties set out in the Geothermal Resources Concession within the time required and shall comply with the other terms and conditions contained in the Geothermal Resources Concession;
 - (c) the Geothermal Resources Concession may be renewed on the application of the geothermal resource developer, for a term, not exceeding ten years in the first instance, set out in the Geothermal Resources Concession, if the Steering Committee so recommends in accordance with section 38.
- (2) A Geothermal Resources Concession also entitles the geothermal resource developer to—
- (a) obtain the land, including easements, acquired under section 34 for the purpose of the geothermal resource development on payment of the price and the statutory rights set out in that section; and
 - (b) export electricity generated from geothermal resources if authorised by the Governor acting on the advice of Cabinet in accordance with section 29.
- (3) The Government of Montserrat shall be represented in the negotiation of any Geothermal Resources Concession by the Steering Committee or any other committee appointed by the Governor acting on the advice of Cabinet for that purpose.

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (4) The rights set out in this section are deemed abandoned—
 - (a) in the circumstances set out in the Geothermal Exploration Agreement; or
 - (b) in absence of contractual provisions under paragraph (a), if the use is not started within 3 years of the execution of the Geothermal Resources Concession.

34. Compulsory acquisition rights

- (1) Where the Steering Committee advises the Governor acting on the advice of Cabinet that land is required for a geothermal resource development the Government of Montserrat may—
 - (a) compulsorily acquire that land in accordance with the Land Acquisition Act (Cap 8.08) as being land required for public purposes within the meaning of that Act; or
 - (b) acquire an easement over the land in a manner consistent with the Registered Land Act (Cap 8.01).
- (2) Land or any easement in respect of land acquired under this section and transferred to a geothermal resource developer shall be transferred to the developer for not less than the cost of acquisition.

35. Statutory rights relating to land

- (1) Section 12 (2)(a) to (d), of the Licensing of Utility Services Act applies to a geothermal resource developer in respect of all of the apparatus of the geothermal resource developer used in, or in the installation of, the developer's authorised geothermal resource development as if the word "licensee" were replaced with "geothermal resource developer".
- (2) Section 12(1), (2)(a) to (e), (3) and (4) of the Licensing of Utility Services Act applies only to a geothermal resource developer who is authorised to generate, transmit, distribute or supply electricity.

PART 7

**PROCEDURE FOR OBTAINING A GEOTHERMAL
RESOURCE DEVELOPMENT AGREEMENT**

36. Geothermal resource development agreement

- (1) An application for a geothermal resource development agreement shall be made—
- (a) in writing if—
 - (i) the area to be developed is not located in a special geothermal zone;
 - (ii) the application is for the grant or renewal of a Geothermal Exploration Agreement or Geothermal Resources Concession; or
 - (iii) the application is for a Geothermal Resources Concession in a special geothermal zone through a non-competitive negotiated process pursuant to section 32(5); or
 - (b) subject to subsection (1)(a)(iii), in the form of a bid as part of a tender process in accordance with tender documents issued by the Steering Committee in the event the area to be developed is located within a special geothermal zone.
- (2) An application shall be accompanied by the application fee set by Order of the Governor acting on the advice of Cabinet under section 41, and contain the information required—
- (a) in the case of an application under subsection (1)(b) by the tender documents prepared by the Steering Committee;
 - (b) under section 18(1) of the Physical Planning Act except to the extent excluded by paragraph (a); and
 - (c) any other information and particulars that may be prescribed by the Steering Committee.

37. Submission of application

An application under this Part shall be submitted to the Steering Committee.

38. Determination of application

- (1) In this section “**application**” means an application for the grant or renewal of a geothermal resource development agreement.
- (2) The Steering Committee shall review an application in accordance with the procedure set out in the Schedule and recommend in respect of an application for—
 - (a) the grant of a geothermal resource development agreement in respect of an area not located in a special geothermal zone, or in respect of an area located in a special geothermal zone through a non-competitive negotiated process pursuant to section 32 (5), whether approval should be given by the Governor acting on the advice of Cabinet;
 - (b) the grant of a geothermal resource development agreement in respect of an area located within a special geothermal zone or in in respect of an area not located in a special geothermal zone pursuant to section 39(4)—
 - (i) the list of bidders who qualify for approval in descending order starting with the highest evaluated bidder;
 - (ii) the parameters of the concession area to be accorded under the geothermal resource development agreement; and
 - (c) renewal of a geothermal resource development agreement, whether approval should be given by the Governor acting on the advice of Cabinet and the term of the renewal.

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (3) The Steering Committee shall not recommend an application under subsection (2) unless the Steering Committee is satisfied—
- (a) on consultation with the Planning and Development Authority, that the application qualifies for planning approval having regard to the considerations set out in section 19 (1)(a) of the Physical Planning Act and any applicable planning and environmental standards;
 - (b) the application does not pose an unacceptable threat to national security and establishes an acceptable balance among competing developers, if any, of the geothermal resources and competing users of land affected by the application;
 - (c) on consultation with the Regulator that the applicant meets the criteria, if any, established by the Regulator;
 - (d) the applicant has the necessary legal capacity, financial standing, technical expertise and managerial competence to carry out efficiently, any electricity generation, transmission, or distribution as required by Part 2 of the Licensing of Utility Services Act which the geothermal resource development agreement may authorise;
 - (e) on consultation with the Regulator, that the geothermal resource developer has, in the case of an application for renewal, during the preceding terms of the geothermal resource development agreement, continued to invest in the sustainable development and use of the resource, complied with requirements of applicable environmental and planning regulations, and met the specific terms and conditions set out in the geothermal resource development agreement.
- (4) Notwithstanding any other provisions of this section, in order to encourage the sustainable development and use of the resource—
- (a) when a geothermal resource developer has—

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (i) during the preceding terms of the geothermal resource development agreement, continued to invest in the sustainable development and use of the resource, complied with requirements of applicable environmental and planning regulations, and met the specific terms and conditions set out in the geothermal resource development agreement, and
 - (ii) demonstrated the existence of geothermal resources sufficient for commercial use within the area accorded under a Geothermal Exploration Agreement;
 - the Steering Committee shall recommend the grant of a Geothermal Resources Concession; and
 - (b) when a geothermal resource developer has complied with subsection (3)(e), the Steering Committee shall recommend the renewal of the developer's Geothermal Resources Concession.
- (5) The objectives in deciding on the parameters of the concession area for the purpose of subsection (2)(b)(ii) include—
- (a) allowing for the sustainable development and use of the geothermal resources;
 - (b) limiting conflict between geothermal resources users;
 - (c) fairly rewarding the investment, if any, that parties have made in exploration leading to the finding of useable geothermal resources.
- (6) The Steering Committee shall forward recommendations to the applicant promptly following communication of them to the Governor acting on the advice of Cabinet.
- (7) For the purpose of this section, the Steering Committee, or any person authorised by it in writing, has the powers of entry, examination and inquiries conferred by section 60 of the Physical Planning Act for the purpose set out in section 60 (1)(a) and (b) of that Act.

39. Cabinet's approval

- (1) The Steering Committee shall submit its recommendation in respect of an application to the Governor acting on the advice of Cabinet for approval in the time frame required under the Schedule.
- (2) The Governor acting on the advice of Cabinet may give in principle approval in respect of an applicant recommended under section 38, pending the successful negotiations of the terms and conditions of a geothermal resource development agreement with the applicant.
- (3) Subject to section 32(5), in the case of an application in respect of an area located within a special geothermal zone, the parties are bound by the terms in the tender documents and the bid, where applicable, but may negotiate in respect of other terms and conditions which are not inconsistent.
- (4) If the Governor acting on the advice of Cabinet does not approve an application in respect of an applicant recommended under section 38 for a particular area, be it within or outside a special geothermal zone, the Steering Committee may recommend the allocation of the right to carry out geothermal resource development through a tender process.

40. Execution of agreement

- (1) If the Governor acting on the advice of Cabinet gives final approval to an application, a geothermal resource development agreement shall, to be valid, be executed by—
 - (a) the Government of Montserrat, represented by the Minister, as party to it; and
 - (b) the applicant, as party to it.
- (2) The details respecting sustainable development and use as it relates to a geothermal resource developer may be specified in the relevant geothermal resource development agreement.

41. Transfer of interests or rights

- (1) A geothermal resource developer who wishes to transfer their geothermal resource development agreement to a third party shall obtain the prior written consent of Governor acting on the advice of Cabinet under this section.
- (2) Subject to subsection (3), an application for consent to a transfer shall—
 - (a) be made jointly by the geothermal resource developer and the transferee; and
 - (b) be made within three months after the date of the agreement that contains the transfer; and
 - (c) be accompanied by a copy of the agreement that contains the transfer.
- (3) The transferee shall provide to the Governor acting on the advice of Cabinet—
 - (a) a statement, signed by or on behalf of the transferee, in which the person signing the agreement shall confirm that the transferee has the financial capability to meet its obligations under the geothermal resource development agreement; and
 - (b) any specified supporting information.
- (4) If the transferee is a company, a statement of financial capability shall be signed on behalf of the company by at least two directors of the company or, if the company has only one director, by that director.
- (5) Before granting consent, the Governor acting on the advice of Cabinet shall consult with the Steering Committee and be satisfied that the transferee is likely to be able to comply with the terms and conditions of, and give proper effect to, the geothermal resource development agreement.
- (6) The Governor acting on the advice of Cabinet shall record the transfer consented to under this section on the

geothermal resource development agreement concerned and publish notice of the transfer in the *Gazette*.

PART 8

FEES, BONDS AND ROYALTIES

42. Cabinet to set fees and royalties

- (1) The Governor acting on the advice of Cabinet in consultation with Steering Committee shall, by Order published in the *Gazette*, set application fees, annual fees and bonds to be payable by geothermal resource developers and the fees and bonds shall apply, unless otherwise agreed to in the geothermal resource development agreement.
- (2) The Governor acting on the advice of Cabinet, after consultation with the Steering Committee and the Regulator may, by Order published in the *Gazette*, set royalties (if any) that geothermal resource developers are required to pay and the royalties shall apply, unless otherwise agreed to in the terms and conditions of a geothermal resource development agreement.

PART 9

RECORD KEEPING AND PUBLICITY

43. Register

- (1) The Steering Committee shall maintain a Register of all geothermal resource development plans, special geothermal zones, geothermal resource development applications, and geothermal resource development agreement.
- (2) The Register shall contain the particulars of applications under this Act and an indication of whether or not the Governor acting on the advice of Cabinet's approval was given and in entering information into the register, the

Steering Committee shall take full account of the need to protect confidential and commercially sensitive information and shall, where necessary, suitably restrict disclosure of such information to achieve such goal.

- (3) Subject to subsection (2), the Register shall be a public register and shall be open for inspection by members of the public at such times and on such days as the Steering Committee determines.
- (4) A person may, on payment of a fee to be determined by the Steering Committee, require the Steering Committee to supply such person with a copy or an extract, certified by the Steering Committee as a true copy or extract, from any part of the Register.
- (5) Notwithstanding subsection (1), the Governor acting on the advice of Cabinet may by Order published in the *Gazette* prescribe other information relating to the Act that shall be maintained in the Register.

44. Publication in the *Gazette*

The Steering Committee shall cause to be published in the *Gazette*, within six weeks of the occurrence, the following—

- (a) notice of geothermal resource development applications;
- (b) recommendations made under section 38;
- (c) notice of the execution, expiration, suspension, surrender, modification, transfer, revocation, or extension of geothermal resource development agreements.

PART 10

COMPLIANCE AND ENFORCEMENT

Division 1—General

45. Responsible authorities

- (1) The Steering Committee shall—
- (a) assist the Planning and Development Authority in the monitoring and enforcement of compliance with planning and environmental controls, subject to subsection (2);
 - (b) assist the Regulator in the monitoring and enforcement of compliance with the electricity supply controls, ensuring the incorporation of health and safety guidance in relation to electricity supply; and
 - (c) monitor and enforce any term or condition in a geothermal resources development agreement, including, but not limited to, environmental monitoring, resource monitoring, and geothermal specific safety monitoring.
- (2) Notwithstanding the provisions of the Physical Planning Act the Planning and Development Authority shall exercise its monitoring and enforcement powers conferred under Part 4 of the Physical Planning in respect of geothermal resource developments, only in accordance with the advice of the Steering Committee.
- (3) Notwithstanding the provisions of the Licensing of Utility Services Act the Regulator shall exercise its monitoring and enforcement powers conferred under the Licensing of Utility Services Act in respect of geothermal resource developments, only in accordance with the advice of the Steering Committee.

46. Self-monitoring

For the purpose of Part 10, the Steering Committee may direct, by notice in writing, the geothermal resource developer to submit information to it, with the frequency and in the manner indicated in the notice, or by a time stipulated in the notice, concerning its activities under the geothermal

resource development agreement, and the geothermal resource developer shall comply with the notice.

Division 2—Inspections

47. Designation of inspectors

- (1) For the purpose of assisting in its monitoring and enforcement functions set out in section 45, the Steering Committee may designate any qualified person, whether a member of the Steering Committee or not, as an inspector to carry out inspections.
- (2) An inspector shall be provided with a certificate of designation, which the inspector shall present at the request of any person appearing to be in charge of any place entered by the inspector.

48. Powers of inspectors

- (1) An inspector may, for the purposes for which the inspector was designated an inspector under section 47—
 - (a) enter and inspect, subject to subsection (2), at any reasonable time, any place owned by, or under the control of, a geothermal resource developer, in which the inspector believes on reasonable grounds there is any document, information or thing relevant to the enforcement of this Act, or a geothermal resource development agreement, and examine the document, information or thing, or remove it for examination or reproduction;
 - (b) make use of, or cause to be made use of, any data processing system at the place to examine any data contained in or available to the system;
 - (c) reproduce any record, or cause it to be reproduced, from the data, in the form of a print-out or other intelligible output, and take the print-out or other output for examination or copying;
 - (d) make use of any copying equipment or means of communication located at the place;

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (e)* take photographs of anything in the place being inspected and remove the photographs from the place;
 - (f)* take for analysis anything in the place being inspected and remove for analysis outside the place;
 - (g)* search and bore for the purpose of examining the subsoil;
 - (h)* interview any person in the place being inspected; and
 - (i)* make any other investigation, examination and inquiries that are necessary to achieve those purposes for which the entry was authorised.
- (2)** An inspector shall not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (3).
- (3)** Where on an *ex parte* application a Magistrate is satisfied by information on oath—
- (a)* that a dwelling-place is a place described in subsection (1)*(a)*;
 - (b)* that entry to the dwelling-place is necessary for the monitoring and enforcement referred to in section 45; and
 - (c)* that entry has been refused, or that there are reasonable grounds for believing that entry will be refused, or consent to entry cannot be obtained from the occupant,
- the Magistrate may issue a warrant authorising an inspector named in the warrant to enter the dwelling place, subject to any conditions specified in the warrant.
- (4)** An inspector executing a warrant issued under subsection (3) shall not use force unless the inspector is accompanied by a police officer and the use of force has been specifically authorised in the warrant.
- (5)** If any damage is caused by reason of the exercise of any right of entry conferred by this section or in the making of any survey for the purpose for which such right of entry

was conferred, or by the wrongful or negligent use of powers conferred, or alleged to have been conferred, by this section, the Steering Committee, as soon as may be after such entry, shall pay compensation to the person injured.

- (6) If the amount of such compensation cannot be settled through negotiation, section 25 of the Physical Planning Act shall apply, with the necessary modifications, respecting the determination of the compensation payable, and the Steering Committee shall refer the matter accordingly.

Division 3—Administrative Monetary Penalties and Other Sanctions

49. Commission of violation

- (1) A person commits a violation if he—
- (a) fails to comply with a notice for information under section 46;
 - (b) fails to comply with the planning and environmental control or electricity supply control to which their geothermal resource development agreement is subject;
 - (c) fails to pay in full when due, a fee or royalty imposed by Order of the Governor acting on the advice of Cabinet under section 42;
 - (d) fails to comply with or defaults under a geothermal resource development agreement; or
 - (e) commits any other act which the Governor acting on the advice of Cabinet by Order published in the *Gazette*, designates as a violation.
- (2) A person who commits a violation referred to in subsection (1)(a) is liable—
- (a) in the case of an individual, to an administrative monetary penalty of \$3,000; or

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (b)* in the case of a corporation, to an administrative monetary penalty of \$10,000.
- (3)** A person who commits a violation referred to in subsection (1)*(b)* is liable—
 - (a)* in the case of an individual, to an administrative monetary penalty of \$5,000; or
 - (b)* in the case of a corporation, to an administrative monetary penalty of \$20,000.
- (4)** A person who commits a violation referred to in subsection (1)*(c)* is liable to an administrative monetary penalty in the amount of 10% of the outstanding fee or royalty.
- (5)** A person who commits a violation referred to in subsection (1)*(e)* is liable to the administrative monetary penalty set out in the Order, which may not exceed \$3,000 in the case of an individual and \$10,000 in the case of a corporation.
- (6)** A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

50. Notice of intention to impose penalty

- (1)** If the Steering Committee believes on reasonable grounds that a person has committed a violation, the Chairperson may issue, and shall cause to be served on that person, a notice of its intention to impose an administrative monetary penalty which—
 - (a)* sets out the name of the person who is believed to have committed the violation;
 - (b)* sets out the alleged violation and the relevant facts surrounding the violation;
 - (c)* sets out the administrative monetary penalty prescribed in section 49 for the violation that it intends to impose; and

- (d)* advises the person of the right to make written representations to the Steering Committee and of the period within which that right shall be exercised in accordance with subsection (2);
- (2)** A person who receives a notice under subsection (1) may, within twenty-eight days after the date on which he or she receives the notice, send written representations to the Steering Committee respecting the facts of the alleged violation or the administrative penalty imposed or both.

51. Penalty notice

- (1)** After the expiration of twenty-eight days from the date that the Steering Committee sent a notice of intention to impose a penalty under section 50, the Steering Committee may impose an administrative monetary penalty in the amount prescribed in section 49 by sending him a penalty notice stating—
 - (a)* the name of the person;
 - (b)* the violation for which the penalty is imposed;
 - (c)* the date on which the notice of intention to impose a penalty in respect of that violation was sent to the person;
 - (d)* the amount of the penalty for the violation in accordance with section 49;
 - (e)* a date, not less than twenty-eight days after the date of the penalty notice, by which the person shall pay the penalty to the Steering Committee; and
 - (f)* the fact that, if the person does not pay the penalty or appeal to the High Court under section 52, the person is considered to have committed the violation and that he or she is liable for the penalty set out in the notice.
- (2)** Before imposing an administrative monetary penalty under this section, the Steering Committee shall consider any written representations that it has received from the

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

person and, where it receives such representations, it shall provide reasons for the action that it takes.

- (3) A person who receives a penalty notice under this section shall pay the penalty stated to the Steering Committee on or before the date specified in the notice, or appeal to the High Court under section 52.
- (4) If the person pays the administrative monetary penalty, the person is deemed to have committed the violation and proceedings in respect of it are ended.
- (5) A person who neither pays the administrative monetary penalty nor appeals to the High Court under section 52 is considered to have committed the violation and is liable for the penalty.

52. Appeal to the High Court

- (1) A person served with a penalty notice under section 51 may, within twenty-eight days after the notice is served, or within any longer period that the High Court allows, appeal in writing to the High Court.
- (2) On an appeal, the High Court may confirm, set aside or vary the decision of the Steering Committee.

53. Publication

If the Steering Committee imposes an administrative monetary penalty on a person, the Committee shall publish the imposition of the penalty in the *Gazette* as soon as practicable after—

- (a) if the person pays the penalty, the date of payment;
- (b) if the person neither pays the penalty nor appeals the penalty notice, the date stipulated in the penalty notice for payment;
- (c) if the person appeals under section 52, the date the High Court confirms that the person is liable to pay the penalty.

54. Debts to the Crown

- (1) An administrative monetary penalty constitutes a debt due to the Crown and may be recovered as such in the High Court.
- (2) The Steering Committee may, on or after the dates referred to in section 53(*b*) and (*c*), issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the High Court has the same effect as a judgment of the High Court for a debt of the amount specified in the certificate, together with the costs of registration.
- (3) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the date stipulated in the penalty notice in accordance with section 51(1)(*e*) or, if the person appeals under section 52, the date the High Court confirms that the person is liable to pay the penalty.
- (4) An administrative monetary penalty paid or recovered in relation to a violation is payable to and shall be remitted to the Accountant General.

55. Common law principles

Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

56. Time limit

- (1) No proceedings in respect of a violation may be commenced later than two years after the day on which the subject matter of the proceedings became known to the Steering Committee.
- (2) A document appearing to have been issued by the Chairperson, Deputy Chairperson or secretary of the Steering Committee, certifying the day on which the subject-matter of any proceedings became known to the

Steering Committee, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

57. Invalidation of agreement

- (1) In this section “**competent authority**” means the authority empowered in accordance with section 59 to make a decision that is final and binding upon the parties to a dispute arising under a geothermal resource development agreement.
- (2) A geothermal resource development agreement is invalidated if a competent authority declares that the agreement is terminated owing—
 - (a) to the breach by a party that the competent authority considers to constitute a substantial breach; or
 - (b) a breach that is stated in the geothermal resource development agreement to constitute a substantial breach.
- (3) When the competent authority is making a decision under subsection 2(a), he shall consider whether the breach is equally substantial to what is specifically stated to constitute a substantial breach in the geothermal resource development agreement.

58. Forfeiture

- (1) If the geothermal resource development agreement is terminated within the meaning of subsection (4), the geothermal resource developer shall, as soon as practicable, and in any event, by the date stated in a notice served under subsection (2), remove any equipment, assets or other property from any land owned or leased by the Government of Montserrat on behalf of the developer for the purpose of the geothermal resource development activities.

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (2) If the geothermal resource agreement is terminated within the meaning of subsection (4), the Steering Committee may issue a notice to the geothermal resource developer to remove any equipment, assets or other property from the land by the date stated in the notice.
- (3) If a geothermal resource developer fails to comply with this section, the equipment, assets or other property is forfeited to the Government of Montserrat on the date stated in the notice in accordance with subsection (1).
- (4) A geothermal resource development agreement is terminated if—
 - (a) rights under a geothermal resource development agreement are abandoned in accordance with sections 32(8) or 33(4);
 - (b) the agreement is invalidated under section 57; or
 - (c) the obligations under the agreement are not executed.

Division 4—Alternative Dispute Resolution

59. Dispute settlement

Unless, and to the extent that, the geothermal resource development agreement otherwise provides—

- (a) disputes arising under the agreement shall be referred to three arbitrators, one to be appointed by the developer, one appointed by the Governor acting on the advice of Cabinet, and one appointed by the first two arbitrators; and
- (b) the Arbitration Act, (Cap 3.02) applies and references in that Act to an arbitration agreement are to be construed as a reference to this section to the extent, if any, modified by this Act or a geothermal resource development agreement.

PART 11

MISCELLANEOUS

60. Statutory provision obligatory

A provision of a geothermal resource development agreement or other document that derogates from the provisions of this Act or Regulations made under this Act is invalid, except to the extent the derogation is expressly authorised by this Act or such Regulations.

61. Schedule

The Governor acting on the advice of Cabinet may, by Order published in the *Gazette*, amend the Schedule.

62. Regulations

- (1) The Governor acting on the advice of Cabinet may make Regulations respecting anything that the Governor acting on the advice of Cabinet considers necessary or expedient for the administration or enforcement of this Act.
- (2) Without prejudice to the generality of subsection (1), the Governor acting on the advice of Cabinet may, from time to time, make regulations for all or any of the following purposes—
 - (a) prescribing the form or content of geothermal resource development agreements, notices, reports, or any other documentation or information required under this Act, and the manner in which such documentation or information is to be provided;
 - (b) prescribing the information to be provided with applications for geothermal resource development agreements;
 - (c) prescribing the manner in which persons wishing to apply for geothermal resource development agreements in respect of any land are to mark out or

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

identify the land and prescribing a particular system for the purpose of defining areas or parts of areas comprised in geothermal resource development agreements, or applications for or extensions of geothermal resource development agreements;

- (d) prescribing conditions on which geothermal resource development agreements may be applied for, granted, changed, or extended; regulations for the time being in force under this Act;
- (e) providing for the exemption of geothermal resource developers, either wholly or partially, and either absolutely or conditionally, from any of the conditions of their geothermal resource development agreement or from the provisions of any regulations for the time being in force under this Act;
- (f) prescribing the duties of geothermal resource developers and the activities to be carried out under geothermal resource development agreements;
- (g) generally regulating activities carried out under geothermal resource development agreements;
- (h) providing for the keeping and provision of records, reports, information, and returns by geothermal resource developers for any purpose under this Act, and prescribing the nature of the records, reports, information, and returns, and the form, manner, and times in or at which they shall be kept or provided;
- (i) providing for standards which are to apply in connection with the remediation of geothermal wells, plant and equipment;
- (j) providing for the procedure respecting approval of changes to a geothermal resource development agreement during the term of the agreement;
- (k) respecting the regulation of the transfer of interests or rights of a geothermal resource developer under a geothermal resource development agreement;

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (l)* respecting the regulation of a change of control where the geothermal resource developer is a corporate entity; and
 - (m)* providing for a Geothermal Reporting Code respecting the methodology for estimation, quantification and categorisation of geothermal resources and reserves in Montserrat and to provide an appropriate reporting basis.
- (3) Regulations made under this section shall be subject to negative resolution of the Legislative Assembly.

63. Consequential and transitional provisions

- (1) A person who at the commencement of this Act, is validly conducting exploration activities for, or is using, geothermal resources under any licence, or other authority, does not commit a violation if he or she applies for the relevant geothermal resource development agreement in accordance with this Act within three months after the date that this Act comes into force, or such further period, not exceeding six months, as the Governor acting on the advice of Cabinet may in writing allow.
- (2) An application under subsection (1) shall be made in accordance with Part 6.
- (3) In respect of applications under this section—
 - (a)* the parties shall negotiate on reasonable grounds and in good faith and shall respect all rights granted under existing authorisations to the extent that they are not inconsistent with this Act; and
 - (b)* the terms and conditions shall be determined by reference to arbitration under section 59, if the parties fail to agree.

SCHEDULE

(sections 38, 39 and 61)

**STEERING COMMITTEE PROCEDURE FOR
DETERMINING APPLICATIONS AND RELATED
MATTERS**

Part A

Applications subject to a tender process

This process applies only to applications for the grant of a geothermal resource development agreement in a special geothermal zone, except applications pursuant to section 32(5).

The Steering Committee shall determine the application in accordance with the procedure outlined in the tender documents which documents shall include information in respect of—

- (a) technical approach and methodology; and
- (b) cost.

Part B

Applications subject to a non-competitive negotiated process

1. The process set out in items 2, 3 and 4 apply to applications for—
 - (a) the grant or renewal of a geothermal resource development agreement in any part of the Montserrat not located in a special geothermal zone;
 - (b) the grant pursuant to section 32(5) or renewal of geothermal resource development agreement in an area that is designated as a special geothermal zone; and

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (c) the grant of a geothermal resource development agreement pursuant to section 63.
- 2. Within 6 weeks of the receipt of an application, the Steering Committee shall publish a notice containing particulars of the application in the *Gazette* inviting comments in writing from the public.
- 3. Within 120 days of the receipt of the application or, such extended time, not exceeding 30 days, that the Governor acting on the advice of Cabinet authorises, the Steering Committee shall submit a report to the Governor acting on the advice of Cabinet containing its recommendations.
- 4. In determining the application, the Steering Committee shall consider any comments and any further information requested in clarification of the comments, received in response of the notice referred to in item 2.

Part C

Information required

- 1. The Steering Committee shall determine the application for a Geothermal Exploration Agreement based on the documents submitted by the applicant, which shall include information in respect of—
 - (a) technical approach and methodology for exploration;
 - (b) cost and schedule for exploration programme;
 - (c) capabilities and track record in exploration and use of geothermal resources;
 - (d) management team of the applicant/tenderer and skills and experience thereof;
 - (e) stated support from specialist organisations working in the geothermal sector;

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

- (f) financial backing of the applicant/tenderer or stated ability to obtain financial backing including shareholder funds available to support the exploration, and letters of intent from commercial backers or joint venture partners;
 - (g) Community consultation plan, safety plan and other stakeholder management plans and objectives.
- 2. Without prejudice to the provisions of section 32(5) and (6), the Steering Committee shall determine the application for a Geothermal Resources Concession based on the documents submitted by the applicants, which shall include information in respect of—
 - (a) description of proposed development;
 - (b) cost and schedule for development;
 - (c) technical approach and methodology;
 - (d) capabilities and track record in use of geothermal resources;
 - (e) compliance with health and safety standards; and
 - (f) proposed tariff agreements

Part D

Ownership of Information

1. The following applies to information pertaining to geothermal resource development.
2. Information pertaining to reconnaissance, an activity which does not require an agreement, will always remain in the ownership of the entity performing the activity.
3. Under a Geothermal Exploration Agreement, the holder owns the information pertaining to the activities and results, but shall share the information with the Governor acting on the advice of Cabinet.

Montserrat
Geothermal Resources Development Bill, 2023
No. 3 of 2023

4. On expiry, cancellation or abandonment of a geothermal exploration agreement, without conversion to a Geothermal Resources Concession, the Crown will take ownership of the information, with the agreement holder eligible for reward on their investment in finding useable geothermal resources.
5. Under a Geothermal Resources Concession, the holder owns the information pertaining to the activities and results, but shall share the information with the Crown.
6. On expiry, cancellation or abandonment of a Geothermal Resources Concession, the Crown will take ownership of the information. This includes the situation where this is a change of ownership. Reward for investment will not apply in this instance.

SPEAKER

Passed by the Legislative Assembly this day of ,2023.

CLERK OF THE LEGISLATIVE ASSEMBLY