



LAWS OF KENYA

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**WATER ACT**

CHAPTER 372

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**CHAPTER 372**

**WATER ACT**

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## CHAPTER 372

## WATER ACT

[Date of assent: 17th October, 2002.]

[Date of commencement: 18th March, 2003: Sections 1 to 6, 19 to 24, 46 to 48, 51 to 78, 80 to 83, 90 to 111, 113 to 114: 29th August, 2003: Sections 7 to 18, 25 to 45, 49 to 50, 79, 84 to 89, 112.]

**An Act of Parliament to provide for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services; to repeal the Water Act (Cap. 372) and certain provisions of the Local Government Act; and for related purposes**

[Act No. 8 of 2002, L.N. 31/ 2003, L.N. 158/2003.]

## PART I – PRELIMINARY

**1. Short title and commencement**

This Act may be cited as the Water Act, 2002 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint, and different days may be appointed for the coming into operation of different provisions.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**authorised**” means authorised by or under this Act;

“**Authority**” means the Water Resources Management Authority established by this Act;

“**catchment area**” means an area designated under section 14;

“**catchment area advisory committee**” means a committee established under section 16;

“**charges**”, in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;

“**easement**” means the right to occupy so much of the lands of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred, by a permit;

“**ground water**” means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, and includes water in interstices below the water table;

“**inspector**” means a person appointed by the Minister, the Authority or the Regulatory Board to exercise the powers of an inspector under this Act;

“**in-stream habitat**” includes the physical structure of a water resource and the associated vegetation in relation to the bed of the water course;

**“landholder”**, in relation to land, means the registered owner of the land or the person in whom the land is otherwise vested by law, and includes—

- (a) any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land;
- (b) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and
- (c) any person to whom a mining lease or mining location has been granted under the Mining Act (Cap. 306);

**“licence”** means a licence in force under this Act;

**“limits of supply”**, in relation to a water undertaking, means the limits within which the licensee is for the time being authorised to supply water;

**“permit”** means a permit for the time being in force under this Act;

**“pollution”**, in relation to a water resource, means any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource so as to make it—

- (a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or
- (b) harmful or potentially harmful to—
  - (i) the welfare, health or safety of human beings;
  - (ii) any aquatic or non-aquatic life or property; or
  - (iii) the environment;

**“public consultation”**, in relation to any application made, or action proposed to be taken, under this Act, has the meaning assigned to it in section 107;

**“regional office”** means an office of the Authority established under section 10;

**“reserve”**, in relation to a water resource, means that quantity and quality of water required—

- (a) to satisfy basic human needs for all people who are or may be supplied from the water resource; and
- (b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource;

**“Regulatory Board”** means the Water Services Regulatory Board established by this Act;

**“resource quality”**, in relation to a water resource, means the quality of all the aspects of a water resource including—

- (a) the water quality stipulated for the reserve;
- (b) the quantity, pattern, timing, water level and assurance of instream flow;
- (c) the physical, chemical and biological characteristics of the water;



- (d) the character and condition of the in-stream and riparian habitat;  
and
- (e) the characteristics, condition and distribution of the aquatic biota;

**“resource quality objectives”**, in relation to a water resource, means the level to be achieved and maintained in each aspect of resource quality for the water resource;

**“riparian habitat”** means the dynamic complex of plant, animal and micro-organism communities and their non-living environment adjacent to and associated with a watercourse;

**“spring”** means water emerging from beneath the surface of the ground otherwise than as a result of drilling or excavation operations;

**“stream”** means the water contained in a watercourse, and includes a river;

**“supply of water in bulk”** means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

**“swamp”** means any shallow depression on which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation;

**“use”**, in relation to water contained in or forming part of a water resource, means—

- (a) abstraction, obstruction or diversion of the water;
- (b) discharge of materials or substances into the into the water; or
- (c) any activity, of a kind prescribed by rules under this Act, in relation to the water;

**“Water Appeal Board”** means the Water Appeal Board established by this Act;

**“water resource”** means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below ground;

**“water service”** means any service of or incidental to the supply of water or the provision of sewerage;

**“water service provider”** means a company, non-governmental organisation or other person or body providing water services under and in accordance with an agreement with the licensee within whose limits of supply the services are provided;

**“water services board”** means a water services board constituted under Part IV;

**“water table”** means—

- (a) in pervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to permit percolation; and
- (b) in fractured impervious rocks and in solution openings, the surface at the contact between the water body in the openings and the overlying ground air;

**“watercourse”** means any natural channel or depression in which water flows regularly or intermittently, unless declared not to be a watercourse under this Act;

**“works”** means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilising water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by rules made under this Act.

(2) For the purposes of this Act, a drought shall be deemed to exist in any area when the Minister, upon such information as seems to him sufficient, by order published in the *Gazette* declares that a drought exists in that area.

## PART II – OWNERSHIP AND CONTROL OF WATER

### 3. Water vested in the State

Every water resource is hereby vested in the State, subject to any rights of user granted by or under this Act or any other written law.

### 4. Powers and duties of the Minister

(1) The Minister shall have and may exercise control over every water resource in accordance with this Act.

(2) It shall be the duty of the Minister to promote the investigation, conservation and proper use of water resources throughout Kenya and to ensure the effective exercise and performance by any authorities or persons under the control of the Minister of their powers and duties in relation to water.

(3) The Minister shall be assisted in discharge of his duties under this section by Director of Water.

### 5. Right to use water

The right to the use of water from any water resource is hereby vested in the Minister, except to the extent that it is alienated by or under this Act or any other written law.

### 6. Acquisition of water rights

After the commencement of this Act, no conveyance, lease or other instrument shall be effectual to convey, assure, demise, transfer or vest any person, any property or right or any interest or privilege in respect of any water resource, and no such property, right, interest or privilege shall be acquired otherwise than under this Act.

## PART III – WATER RESOURCES MANAGEMENT

*The Water Resources Management Authority***7. Establishment of the Authority**

(1) There is hereby established an authority to be known as the Water Resources Management Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall have power, in and by its corporate name, to sue and to be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

(3) The powers and functions of the Authority shall be exercised and performed under the direction of a governing board, which shall consist of—

- (a) a Chairman, who shall be appointed by the President; and
- (b) ten other members, who shall be appointed by the Minister.

(4) The First Schedule has effect with respect to the membership and procedure of the governing board of the Authority.

**8. Powers and functions of the Authority**

(1) The Authority shall have the following powers and functions—

- (a) to develop principles, guidelines and procedures for the allocation of water resources;
- (b) to monitor, and from time to time re-assess, the national water resources management strategy;
- (c) to receive and determine applications for permits for water use;
- (d) to monitor and enforce conditions attached to permits for water use;
- (e) to regulate and protect water resources quality from adverse impacts;
- (f) to manage and protect water catchments;
- (g) in accordance with guidelines in the national water resources management strategy, to determine charges to be imposed for the use of water from any water resource;
- (h) to gather and maintain information on water resources and from time to time publish forecasts, projections and information on water resources;
- (i) to liaise with other bodies for the better regulation and management of water resources;
- (j) to advise the Minister concerning any matter in connection with water resources.

(2) The Authority may, with the consent of the Attorney-General given under the Criminal Procedure Code, undertake the prosecution of any offences arising under this Act or in connection with the performance of its functions.

(3) The Authority shall have such other powers and functions as may be conferred or imposed on it by or under this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred or imposed.

(4) Except as to the contents of any report or recommendation made by it, the Authority shall, in the exercise and performance of its powers and functions, be subject to such directions as may be given from time to time by the Minister.

(5) A summary of any directions given under subsection (4) during a financial year shall be published in the Authority's annual report prepared under section 18.

#### **9. Staff of the Authority**

(1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Authority on such terms and conditions of service as the Authority may, with the approval of the Minister, determine.

(2) The Chief Executive Officer shall be the principal officer of the Authority and, subject to the directions of the governing board, shall be responsible for the management of the affairs of the Authority.

(3) The Authority may appoint such officers and other staff as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as it may determine.

#### **10. Regional offices**

The Authority shall establish regional offices in or near any catchment area established under section 14.

#### *Water Resources Management Strategy*

#### **11. National water resources management strategy**

(1) Following public consultation, the Minister shall formulate, and publish in the *Gazette*, a national water resources management strategy in accordance with which the water resources of Kenya shall be managed, protected, used, developed, conserved and controlled.

(2) The Minister shall periodically review the national water resources management strategy and may from time to time publish in the *Gazette* a revised strategy.

(3) The national water resources management strategy shall prescribe the principles, objectives, procedures and institutional arrangements for the management, protection, use, development, conservation and control of water resources and, in particular, for—

- (a) determining, in accordance with this Part, the requirements of the reserve for each water resource;
- (b) classifying water resources in accordance with this Part; and
- (c) identifying areas which, in accordance with this Act, should be designated protected areas and ground water conservation areas.

(4) The Minister, the Authority and all public bodies shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the national water resources management strategy.

## **12. Classification of water resources and resource quality objectives**

(1) The Minister shall prescribe a system for classifying water resources for the purpose of determining resource quality objectives for each class of water resource.

(2) Under the prescribed classification system, water resources may be classified according to type, location or geographical or other factors.

(3) The Minister shall, by notice in the *Gazette*—

- (a) classify each water resource in accordance with the prescribed classification system;
- (b) specify the resource quality objectives for a water resource of the class to which it belongs; and
- (c) specify the requirements for achieving the objectives, and the dates from which the objectives will apply.

(4) The Minister, the Authority and all public bodies shall, when exercising any statutory power or performing any statutory duty, take into account and give effect to the resource quality objectives determined under this section in respect of a water resource.

## **13. Determination of reserve**

(1) The Minister shall, by notice in the *Gazette*, determine the reserve for the whole or part of each water resource which has been classified under this Part.

(2) A determination of the reserve shall ensure that adequate allowance is made for each aspect of the reserve.

(3) The Minister, the Authority and all public bodies shall, when exercising any statutory power or performing any statutory function in relation to the water resource concerned, take into account and give effect to the requirements of the reserve.

## **14. Catchment areas**

(1) In accordance with the national water resources management strategy, the Authority may by notice published in the *Gazette* designate a defined area from which rainwater flows into a watercourse to be a catchment area for the purposes of this Act.

(2) A catchment area designated under this section may lie wholly or partly within another catchment area.

## **15. Catchment management strategy**

(1) Following public consultation, the Authority shall formulate a catchment management strategy for the management, use, development, conservation, protection and control of water resource within each catchment area.

(2) It shall be the duty of the Authority to review the catchment management strategy made from time to time.

(3) A catchment management strategy shall—

- (a) take into account the class of water resource and resource quality objectives for the water;
- (b) be consistent with the national water resources strategy;
- (c) prescribe the principles, objectives, procedures and institutional arrangements of the Authority for the management, use, development, conservation and control of water resources within each catchment area;
- (d) contain water allocation plans which set out principles for allocating water; and
- (e) provide mechanisms and facilities for enabling the public and communities to participate in managing the water resources within each catchment area.

(4) The catchment management strategy, as in force for the time being, shall be published in the *Gazette*.

(5) Without prejudice to the generality of subsection (3)(e), the catchment management strategy shall encourage and facilitate the establishment and operation of water resources users associations as for a for conflict resolution and co-operative management of water resources in catchment areas.

(6) The Minister, the Authority and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to any catchment management strategy in force under this section.

#### **16. Catchment area advisory committees**

(1) The Authority shall, in consultation with the Minister, appoint a committee of not more than 15 members in respect of each catchment area.

(2) A catchment area advisory committee shall, in relation to the catchment area for which it is appointed, advise officers of the Authority at the appropriate regional office concerning—

- (a) water resources conservation, use and apportionment;
- (b) the grant, adjustment, cancellation or variation of any permit; and
- (c) any other matters pertinent to the proper management of water resources.

(3) The members of a catchment area advisory committee shall be chosen from among—

- (a) representatives of Ministries or public bodies responsible for matters relating water resources in the catchment area;

- (b) representatives of any regional development authorities and local authorities whose areas of jurisdiction or any part thereof fall within the catchment area concerned;
- (c) representatives of farmers or pastoralists within the catchment area concerned;
- (d) representatives of the business community operating within the catchment area concerned;
- (e) representatives of the non-government organisations engaged in water resources management programmes within the catchment area concerned; and
- (f) other persons who have demonstrated competence in matters relating to the management of water resources.

(4) The Authority shall facilitate the activity of the catchment area advisory committees by making available secretariat services and logistical and administrative support.

(5) The First Schedule has effect with respect to the membership and procedure of a catchment area advisory committee.

#### **17. Protected areas**

(1) Where the Authority is satisfied that special measures are necessary for the protection of a catchment area or part thereof, it may, with the approval of the Minister, by order published in the *Gazette* declare such an area to be a protected area.

(2) The Authority may impose such requirements, and regulate or prohibit such conduct or activities, in or in relation to a protected area as the Authority may think necessary to impose, regulate or prohibit for the protection of the area and its water resources.

#### **18. National monitoring of and information on water resources management**

(1) The national water resources management strategy shall provide for national monitoring and information systems on water resources.

(2) The systems shall provide for—

- (a) the collection and management of data and information regarding water resources and their management; and
- (b) procedures for gathering data and the analysis and dissemination of information on water resources.

(3) For the purposes of any systems established under this section, the Authority may by order require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials.

(4) Rules made under this Act may specify requirements for the keeping of records and the furnishing of information to the Authority.

(5) Within 3 months after the end of each financial year, the Authority shall prepare an annual report of its work and activities.

(6) On payment of the prescribed fee, any member of the public—

- (a) shall have access to information contained in any national information system; and
- (b) shall be supplied with a copy of the Authority's annual report.

*Public Works for Water Use*

**19. State schemes and community projects**

(1) In this Part—

**“community project”** means a project approved by the Authority and operating under a permit for one or more purposes which are—

- (a) connected with the use of water or the drainage of land situate entirely, or for the most part, within a given area; and
- (b) classified by the Authority, with the approval of the Minister, as community purposes,

which has been declared by the Authority, by notice published in the *Gazette*, to be a community project for the purposes of this Act;

**“state scheme”** means—

- (a) a scheme, whether formulated in detail or not, for the use for any public purpose of the whole or part of a water resource;
- (b) a reservation by the Minister, after consultation with the Authority, of the whole or part of a water resource for use for any public purpose; or
- (c) a scheme for draining any land,

which has been declared by the Minister after consultation with the Authority, by notice published in the *Gazette*, to be a state scheme for the purposes of this Act.

(2) For the purposes of the definition of **“state scheme”** in subsection (1), **“public purpose”** includes any of the following—

- (a) the supply of water, or of electrical energy derived from the energy of moving water, to the public or any section of the public;
- (b) the drainage or reclamation of lands;
- (c) the protection of any water resource, its source or catchment;
- (d) identification and development of a retarding basin for the control and management of flood water or any other measures for its control or disposal;
- (e) the conservation or improvement of water quality;
- (f) the distribution, apportionment or measurement of water;



- (g) the storage or impoundment of water for purposes of bulk distribution, including the construction of reservoirs for impounding surface runoff and for regulating stream flows to synchronise them with water demand patterns.

## **20. Precedence of schemes and projects**

(1) A state scheme shall take precedence over all other schemes for the use of water or the drainage of land.

(2) A community project shall take precedence over all other schemes for the use of water or the drainage of land, except a state scheme.

(3) The Minister—

- (a) may direct that a state scheme or community project shall be executed in augmentation, modification or improvement and, subject to the provisions of this Act, so as to supersede any other works for the use of water; and
- (b) may at any time order that any works contemplated or under execution or completed shall be aided from public moneys to such extent as may be authorised by Parliament.

## **21. Acquisition of land for state scheme**

(1) The Minister may, by notice published in the *Gazette*, designate the land required for the development of any state scheme.

(2) Land required for a state scheme may be acquired in any manner provided by law for the acquisition of land for public purposes.

(3) Land or a part of any land acquired in accordance with this section which is not immediately required for the full development of a state scheme may, with the approval of the Minister and in accordance with any law for the time being in force relating to the leasing of such land, be leased by the Commissioner of Lands to the previous owner of the land or, if not required by him, to any other person.

## **22. Construction of works for state schemes**

(1) The Minister may, after reasonable notice to any landholder concerned, construct and maintain upon any land such works as he may deem necessary or desirable for the purposes of any state scheme.

(2) Compensation on just terms shall be payable by the Government to the owner of the land on which any such works are constructed, but in assessing the amount of compensation payable the Minister shall take into consideration any benefit accruing to the land by the construction of the works and any adverse effect on the land caused by the works, as the case may be.

(3) The cost of construction and maintenance of any such works shall be paid out of moneys to be provided by Parliament.

(4) Development works and management of assets for the purposes of a state scheme for the provision of bulk water supplies for use by licensees and water service providers shall be undertaken on the Minister's behalf by the National Water Conservation Land Pipeline Corporation (L.N. 270/1988).

(5) Other works which the Minister is empowered by this Part to undertake may be undertaken on his behalf by that Corporation or by such other public bodies as the Minister may appoint.

### **23. Community projects**

(1) The Authority shall not approve any community project unless—

- (a) the proposed project is approved by the persons owning or occupying at least two-thirds of the particular area concerned in the project; and
- (b) provision is made by the project for an adequate alternative supply of water to be supplied to permit holders likely to be adversely affected and unable to benefit from the scheme.

(2) No permit for a community project shall be cancelled or varied except with the consent of the Minister.

### **24. Charge for benefits resulting from schemes and projects**

When all or part of the cost of a state scheme or community project has been paid from moneys provided by Parliament, any person who in the opinion of the Minister, has benefited by the scheme or project shall, if the Minister so determines, pay to the Government a water rate or other charge for that benefit calculated as prescribed by rules made under this Act.

#### *Water Rights and Works*

### **25. Requirement for permit**

(1) A permit shall be required for any of the following purposes—

- (a) any use of water from a water resource, except as provided by section 26;
- (b) the drainage of any swamp or other land;
- (c) the discharge of a pollutant into any water resource;
- (d) any purpose, to be carried out in or in relation to a water resource, which is prescribed by rules made under this Act to be a purpose for which a permit is required.

(2) Nothing in this section applies to the purposes of a state scheme under this Part.

### **26. Permit not required for certain activities**

(1) Except as provided by subsection (2), a permit is not required—

- (a) for the abstraction or use of water, without the employment of works, from or in any water resource for domestic purposes by any person having lawful access thereto;
- (b) for any development of ground water, where none of the works necessary for the development are situated—
  - (i) within one hundred metres of any body of surface water (other than enclosed spring water, as defined in subsection (3)); or

- (ii) within a ground water conservation area; or
- (c) for the storage of water in, or the abstraction of water from, a dam constructed in any channel or depression which the Authority has declared, by notice published in the *Gazette*, not to constitute a watercourse for the purposes of this Act.

(2) Subsection (1) does not apply in relation to any activity mentioned in that subsection which is carried on in prescribed circumstances, where rules made under this Act provide that a permit shall be required for the carrying on of that activity in those circumstances.

(3) For the purposes of subsection (1)(b)(i), “**enclosed spring water**” means water in a spring which—

- (a) is situated wholly within the boundaries of the land owned by any one landholder; and
- (b) does not naturally discharge water into a watercourse abutting on, or extending beyond, the boundaries of that land.

(4) Rules made under this Act may make provision for or with respect to the use of water from a water resource in any manner for which a permit is not required.

(5) Without prejudice to the generality of subsection (4), such rules may—

- (a) prohibit any such use of water in prescribed circumstances; or
- (b) require the consent or permission of the Authority for any such water use of a prescribed kind or description.

## **27. Unauthorised construction and use of works**

(1) A person who—

- (a) not being the holder of a permit, constructs or employs any works for a purpose for which a permit is required; or
- (b) being the holder of a permit, constructs or employs any such works in contravention of the conditions of the permit,

shall be guilty of an offence.

(2) The holder of a permit authorising the construction of works who, without the permission of the Authority, takes water from any water resource by means of any work authorised by the licence before the whole of the works authorised by the permit have been certified, in accordance with the conditions of the permit to be completed, shall be guilty of an offence.

## **28. Easements for works**

(1) The holder of a permit which authorises the construction of works that would (or a portion of which would), when constructed, be situated upon lands not held by the permit holder shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works unless and until he has acquired such an easement.

(2) The provisions of the Third Schedule shall apply in respect of the acquisition of, and subsequent rights pertaining to or against, any such easement.

### **29. Procedure for obtaining permit**

(1) An application for a permit shall be made to the Authority.

(2) If the Authority prescribes a form for use in making such an application, the application shall be made by completing and lodging the prescribed form together with—

- (a) such information in support of the application as the form may require; and
- (b) the prescribed fee (if any).

(3) The Authority shall determine an application for a permit by granting the permit or rejecting the application.

(4) Except as provided by section 33, an application for a permit shall be the subject of public consultation and, where applicable, of environmental impact assessment in accordance with the requirements of the Environmental Management and Co-ordination Act, No. 8 of 1999.

(5) Any person opposed to the grant of a permit may object in writing to the Authority.

(6) The applicant and any person who may have objected to the grant of the application shall be notified of the decision of the Authority and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefor.

(7) It is the duty of the Authority to determine an application for a permit as soon as practicable after its lodgment.

(8) Where an application duly made in accordance with this section is not determined by the Authority within six months after lodgment, any fee paid by the applicant under subsection (2)(b) shall be refunded to the applicant.

### **30. Conditions of permits**

(1) A permit shall be subject to—

- (a) such conditions as may be prescribed by or under this Act in relation to the permit; and
- (b) such other conditions, not inconsistent with the conditions so prescribed, as the Authority may impose by endorsement on, or instrument in writing annexed to, the permit.

(2) Without prejudice to the generality of subsection (1), the provisions of the Second Schedule shall be conditions of every permit which authorises the construction of works.

(3) Rules made under this Act may make provision imposing conditions on, or with respect to the conditions which are or shall be imposed on, permits generally or any class or description of permits.

(4) Without prejudice to the generality of subsection (2), such rules may—

- (a) require the imposition of prescribed conditions in prescribed circumstances;
- (b) require the payment by the permit holder of prescribed fees in respect of the exercise of rights under the permit;
- (c) provide that a contravention of any or any specified conditions prescribed by or under this Act as conditions of permits shall constitute an offence punishable by a prescribed penalty.

(5) The imposition of a penalty by a rule made in accordance with subsection (4)(c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

### **31. Charges for water use**

(1) The conditions of a permit may require that, on issue of the permit and at prescribed intervals thereafter, the permit holder shall pay charges to Authority for use of water in accordance with the permit.

(2) The charges shall be determined by reference to a schedule of charges published in the *Gazette* from time to time by the Authority, with the approval of the Minister and following public consultation.

### **32. Considerations for the issue of permits**

(1) In issuing a permit, and in fixing any conditions to be imposed on a permit, the Authority shall take into account such factors as it considers relevant, including

- (a) existing lawful uses of the water;
- (b) efficient and beneficial use of water in the public interest;
- (c) any catchment management strategy applicable to the relevant water resource;
- (d) the likely effect of the proposed water use on the water resource and on other water users;
- (e) the class and the resource quality objectives of the water resource;
- (f) the investments already made and to be made by the water user in respect of the water use in question;
- (g) the strategic importance of the proposed water use;
- (h) the quality of water in the water resource which may be required for the reserve; and
- (i) the probable duration of the activity or undertaking for which a water use is to be authorised.

(2) The use of water for domestic purposes shall take precedence over the use of water for any other purpose, and the Authority may, in granting any permit, reserve such part of the quantity of water in a water resource as in its opinion is required for domestic purposes.

(3) The nature and degree of water use authorised by a permit shall be reasonable and beneficial in relation to others who use same sources of supply or bodies of water.

(4) A permit shall, subject to this Act, remain in force for the period specified in it, and may, to the extent that the permit so provides, be renewed from time to time.

### **33. Issue of permits in exceptional cases**

(1) The Authority may, if in its opinion exceptional circumstances warrant such action, grant a permit authorising, unconditionally or subject to conditions, the use of water from a water resource and construction of the works required therefor, without subjecting the application to public consultation.

(2) In considering whether or not to grant a permit in accordance with this section, the Authority shall have regard to the extent to which the grant of such a permit would be likely to interfere with the domestic requirements of other users.

(3) A permit granted in accordance with this section shall not be granted or renewed so as to be in force for a period exceeding, or for periods which in the aggregate exceed, one year.

### **34. Permit to run with land or undertaking**

(1) A permit shall specify, as far as practicable, the particular portion of any land, or the particular undertaking, to which the permit is to be appurtenant, and on its grant the permit shall, subject to this section, during the period for which it remains in force—

- (a) be appurtenant to that portion of land or that undertaking; and
- (b) pass with any demise, devise, alienation, transfer or other disposition thereof, whether by operation of law or otherwise.

(2) Where, in the opinion of the Authority—

- (a) owing to a change in circumstances not under the control of the permit holder since a permit was granted, the water concerned cannot, in such circumstances, be reasonably beneficially used by the permit holder on the particular portion of land to which the permit is appurtenant; and
- (b) neither the public interest nor the rights of others would be adversely affected by a transfer in accordance with this subsection,

the Authority may, on application by the permit holder and by endorsement of the permit or other instrument in writing, transfer the permit to another portion of land, owned by the permit holder, whereupon, it shall become appurtenant to that portion.

(3) If any land to which a permit is appurtenant has been, or is about to be, subdivided, the Authority may grant a new permit—

- (a) subject to the condition that such easements, if any, as may be required be granted, within a period of two years after subdivision of the land or within such longer period as the Authority may determine; and
- (b) subject to such other conditions, and with such other modifications, as seem to the Authority to be necessary or desirable in the circumstances.

### **35. Variation of permit owing to change in circumstances, etc.**

(1) Whenever it is shown to the satisfaction of the Authority that, owing to drought, natural changes, increased demand or other cause, the use of water under a permit, or the method or point of diversion or other manner in which the water is so used causes—

- (a) inequity;
- (b) a deterioration in the quality of water;
- (c) a shortage of water for domestic purposes; or
- (d) a shortage of water for any other purpose which in the opinion of the Authority should have priority,

it may vary the permit so as to alter the discharge or quality of water or any other aspect of water use authorised by the permit, or to alter the method or point of diversion or other specifications, terms or conditions of the permit.

(2) No permit shall be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the permit holder and the permit holder has been afforded a reasonable opportunity to show cause to the Authority as to why the permit should not be cancelled or varied.

(3) Subsection (2) does not apply where the variation is expressed to be made owing to drought or owing to an emergency of a kind prescribed by rules made under this Act.

### **36. Power to require permit applications or re-applications**

(1) Where, in the opinion of the Authority, it is desirable that water use in respect of one or more water resources, including ground water, within a specific geographic area be rationalised or reviewed so as—

- (a) to achieve a sustainable allocation of water from a water resource which is under stress;
- (b) to achieve equity in allocations;
- (c) to promote beneficial use of water in the public interest;
- (d) to facilitate efficient management of water resources; or
- (e) to protect water resource quality,

the Authority may issue a notice in the *Gazette* requiring all water users, including permit holders, to apply or re-apply for permits for one or more types of water use.

(2) Following receipt of applications or re-applications, the Authority shall prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated, taking into account the requirements of the reserve.

(3) The proposed allocation schedule shall be subjected to public consultation, following which the Authority shall prepare a preliminary allocation schedule and shall, by notice published in the *Gazette*, advertise the times and places at which a copy of the schedule may be inspected.

(4) Any person who is dissatisfied with the preliminary allocation schedule may appeal to the Water Appeal Board within 30 days of a publication under subsection (3).

(5) A preliminary allocation schedule shall become a final allocation schedule—

- (a) if no appeal is lodged within the time limited by subsection (4);
- (b) if it has been amended following every successful appeal; or
- (c) if every appeal has been dismissed.

(6) The Authority shall publish a notice in the *Gazette* stating that the preliminary allocation schedule has become final and advertise the times and places at which a copy of the schedule may be inspected.

(7) The Authority shall, as soon as reasonably practicable after an allocation schedule becomes final, issue permits according to the allocations provided for in it, and cancel any inconsistent permits.

### **37. Cancellation or variation of permit to enable scheme or project**

(1) A permit may be cancelled or varied by the Authority to the extent necessary to enable a state scheme or community project to be undertaken in accordance with this Act.

(2) No permit shall be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the holder and the permit holder has been afforded a reasonable opportunity to show cause to the Authority why the permit should not be cancelled or varied.

(3) A permit holder whose permit is cancelled or varied under this section shall be paid compensation in such amount as may be agreed between the permit holder and the Authority or, in default of agreement, as may be determined by the Water Appeal Board.

### **38. Cancellation or variation of permit for failure to observe terms and conditions**

(1) A permit may be cancelled or varied by the Authority if the permit holder—

- (a) contravenes any condition of the permit; or
- (b) fails to make beneficial use of the water or any part thereof.



(2) No permit shall be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the permit holder and the permit holder has been afforded a reasonable opportunity to show cause to the Authority as to why the permit should not be cancelled or varied.

### **39. Variation of permit following hydrographic survey**

Every permit shall be subject to subsequent variation by the Authority after hydrographic survey of the relevant body of water has been made and after reasonable notice has been given to all parties affected.

### **40. Variation of permit at request of permit holder**

(1) A permit may, at the request of the permit holder, be varied by the Authority so as—

- (a) to vary the point of diversion or abstraction of the water used under the permit;
- (b) to vary the use of water authorised by the permit; or
- (c) to permit the apportionment of the water authorised by the permit to be taken or used to be apportioned between two or more parts of the land to which the permit pertains;
- (d) to permit the mixture of waters authorised to be taken or used with those authorised to be taken or used by another permit, whether held by the same or another permit holder;
- (e) to remedy any defect whereby the permit is incomplete or indefinite in its terms and conditions; or
- (f) to vary any other term or condition of the permit,

if the Authority is satisfied that the variation is not contrary to the public interest or the rights of others.

(2) A variation relating to—

- (a) the use of water authorised by the permit; or
- (b) a term or condition of a prescribed kind,

shall not be made without public consultation.

### **41. Abandonment of permitted activities**

(1) A permit holder who ceases to utilise water in accordance with the terms of his permit shall, by notice to the Authority, abandon the whole of the permit or any part capable of separation.

(2) Upon such abandonment, the Authority may direct the permit holder to remove, within such time as it may specify, all or any works erected in connection with the permit.

(3) A permit holder who neglects or fails to remove the works concerned shall be guilty of an offence, and the Authority may remove all or any portion of the works, and may recover the cost of their removal from the permit holder as a debt in any court of competent jurisdiction.

(4) Nothing in this section shall be construed as requiring or authorising a permit holder wholly or in part to abandon a permit contrary to the conditions of any mortgage or charge upon the land to which the permit is appurtenant.

#### **42. Surrender of permits**

(1) Where—

- (a) a permit is to be cancelled or varied by the authority in pursuance of this Act; or
- (b) a permit has been granted erroneously or irregularly; or
- (c) a permit has been granted in contravention of the provisions of any rules made under this Act with respect to the terms and conditions of such a permit,

the Authority may, by notice served on the holder of the permit, require the permit holder, if he has not already done so, to surrender the permit to the Authority.

(2) A permit holder who fails to comply with such a notice shall be guilty of an offence.

#### **43. Register of permits**

(1) The Authority shall establish and maintain a register of permits in force together with details of the permits and their terms and conditions and the results of monitoring and enforcement action taken by the Authority regarding each permit.

(2) Information contained in the register shall be accessible by the public on payment of the prescribed fee.

#### *Ground Water*

#### **44. Ground water conservation areas**

(1) Where the Authority is satisfied that, in any area, special measures for the conservation of groundwater are necessary in the public interest—

- (a) for the protection of public water supplies; or
- (b) for the protection of water supplies used for industry, agriculture or other private purposes,

it may, following public consultation, by order published in the *Gazette* declare the area to be a ground water conservation area.

(2) The Authority may impose such requirements, and regulate or prohibit such conduct or activities, in or in relation to a ground water conservation area as the Authority may think necessary to impose, regulate or prohibit for the protection of the area and its ground water.

#### **45. Abstraction of ground water**

The Fourth Schedule has effect with respect to the abstraction of ground water and works therefor.

## PART IV – WATER SUPPLY AND SEWERAGE

*The Water Services Regulatory Board***46. Establishment of the Regulatory Board**

(1) There is hereby established a board to be known as the Water Services Regulatory Board.

(2) The Regulatory Board shall be a body corporate with perpetual succession and a common seal and shall have power, in and by its corporate name, to sue and be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

(3) The Regulatory Board shall consist of—

- (a) a Chairman, who shall be appointed by the President; and
- (b) ten other members, who shall be appointed by the Minister.

(4) The First Schedule has effect with respect to the membership and procedure of the Regulatory Board.

**47. Powers and functions of the Regulatory Board**

The Regulatory Board shall have the following powers and functions—

- (a) to issue licences for the provision of water services;
- (b) to determine standards for the provision of water services to consumers;
- (c) to establish procedures for handling complaints made by consumers against licensees;
- (d) to monitor compliance with established standards for the design, construction, operation and maintenance of facilities for water services;
- (e) to monitor and regulate licensees and to enforce licence conditions;
- (f) to advise licensees on procedures for dealing with complaints from consumers and to monitor the operation of these procedures;
- (g) to develop guidelines for the fixing of tariffs for the provision of water services;
- (h) to develop guidelines for and provide advice on the cost-effective and efficient management and operation of water services;
- (i) to develop model performance agreements for use between licensees and water service providers;
- (j) to monitor the operation of agreements between water services boards and water service providers and to take appropriate action to improve their effectiveness;
- (k) to develop guidelines on regulations for the provision of water services to be adopted by licensees;
- (l) to disseminate information about water services;

- (m) to promote water conservation and demand management measures;
- (n) to monitor, and from time to time re-assess, the national water services strategy;
- (o) in accordance with the national water services strategy, to determine fees, levies, premiums and other charges to be imposed for water services;
- (p) to gather and maintain information on water services and from time to time publish forecasts, projections and information on water services;
- (q) to liaise with other bodies for the better regulation and management of water services;
- (r) to advise the Minister concerning any matter in connection with water services.

(2) The Regulatory Board may, with the consent of the Attorney-General given under the Criminal Procedure Code, undertake the prosecution of any offences arising under this Act or in connection with the performance of its functions.

(3) The Regulatory Board shall have such other powers and functions as may be conferred on the Regulatory Board by or under this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred.

(4) Except as to the contents of any report or recommendation made by it, the Regulatory Board in the exercise and performance of its powers and functions, be subject to such directions as may be from time to time by the Minister.

(5) A summary of any directions given under subsection (3) during a financial year shall be published in the Regulatory Board's annual report prepared under section 47.

#### **48. Staff of the Regulatory Board**

(1) There shall be a Chief Executive Officer of the Regulatory Board who shall be appointed by the Regulatory Board, and whose terms and conditions of service shall be determined by the Regulatory Board with the approval of the Minister.

(2) The Chief Executive Officer shall be the principal officer of the Regulatory Board and, subject to the directions of the Board, shall be responsible for management of the Regulatory Board.

(3) The Regulatory Board may appoint, upon such terms and conditions as it may determine, such officers and other staff as may be necessary for the exercise and performance of its powers and functions.

#### *Water Services Strategies*

#### **49. National water services strategy**

(1) Following public consultation, the National Water Minister shall formulate, and publish in the *Gazette*, a national water services strategy.

(2) It shall be the duty of the Minister to review the national water services strategy from time to time.

(3) The national water services strategy shall have the following objects—

- (a) to institute arrangements to ensure that at all times there is in every area of Kenya a person capable of providing water supply; and
- (b) to design a programme to bring about the progressive extension of sewerage to every centre of population in Kenya.

(4) The national water services strategy shall contain details of—

- (a) existing water services;
- (b) the number and location of persons who are not being provided with a basic water supply and basic sewerage;
- (c) plans for the extension of water services to underserved areas;
- (d) the time frame for the plan; and
- (e) an investment programme.

(5) The national water services strategy, as in force for the time being, shall be published in the *Gazette*.

#### **50. National monitoring of and information on water services**

(1) The national water services strategy shall provide for national monitoring and information on water systems on water services.

(2) The systems shall provide for—

- (a) the collection and management of data and information regarding water services; and
- (b) procedures for gathering data and the analysis and dissemination of information on water services.

(3) For the purposes of any systems established under this section, the Regulatory Board may by order require any person, within a reasonable time or on a regular basis, to provide it with information, documents, samples or materials.

(4) Rules made under this Act may specify requirements for the keeping of records and the furnishing of information to the Regulatory Board.

(5) Within 3 months after the end of each financial year, the Regulatory Board shall prepare an annual report of its work and activities.

(6) On payment of the prescribed fee, any member of the public—

- (a) shall have access to information contained in any national information system; and
- (b) shall be supplied with a copy of the Regulatory Board's annual report.

*Water Services Boards and Water Service Providers***51. Constitution of water services boards**

(1) The Minister may, by notice published in the *Gazette*—

- (a) name a water services board proposed to be constituted under this section; and
- (b) specify the members appointed to it and their respective qualifications.

(2) The members shall be appointed by the Minister and, on publication of a notice under subsection (1), the water services board shall by force of this section be constituted a corporation with perpetual succession and a common seal, with the corporate name specified in the notification.

(3) The board shall have power, in and by its corporate name, to sue and be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

(4) The First Schedule has effect with respect to the membership and procedure of a water services board.

**52. Change of membership of boards**

(1) Where, in accordance with this Act, the limits of supply or functions of a water services board are varied, the Minister may, by notification published in the *Gazette*—

- (a) vary the number of members of the water services board; or
- (b) vary the qualifications for members of the water services board.

(2) A change effected under this section shall not affect the identity of the water services board.

**53. Powers and functions of boards**

(1) A water services board shall, as a licensee, be responsible for the efficient and economical provision of water services authorised by the licence.

(2) Water services authorised by a licence shall be provided by an agent of the Board in accordance with section 55, except in circumstances where the Regulatory Board is satisfied that the procurement of such an agent is not possible or that the provision of such services by an agent is not practicable.

(3) Without prejudice to the generality of 51(2)(b), a water services board may, for the purpose of the provision of water services—

- (a) purchase, lease or otherwise acquire, on such terms as the Minister may approve, premises, plant, equipment and facilities; and
- (b) purchase, lease or otherwise acquire land, on such terms as the Minister may approve, or arrange for its compulsory acquisition under section 78.

(4) A water services board shall have such other powers and functions as may be conferred or imposed on it by or under this or any other Act.

**54. Staff of water services boards**

(1) There shall be a Chief Executive Officer of each water services board who shall be appointed by the board, and whose terms and conditions of service shall be determined by the board with the approval of the Minister.

(2) The Chief Executive Officer shall be the principal officer of a water services board and, subject to any directions of the board, shall be responsible for management of the affairs of the board.

(3) A water services board may appoint, upon such terms and conditions as it may determine, officers and other staff as may be necessary for the exercise and performance of its powers and functions.

**55. Water service providers**

(1) For the purposes of section 53 a water services board may, in accordance with this section, arrange for the exercise and performance of all or any of its powers and functions under the licence by one or more agents, to be known as water service providers.

(2) Such an arrangement shall be reduced to an agreement in writing between the water services board and the water service provider, the terms of which (and of any amendment of which) shall be of no force or effect unless approved by the Regulatory Board.

(3) The agreement shall specify the powers and functions under the licence which shall be exercised and performed by the water service provider during the currency of the agreement.

(4) The agreement may also make provision for or with respect to—

- (a) the concurrent performance, by the water services Board and the water services provider, of the same functions in different parts of the area defined by the board's limits of supply;
- (b) the indemnity by the water service provider of any liability of the water services board arising from the performance or non-performance of functions conferred by the licence; and
- (c) the maintenance, rehabilitation and development, by the water service provider of water services infrastructure and facilities of the water services board; and
- (d) such other matters as the Regulatory Board may approve.

(5) The water services board may enter into agreements with more than one water service provider in respect of its area of supply.

(6) A power or function conferred by a licence or otherwise conferred by or under this Act which, pursuant to an agreement approved under this section, may be exercised or performed by a water service provider shall be deemed, when exercised or performed by the water service provider, to have been exercised or performed under the authority of the licence.

*Provision of Water Services***56. Requirement for licence**

(1) No person shall, within the limits of supply of a licensee—

- (a) provide water services to more than twenty households; or
- (b) supply—
  - (i) more than twenty-five thousand litres of water a day for domestic purposes; or
  - (ii) more than one hundred thousand litres of water a day for any purpose,

except under the authority of a licence.

(2) A person who provides water services in contravention of this section shall be guilty of an offence.

(3) Nothing in this section prohibits—

- (a) the provision of water services by a person to his employees; or
- (b) the provision of water services on the premises of any hospital, factory, school, hotel, brewery, research station or institution to the occupants thereof, in cases where the source of supply of the water is lawfully under its control, or where the water is supplied to it in bulk by a licensee.

**57. Procedure for obtaining licence**

(1) An application for a licence may be made only by a water services board, and shall be made to the Regulatory Board.

(2) The Regulatory Board shall prescribe a form for use in making such an application, which shall require at least the following particulars to be furnished by the applicant—

- (a) the technical and financial capability of the applicant, and any water service provider by whom its functions are to be performed, to provide the services and perform functions authorised by the licence;
- (b) the applicant's plans for the provision of efficient, affordable and sustainable water services;
- (c) performance targets;
- (d) details of planned financial and infrastructural improvements;
- (e) a proposed tariff structure.

(3) The application shall be made by completing and lodging the prescribed form together with the prescribed fee.

(4) The Regulatory Board shall determine an application for a licence by granting the licence or rejecting the application.



(5) The application shall not be granted unless the Regulatory Board is satisfied that—

- (a) the applicant, or a water service provider by whom the functions authorised by the licence are to be performed, has the requisite technical and financial competence to provide the services to which the licence relates;
- (b) the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable service;
- (c) the applicant has proposed satisfactory performance targets and planned improvements and an acceptable tariff structure; and
- (d) the applicant, or any water service provider by whom the functions authorised by the licence are to be performed will provide the water services authorised by the licence on a commercial basis and in accordance with sound business principles;
- (e) where water services authorised by the licence are to be provided by a water service provider which conducts some other business or performs other functions not authorised by the licence, the supply of those services will be undertaken, managed and accounted for as a separate business enterprise; and
- (f) the applicant and any associated water service provider have met any other requirements which the Regulatory Board considers are called for by the services to be provided under the licence.

(6) An application for a licence shall be the subject of public consultation and, where applicable, environmental impact assessment in accordance with the requirements of the Environmental Management and Co-ordination Act (Cap. 387).

(7) Any person opposed to the grant of a licence may object in writing to the Authority.

(8) The Regulatory Board shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefor, and an applicant or objector may, if aggrieved by the decision within thirty days after the date of the notification, appeal to the Water Appeal Board against the decision.

(9) It shall be the duty of the Regulatory Board to determine an application for a licence as soon practicable after lodgment of the application.

(10) Where an application duly made in accordance with this section is not determined by the Regulatory Board within six months after lodgment, any fee chargeable by the Regulatory Board under subsection (3) shall be refunded to the applicant.

## **58. Licences**

(1) A licence shall authorise and, to the extent provided therein, require, the provision by the licensee of water services specified in the licence.

(2) There is no property in a licence, and except provided by this Act, a licence shall not be capable of being sold, leased, mortgaged, transferred, attached otherwise assigned, demised or encumbered.

(3) As a condition precedent to the issue of a licence, the Regulatory Board may require the applicant to deposit with it a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from him, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

#### **59. Limits of supply**

(1) The limits of supply of a water services board shall be as prescribed by the licence.

(2) The limits so prescribed may, but need not, coincide with the boundaries of the area or areas of jurisdiction of one or more local authorities.

#### **60. Licence fees**

(1) A licensee shall pay to the Government, on issue of the licence and at prescribed intervals thereafter, such fees as the Regulatory Board may determine.

(2) The fee shall be determined by reference to a schedule of fees published in the *Gazette* from time to time by the Regulatory Board, with the approval of the Minister and following public consultation.

#### **61. Conditions of licence**

(1) A licence shall be subject to—

- (a) such conditions as may be prescribed by or under this Act in relation to the licence; and
- (b) such other conditions, not inconsistent with the conditions prescribed, as the Regulatory Board may impose by endorsement on, or instrument in writing annexed to, the licence.

(2) Rules made under this Act may make provision imposing conditions on, or with respect to the conditions which are or shall be imposed on, licences generally or any class or description of licences.

(3) Without prejudice to the generality of subsection (2), such rules may—

- (a) require the imposition of prescribe conditions in prescribed circumstances;
- (b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the licence or for meeting any other prescribed contingency;
- (c) provide that a contravention of any, or of any specified, conditions prescribed by or under this Act as conditions of licences shall constitute an offence punishable by a penalty not exceeding one hundred thousand shillings.

(4) The imposition of a penalty by a regulation made in accordance with subsection (3)(c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

**62. Variation of terms or conditions of licence**

(1) The Regulatory Board may, on the application of a licensee, vary the terms and conditions of a licence.

(2) Except as otherwise provided by rules made under this Act, no such variation shall be made without prior public consultation.

**63. Combination or transfer of undertakings**

(1) Without prejudice to the generality of section 62, the Regulatory Board may, on the application of the licensees concerned—

- (a) permit the joint provision by two or more licensees of water supply services on such terms as it may approve; or
- (b) permit the transfer of the undertaking, or part thereof, of one licensee to another licensee.

(2) Where it appears to the Regulatory Board to be expedient for the purpose of securing a more efficient supply of water, it may order such a joint provision of water services or such a transfer of undertaking and vary the relevant licences accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provision as the Regulatory Board deems necessary or expedient for the purpose of carrying out the order.

(4) A licensee aggrieved by the provisions of the order may appeal to the Water Appeal Board.

**64. Variations of limits of supply**

(1) Without prejudice to the generality of section 61, the Regulatory Board may vary the limits of supply prescribed by one or more licences—

- (a) on the application of a licensee whose limits of supply are to be varied and with the consent of any other licensees affected; or
- (b) without the consent, or against the objections, of any such other licensee, if the Regulatory Board is satisfied that the other licensee is unable to meet the demands for water in his area.

(2) Where it appears to the Regulatory Board that it is expedient to vary the limits of supply of a licensee, and the Regulatory Board is satisfied that such a variation cannot otherwise be secured, it may by order effect the variation and may vary the relevant licence accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provision as the Regulatory Board deems necessary or expedient for the purpose of carrying out the order.

(4) A licensee aggrieved by the provisions of an order made under this section may appeal to the Water Appeal Board.

**65. Supply outside limits of supply**

(1) With the consent of the Regulatory Board, and subject to any rules made under this Act and to such conditions as the Regulatory Board may impose, a licensee may provide water services outside its limits of supply.

(2) Where under this section a licensee (in this section called “the supplying licensee”) is providing water services to premises outside his limits of supply, any other licensee within whose limits of supply those premises are situated may, in the absence of any agreement to the contrary, at any time give not less than three months’ notice to the supplying licensee that he is able and intends to provide water services to the premises:

Provided that a notice given under this section shall not be valid unless it relates to all the premises to which water services are being provided by the supplying licensee in accordance with this section.

(3) If, at the end of a period of three months notified under subsection (2), the licensee giving the notice commences to supply water to the premises covered by the notice, the supplying licensee shall, except for the purpose of recovering water rates or other charges or expenses lawfully recoverable by him, and of removing any pipes, plant or apparatus belonging to him, cease to have any rights or duties in respect of providing water services to the premises concerned:

Provided that the supplying licensee shall not remove any pipes, plant or apparatus which he is required by the licensee giving the notice to leave in position, and any such pipes, plant or apparatus shall vest in the licensee giving the notice.

#### **66. Supply of water in bulk**

(1) Any licensee or water service provider may enter into an agreement with any other person, whether a licensee or not, for the giving by that person, and the taking by the licensee or service provider, of a supply of water in bulk for any period and on any terms and conditions and, where the supply is to be given by a person who is himself a licensee, either within or outside the limits of supply of that licensee:

Provided that no such agreement shall be of any force or effect unless its terms have been approved by the Regulatory Board, and where such a supply is to be given by a licensee, it shall withhold approval if it appears that the giving of that supply would be likely to interfere with the supply of water for any purpose within the limits of supply of that licensee.

(2) Where it appears to the Regulatory Board that—

(a) it is expedient that—

- (i) any licensee or water service provider should give a supply of water in bulk to another licensee or water service provider; and
- (ii) the other licensee or water service provider should take such a supply; and

(b) the giving and taking of such a supply cannot be secured by agreement,

the Regulatory Board may, by order served on them, require the licensees or water service providers concerned to give and take such supply for such period and on such terms as it may specify.

#### **67. Reserve powers of the Minister**

(1) The Minister shall retain a residual power to provide water services to consumers with the assistance of the National Water Conservation and Pipeline Corporation referred to in section 22(4).

(2) The Minister's power under this section shall only be exercised in cases where and for the periods during which—

- (a) no applicant has qualified to be licensed to provide water services in a particular area and the Regulatory Board has advised the Minister to provide water services in that area;
- (b) the licensee for an area has been declared to be in default under this Act by the Regulatory Board and the Regulatory Board has made an order transferring the functions to the Minister;
- (c) there is an emergency leading to serious and widespread disruption of services and the Regulatory Board has determined that the licensee is unable to deal with situation; or
- (d) for some other reason which to the Regulatory Board appears sufficient, the Regulatory Board has advised the Minister to provide water services in a specified area for a specified period.

(3) The Minister shall, to the extent necessary to enable the exercise of his powers under this section, have power to—

- (a) purchase, lease or otherwise acquire premises, plant, equipment and facilities; and
- (b) purchase, lease or otherwise acquire land.

(4) The exercise by the Minister of his powers under this section shall be deemed, for the purposes of any law authorising the compulsory acquisition land, to be a public purpose.

#### **68. Default by licensee**

(1) If, following a complaint made to or, information received by the Regulatory Board, it appears to that Board that any licensee—

- (a) has failed to discharge any duty imposed upon him by a licence or otherwise under this Act; or
- (b) has failed to give an adequate supply of water, as respects either quantity or quality, to any area or any person which he supplying, or has failed to give any supply which he is lawfully required to give; or
- (c) having been notified by the Regulatory Board to take such steps as are reasonably practicable in order to remedy any such failure as is mentioned in paragraph (a) or (b), has failed to do so,

the Regulatory Board may inquire into the matter.

(2) If, after inquiry, the Regulatory Board is satisfied that there has been any such failure on the part of the licensee in question, it may by order declare him to be in default and direct him, for the purpose of remedying the default, to take such steps, including the payment of a financial penalty to a person who lodged a complaint, within such periods of time as the Regulatory Board may specify.

(3) A licensee declared to be in default who is dissatisfied with an order of the Regulatory Board under this section may, within thirty days after receipt of the order, appeal to the Water Appeal Board, and the order shall be stayed pending determination of the appeal.

(4) A licensee declared to be in default by order under this section who fails to comply with any requirement of the order within the time specified for compliance with the requirement shall be guilty of an offence.

#### **69. Transfer of functions of licensee**

(1) If the Regulatory Board is satisfied that a licensee is guilty of an offence under section 68 (whether or not the licensee has been charged or convicted of such an offence), the Regulatory Board may make an order transferring—

- (a) to another licensee; or
- (b) with the Minister's consent, to the Minister,

such powers functions of the licensee as it may think necessary to remedy any loss of service to consumers occasioned by default.

(2) Such an order shall have effect in accordance with its term, and the Regulatory Board may accordingly—

- (a) amend the license of the licensee from whom the powers and functions have been transferred; and
- (b) where the powers and functions have been transferred to another licensee, amend the license of the transferee.

(3) Where the Regulatory Board has transferred any power of function to another licensee or to the Minister under this section, any expenses incurred by the other licensee or the Minister in exercising and performing any such power of function may be recovered by the regulatory Board in any court of component jurisdiction as a debt from the licensee in default.

(4) The terms of an order transferring any powers and functions of a licensee may provide for—

- (a) the transfer to the other licensee or the Minister of such property and liabilities of the licensee in details as, in the opinion of the Regulatory Board may be necessary or expedient; and
- (b) the compensation on just terms (but taking into account any concurrent transfer of liabilities), of the licensee in default for loss of any property so transferred,

and on revocation of any such order, the Regulatory Board may, either by the revoking order or by subsequent order, make such provision as appears to it be desirable with respect to any property or liabilities then held by the other licensee or the Minister for the purposes of the power or function transferred, and the order shall have effect accordingly.

#### *Powers and Duties of Licensees*

#### **70. Duty to provide water services**

To the extent required by the licence, it shall be the duty of a licensee to ensure that water services and associated works and facilities are provided, maintained and progressively improved.

#### **71. Agreements as to catchment protection, etc.**

(1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as

the licensee considers necessary or as the conditions of his licence may require for the purpose of catchment protection, drainage of land, carrying out soil conservation measures or the control of vegetation or for more effectively collecting, conveying or preserving the purity and quantity of water which the licensee is for the time being authorised to take.

(2) An agreement under this section may be registered against any land of the person with whom it is made, and shall be binding upon and enforceable against such land or such person or his successor in title.

## **72. Power of licensee to prohibit or restrict use of water**

(1) A licensee who is of the opinion that there is a serious deficiency of water available for distribution or that such a deficiency is threatened may, with the approval of the Regulatory Board, for such period as he thinks necessary prohibit or restrict, as respects the whole or any part of his limits of supply, the use for any specified purpose of water supplied by him.

(2) Before any such prohibition or restriction comes into force, public notice shall be given by the licensee, in one or more newspapers circulating within the affected area or by such other means as the Regulatory Board may approve, of the proposed prohibition or restriction and of the date when it will come into force.

(3) Rules made under this Act may provide that any person who, while such prohibition or restriction is in force, contravenes its provisions shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings.

## **73. Power to make regulations**

(1) A licensee shall make regulations for or with respect to conditions for the provision of water services and the tariffs applicable.

(2) If it appears to a licensee to be necessary for the purpose of protecting against degradation any water, whether on the surface or underground, which belongs to him or which he is for the time being authorised to take, he may, with the approval of the Regulatory Board, make regulations—

- (a) defining the area within which he deems it necessary to exercise control;
- (b) prohibiting or regulating the doing, within that area, of any act prescribed by such regulations; and
- (c) prescribing penalties not exceeding fifty thousand shillings for contravention of any such prohibition or regulation.

(3) Rules made under this Act may provide that any person who contravenes any regulations made under this section shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings.

(4) Regulations under this section shall be published in the *Gazette* and shall come into force on the date of such publication or on a later date specified in the regulations.

(5) No regulations under this section shall be published in the *Gazette*, nor shall they if so published be of any force or effect, unless their terms have first been approved by the Regulatory Board.

(6) Without prejudice to the generality of subsection (2), regulations made under this section may empower the licensee, by notice, to require the owner or occupier of any land or premises within a prescribed area within the licensee's limits of supply—

- (a) to execute and keep in good repair such works; or
- (b) to take such other action,

as the licensee considers necessary for preventing degradation of such water:

Provided that any owner or occupier who considers that any such requirement is unreasonable may, within thirty days after service on him of notice of such requirement, appeal to the Water Appeal Board.

(7) A licensee shall pay compensation on just terms to the owner or occupier, as the case may be, of any premises within the prescribed area in respect of—

- (a) any curtailment of or injury to his legal rights by restrictions imposed by such regulations, and
- (b) any expenses incurred by him in complying with a requirement to construct and maintain any works, or take other action, which would not, but for the provisions of this Act, lawfully have been required,

and any disagreement as to the amount of such compensation shall be resolved and determined by the Water Appeal Board.

(8) Where any person has failed to comply with a requirement notified to him in accordance with subsection (6) and—

- (a) he has not appealed against the requirement and the time for appeal has expired; or
- (b) his appeal has been dismissed or the requirement has been affirmed or varied in consequence of his appeal and he has failed to comply with the requirement as so affirmed or varied,

the licensee may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as varied on appeal, and may in any court of competent jurisdiction recover from the owner or occupier concerned, as a debt, expenses reasonably incurred by him in so doing.

(9) Expenses revocable under subsection (8) do not include expenses incurred in respect of—

- (a) works the construction of which; or
- (b) action which,

could not lawfully have been required otherwise than upon payment of compensation by the licensee.

(10) Two or more licensees may combine for the purpose of making and enforcing regulations under this section, and the provisions of this Act shall in any such case have effect as if references therein to a licensee were references to two or more such licensees acting jointly.

(11) Section 34 of the Interpretation and General Provisions Act shall not apply to any regulations made under this section.



**74. Duty to enforce regulations**

(1) It shall be the duty of any licensee by whom any regulations are made under this Act (Cap. 412) to monitor and enforce them, and any licensee who fails so to do may be ordered by the Regulatory Board to take such action to enforce such regulations as shall be specified in the order.

(2) Where a licensee considers that the operation of any such regulation would be unreasonable in any particular case, he may by notice to any affected part relax or dispense with the requirements of the regulation.

**75. Execution of works for protection of water**

(1) A licensee may, on any land belonging to him, or over or in which he has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the licensee, or which he is for the time being authorised to take, from being polluted:

Provided that before constructing any works the licensee, if the proposed works will affect or be likely to affect any body of water in the catchment area in which the works are situated, shall obtain the consent of the Authority.

(2) Any licensee proposing to construct any such drain, sewer or other works may, with the consent of the authority concerned and subject to such conditions as the authority may impose, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of supply of the licensee.

(3) A consent required under subsection (2) shall not be unreasonably withheld, nor shall any unreasonable condition be attached to such consent, and any question arising from the operation of this subsection shall be decided by consultation between the Minister administering this Act and the Minister responsible for the authority concerned.

**76. Control of trade effluent**

(1) No person shall discharge any trade effluent from any trade premises into the sewers of a licensee without the consent of the licensee.

(2) An application for consent shall be made to the licensee and shall state—

- (a) the nature or composition of the trade effluent;
- (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) any other information required by the licensee.

(3) The licensee's consent may be given subject to conditions, including conditions requiring the payment to the licensee of charges for the discharge.

(4) Any person who is dissatisfied with the decision of the licensee on an application under this section may, within thirty days of the decision, appeal to the Water Appeal Board.

(5) A person who contravenes the provisions of this section shall be guilty of an offence.

(6) In this section, “**trade effluent**” means any liquid, whether with or without suspended particles, produced as a by-product in the course of any trade or industry.

#### **77. Sewage service levy**

A licensee may, in consultation with the Regulatory Board and with the approval of the Minister, fix and impose a sewerage services levy on all water services within the limits of supply of the licensee, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

#### **78. Acquisition of land**

(1) A licensee, or an applicant for a licence, who requires the compulsory acquisition of land for any of its purposes may apply to the Minister, who may, on the advice of the Regulatory Board, and upon being satisfied that such compulsory acquisition is desirable, take any steps necessary to secure the compulsory acquisition of the land in accordance with the Land Acquisition Act (Cap. 295).

(2) The purposes of a licensee or an applicant for a licence shall be deemed, for the purposes of subsection (1), to include any necessary protection of a source of supply which belongs to the licensee or will belong to the applicant, or which he is or will be authorised to take, against pollution or other degradation, whether on the surface or underground.

(3) Any purpose for which land may be acquired under this section shall be deemed, for the purposes of the Land Acquisition Act (Cap. 295), to be a public purpose.

### PART V – FINANCIAL PROVISIONS

#### **79. Application of revenue from permit charges and licence fees**

(1) The Authority may, with the approval of the Minister and the Treasury, retain in a fund managed by it some or all of the revenue from water use charges payable under a permit, to be applied by the Authority in meeting costs incurred in the performance of its functions.

(2) Without prejudice to the generality of subsection (1), funds retained by the Authority under that subsection may be applied for the payment of compensation payable by the Authority under this Act, whether or not the payment is subsequently recoverable from a permit holder or other person.

(3) The Regulatory Board may, with the approval of the Minister and the Treasury, retain in a fund managed by it some or all of the revenue from licence fees, to be applied by the Regulatory Board in meeting costs incurred in the performance of its functions.

**80. Application of revenue arising from schemes and projects**

(1) The Minister may retain, in a fund managed by him, some or all of the revenue from rates or charges imposed under section 24, to be applied by the Minister in meeting costs incurred in a scheme or project undertaken in accordance with Part III.

(2) Without prejudice to the generality of subsection (1), the costs of a scheme or project referred in that subsection shall be deemed to include any amount of compensation payable under section 37 as a consequence of the scheme or project.

**81. Financial assistance to the Authority and Regulatory Board**

For the purposes of their respective functions, the Minister may, out of moneys provided by Parliament or from any other source, provide funds to the Authority and the Regulatory Board in the form of grants, loans or subsidies, subject to such conditions as the Minister may determine.

**82. Accounts and audit**

(1) The Authority, the Regulatory Board and each water services board shall keep proper books of account of their respective income, expenditure, assets and liabilities.

(2) The accounts of the Authority, the Regulatory Board and each water services board shall be audited and reported on in accordance with the Exchequer and Audit Act.

**83. Water Services Trust Fund**

(1) There is hereby established a fund to be known as the Water Services Trust Fund.

(2) The object of the Fund is to assist in financing the provision of water services to areas of Kenya which are without adequate water services.

(3) There shall be paid into the Fund—

- (a) such moneys as may be appropriated by Parliament for the purposes of the Fund;
- (b) such moneys as may be received by the Fund from donations, grants, and bequests from whatever source; and
- (c) such other moneys as may, by or under any Act, be payable to the Fund.

(4) The Fund shall be managed by trustees from time to time appointed and holding office under a trust deed, to be drawn up by the Minister.

(5) The trustees shall develop and apply principles governing the grant of moneys from the Fund and for achieving the object of the Fund.

(6) There shall be paid from the fund such grants as the trustees may from time to time authorise in furtherance of the object of the Fund.

## PART VI – GENERAL AND SUPPLEMENTAL

*The Water Appeal Board***84. Establishment of the Board**

(1) There is hereby established a board to be known as the Water Appeal Board.

(2) The Board shall consist of—

- (a) a Chairman, to be appointed by the President on the recommendation of the Chief Justice, who shall be a person qualified to hold or who has held the office of a judge of the High Court of Kenya; and
- (b) two other persons, to be appointed by the Minister.

(2) The Fourth Schedule has effect in respect of the membership and procedure of the Board.

**85. Jurisdiction of the Board**

(1) An appeal shall lie to the Water Appeal Board at the suit of any person having a right or proprietary interest which is directly affected by a decision or order of the Authority, the Minister or the Regulatory Board concerning a permit or licence under this Act, and the Board shall hear and determine any such appeal.

(2) In addition, the Board shall have such jurisdiction to hear and determine disputes, and shall have such other powers and functions, as may be conferred or imposed on it by or under this or any other Act.

**86. Time for lodging appeal**

No appeal shall be entertained by the Water Appeal Board unless it is lodged—

- (a) within the period elsewhere prescribed by or under this Act for lodgment of an appeal against the decision or order concerned; or
- (b) where no period is so prescribed, then within thirty days after the date on which written notice was served on the appellant notifying him of the decision or order against which he wishes to appeal:

Provided that the Board may in any case, for good cause shown, admit an appeal after the time limited for lodgment of an appeal has expired.

**87. Determination of appeals and disputes**

(1) In proceedings on any matter before it, the Water Appeal Board shall have and may exercise all the powers vested in Commissioners under sections 10, 11 and 13 of the Commissions of Inquiry Act (Cap. 102).

(2) In determining an appeal, the Board may affirm, quash or vary the decision or order concerned, as justice requires.

(3) In determining a dispute, or in exercising any other judicial function, the Board shall decide the matter on the merits of the case and may make such order as, in its judgment, will do justice between the parties.

(4) A judgment of the Water Appeal Board shall be final:

Provided that on a matter of law, an appeal shall lie to the High Court.

### **88. Rules of the Board**

The Water Appeal Board may make rules for or with respect to the lodgment, hearing and disposal of appeals and other matters before it.

#### *Entry on to Land*

### **89. Entry by permit holder or licensee for survey and preliminary investigation**

(1) A permit holder, or any person proposing to apply for a permit, wishing to enter on to the land of another person, if his proposal is opposed by the other person, may—

- (a) upon submitting in the manner prescribed—
  - (i) a general description of his proposal;
  - (ii) a schedule of lands which may be affected by the construction and operation of any works to be undertaken pursuant to the permit; and
  - (iii) the names and addresses of the affected landholders; and
- (b) upon payment of the prescribed fee,

obtain from the Authority permission to enter on to the land concerned and to carry out any necessary survey or other preliminary investigation in connection with the location of any such proposed works.

(2) The Authority may prescribe a time limit within which such investigation shall be completed.

(3) The person given permission under subsection (1) or any person authorised by him may, with such assistance as is necessary, enter on to the land concerned and there carry out the investigation for, which the permission was granted.

(4) No such permission shall be given until the Authority has notified each landholder concerned that application to enter his land has been made under this section.

### **90. Entry by Authority for monitoring of water resource**

An employee or agent of the Authority appointed by the Authority for the purpose may without warrant enter on to any land and inspect any water resource located within or accessible from the land concerned, in order to take such measures as the Authority may think fit for the purpose of—

- (a) conserving or regulating the water resource, or preserving it from pollution or protecting the bed over which it lies or flows; or

- (b) removing any obstruction from, or for clearing and deepening, the bed; or
- (c) preventing the excessive or illegal diversion, waste or pollution of the water resource or interference with any such bed.

**91. Entry by licensee**

An employee or agent of a licensee authorised by the licensee for the purpose may without warrant enter on to any land and inspect any source of water supply which is located within or accessible from the land concerned, in order to take such measures as the licensee, with the approval of the Regulatory Board, may direct for the purpose of—

- (a) preserving the water from pollution or protecting the bed over which it lies or flows; or
- (b) removing any obstruction from, or for clearing and deepening, the bed; or
- (c) preventing the excessive or illegal diversion, waste or pollution of the water or interference with any such bed.

(2) An employee or agent of a licensee authorised by the licensee for the purpose may enter on to any kind or premises in the area to which any regulations of the licensee apply, for the purpose of—

- (a) ascertaining whether there is or has been any contravention of any such regulations;
- (b) in the case of any regulations in respect of tariffs and the payment therefor, exercising any right conferred on the licensee to cut off supplies for non-payment; or
- (c) in the case of any regulations made for preventing water degradation —
  - (i) ascertaining whether or not circumstances exist which would justify the licensee's imposing a requirement to execute works or take other action to prevent degradation; or
  - (ii) exercising any right conferred on the licensee to execute and maintain works or take other action.

**92. Entry by inspector**

An inspector may without warrant enter any land or premises for the purpose of ascertaining whether there is or has been any contravention of the provisions of this Act or of any rule or order made under this Act in relation to any water resource.

**93. Manner of entry**

(1) In this section, “**authorised person**” means a person entering on to any land or premises pursuant to a right or permission conferred by or under this Act.

(2) An authorised person shall not enter on to the land or premises without first giving reasonable notice, whether written, verbal or otherwise, to the

landholder or other responsible person in charge of the land or premises, and any such entry shall be at a reasonable hour:

Provided that an inspector may enter without giving notice if—

(3) If so requested by the owner or occupier of the land or premises, the authorised person shall produce evidence of his right or permission, as the case may be, to enter on to the land.

(4) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

#### *Miscellaneous*

### **94. Obstruction or pollution of watercourse or water resource**

(1) No person shall, without authority under this Act—

- (a) wilfully obstruct, interfere with, divert or abstract water from any watercourse or any water resource, or negligently allow any such obstruction, interference, diversion or abstraction; or
- (b) throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or be likely to cause, pollution of the water resource.

(2) A person who contravenes this section shall be guilty of an offence.

### **95. Miscellaneous offences**

(1) No person shall—

- (a) wilfully obstruct, molest or hinder any inspector or other employee of or person authorised by the Minister or the Authority acting in the exercise or performance of his powers and functions under this Act;
- (b) without the written permission of the Authority, knowingly or wilfully—
  - (i) deface, alter or remove; or
  - (ii) cause to be defaced, altered or removed,any survey mark, water gauge, weir or measuring device or other work, structure or approval installed with the approval of Authority for the purposes of water control or investigation;
- (c) wilfully hinder or interrupt, or cause be hindered or interrupted, any permit holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act;

- (d) without lawful authority, wilfully let off or discharge water from the works of any permit holder so that the permit holder loses the use of that water;
- (e) without lawful authority, lay, erect or construct, or cause to be laid, erected or constructed, any work to connect with the work of any permit holder which is capable of drawing water from that work;
- (f) unlawfully interfere with the works or water supply of any permit holder; or
- (g) neglect or fail to comply with lawful order given under this Act.

(2) A person who contravenes the provisions of this section shall be guilty of an offence.

#### **96. Remedy of defaults**

(1) Where by his act or omission a person contravenes any requirement or prohibition made or imposed by or under this Act, then, without affecting any other liability of the person under this Act or otherwise in respect of the contravention, the Authority may, by order served on the person concerned, require him, within a reasonable time specified in the order—

- (a) to remedy the contravention;
- (b) to clean up any pollution or make good any other detriment identified in the order which was caused to any water resource by reason of the contravention; and
- (c) to remove or destroy any works, plant or machinery employed for the purposes of the contravention.

(2) In default of the person's compliance with such an order, the Authority or a prescribed person or body may take such steps as are necessary to execute the order, and the expenses incurred in doing so shall be recoverable at the suit of the Authority, person or body in any court of competent jurisdiction as a debt from the person to whom the order was given.

(3) A person aggrieved by an order under this section may appeal to the Water Appeal Board.

#### **97. Powers of inspectors**

(1) Every permit holder or licensee, and any employee or agent of a permit holder or licensee, shall on demand by an inspector—

- (a) afford to the inspector such information as is within his knowledge in all matters relating to any inquiry held by the inspector under this Act; and
- (b) produce for inspection any licence, map, plan, specification, drawing or other document or record relating to—
  - (i) the permit or licence;
  - (ii) any works constructed under the permit or licence; or
  - (iii) the flow of water in any such works or in any water resource affected by them.

(2) A person who contravenes this section shall be guilty of an offence.



**98. Requirement to state name and address**

(1) Any person who has committed, or has been accused of committing, an offence under this Act who—

- (a) refuses, on demand of an inspector, to give his name and place of abode and other particulars which the inspector may reasonably require; or
- (b) in purported compliance with such a demand, gives a name, place of abode or other particulars which the inspector has reason to believe to be false,

may be arrested by the inspector without warrant, and handed over to the nearest police officer.

(2) When his true name and place of abode or other particulars have been ascertained, the person concerned shall be released on his executing a bond, if so required, with or without sureties, to appear before a magistrate.

(3) Should the person's true name and place of abode other particulars not be ascertained within twenty-four hours from the time of his arrest, or should he fail to execute such a bond or, if so required, to furnish sufficient sureties, he shall forthwith be brought before a magistrate having jurisdiction in the area:

Provided that, if there is no magistrate then in the area before whom the person can conveniently be brought, the person may be detained in custody until a magistrate is available.

**99. Service of notices**

(1) Any notice required to be served in pursuance of this Act shall be served—

- (a) by delivering it personally to the person required to be served, or, if such person is absent or cannot be found—
  - (i) by leaving it at the person's usual or last known place of abode in Kenya; or
  - (ii) by post, addressed to the person's usual or last known address in Kenya; or
- (b) in the case of a notice required to be served on a local authority, company or other corporate body, by delivering it to its principal officer or by leaving it at his office with some person employed there, or by post.

(2) If any landholder is not known and, after diligent inquiry, cannot be found, such notice may be served on him by leaving it, addressed to him, with some occupier of the land or, if there is no apparent occupier, by causing it to be put in a conspicuous position on the property in Kenya last known to have been occupied by him.

(3) Any notice required to be given to landholder may be addressed to "the owner" of land or premises described in the address in respect of which the notice is given, without further name or description.

**100. Order, etc., to be in writing**

Any order, notice, consent, approval, permission, demand, objection, application or other thing authorised or required by this Act to be given, made or issued by or to the Minister, the Authority, the Regulatory Board or any other person shall be in writing.

**101. Authentication of documents**

(1) Any order, notice, consent, approval, demand or other document which the Authority is authorised or required by or under this Act to give, make or issue may be signed on behalf of the Authority—

- (a) by the Chief Executive Officer of the Authority; or
- (b) by any officer of the Authority authorised by it in writing to sign documents of the particular kind or to sign the particular document.

(2) Any order, notice, consent, approval, demand or other document which the Regulatory Board is authorised or required by or under this Act to give, make or issue may be signed on its behalf—

- (a) by the Chief Executive Officer of the Board; or
- (b) by any officer of the Board authorised by it in writing to sign documents of the particular kind or to sign the particular document.

(3) Any document purporting to bear the signature of any person—

- (a) expressed to hold an office by virtue of which he is under this section empowered to sign a document; or
- (b) expressed to be duly authorised by the Authority or the Regulatory Board to sign such a document or the particular document,

shall, for the purposes of this Act, be deemed, unless the contrary is proved, to be duly given, made or issued on behalf of the Authority or the Regulatory Board, as the case may be.

**102. Permit or licence to be evidence of power or function**

The production of—

- (a) a permit, or a copy of a permit, purporting to be certified by the Chief Executive Officer of the Authority; or
- (b) a licence, or a copy of a licence, purporting to be certified by the Chief Executive Officer of the Regulatory Board,

shall without further proof be *prima facie* evidence in any proceedings of the matters and things specified therein.

**103. Protection of the Minister and others from liability**

No matter or thing done or omitted by—

- (a) the Minister, the Authority, the Regulatory Board, a catchment area advisory committee, a water services board or the Water Appeal Board;
- (b) any person acting at the direction of the Minister; or

- (c) any member of or person acting at the direction of the Authority, the Regulatory Board or any such other board or committee,

shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject the Minister or any such member or person in his personal capacity to any action, suit, claim or demand whatsoever.

#### **104. Proceedings for offences**

Without prejudice to the rights of any person to bring proceedings in respect of an offence, the Minister, the Authority or Regulatory Board may institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any rules or regulations made under this Act.

#### **105. Penalties for offences**

A person who is guilty of an offence under this Act, or under any rules or regulations made under this Act, shall, if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

#### **106. Application of Act to Trust land**

Notwithstanding anything contained in this Act, any powers and functions conferred or imposed by or under this Act shall in respect of Trust land be exercised and performed subject to any written law relating to that land.

#### **107. Public consultation**

(1) A requirement imposed by or under this Act for a person (in this section called the "designated person") to undertake public consultation in relation to any application made, or action proposed to be taken, under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action.

(2) The designated person shall publish a notice, in relation to the application or proposed action—

- (a) in the *Gazette*;
- (b) in at least one national newspaper circulating in the locality to which the application or proposed action relates; and
- (c) in at least one Kenyan radio station broadcasting in that locality.

(3) The notice shall in each case—

- (a) set out a summary of the application or proposed action;
- (b) state the premises at which the details of the application or proposed action may be inspected;
- (c) invite written comments on or objections to the application or proposed action;
- (d) specify the person or body to which any such comments are to be submitted; and

(e) specify a date by which any such comments are required be received, not being a date earlier than 30 days after publication of the notice.

(4) The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession of the designated person.

(5) The designated person shall consider—

(a) any written comments received on or before the date specified under subsection (3)(e); and

(b) any comments, whether in writing or not, received at any public meeting held in relation to the application or proposed action at which the designated person was represented, or pursuant to any other invitation to comment.

(6) The designated person shall publish, through the same media as were employed pursuant to subsection (2), notice of the fact that a copy of the decision in writing of the designated person in relation to the application or proposed action, and of the reasons therefor, is available for public inspection at the same premises as were notified under subsection (3)(b).

(7) Where rules made under this Act so require, the designated person shall cause a public meeting to be held in relation to the application or proposed action.

#### **108. Emergency powers in case of shortage water**

(1) If the Minister, on the advice of the Authority, is satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists or is threatened in any area, he may by order—

(a) declare that an emergency exists; and

(b) direct a person who has a supply of water in excess of his needs for domestic purposes to supply to the area concerned, or to a specified person in the area, such quantity of water, and for such period, as the order may specify.

(2) Any person so directed by an order under this section who fails to comply with the provisions of the order concerned shall be guilty of an offence.

(3) An order under this section may require or authorise—

(a) the laying of pipes and the construction of works on any land;

(b) the entry on to any land by servants or agents of the Authority; and

(c) such other measures as the Minister may consider necessary for the giving and taking of any such water.

(4) If a person to whom an order under this section is directed fails to comply with the order, the Minister, or any person deputed by him for the purpose—

(a) may take possession of the water supply and operate any works of the person concerned for the drawing, diversion or use of water; and

- (b) shall have and may exercise the person's rights in connection with them during the period of the order, subject to any conditions imposed by the order.

(5) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

(6) A payment made under subsection (5), or such proportion of it as the Minister may determine, may be recovered by the Minister, as a debt due to the Government, from a person benefiting by the supply of water under the order.

(7) A person who, without lawful authority, hinders or obstructs any person acting in pursuance of an order under this section, or interferes with any works constructed or under construction in pursuance of such an order, shall be guilty of an offence.

#### **109. No warranty implied by inspection**

No inspection, in pursuance of this Act, of any works authorised to be constructed under this Act shall be deemed to constitute or imply any guarantee of the works constructed, or to support or justify any claim whatsoever against the Authority, the Regulatory Board, the Minister or the Government in connection with any such works.

#### **110. Rules**

(1) The Minister may make rules, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act (Cap. 372).

(2) Without prejudice to the generality of subsection (1), such rules may make provision for or with respect to—

- (a) delegation by the Authority or the Regulatory Board of their respective powers;
- (b) abstraction of ground water and works therefor;
- (c) the construction and maintenance of weirs, flumes, sluice-gates, valves or other controlling or measuring devices;
- (d) construction, extension or improvement of dams, and licensing of persons carrying on business as dam constructors;
- (e) temporary works;
- (f) inspection of works;
- (g) abandoned works;
- (h) plans and specifications to be submitted by applicants under this Act;
- (i) charges for water use under a permit and fees for licences;
- (j) forms to be used under this Act;
- (k) drainage and reclamation of swamps;

- (l) the provision of bottled or mineral waters;
- (m) protection of fish and fish food;
- (n) state and community projects;
- (o) any saving or temporary provision in consequence of the repeal of the Water Act.

(3) The Authority may make rules, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed by the Authority.

(4) Rules made under this section may create offences in respect of any contravention of the rules and may for any such offence impose penalties not exceeding fifty thousand shillings or imprisonment for six months, or both.

*Repeals, Savings and Transitional Provisions*

**111. Repeals**

- (1) The Water Act (Cap. 372) is hereby repealed.
- (2) Sections 168-176 of the Local Government Act (Cap. 265) are hereby repealed.
- (3) Notwithstanding the repeals effected by this section—
  - (a) the Water Resources Authority, a Local Water Authority, the Water Apportionment Board and any other body established under an enactment repealed by this section shall be deemed to continue in being; and
  - (b) any person or body performing any functions under such an enactment shall continue to do so, and in so doing may exercise any power vested in the person or body in connection with the performance of such functions,

until the Minister, by a notice or notices in the *Gazette*, revokes this subsection in full or in part as may be necessary.

**112. Existing water rights**

A right to the use of water in any body of water, being a right existing immediately before the commencement of this section and which was acquired—

- (a) under any provision of the Water Act repealed by this Act;
- (b) under the Water Ordinance, 1929;
- (c) by specific grant, before 1st July, 1935, by or on behalf of the Government in any title under the Government Lands Act or under the Crown Lands Ordinance, 1902 (now repealed); or
- (d) by agreement or otherwise,

shall be deemed to be a right conferred by a permit under this Act, and any instrument by which the right was conferred shall be deemed to be such a permit, and may be dealt with under this Act accordingly.

**113. Transfer of water services**

(1) As soon as reasonably practicable after the commencement of Part I of this Act, and following public consultation, the Minister shall publish by notice in the *Gazette* a plan for the transfer of the management and operation of water services to water services boards established under this Act.

(2) The plan shall—

- (a) provide details of the institutional, contractual and financial arrangements, capacity building, organisational restructuring, transitional and other measures necessary to ensure an efficient, cost-effective and orderly transfer of the management and operation of water services;
- (b) prescribe appropriate arrangement for transferring to water services boards the ownership of plant, equipment or other assets used by the Government in connection with water services, whether with or without any associated liabilities; and
- (c) prescribe appropriate arrangements for water services boards to obtain the use of plant, equipment or other assets used by a local authority or other person in connection with water services; and
- (d) specify measures to give effect to the plan within a specified time.

(3) Rules made under this Act may make such provision as may be necessary to give effect to the plan in respect of any particular water services.

**114. Arrangements pending transfer**

Notwithstanding any repeal or amendment effected by or under this Act—

- (a) a local authority or other person who, immediately before the date on which the repeal or amendment took effect, was a water undertaker within the meaning of the Water Act shall, until the coming into force of any rules to the contrary under section 113, continue to exercise and perform the same powers and functions as a water undertaker as it was exercising immediately before that date, as if it were the holder of a licence under this Act conferring or imposing such powers and functions upon it; and
  - (b) for the purposes of the exercise and performance of functions in accordance with paragraph (a), the repealed provisions the Water Act (Cap. 372), and the provisions of sections 168-176 of the Local Government Act (Cap. 265), and any by-laws or other subsidiary legislation made for the purposes of any such provisions, shall be deemed to continue in force.
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## FIRST SCHEDULE

[Sections 7, 15, 46 and 51.]

## MEMBERSHIP AND PROCEDURE OF BOARDS AND COMMITTEES

**1. Application of this Schedule**

(1) This Schedule applies to—

- (a) the governing board of the Authority;
- (b) the Regulatory Board;
- (c) every catchment area advisory committee; and
- (d) every water services board.

(2) In this Schedule, unless the context otherwise requires—

**“board”** means a board to which this Schedule applies;**“Chairman”** means the Chairman of a board or committee;**“committee”** means a catchment area advisory committee;**“member”** means a member of a board or committee.**2. Qualification of members**

In making an appointment to a board or committee, the person making the appointment shall have regard to—

- (a) the educational qualifications, experience, expertise, character and integrity of potential candidates for membership; and
- (b) the degree to which water users, or water users of particular kinds, are represented on the board or committee at the time the appointment is made.

**3. Term of office**

(1) A member shall hold office for such term, not exceeding three years, as may be specified in the instrument of his appointment.

(2) A member shall be eligible (if otherwise qualified) for reappointment from time to time.

**4. Acting Chairman**

(1) A person may from time to time be appointed to act in the office of Chairman during the illness or absence of the Chairman, and a person so appointed shall, while so acting, have all the functions of the Chairman and shall be deemed to be the Chairman.

(2) An appointment under this paragraph may be made, and at any time revoked, by the person or body who appointed or elected the Chairman or by any of their successors in office.

(3) For the purposes of this paragraph, a vacancy in the office of Chairman shall be deemed to be an absence from office of the Chairman.



**5. Terms and conditions of service**

The terms and conditions of service of a member, including the remuneration, travelling and other expenses to which he is entitled, shall be as prescribed by rules made under this Act.

**6. Vacancy in office of member**

(1) The office of a member shall become vacant if—

- (a) he dies, resigns or is removed from office;
- (b) he absents himself from four consecutive meetings of the board or committee of which reasonable notice has been given to him personally or in the ordinary course of post, unless—
  - (i) the board or committee has granted the member leave to be absent from those meetings; or
  - (ii) within four weeks after the last of those meetings, he is excused by the board or committee for having been absent from those meetings;
- (c) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) he is adjudged or declared by any competent court or tribunal to be of unsound mind; or
- (e) he is convicted of an offence punishable by imprisonment for 12 months or more.

(2) If the office of a member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**7. Disclosure of pecuniary interests**

(1) A member who has a direct or indirect pecuniary interests—

- (a) in a matter which is being considered, or is about to be considered, at a meeting of a board or committee of which he is a member; or
- (b) in a thing being done or about to be done by the board or committee,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the board or committee.

(2) A disclosure at such a meeting that the member concerned—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The board or committee shall cause particulars of any disclosure made under subparagraph (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subparagraph (1) or (2), the member shall not, unless it is otherwise determined—

- (a) be present during any deliberation, or take part in any decision, of the board or committee with respect to that matter; or
- (b) exercise or perform any powers or functions under this Act with respect to that thing,

as the case may require.

(5) A determination under subparagraph (4) may only be made—

- (a) in relation to the governing board of the Authority or the Regulatory Board by the Minister;
- (b) in relation to a catchment area advisory committee by the Authority; or
- (c) in relation to a water services board-by the Regulatory Board.

(6) Subparagraph (4) does not apply to a member whose interest consists merely of the fact that the member is the holder of a permit.

(7) A contravention of this paragraph does not invalidate any decision of the board or committee or the exercise or performance of any power or function under this Act.

(8) A reference in this paragraph to a meeting of a board or committee includes a reference to a meeting of any subcommittees of the board or committee.

## **8. General procedures**

Except as otherwise provided by or under this Act—

- (a) meetings of a board or committee shall be held at such times and places as are fixed by the Chairman; and
- (b) the procedure for the convening of meetings and for the conduct of business at those meetings shall be as determined by the Chairman.

## **9. Quorum**

A majority of the members for the time being holding office as members of a board or a committee shall constitute a quorum at any meeting of the board or committee.

## **10. Presiding members**

The Chairman (or, in the absence of the Chairman, a member appointed by the members then present) shall preside at a meeting of a board or committee.

**11. Decisions**

A decision supported by a majority of the votes cast at a meeting of a board or committee at which a quorum is present shall be the decision of the board or committee.

**12. Record of proceedings**

(1) The presiding member at a meeting of a board or committee shall cause a record of the proceedings at the meeting to be made.

(2) Records made for the purposes of this paragraph may be destroyed after the expiry of the period prescribed by rules made under this Act.

**13. First meeting**

(1) The first meeting of the governing board of the Authority or of the Regulatory Board shall be called by the Minister in such manner as the Minister thinks fit.

(2) The first meeting of a catchment area advisory committee shall be called by the Authority in such manner as the Authority thinks fit.

(3) The first meeting of a water services board shall be called by the Regulatory Board in such manner as the Regulatory Board thinks fit.

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**SECOND SCHEDULE**

[Section 27.]

**CONDITIONS RELATING TO CONSTRUCTION OF WORKS****1. Meaning of “authorised works”**

In this Schedule, “**authorised works**” means works the construction of which is authorised by a permit.

**2. Inspection of works during construction**

Any authorised works may, if the Authority so determines, be inspected during construction by its officers.

**3. Works to be made secure**

(1) Upon any inspection made under this Schedule, the Authority may order the permit holder to make any addition or alteration which it considers necessary for the security of any authorised works, whether completed or in the course of construction.

(2) If such an order is not completed with to the satisfaction of the Authority within such period as it may specify, the permit authorising construction of the works may be cancelled or modified by the Authority.

**4. Road crossings**

(1) A permit holder constructing any authorised works—

- (a) shall, during their construction, keep open for safe and convenient travel all public roads and rights of way, publicly used as such, when they are crossed or interfered with by the works; and

- (b) shall, before water is admitted to the works, construct to the satisfaction of the local authority concerned (or, at the option of the local authority, refund to it the costs of construction by it of)—
- (i) a substantial bridge with proper and sufficient approaches thereto over the works; and
  - (ii) such railings, fences, guard posts, culverts, face-walls and other structures and appurtenances as the local authority, with the approval of the Authority, may declare to be necessary in the public interest.

(2) All such bridges, approaches and appurtenances shall be maintained by the permit holder, while his permit is valid, or alternatively, at the option of the local authority, by the local authority at the expense of the constructor.

(3) The local authority concerned may at any time, at its own cost, renew or alter any such bridge or any structure or works in connection therewith.

#### **5. Completion certificate and inspection**

(1) Upon the expiration of the time limited by a permit for the construction of works authorised by the permit, or before the expiration of that time, if the construction be sooner completed, the permit holder shall submit a completion certificate in the prescribed form.

(2) Thereupon an inspection may be made, by an officer appointed for the purpose by the Authority, to ascertain that—

- (a) the works have been completed in accordance with the permit;
- (b) the easements, if any, for the works have been obtained;
- (c) agreements, if any are necessary, have been entered into for the supply of water for utilisation on lands which are not the property of the permit holder or for the drainage of lands; and
- (d) the works as constructed are of the required capacity.

(3) If construction is not completed within the time limited by the permit, a progress report shall be submitted in lieu of a completion report, and the permit holder may apply for an extension of time.

(4) An extension of time under subparagraph (3) may be refused or may be sanctioned upon such terms as the Authority may specify.

#### **6. Forfeiture of rights of works not completed within time allowed**

Upon the expiration of the time limited by a permit for the construction of works authorised by the permit, or by any extension of that time, the rights granted to the permit holder under the permit shall cease and determine, and any works constructed, erected, fixed or acquired at the date of such determination may be taken over and operated, or disposed of, in such manner as the Authority may specify.

**7. Works to be kept in repair**

Every permit holder shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Authority, so that—

- (a) they are, at all times, of sufficient strength and capacity for the fulfilment of the purposes for which they were constructed; and
- (b) no damage occurs to any road, property or work in their vicinity.

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**THIRD SCHEDULE**

[Section 28.]

**EASEMENTS****1. Encumbrances**

The acquisition of an easement in accordance with this Schedule shall not affect the burden or benefit of any encumbrance on the land existing at the date of the acquisition or the liability or right of any person in respect thereof.

**2. Easement includes right of access**

(1) An easement shall include the right of access, along a route to be approved by the Authority after consultation with the owner, to any piece of land contiguous to the water of the permit holder in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the permit holder and for any purpose necessary for the effective enjoyment of the easement.

(2) The permit holder shall, however, give reasonable notice to the occupier of the land over which the easement is held of his intention to enter the land for any of the purposes mentioned in this paragraph.

**3. Permit holder must avoid flooding lands and maintain canal satisfactorily**

A permit holder who has acquired an easement which authorises the construction of a canal—

- (a) shall take and maintain adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying; and
- (b) shall not cause damage to any land in respect of which the easement is held by permitting the accumulation of weeds, silt or any other obstruction or nuisance which might cause flooding or any other damage whatsoever.

**4. Damage caused by works of permit holder**

(1) If damage is caused, as the result of works of a permit holder, to the land over which the easement is held, the landholder may require the permit holder to construct such additional works as are necessary, in the opinion of the Authority,

to prevent such damage or any recurrence thereof, and the Authority may by order require the permit holder to construct such additional works at his sole expense.

(2) If the permit holder fails to comply with an order of the Authority given under this paragraph, the Authority may cancel his permit.

**5. Permit holder to construct works to enable landholder to enjoy his existing works if interfered with**

(1) A permit holder who has acquired an easement for the construction of works on another landholder's land which prevents the landholder passing freely over or on his land as he could before, or interferes with his existing works, structures or devices upon his land, shall, at his own expense, construct and maintain in repair, to the satisfaction of the Authority and under such conditions as it may prescribe—

- (a) such bridges and other structures and devices as will make communication safe and convenient; or
- (b) such works, structures or devices as the Authority considers necessary to enable the landholder effectually to enjoy the use of any work, structure or device interfered with.

(2) Any permit holder who fails to comply with the provisions of this paragraph shall be guilty of an offence.

**6. Permit holder desiring easement to serve notice on landholder**

(1) A permit holder claiming an easement under this Act shall serve a notice on the holder of the land on, over or through which he desires to acquire the easement, and shall in such notice state the following particulars, and such further particulars as may be required by rules made under this Act—

- (a) a description of the proposed works and a statement of their use;
- (b) a statement of the quantity or discharge of water, if any, to be diverted or deal with;
- (c) a map showing clearly the nature and locality of any works or area of swamp or land to be reclaimed, if the easement is for reclamation of a swamp or lands;
- (d) a statement of the area of the land (if any) which is or will be—
  - (i) occupied by the works;
  - (ii) flooded as a result of the works;
  - (iii) required for the purposes of inspection and maintenance of the works;
  - (iv) required for the excavation or collection of material for the works, or for the deposit of soil or material derived from the works;
  - (v) required for a road or roads to obtain access to the works; or
  - (vi) required for the control or prevention of pollution of the water to be used; and
- (e) a statement of the compensation which is offered and the period of time during which the permit holder wishes to enjoy the easement.

(2) A copy of the notice shall be sent by the permit holder to the Authority.

#### **7. Consent of landholder to easement**

If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the permit holder—

- (a) shall embody the particulars and other matters pertaining thereto in a deed or other instrument suitable for registration; and
- (b) after its execution by the parties concerned, shall send two copies of such deed or other instrument, certified by the Registrar of Titles, to the Authority.

#### **8. Application if landholder does not consent**

If the landholder does not, within two months after the service of a notice under this Schedule, agree to the claim for an easement or to any other matter necessary for an easement, the permit holder may apply to the Authority, in the prescribed manner, for an easement, and shall serve notice of such application upon the landholder.

#### **9. Determination application to easement**

(1) The Authority may either dismiss the claim for an easement or grant the claim with or without modification and subject to such conditions, and to the payment of such compensation, as to the Authority seems just.

(2) The Authority shall notify the permit holder and the landholder of its decision.

(3) When the claim for an easement has been granted, the permit holder shall embody the particulars and other matters pertaining to an easement granted under subparagraph (1) of this paragraph in a deed or other instrument suitable for registration, and shall tender the deed or instrument, together with the amount of any award of compensation made, to the landholder for execution.

(4) If the landholder fails within such time as may be specified by the Authority to execute and deliver the deed or instrument to the permit holder, the Authority may do so on his behalf, and thereupon the deed or instrument shall have the same effect as if it had been executed by the landholder.

(5) The Registrar of Titles shall register the deed or instrument against the title affected, and two copies of such deed or instrument, certified by the Registrar of Titles, shall be sent by the permit holder to the Authority.

(6) Where an appeal has been lodged under subparagraph (2) of this paragraph, no action shall be taken under subparagraphs (3), (4) or (5) of this paragraph until the appeal has been decided.

#### **10. Lapsing of easement**

(1) An easement acquired under this Act shall lapse—

- (a) if the works authorised are not completed and the water is not utilised within one year from the date of acquiring the easement or within such further period as the Authority may determine; or

- (b) if, at any time, substantial use is not made of the permit in accordance with the terms of the permit for a continuous period of two years, or such longer period as the Authority may, from time to time, in any particular case, determine.

(2) Upon the lapse of an easement, the Authority shall notify the Registrar of Titles, who shall, without charge, cancel the registration of the easement against the title affected.

#### **11. Permit holder to keep works in state of repair**

(1) If any work constructed on the land of a person other than the permit holder is out of repair or requiring cleaning, the permit holder or agent shall, if required in writing by the landholder to repair or clean such work, carry out such requirements within a reasonable time.

(2) If the permit holder fails so to do, the landholder may cause to be done all things necessary for carrying out such repairs or cleaning, and may recover the cost thereof from the permit holder in any court of competent jurisdiction.

(3) Such repairs or cleaning shall not be unreasonably demanded, and, in the event of a dispute between the parties, the Authority shall decide what constitutes reasonable repairs or cleaning.

(4) A permit holder who allows or suffers any such works to fall into disrepair or, in the opinion of the Authority, to be in such a state as to require cleaning shall be liable for all damage which may arise as a consequence.

#### **14. Landholder may demand and obtain use of works**

(1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Authority either before or after the construction of any works, apply for a permit to make use of such works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, store or use under this Act.

(2) Before such a permit or authorisation is issued by the Authority—

- (a) the landholder shall prove, to the satisfaction of the Authority, that the works of the permit holder can be satisfactorily used for the purpose of the landholder and without material detriment to the permit holder; and
- (b) such proportionate cost of the works shall be paid by the landholder to the permit holder who constructed or is constructing the works as may be agreed on between the parties or, failing agreement, as may be determined by the Water Appeal Board.

(3) The permit holder may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the works made use of, until either party has in writing surrendered such right of user and, in the event of disagreement, the matter shall be decided by the Water Appeal Board.



(4) If such works require modification to enable the landholder to enjoy their use, he shall, unless the matter is otherwise agreed, pay to the permit holder—

- (a) the entire cost of modifying them in the manner approved by the Authority; and
- (b) the cost of constructing and maintaining such devices for apportioning the quantities of water as the Authority may prescribe or approve.

(5) When it is proved to the satisfaction of the Authority that altered conditions have rendered revision of such rate of payment just and equitable, the Authority shall inform the parties concerned, and, failing agreement between such parties on any such revision of the rate of payment, the matter shall be referred to and decided by the Water Appeal Board.

#### **15. Landholder may use land occupied by excavated material for own purposes**

When works have been excavated by a permit holder on another person's land

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- (a) any land used solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the landholder for his own purposes; and
- (b) the landholder may remove such excavated material:

Provided that no damage shall be done to the works of the permit holder, nor shall the works be obstructed or interfered with by such removal.

#### **16. Easement to be registered**

The deed or other instrument creating an easement acquired under the Schedule shall be registered against the title affected, and a plan, which shall be approved and signed by, or by the authority of, the Director of Surveys, shall be attached to each document granting the easement.

#### **17. Determination of easement**

(1) An easement acquired under this Act shall determine if and when the permit for the exercise of rights under which the easement has been acquired is cancelled as provided for in this Act.

(2) On the determination of the relevant permit, any works constructed by the permit holder on the lands of another person shall, where the permit holder is the sole permit holder, become the property of such other person unless removed by the permit holder—

- (a) voluntarily, within two years from the date of such determination; or
- (b) at the order of the Authority at the request of the other person.

#### **18. Registration of determination or variation of easement**

On the determination or variation of an easement, the Authority shall notify the landholder over whose land the easement was granted, and the Registrar of Titles and the landholder concerned may, at the expense of the person in whose

name the easement is registered, take such action as is necessary to cause his title to be freed from the easement or to record the variation, as the case may require.

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#### FOURTH SCHEDULE

[Section 45.]

#### ABSTRACTION OF GROUND WATER

##### 1. Application of this Schedule

This Schedule shall apply to the extraction of ground water whether or not for a purpose or in circumstances which require a permit.

##### 2. Notice of intention to construct well

(1) No person shall construct or begin to construct a well without having first given to the Authority notice of his intention to do so and shall comply with such requirements as may be imposed by the Authority.

(2) Unless otherwise exempted, a person constructing a well shall keep a record of the progress of the work, which shall include—

- (a) measurements of the strata passed through and specimens of such strata;
- (b) measurements of the levels at which water was struck; and
- (c) measurements of the quantity of water obtained at each level, the quantity finally obtained and the rest level of the water.

(3) A person to whom subparagraph (2) applies shall allow any person authorised by the Authority, at any reasonable time—

- (a) to have free access to the well;
- (b) to inspect the well and the material excavated from it;
- (c) to take specimens of such material and of water abstracted from the well; and
- (d) to inspect and take copies of or extracts from the record required to be kept under this paragraph.

(4) Where the person constructing a well on any land is not the occupier of the land, the obligation to allow any person authorised by the Authority to exercise his rights under this paragraph shall be the obligation of the occupier of the land as well as of the person constructing the well.

(5) The Authority may by notice, whether conditionally or subject to specified conditions, exempt any person, in such circumstances as may be specified in the notice from the operation of subparagraphs (2) and (3).

##### 3. Submission of records

A person constructing a well, if required to keep records under this Part, shall, within one month of the cessation of the construction, send to the Authority—

- (a) a complete copy of the record, together with the specimens referred to in the record; and

- (b) particulars of any test made, before such cessation of the construction, of the yield of water, specifying—
  - (i) the rate of flow throughout the test and the duration of the test; and
  - (ii) where practicable, the water levels during the test and thereafter until the water has returned to its natural level; and
- (c) a statement of whether, in his opinion (as determined by tasting) the water is suitable for drinking or is highly mineralised, as the case may be; and
- (d) if required by the Authority, such water samples as it may consider necessary.

#### **4. Tests on neighbouring wells**

(1) Where any well is being constructed within eight hundred metres of an existing well, the Authority may by notice require the person constructing the well to apply tests, to be specified in the notice, to the existing well and to supply to the Authority the particulars of the results of such tests including the rate of pumping and rest levels of water.

(2) Where the well to which the tests are to be applied is situated on the property of a person other than the person constructing the well and the person constructing the well is unable for any reason to apply the test, the Authority may by notice, require the person upon whose property the existing well is situate to apply the tests to be specified in the notice to him, and to supply to the Authority the particulars of the results of such tests.

#### **5. Contractor deemed to be construction**

Where any borehole contractor constructs a borehole for the purposes of a well on land belonging to or occupied by any other person, the borehole contractor shall be deemed, for the purposes of this Act, to be the person constructing the well.

#### **6. Records may be required to be treated as confidential**

(1) A person constructing a well or the owner or occupier of the land on which construction takes place may give notice to the Authority requesting that—

- (a) any copy of, or extract from, the record required to be kept under this Act; or
- (b) any specimen taken or any other particulars connected with the well;

be treated confidentially.

(2) In response to such a notice, the Authority shall, if sufficient cause has been shown, thereupon not allow such copy extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person other than a member of the Authority without the consent of the person giving the notice:

Provided that, if at any time the Authority gives notice to the person that, in its opinion, his consent is unreasonably withheld—

- (i) the person may, within three months after the notice given by the Authority, appeal to the Water Appeal Board; and

- (ii) if, at the expiration of that period, no such appeal has been made or, after hearing the appeal, the Water Appeal Board does not make an order restraining it from doing so, the Authority may proceed as if such consent had been given.

### **7. Waste of ground water**

(1) No person shall, except with the written permission of the Authority—

- (a) cause any ground water to run to waste from any well, except for the purpose of testing the extent or quality of the supply or cleaning, sterilising, examining or repairing the well;
- (b) abstract from any well water in excess of his reasonable requirements and which he cannot use in a reasonable and beneficial manner;
- (c) conduct the water from any well through any channel or conduct so that more than twenty per cent of the water is lost between the point of appropriation and the point of beneficial use:

Provided that, where the water from any well is conducted through channels or conducts together with water from other sources, no person shall permit the waste of more than twenty per cent of the water in conducting the water from the point of appropriation of the well water to the point of beneficial use;

- (d) use any water from any well for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste:

Provided that, where ground water interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the Authority may, in any particular case, by notice permit such water to waste upon such conditions, regarding quantity and method of disposal, as the notice may specify.

### **8. Detective wells**

(1) Any well which encounters salt water, in this Part referred to as a “defective well”, shall be securely cased, plugged or sealed off by the owner of the well, so that the salt water is confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as effectively to prevent the salt water from escaping from the strata in which it was found into any other water-bearing strata or on to the surface of the ground.

(2) This paragraph shall apply to wells constructed before or after the commencement of this paragraph.

### **9. Interference with defective well**

Any person who re-cases or removes the plugs or seals from a defective well, or deposits, or causes or knowingly permits the deposit of, any dirt, rubbish or other material in any such well, except with the written permission of the Authority, shall be guilty of an offence.

**10. Application to can out work on a defective well**

(1) Before any defective well is re-cased or the plugs or removed, the owner of the well, or his duly authorised representative, shall file with the Authority an application for permission to carry out such re-casing or the removal of the plugs or seals.

(2) The application shall contain such information as the Authority may require to—

- (a) the name and address of the owner of the well;
- (b) its location, depth and size;
- (c) the amount and location of casing or sealing in the well;
- (d) the distance below the surface of the ground to the water level in the well;
- (e) the strata penetrated;
- (f) the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum; and
- (g) any other matter specified by the authority in respect of the well.

(3) The application shall also state the methods proposed for recasing, replugging or resealing of the well.

**11. Instructions to deal with defective well**

The Authority, after consideration of any application under paragraph 10, may call for additional data, and may make such investigation as it considers necessary, and if the well is found to contain salt water, shall by order give instructions to the applicant, specifying—

- (a) the work that shall be done by the owner to place it in a satisfactory condition; and
- (b) the time that shall be allowed to complete the work,

and may inspect such work while it is in progress.

**12. Authority may inspect well**

The Authority may on its own initiative, or upon information or complaint from any source, make an examination of any well suspected of containing salt water, and may by order issue instructions for curing any defects in the well.

**13. Sworn statement to be submitted**

(1) Upon completion of the works in pursuance of any instructions issued under the Schedule—

- (a) the contractor who carries out the work; or
- (b) if the work is done without a contractor, the owner of the well,

shall file with the Authority a statement sworn or affirmed specifying in detail the manner in which such work was done.

(2) The statement shall be filed within thirty days after the completion of the work.

**14. Additional work on defective well**

(1) Upon receipt of a statement under paragraph 13, the Authority shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily performed.

(2) If the Authority determines that the work has not been satisfactorily performed, it shall by order issue additional instructions specifying the additional work required to place the well in a satisfactory condition, and specifying the time for the completion of such additional work.

(3) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the Authority as provided for in paragraph 13.

**15. Contamination pollution of ground water**

Every person abstracting ground water by means of a well shall, in order to prevent contamination or pollution of the water—

- (a) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;
- (b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe;
- (c) dispose of all return or waste water by means other than by return to the well;
- (d) extend the well casing to a point not less than twenty centimetres above the elevation of the finished pump house or pump pit floor;
- (e) use either welded or screw type well joints on the casing, if made of metal;
- (f) dispose of effluents or drainage from any household, stable, factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or ground water; and
- (g) carry out such other work as the Authority may by order direct, from time to time, for the prevention of contamination or pollution.

**16. Authority may special measure safeguard ground water resource**

If—

- (a) during the construction of a well, water is encountered in an aquifer; and
- (b) water from a water table or lower aquifer tends to flow from the upper aquifer to the lower aquifer; and
- (c) in the opinion of the Authority this is likely to prove detrimental to the ground water resources of the area;

the Authority may order what special measures shall be taken by the owner of the well so that the water from the higher aquifer cannot flow to the lower aquifer.

**17. Artesian wells cased**

Every artesian well and every sub-artesian well shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow therefrom over the surface of the ground or wasting from the well through the strata through which it passes.

**18. Offence and penalty**

(1) A person who neglects or fails to comply with any order or requirement given or imposed on him by or under this Schedule shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings.

(2) Liability of any person under this paragraph is in addition to any liability of the person under paragraph 18.

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**FIFTH SCHEDULE**

[Section 84.]

**MEMBERSHIP AND PROCEDURE OF THE WATER APPEAL BOARD****1. Term of office**

A member of the Water Appeal Board shall hold office for such term, not exceeding five years, as may be specified in the instrument of his appointment.

**2. Terms and conditions of service**

The terms and conditions of service of a member of the Water Appeal Board, including the remuneration, travelling and other expenses to which he is entitled, shall be as prescribed by rules made under this Act.

**3. Qualification of lay members**

In making an appointment to the Water Appeal Board, the Minister shall have regard to the educational qualifications, experience in the water sector, expertise, character and integrity of potential candidates for membership.

**4. Vacancy in office of member**

(1) The office of a member of the Water Appeal Board shall become vacant if—

- (a) he dies, resigns or is removed from office;
- (b) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) he is adjudged or declared by any competent court or tribunal to be of unsound mind; or
- (d) he is convicted of an offence punishable by imprisonment for 12 months or more.

(2) A member of the Water Appeal Board may be removed from office at any time by the person who appointed him or by any successor in office of that person.

(3) If the office of a member of a board becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**5. Decisions**

A decision supported by a majority of the members of the Water Appeal Board shall be the decision of the Board.

**6. Record of proceedings**

(1) The Chairman shall cause a record of the proceedings of the Board to be made.

(2) Records made for the purposes of this paragraph may be destroyed after the expiry of the period prescribed by rules made by the Minister under this Act.

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