

(4) The licensee giving the notice shall pay to the supplying licensee—

- (a) such portion of any expenses reasonably incurred by him for the purpose of providing water services to the premises referred to in the notice; and
- (b) such sum in respect of any pipes, plant or apparatus vested in the licensee giving the notice as may be agreed or, in default of agreement, as may be determined by the Regulatory Board.

(5) While a supplying licensee is, in accordance with this section, authorised to provide water services outside his limits of supply, any regulations relating to his undertaking shall have effect as if the area to which those services were provided were within those limits.

Supply of water
in bulk.

66.(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.(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).

Reserve powers
of the Minister.

(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 the 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 of land, to be a public purpose.

Default by
licensee.

68.(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 is 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 made 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. 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,

Transfer of
functions of
licensee.

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

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

- (a) amend the licence 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 licence of the transferee.

(3) Where the Regulatory Board has transferred any power or 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 or function may be recovered by the Regulatory Board in any court of competent 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 default 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 a subsequent order, make such provision as appears to it to 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. 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.

Duty to provide water services.

71.(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.

Agreements as to catchment protection, etc.

(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.

Power of licensee to prohibit or restrict use of water.

72.(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.

Power to make regulations.

73.(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 recoverable 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.

Cap. 2.

74. (1) It shall be the duty of any licensee by whom any regulations are made under this Act 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.

Duty to enforce regulations.

(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 party relax or dispense with the requirements of the regulation.

Execution of works for protection of water.

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

Control of trade effluent.

(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.

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Sewerage
services levy.

77. 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.

Acquisition of
land.

78.(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.

Cap. 295.

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

PART V—FINANCIAL PROVISIONS

Application of
revenue from
permit charges
and licence fees.

79.(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.(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.

Application of revenue arising from schemes and projects.

(2) Without prejudice to the generality of subsection (1), the costs of a scheme or project referred to 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. 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.

Financial assistance to the Authority and the Regulatory Board.

82.(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.

Accounts and audit.

Cap. 412.

(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.

Water Services Trust Fund.

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

Establishment
of the 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.(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.

Jurisdiction of
the Board.

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

Time for
lodging appeal.

- (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.

Determination
of appeals and
disputes.

Cap. 102.

87.(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.

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

Rules of the Board.

Entry on to Land

89.(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---

Entry by permit holder or licensee.

(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.

Entry by
Authority for
monitoring of
water resource.

90. 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.

Entry by
licensee.

91. 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) prevent 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 land 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. 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.

Entry by
inspector.

93.(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.

Manner of
entry.

(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—

- (a) he has reason to believe that a provision of this Act or of any rule or order made under this Act has been or is about to be contravened;
- (b) he is unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) he has given reasonable grounds for not giving notice.

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

Obstruction or pollution of watercourse or water resource.

- (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. (1) No person shall—

Miscellaneous offences.

- (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 appliance installed with the approval of the Authority for the purposes of water control or investigation;

- (c) wilfully hinder or interrupt, or cause to 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 any lawful order given under this Act.

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

96.(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—

Remedy of defaults.

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

Powers of inspectors.

- (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

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(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.

Requirement to state name and address.

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

Service of notices.

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

Order, etc., to be
in writing.

100. 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.

Authentication
of documents.

101.(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. 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.

Permit or licence to be evidence of power or function.

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

Protection of the
Minister and
others from
liability.

103. 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.

Proceedings for
offences.

104. Without prejudice to the rights of any person to bring proceedings in respect of an offence, the Minister, the Authority or the 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.

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No. 8

105. 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.

Penalties for offences.

106. 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.

Application of Act to Trust land.

107.(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.

Public consultation.

(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 to 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.(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 -

Emergency powers in case of shortage of water.

- (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 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 and claim whatsoever against the Authority, the Regulatory Board, the Minister or the Government in connection with any such works.

No warranty implied by inspection.

110.(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.

Rules.

(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.

Cap. 372.

(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

Repeals.
Cap. 372.

111. (1) The Water Act is hereby repealed.

(2) Sections 168–176 of the Local Government Act are hereby repealed.

Cap. 265.

(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. 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—

Existing water rights.

- (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,

Cap. 372.

Cap. 280.

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.

Transfer of
water services.

113.(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, organizational 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 arrangements 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. 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, and the provisions of sections 168-176 of the Local Government Act, and any by-laws or other subsidiary legislation made for the purposes of any such provisions, shall be deemed to continue in force.

Arrangements pending transfer.

Cap. 372.

Cap. 372.

Cap. 265.

FIRST SCHEDULE

(ss. 7, 15, 46, 51)

MEMBERSHIP AND PROCEDURE OF BOARDS AND COMMITTEES

Application of this
Schedule.

1. (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.

Qualification of
members.

2. 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.

Term of office.

3. (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 re-appointment from time to time.

Acting Chairman.

4. (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.

Terms and conditions of service.

5. 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.

Vacancy in office of member.

6. (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.

Disclosure of pecuniary interests.

7.(1) A member who has a direct or indirect pecuniary interest—

- (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; or
- (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.

General procedures.

8. 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.

- Quorum. 9. 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.
- Presiding members. 10. 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.
- Decisions. 11. 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.
- Record of proceedings. 12. (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.
- First meeting. 13. 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.

SECOND SCHEDULE

(S. 27)

CONDITIONS RELATING TO CONSTRUCTION OF WORKS

Meaning of
"authorised works".

1. In this Schedule, "authorised works" means works the construction of which is authorised by a permit

Inspection of works
during construction.

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

Works to be made
secure.

3. (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 complied 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.

Road crossings.

4. (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.

Completion certificate and inspection.

5. (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 utilization 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.

Forfeiture of rights if works not completed within time allowed.

6. 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.

Works to be kept in repair.

7. 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.

THIRD SCHEDULE

(S. 28)

EASEMENTS

Encumbrances.

1. 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.

Easement includes right of access.

2. (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.

Permit holder must avoid flooding lands and maintain canal satisfactorily.

3. 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.

Damage caused by works of permit holder.

4. (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.

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

5. (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.

Permit holder desiring easement to serve notice on landholder.

6. (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 dealt 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. 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.

Consent of landholder to easement.

8. 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.

Application where landholder does not consent.

9. (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.

Determination of application for easement.

(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.

Lapsing of
easement.

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

- (a) if the works authorised are not completed and the water is not utilized 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.

Permit holder to
keep works in state
of repair.

11. (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 his 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.

Landholder may demand and obtain use of works.

14. (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.

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

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

- (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.

Easements to be registered.

16. The deed or other instrument creating an easement acquired under this 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.

Determination of easement.

17. (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. 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.

Registration of determination or variation of easement.

FOURTH SCHEDULE

(S. 45)

ABSTRACTION OF GROUND WATER

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

Application of this Schedule.

2. (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.

Notice of intention to construct well.

(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 authorized 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 authorized 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).

Submission of records.

3. 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 mineralized, as the case may be; and
- (d) if required by the Authority, such water samples as it may consider necessary.

Tests on
neighbouring wells.

4. (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.

Contractor deemed
to be constructor.

5. 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.

Records may be
required to be
treated as
confidential.

6. 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.

Waste of ground
water.

7. (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, sterilizing, 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 conduit 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 conduits 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.

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8. (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.

Defective wells.

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

9. 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.

Interference with defective well.

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

Application to carry out work on a defective well.

(2) The application shall contain such information as the Authority may require in relation 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 re-casing, re-plugging or resealing of the well.

Instructions to deal
with defective well.

11. 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.

Authority may
inspect well.

12. 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.

Sworn statement to
be submitted.

13.(1) Upon completion of the works in pursuance of any instructions issued under this 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.

Additional work on
defective well.

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

Contamination and pollution of ground 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. 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.

Authority may order special measures to safeguard ground water resources.

17. 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.

Artesian wells to be cased.

Offence and penalty. 18. 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.

FIFTH SCHEDULE

(S. 84)

MEMBERSHIP AND PROCEDURE OF THE WATER APPEAL BOARD

- Term of office. 1. 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.
- Terms and conditions of service. 2. 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.
- Qualification of lay members. 3. 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.
- Vacancy in office of member. 4. (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. A decision supported by a majority of the members of the Water Appeal Board shall be the decision of the Board.

Decisions.

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

Record of proceedings.

(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.