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Kenya Water Act (2016)

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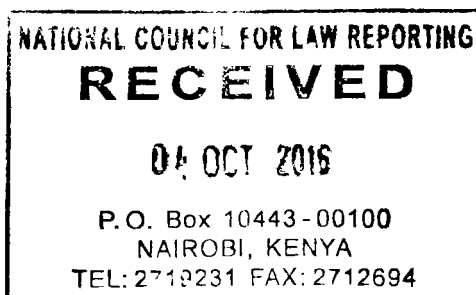
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THE WATER ACT

No. 43 of 2016

Date of Assent: 13th September, 2016

Date of Commencement: By Notice

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THE WATER ACT, 2016

AN ACT of Parliament to provide for the regulation, management and development of water resources, water and sewerage services; and for other connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Water Act, 2016 and shall come into operation on such a date as the Cabinet Secretary responsible for matters relating to water may, by notice in the *Gazette*, appoint, and different dates may be appointed for the coming into operation of different provisions.

Short title and
commencement.

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

Interpretation.

“Authority” means the Water Resources Authority established under section 11;

“aquifer” means an underground geological formation able to store and yield water;

“basin area” means an area designated as such under section 24;

“basin water resources committee” means a water basin organization established under section 25;

“bulk water” means water supplied to a water services provider by the water services provider making the supply;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water;

“catchment area” means an area that is part of a basin designated as such under section 22;

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

“county government” means a county government as provided for under Chapter 11 of the Constitution of Kenya;

“county government executive” means the county executive committee member responsible for matters relating to water;

“cross-county water services provider” means a water

services provider providing water services to more than one county;

“easement” means the right to occupy so much of the land 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;

“Equalisation Fund” means the Equalisation Fund provided for in Article 204 of the Constitution;

“Fund” means the Water Sector Trust Fund established in section 113;

“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 Cabinet Secretary, the Authority, a water basin resources committee, 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;

“international waters” means the ocean water beyond territorial waters;

“Land and Environment Court” means the Land and Environment Court as established under article 162 (2) of the Constitution;

“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 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, 2016;

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

“licensee” means a water service provider licensed by the Regulatory Board 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;

“Management Board” means the Board of the Authority established under section 14;

“management of water resources” means the development, augmentation, conservation or protection of a water resource;

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“peri-urban water services” means services provided in peri-urban areas as shall be defined by the Regulatory Board from time to time;

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

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“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 is 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 139;

“reasonable water use” means the use of water without wastage;

“Regulatory Board” means the Water Services Regulatory Board established under section 70;

“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;

“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 in-stream 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;

“rural water services” means services provided in rural areas as shall be defined by the Regulatory Board;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“sanitation” means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services;

“sector wide approach” means coordinated development in the sector to achieve national goals, effectiveness of funds and ownership of government institutions including sector wide planning and coordination, national monitoring and information and national implementation concepts;

“sewerage services” means the development and management of infrastructure for transport, storage,

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treatment waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

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

“state organ” has the meaning assigned in Article 260 of the Constitution;

“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 in 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;

“transboundary waters” means water resources shared between Kenya and another State;

“urban water services” means services provided in urban areas as shall be defined by the Regulatory Board from time to time;

“use of water”, in relation to a water resource includes, without any limitation to—

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

“watercourse” means any natural channel or depression in which water flows regularly or intermittently, unless declared not to be a watercourse under 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 the ground, and includes sea water and transboundary waters within the territorial jurisdiction of Kenya;

“water right” means the right to have access to water through a water permit;

“water resource management” means the conservation, including soil and water conservation, protection, development and utilization of water resources; and

“water services” means any services of or incidental to the supply or storage of water and includes the provision of sewerage services;

“water services provider” means a company, public benefits organization or other person providing water services under and in accordance with a licence issued by the Regulatory Board for the service areas defined by the licence;

“water storage” means a location or structure where water is stored for future use;

“Water Storage Authority” means the National Water Harvesting and Storage Authority established in section 30;

“Water Storage Board” means the Board of the National Water Harvesting and Storage Authority established under section 31;

“Water Strategy” means the Integrated National Water Services Strategy formulated by the Cabinet Secretary in section 64;

“water table” means—

- (a) impervious 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;

“water user” means a person using water from a water resource;

“water works development agencies” means the agencies of the national government established under

section 65:

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

3. The purpose of this Act is to provide for the regulation, management and development of water resources and water and sewerage services in line with the Constitution.

Purpose of the Act.

4. The Cabinet Secretary, the Authority, the Regulatory Board, county governments and any person administering or applying this Act shall be guided by the principles and values set out in Articles 10, 43, 60 and 232 of the Constitution.

Principles

PART II—OWNERSHIP, USE AND MANAGEMENT OF WATER RESOURCES

5. Every water resource is vested in and held by the national government in trust for the people of Kenya.

Ownership of water resources

6. The Authority established in section 11 shall serve as an agent of the national government and regulate the management and use of water resources

Regulation of the management and use of water resources

7. Upon the commencement of this Act, no conveyance, lease or other instrument shall convey, assure, demise, transfer or vest in any person any property, right, interest or privilege in respect of any water resource except as may be prescribed under this Act.

Rights to water resources

8. (1) A national public water works means a water works which has been designated by the Cabinet Secretary, by notice published in the *Gazette*, as a national public water works based on the fact that—

National Public Water Works.

(a) the water resource on which it depends is of a cross county in nature;

(b) it is financed out of the national government's share of national revenue pursuant to the provisions of the Public Finance Management Act, 2012;

(c) it is intended to serve a function of the national government; or

No 18 of 2012

(d) it is intended to serve a function which, by agreement between the national and county government, has been transferred to the national government.

(2) National public water works include—

(a) water storage;

(b) water works for bulk distribution and provision of water services;

(c) inter-basin water transfer facilities; and

(d) reservoirs for impounding surface run-off and for regulating stream flows to synchronize them with water demand patterns which are of strategic or national importance.

No. 6 of 2012.

(3) A national public water works for domestic use shall, subject to the acquisition of a permit from the Authority in case of inter basin water transfer, take precedence over all other water works for the use of water or the drainage of land.

(4) Subject to the Land Act, 2012, land required for national public water works may be acquired in any manner provided by law for the acquisition of land for public purposes.

(5) The Cabinet Secretary may, after reasonable notice to any landholder concerned, cause to be constructed and maintained upon any land such works as the Cabinet Secretary may consider necessary for the purposes of any national public water works.

(6) 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 Cabinet Secretary 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.

(7) The Cabinet Secretary shall make Regulations for the better carrying into effect of subsections (5) and (6).

9. Every person has the right to access water resources, whose administration is the function of the

Administration of
National Water
Resources.

national government as stipulated in the Fourth Schedule to the Constitution.

10. (1) The Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a National Water Resource Strategy.

National Water
Resource
Strategy

(2) The object of the National Water Resource Strategy shall be to provide the Government's plans and programs for the protection, conservation, control and management of water resources.

(3) The National Water Resource Strategy shall contain, among other things, details of—

- (a) existing water resources and their defined riparian areas;
- (a) measures for the protection, conservation, control and management of water resources and approved land use for the riparian area;
- (b) minimum water reserve levels at national and county levels;
- (c) institutional capacity for water research and technological development;
- (d) functional responsibility for national and county governments in relation to water resources management; and
- (e) any other matters the Cabinet Secretary considers necessary.

(4) The Cabinet Secretary shall—

- (a) prepare and issue an annual report on the state of national water resource strategies in Kenya; and
- (b) may direct any lead agency to prepare and submit to it a report on the state of national water resources under the administration of that lead agency.

(5) The Cabinet Secretary shall review the National Water Resource Strategy every three years.

PART III—REGULATION OF THE MANAGEMENT AND USE OF WATER RESOURCES

Water Resources Authority

11. (1) There is established the Water Resources Authority.

Establishment of
the Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act and any other written law as may be lawfully done or performed by a body corporate.

12. The functions of the Authority are to—

Functions of the Authority.

- (a) formulate and enforce standards, procedures and Regulations for the management and use of water resources and flood mitigation;
- (b) regulate the management and use of water resources;
- (c) enforce Regulations made under this Act;
- (d) receive water permit applications for water abstraction, water use and recharge and determine, issue, vary water permits; and enforce the conditions of those permits;
- (e) collect water permit fees and water use charges;
- (f) determine and set permit and water use fees;
- (g) provide information and advice to the Cabinet Secretary for formulation of policy on national water resource management, water storage and flood control strategies;
- (h) coordinate with other regional, national and international bodies for the better regulation of the management and use of water resources; and
- (i) advise the Cabinet Secretary generally on the management and use of water resources.

13. (1) The Authority shall have all the powers necessary for the execution of its functions under this Act.

Powers of the Authority.

(2) Without prejudice to the generality of subsection (1), the Authority shall have the power to—

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- (a) source and receive funding for the activities of the Authority;
- (b) collect, analyze and disseminate information on water resources;
- (c) monitor compliance by water users with the conditions of permits and the requirements of the Act;
- (d) issue permits for inter-basin water transfer; and
- (e) delegate regulatory functions to the basin water resource committees provided for under section 25.

14. (1) The powers and functions of the Authority shall be exercised and performed under the direction of a Management Board, which consists of—

Management Board.

- (a) a chairperson, who shall be appointed by the President; and
- (b) the Principal Secretary responsible for matters relating to finance or his representative;
- (c) the Principal Secretary responsible for matters relating to water or his representative;
- (d) the Principal Secretary responsible for matters relating to the environment or his representative;
- (e) the Principal Secretary responsible for matters relating to land or his representative;
- (f) four other members, who shall be appointed by the Cabinet Secretary; and
- (c) the Chief Executive Officer.

(2) The Chief Executive Officer shall be an *ex officio* member of the Management Board with no voting rights.

(3) The chairperson and members of the Management Board shall hold relevant professional qualifications and experience and shall be appointed following an open and competitive recruitment process.

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

15. The Management Board shall be responsible for overseeing the operations of the Authority with the goal of—

General duties and responsibilities of the Management Board.

- (a) securing continuing improvements of performance;
- (b) protecting the long term viability of the Authority; and
- (c) ensuring fiscal discipline of the Authority.

16. (1) The Management Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

Powers of the Management Board.

(2) Without prejudice to the generality of the foregoing, the Management Board shall have power to—

- (a) administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) ensure protection, where necessary, of the assets and developments of the Authority;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (e) invest any funds of the Authority not immediately required for its purposes;
- (f) delegate any of its powers; and
- (g) undertake any activity necessary for the fulfillment of any of the functions of the Authority.

17. (1) The Cabinet Secretary shall, on the recommendation of the Management Board, appoint a Chief Executive Officer of the Authority on such terms and conditions as may be specified in the instrument of appointment.

Chief Executive Officer.

(2) A person is qualified for appointment as Chief Executive Officer if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant work experience with at least five years in a senior management position either in a public service or private sector organization; and

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(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Chief Executive Officer is the accounting officer of the Authority.

(4) The Chief Executive Officer is subject to the direction of the Management Board and is responsible to it for the—

- (a) implementation of the decisions of the Management Board;
- (b) day to day management of the affairs of the Management Board;
- (c) organization and management of the employees; and
- (d) any other function that may be assigned by the Management Board.

(5) The Chief Executive Officer shall hold office for a term of five years and is eligible for re-appointment for one further term upon exemplary performance.

18. The Chief Executive Officer may be removed from office by the Cabinet Secretary on the recommendation of the Management Board, in accordance with the terms and conditions of service.

Removal of the Chief Executive Officer.

19. (1) The Authority may appoint such other employees as it may consider necessary for the performance of its functions under this Act.

Employees of the Authority

(2) The terms and conditions of service of the employees of the Authority shall be determined by the Cabinet Secretary responsible for public service on the advice of the Salaries and Remuneration Commission.

20. (1) The Authority shall prescribe the criteria for classifying water resources for the purpose of determining water resources quality objectives for each class of water resource.

Classification of water resources and determination of quality objectives.

(2) The prescribed classification criteria shall take into account—

- (a) trans-boundary considerations;
- (b) strategic functions served by the water resource;

- (c) the use or potential for use of the water resource for inter-basin transfers;
- (d) ecological functions of the water resource; and
- (e) vulnerability to degradation or depletion and other related factors.

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

- (a) classify each water resource in accordance with the prescribed classification criteria;
- (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) All State organs 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.

21. (1) The Authority shall ensure that there is in place a national monitoring and geo referenced information system on water resources.

National
Monitoring and
Information
System.

(2) The Authority may require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials in relation to the system referred to in subsection (1).

(3) Subject to Article 35 of the Constitution, a member of the public on payment of the prescribed fee shall—

- (a) have access to any specific information contained in any national information system; and
- (b) be supplied with a copy of any document contained in the information system which is accessible to the public.

22. (1) Where the Authority is satisfied that in order to conserve a vulnerable water resource, special measures are necessary for the protection of a catchment area or a part thereof, it may by Order published in the *Gazette* declare such catchment area to be a protected area.

Protection of
catchment areas

(2) The Authority may impose such requirements or regulate or prohibit such conduct or activities, in or in

relation to the protected catchment area as the Authority may consider necessary for the protection of the area and its water resources.

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

Conservation of
ground water

- (a) the protection of public water or water supplies used for industry, agriculture or other private purposes;
- (b) the conservation of the water resources of the aquifer of the ground water resources; or
- (c) ecological reasons, it may by Order published in the *Gazette*, declare the area to be a ground water conservation area.

(2) The Authority may impose such requirements or prohibit such conduct or activities in relation to a groundwater conservation area as it may consider necessary for the conservation of the ground water.

(3) The Cabinet Secretary may make Regulations for the better carrying into effect of this section.

Basin Areas

24. (1) The Authority shall in consultation with the Cabinet Secretary by notice published in the *Gazette*, designate a defined area from which rain water flows into a watercourse to be a basin area for the purposes of this Act.

Basin areas

(2) The Authority may designate a basin area lying wholly or partly within another basin area as a sub-basin.

25. (1) The Cabinet Secretary shall by notice published in the *Gazette* establish a basin water resources committee for each respective basin area provided for under section 24.

Establishment of a
basin water
resources
committee.

(2) The Cabinet Secretary shall assign a name to each basin water resources committee established in accordance with subsection (1).

(3) A basin water resources committee shall be responsible for the management of the water resources within a respective basin area.

(4) A basin water resources committee shall operate under the Regulations made by the Authority.

26. (1) A basin water resources committee shall consist of—

- (a) not less than four and not more than seven members appointed by the Authority in consultation with the Cabinet Secretary; and
- (b) a representative of each county government whose area falls within the basin appointed by the appointing authority after approval by the county assembly.

(2) The Cabinet Secretary shall, by notice in the *Gazette*, appoint the chairperson from amongst the members appointed under subsection (1) (a), who shall hold office for a period of three years.

(3) The persons appointed under subsection (1)(a) must be residents of the respective basin area and shall include—

- (a) a representative of a ministry responsible for matters relating to water resources;
- (b) a representative of farmers or pastoralists within the basin area concerned;
- (c) a representative of a public benefits organisation engaged in water resources management programmes within the basin area concerned; and
- (d) a representative of the business community operating within the basin area concerned.

(4) In appointing the members in subsection (1), the Authority shall ensure that at least three members have technical expertise in matters relating to water.

(5) Paragraphs 2, 3, 5, 6, 7, 9, 11, 12 and 13 of the First Schedule shall apply in relation to the members and procedure of the basin water resources committee.

(6) The Authority shall facilitate the activity of the basin water resources committee by making available secretariat services, logistical and administrative support.

(7) The salaries, allowances and other expenses of the committee referred to in subsection (1) shall be determined by the Cabinet Secretary responsible for public service on the advice of the Salaries and Remuneration Commission.

27. The powers and functions of the basin water resources committee shall be to advise the Authority and county governments, at the respective regional office, concerning—

Functions of the
basin water
resources
committees

- (a) conservation, use and apportionment of water resources;
- (b) the grant, adjustment, cancellation or variation of any permit;
- (c) protection of water resources and increasing the availability of water;
- (d) annual reporting to the users of its services and the public on water issues and their performance within the basin area;
- (e) collection of data, analyzing and managing the information system on water resources;
- (f) review of the basin area water resources management strategy;
- (g) facilitation of the establishment and operations of water resource user associations;
- (h) flood mitigation activities;
- (i) information sharing between the basin area and the Authority;
- (j) the equitable water sharing within the basin area through water allocation plans; and
- (k) any other matter related to the proper management of water resources.

28. (1) Upon the designation of a basin area, the Authority shall prescribe requirements and a time frame for the formulation of a basin area water resources management strategy.

Basin area water
resources
management
strategy

(2) The basin area water resources management strategy shall be formulated by a basin water resources committee in consultation with the Authority and the county governments whose areas of jurisdiction lie within the basin area.

(3) A basin area water resources management strategy shall—

- (a) be consistent with the national water resources policy;

- (b) put in place measures to fulfil the water resource quality objectives for each class of water resource in the basin area;
- (c) describe the measures to be put in place for the sustainable management of water resources of the basin area;
- (d) contain a water allocation plan for the water resources of the basin area;
- (e) provide systems and guidelines to enable the users of water resources within the basin area to participate in managing the water resources of the basin area; and
- (f) provide a strategy for financing the management of the water resources of the basin area.

(4) The Cabinet Secretary shall publish the strategy referred to in subsection (1) in the *Gazette*.

29. (1) Water resource users associations may be established as associations of water resource users at the sub-basin level in accordance with Regulations prescribed by the Authority.

Establishment and functions of water resource users associations.

(2) A water resource users association shall be a community based association for collaborative management of water resources and resolution of conflicts concerning the use of water resources.

(3) Without prejudice to the generality of section 28 (3) (e), the basin area water resources management strategy shall facilitate the establishment and operation of water resources users associations.

(4) The basin water resources committees may contract water resource users associations as agents to perform certain duties in water resource management.

National Water Harvesting and Storage Authority

30. (1) There is established the National Water Harvesting and Storage Authority.

Establishment of the National Water Harvesting and Storage Authority.

(2) The Water Storage Authority established under this section shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and doing all things that a corporation may lawfully do.

31. (1) The powers and functions of the Water Storage Authority shall be exercised and performed under the direction of a Water Harvesting and Storage Board which shall consist of—

Water Harvesting
and Storage
Board

- (a) a chairperson, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to water;
- (c) the Principal Secretary responsible for matters relating to land;
- (d) the Principal Secretary responsible for finance;
- (e) five other members, who shall be appointed by the Cabinet Secretary; and
- (f) a Chief Executive Officer.

(2) The Chief Executive Officer is an *ex officio* member of the Water Storage Board with no voting rights.

(3) The First Schedule shall have effect with respect to the membership and procedure of the Water Storage Board.

32. (1) The functions and powers of the Water Storage Authority shall be to—

Powers and
functions of the
Water Storage
Authority.

- (a) undertake on behalf of the national government, the development of national public water works for water resources storage and flood control;
- (b) maintain and manage national public water works infrastructure for water resources storage;
- (c) collect and provide information for the formulation by the Cabinet Secretary of the national water resources storage and flood control strategies;
- (d) develop a water harvesting policy and enforce water harvesting strategies;
- (e) undertake on behalf of the national government strategic water emergency interventions during drought; and
- (f) advise the Cabinet Secretary on any matter concerning national public water works for water storage and flood control.

(2) The Water Storage Authority may appoint agents for the operation, management, maintenance and safety of any storage infrastructure that it has developed.

(3) The Water Storage Authority shall have such other powers and functions as may be conferred or imposed on it by this or any other Act.

33. (1) The Cabinet Secretary, on the recommendation of the Water Storage Board may appoint the Chief Executive Officer of the Water Storage Authority, on such terms and conditions as the Cabinet Secretary for public service may determine on the advice of the Salaries and Remuneration Commission.

Chief Executive Officer.

(2) A person is qualified for appointment as Chief Executive Officer if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years' experience, five of which should be in a senior management position in a public or private organisation; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be the accounting officer of the Water Storage Authority.

(4) The Chief Executive Officer is subject to the direction of the Water Storage Board and is responsible to it for the—

- (a) implementation of the decisions of the Water Storage Board;
- (b) day to day management of the affairs of the Water Storage Board;
- (c) organization and management of the employees; and
- (d) any other function that may be assigned by the Water Storage Board.

(5) The Chief Executive Officer shall hold office for a term of five years and is eligible for re-appointment for one further term.

34. The Chief Executive Officer may be removed from office by the Cabinet Secretary on the recommendation of the Water Storage Board, in accordance with the terms and conditions of service.

Removal of the Chief Executive Officer.

35. (1) The Water Storage Authority may appoint such other employees as it may consider necessary for the performance of its functions under this Act.

Employees of the
Water Storage
Authority.

(2) The Cabinet Secretary responsible for matters relating to public service shall determine the terms and conditions of service of the employees of the Water Storage Authority on the advice of the Salaries and Remuneration Commission.

Regulation of Water Rights and Works

36. A permit is required for any of the following purposes—

Water permit

- (a) any use of water from a water resource, except as provided by section 37;
- (b) the drainage of any swamp or other land;
- (c) the discharge of a pollutant into any water resource; and
- (d) any other purpose, to be carried out in or in relation to a water resource, which is prescribed by Regulations made under this Act to be a purpose for which a permit is required.

37. (1) A permit is not required—

Exemptions.

- (a) for the abstraction or use of water, without the employment of works, from any water resource for domestic purposes by any person having lawful access to the water resource;
- (b) for the abstraction of water in a spring which is situated wholly within the boundaries of the land owned by any one landholder and does not naturally discharge into a watercourse abutting on or extending beyond the boundaries of that land; or
- (c) for the storage of water in, or the abstraction of water from a reservoir constructed for the purpose of such storage and which does not constitute a water course 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 and the relevant law or regulation made under this Act requires a permit for the carrying on of that activity in those circumstances.

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

(4) Without prejudice to the generality of subsection (3), such Regulations 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.

38. (1) A person who—

- (a) without a permit, constructs or employs 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, commits an offence.

Unauthorized construction and use of works

(2) The holder of a permit authorising the construction of works who, without the permission of the Authority takes water from any water resource—

- (a) by means of any works not authorised by the permit; or
- (b) before the whole of the works authorised by the permit have been certified, in accordance with the conditions of the permit, commits an offence.

39. (1) The holder of a permit which authorises the construction of works that would or a portion of works which would when constructed, be situated upon land not held by the permit holder shall, subject to any relevant law, 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 he or she has acquired such an easement.

Easement for works.

(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.

40. (1) An application for a permit shall be made to the Authority at the applicable basin area.

Procedure for obtaining a permit.

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(2) An application under subsection (1) shall be made by completing and lodging the form prescribed by the Authority, together with—

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

(3) The application shall be determined within six months of receiving an application which meets the requirements of the Authority.

(4) 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, 1999.

No. 8 of 1999.

(5) Any person opposed to the grant of a permit may object in writing to the Water Tribunal within a period of thirty days after publication of the notice of the application.

(6) The Authority must within thirty days notify the applicant and any person who may have objected to the grant of the application of its decision and in the event of a rejection, the reasons for the rejection.

(7) Where an application made in accordance with this section is not determined by the Authority in accordance with subsection (3), any fee paid by the applicant under subsection (2)(b) shall be refunded to the applicant.

41. (1) A permit shall subject to subsection (2), be subject to—

Conditions of permits.

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

(2) The provisions of the Second Schedule shall be conditions on every permit which authorises the construction of works.

(3) The Regulations under subsection (1)(a) may, among other things—

- (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; or
- (c) provide that a contravention of any specified conditions of a permit under this Act, shall constitute an offence and provide for corresponding penalties.

(4) The imposition of a penalty under this Act shall not prevent any person who has suffered loss, damage or injury by reason of the contravention of this Act from pursuing any other remedy for the recovery of damages.

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

Charges for water use

(2) The charges shall be determined by reference to a schedule of charges published in the *Gazette* by the Authority following public consultation.

(3) Where there is an agreement between the Authority and a water resources users' association, the Authority may make available a portion of the water use charges to be used for financing such regulatory activities as the water resources users association has agreed to undertake on behalf of the Authority.

43. (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—

Considerations for the issuance of permits.

- (a) existing lawful uses of the water;
- (b) efficient and beneficial use of water in the public interest;
- (c) any basin area water resources 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 classification 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;
- (f) the strategic importance of the proposed water use;
- (g) the quality of water in the water resource which may be required for the reserve; and
- (h) 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 authorized by a permit shall be reasonable and beneficial in relation to other persons who use the 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.

44. (1) The Cabinet Secretary in consultation with the Authority may from time to time, by notice in the *Gazette*, make Regulations for determining exceptional circumstances to warrant a grant of a permit.

Issue of permits in exceptional cases.

(2) The Authority upon the advice of the basin water resources committee may, if in the opinion of the Authority exceptional circumstances as provided for in subsection (1), warrant such action, grant a permit authorising with or without conditions, the use of water from a water resource and the construction of the works required without subjecting the application to public consultation.

(3) 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 shall interfere with the domestic requirements of other users.

(4) A permit granted in accordance with this section shall not in any case be in force for a period exceeding or

for periods which in the aggregate exceed, one year, or for the construction of permanent works.

45. (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 the provisions of this section, during the period for which it remains in force—

Permit to be
linked to land or
undertaking

- (a) be appurtenant to that portion of land or that undertaking; and
- (b) pass with any demise, devise, alienation, transfer or other disposition 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 after the grant of the permit, the applicable water 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 the land owned by the permit holder, after which, 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 subject—

- (a) to the condition that such easements, if any, as may be required to be granted within a period of two years after sub-division of the land or within such longer period as the Authority may determine; and
- (b) any other conditions, and modifications, that the Authority may consider necessary.

46. (1) Whenever it is shown to the satisfaction of the Authority that, owing to natural changes, increased demand

Variation of
permit.

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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 in case of inter-basin water transfers, should have priority,

the Authority 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) A permit shall not 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 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 a crisis of a kind prescribed by Regulations made under this Act.

47. (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 rationalized or reviewed so as to—

Power to require permit applications or re-applications

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

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

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

(3) The proposed allocation schedule shall be subjected to public consultation, after which the basin water resources committee 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) A person dissatisfied with the preliminary allocation schedule may appeal to the Water Tribunal within thirty days of the publication under subsection (3).

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

- (a) if no appeal is lodged as provided for under subsection (4);
- (b) if it has been amended after a successful appeal; or
- (c) if every appeal lodged 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 where 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.

48. (1) The Authority may in the case of an inter basin water transfer cancel or vary a permit if such cancellation or variation is necessary for the accommodation of additional water users of a water source.

Cancellation of a permit.

(2) A permit shall not 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 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 under this section shall be paid compensation of an amount

agreed between the permit holder, the additional water user or users and the Authority in the case of inter basin water transfer, and any disputes arising from such compensation shall be determined by the Water Tribunal.

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

Cancellation or variation of a permit for failure to observe terms and conditions

- (a) contravenes any condition of the permit, or
- (b) fails to make beneficial use of the water or any part of the water as determined by the Authority.

(2) A permit shall not 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.

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

Variation of permit following a hydrographical survey.

51. (1) A permit holder may request the Authority to vary a permit issued under this Act and the Authority may if satisfied that the variation is not contrary to the public interest or the rights of others, vary such permit in order to—

Variation of a permit at the request of the permit holder

- (a) change the point of diversion or abstraction of the water used under the permit;
- (b) change the use of water authorised by the permit; or
- (c) 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) 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) remedy any defect where the permit is incomplete or indefinite in its terms and conditions; or

2016

vary any other term or condition of the permit.

A variation relating to—

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.

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

Abandonment of
permitted
activities

(2) Upon abandonment of a permit under subsection (1), 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 commits 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.

53. (1) Where a permit—

Surrender of
permits

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

the Authority may, by notice served on the permit holder, require such permit holder to surrender the permit to the Authority.

(2) A permit holder who fails to comply with the notice mentioned in subsection (1) commits an offence.

54. (1) The Authority shall establish and maintain a register of permits and the register shall contain the details of the permit holders, the respective terms and conditions of each permit and the results of any monitoring and enforcement action taken by the Authority in respect to each permit.

Register of
permits.

(2) The Authority shall establish and keep a register at the national level.

(3) The public may access the information contained in the register on payment of the fee prescribed by the Authority.

55. (1) Any party aggrieved by the decision of the Authority may appeal to the Water Tribunal, in the prescribed manner within fourteen days from the date such decision was made.

Appeals

(2) The Tribunal shall on appeal either vary, reverse or confirm the decision of a water basin resources committee, and its decision shall be communicated to the parties concerned within fourteen days from the time the decision is made.

Ground Water

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

Abstraction of
ground water

Entry on Land

57. (1) Subject to the provisions of subsection (4), a permit holder or any person proposing to apply for a permit or intending to enter onto the land of another person for the purposes of conducting a survey related to proposed works, if his or her proposal is opposed by the other person, may—

Entry by permit
holder

(a) upon submitting in the manner prescribed—

(a) a general description of his or her proposal;

(b) a schedule of lands which may be affected by the construction and operation or any works to be undertaken pursuant to the permit;

(c) 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 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 the investigation shall be completed.

(3) The permit holder or any person authorized by the permit holder, may seek such assistance as is necessary to enter onto the respective land.

(4) A permit shall not be issued under this section until the Authority has notified each landholder concerned that an application to enter his or her land has been made under this section.

58. An inspector appointed by the Authority may, without a warrant, enter onto 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 consider necessary for the purpose of—

Entry by the
Authority

- (a) conserving or regulating the water resource, or preserving it from pollution or protecting the bed over which it lies;
- (b) removing any obstruction from, or 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.

59. (1) 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 may direct for the purpose of—

Entry by licensee

- (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 onto any premises in the area to which the licence is applicable, for the purpose of—

- (a) ascertaining whether there has been a contravention of any such Regulations;
- (b) in the case of any Regulations in respect of tariffs and the payment of those tariffs, 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 other appropriate action.

60. (1) In this Part, “authorised person” means a person entering onto any land or premises pursuant to a right or permission conferred under this Act.

Manner of entry

(2) An authorised person shall not enter on any land or premises without first giving a reasonable notice in verbal or written form to the landholder or other responsible person in charge of the land or premises, and any such entry shall be at a reasonable hour.

(3) Notwithstanding the provisions of subsection (2), an inspector may enter without giving notice if —

- (a) he or she 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 or she is unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) he or she has given reasonable grounds for not giving notice.

(4) 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.

(5) It shall be the duty of any person when 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 on the land or premises referred to in subsection (1).

61. (1) A permit holder or licensee, or an employee or agent of a permit holder or licensee shall, on demand by an inspector —

Powers of inspectors.

- (a) avail to the inspector any information within his or her knowledge 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 commits an offence.

62. (1) A person who has committed, or has been accused of committing an offence under this Act and who—

Requirement to state name and address.

- (a) refuses, on demand of an inspector, to give his or her 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 the true identity, place of abode or other particulars of the person referred to in subsection (1) have been ascertained, the person concerned shall be released upon the execution of a bond, if so required, with or without sureties, so as to appear before a magistrate.

(3) If the person's true name and place of abode and other particulars are not ascertained within twenty hours from the time of the arrest, or if he or she fails to execute the bond or, to furnish the applicable sureties, such person shall be presented before a magistrate having jurisdiction in the area.

PART IV—WATER SERVICES

General

63. Every person in Kenya has the right to clean and safe water in adequate quantities and to reasonable

Right to clean and safe water.

standards of sanitation as stipulated in Article 43 of the Constitution.

64. (1) The Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a Water Services Strategy.

National Water
Services Strategy

(2) The object of the Water Strategy shall be to provide the Government's plans and programs for the progressive realization of the right of every person in Kenya to water.

(3) The Water Strategy shall contain, among other things, details of—

- (a) existing water services;
- (b) the number and location of persons who are not provided with a basic water supply and basic sewerage services;
- (c) standards for the progressive realisation of the right to water; and
- (d) a resource mobilization strategy for the implementation of the plans.

(4) The Water Strategy in force for the time being, shall be published in the *Gazette*.

(5) The Cabinet Secretary shall in consultation with county governments, provide a national water sector investment and financing plan aggregated from the county government plans which shall include, among other details, the time frames for the plans and an investment programme based on the investment plans.

(6) The Cabinet Secretary shall review the Water Services Strategy every three years.

Water Works Development Agencies

65. (1) The Cabinet Secretary may, by notice in the *Gazette*, establish one or more waterworks development agencies and define the geographical area of jurisdiction of each such agency.

Establishment of
water works
development
agencies

(2) The water works development agencies shall be bodies corporate with perpetual succession and a common seal and shall have power, in their respective corporate names, to sue and to be sued and, in the exercise and

performance of their powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate.

66. (1) Each water works development agency shall consist of—

Boards of the
water works
development
agencies

- (a) a chairperson, who shall be appointed by the Cabinet Secretary from a county within the basin area;
- (b) four other members who shall be appointed by the Cabinet Secretary from counties within the basin area; and
- (c) the Chief Executive Officer.

(2) The First Schedule has effect with respect to the membership and procedure of the water works development agencies.

67. The Cabinet Secretary shall in consultation with stakeholders develop the criteria for establishment of the water works development agencies.

Criteria for water
works
development
agencies

68. The powers and functions of the water works development agency shall be to —

Powers and
functions of the
water works
development
agency

- (a) undertake the development, maintenance and management of the national public water works within its area of jurisdiction;
- (b) operate the waterworks and provide water services as a water service provider, until such a time as responsibility for the operation and management of the waterworks are handed over to a county government, joint committee, authority of county governments or water services provider within whose area of jurisdiction or supply the waterworks is located;
- (c) provide reserve capacity for purposes of providing water services where pursuant to section 103, the Regulatory Board orders the transfer of water services functions from a defaulting water services provider to another licensee;
- (d) provide technical services and capacity building to such county governments and water services providers within its area as may be requested; and

- (e) provide to the Cabinet Secretary technical support in the discharge of his or her functions under the Constitution and this Act.

69. (1) As soon as possible, following the commissioning of the waterworks, the waterworks development agency shall enter into an agreement with the county government, the joint committee or authority of the county governments within whose area of jurisdiction the water works is located, jointly with the water service provider within whose area of supply the water works are located for the use by the joint committee, authority or water services provider, as the case may be, of the water works to provide water services.

Handover of
completed works.

(2) The agreement shall make provision for the assumption by the county government, the joint committee, authority or water services provider of the responsibility for the repayment of any loans or liabilities of the waterworks and until full repayment of the loans and discharge of any outstanding liabilities, ownership of the waterworks shall remain in the waterworks development agency.

(3) In the event that the county government, the joint committee, the authority or water services provider defaults in the repayment of any outstanding loans arising from the development, rehabilitation or maintenance of the works, the waterworks development agency may petition the Regulatory Board to declare a default and order the transfer of the water services provider's functions to the waterworks development agency, to exercise such functions until full repayment of the loan.

The Water Services Regulatory Board

70. (1) There is established the Water Services Regulatory Board whose principal object is to protect the interests and rights of consumers in the provision of water services.

Establishment of
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 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.

71. (1) The powers and functions of the Regulatory Board shall be exercised and performed under the direction of the Regulatory Board, which shall consist of—

- (a) a chairperson appointed by the President,
- (b) four other members appointed by the Cabinet Secretary; and
- (c) the Chief Executive Officer.

(2) The First Schedule shall have effect with regard to the membership and procedure of the Regulatory Board.

72. (1) The powers and functions of the Regulatory Board shall be to—

Powers and
functions of the
Regulatory Board.

- (a) determine and prescribe national standards for the provision of water services and asset development for water services providers;
- (b) evaluate and recommend water and sewerage tariffs to the county water services providers and approve the imposition of such tariffs in line with consumer protection standards;
- (c) set licence conditions and accredit water services providers;
- (d) monitor and regulate licensees and enforce licence conditions;
- (e) develop a model memorandum and articles of association to be used by all water companies applying to be licensed by the Regulatory Board to operate as water services providers;
- (f) monitor compliance with standards including the design, construction, operation and maintenance of facilities for the provision of water services by the water works development bodies and the water services providers;
- (g) advise the Cabinet Secretary on the nature, extent and conditions of financial support to be accorded to water services providers for providing water services;
- (h) monitor progress in the implementation of the Water Strategy and make appropriate recommendations;

No. 43

- (i) maintain a national database and information system on water services;
- (j) establish a mechanism for handling complaints from consumers regarding the quality or nature of water services;
- (k) develop guidelines on the establishment of consumer groups and facilitate their establishment;
- (l) inspect water works and water services to ensure that such works and services meet the prescribed standards;
- (m) report annually to the public on issues of water supply and sewerage services and the performance of relevant sectors and publish the reports in the *Gazette*;
- (n) make Regulations on water services and asset development which shall include business, investment and financing plans in order to ensure efficient and effective water services and progressive realization of the right to water services;
- (o) advise the Cabinet Secretary on any matter in connection with water services; and
- (p) make recommendations on how to provide basic water services to marginalised areas.

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

73. (1) There shall be a Chief Executive Officer of the Regulatory Board who shall be appointed by the Cabinet Secretary on the recommendation of the Regulatory Board, on such terms and conditions of service as may be prescribed by the Cabinet Secretary responsible for public service on the advice from the Salaries and Remuneration Commission.

Employees of the
Regulatory Board

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

(3) The Regulatory Board may appoint such officers and other employees as may be necessary for the exercise

and performance of its powers and functions, upon such terms and conditions as the Cabinet Secretary responsible for public service may determine upon consideration of advice from the Salaries and Remuneration Commission.

74. (1) A person shall not be licensed as a water service provider unless such person makes an application under this section to the Regulatory Board and submits a copy of the application to the county government within whose area of jurisdiction it intends to provide water services.

Licensing.

(2) Prior to determination of the application, the Regulatory Board shall publicise the application and shall take into consideration the views of stakeholders including the county government, within whose area of jurisdiction the applicant intends to provide water services.

(3) The Regulatory Board shall issue a licence if the applicant meets the licensing requirements.

75. (1) The Regulatory Board shall maintain the register of all licensed water services providers containing—

Register of
licensed water
services providers.

- (a) their names and addresses;
- (b) in the case of a registered association, or public benefit organization, the nature of the association or organization and the particulars of its registration;
- (c) the nature of services in respect of which the water services providers are accredited;
- (d) the conditions, if any, attaching to their license; and
- (e) any other matter prescribed in Regulations.

(2) The register of the licensed person shall be a public document accessible for inspection at no charge and shall be publicized, placed or posted in accessible formats at such places as the Regulatory Board shall determine.

(3) The register referred to in this section shall be published from time to time by the Authority.

(4) The Regulatory Board shall develop and publish guidelines to regulate the conduct of licensed water services providers.

76. (1) The Regulatory Board may, revoke the licence of a water services provider on any of the following grounds—

Revocation of
licence

- (4) if it is shown to the satisfaction of the Regulatory Board that the licence was obtained by mistake, fraud, undue influence or misrepresentation; or
- (5) the water services provider has for any reason ceased to meet the criteria for licensing; or
- (6) if it is shown to the satisfaction of the Regulatory Board that the water services provider has refused, failed or neglected to provide the services for which they were licensed;
- (7) the water services provider becomes insolvent, or is adjudged bankrupt; or
- (8) the water services provider has failed to comply with any conditions for licensing.

(2) The Regulatory Board shall give written notice of revocation of a license under subsection (1) to the water services provider within seven days of the revocation.

(3) A person whose licence is suspended or revoked shall cease to provide the relevant service.

(4) A water services provider whose licence is suspended or revoked may apply to the Regulatory Board to review its decision within fourteen days of receipt of the notice of revocation.

77. (1) A county government shall establish water services providers.

Establishment of
water service
providers

(2) In establishing a water services provider, a county government shall comply with the standards of commercial viability set out by the Regulatory Board.

(3) A water services provider established under this section may be a public limited liability company established under the Companies Act, 2015 or other body providing water services as may be approved by the Regulatory Board.

No. 17 of 2015.

(4) A company intending to be licensed as a water service provider shall submit to the Regulatory Board its memorandum and articles of association that conform to the guidelines developed and approved by the Regulatory Board.

(5) The Regulatory Board shall make Regulations on the standard of water to be supplied by water service providers licensed under this section.

78. (1) A water services provider shall be responsible for-

Responsibilities of the water services provider.

- (a) the provision of water services within the area specified in the licence; and
- (b) the development of county assets for water service provision.

(2) A licensed water services provider shall have such other powers and functions as may be conferred on it by this Act or any other Act.

79. (1) A water services provider shall have a board of directors and in the case of a company, the members of its board of directors shall be constituted in accordance with the Companies Act, 2015 or any other written law and the directors shall be nominated to serve on the board in accordance with the company's memorandum and articles of association.

Board of a water services provider

No 17 of 2015.

(2) All members nominated to the water services provider's board of directors shall possess qualifications which meet the standards set by the Regulatory Board.

80. A member of a board of directors of a water services provider shall not—

Member of the Board not to hold public office.

- (a) at the time of nomination for appointment to the board, be serving as an elected member of a county government;
- (b) hold office in a political party; or
- (c) be a serving member of Parliament.

81. A water services provider may with the approval of the relevant licensing authority extend water services to rural or developing areas.

Extension of services to rural or developing areas.

82. (1) A party aggrieved by the decision of a water services provider may appeal against the decision to the Regulatory Board in the prescribed manner within fourteen days from the date the decision was made.

Appeals to the Regulatory Board.

(2) The Regulatory Board may on appeal either vary, reverse or confirm the decision of the water service

provider, and the Regulatory Board shall communicate its decision to the parties concerned within fourteen days from the time the decision is made.

83. A county or a cross-county owned water service provider established as a public institution and operating and providing water services shall hold the county or national public water services assets on behalf of the public.

County owned water service provider to hold assets for the public

84. (1) The Cabinet Secretary shall make Regulations for the transfer of national public assets to the county water services providers in accordance with any law regulating the handing over and disposal of public assets.

Cabinet Secretary to make Regulations

(2) The Regulations shall include arrangements to protect public assets in case of private sector participation such as the separation of operation from asset holding and development.

85. (1) A person shall not provide water services except under a licence issued by the Regulatory Board, upon submission of an application and such supporting documents as the Board may require.

Provision of water services

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

(3) Nothing in this section prohibits the provision of water services —

- (a) by a person to their employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or other comparable institution, in cases where the source of supply of the water is lawfully under the control of the institution or where the water is supplied to such institution in bulk by a licensee; or
- (c) in circumstances which are prescribed by Regulations made by the Regulatory Board to be exempt from the requirement of a licence.

86. (1) An application for the licence under section 85 (1) shall be made in the prescribed form to the Regulatory Board.

Procedure and requirements for obtaining a licence.

(2) In making the application, the applicant shall be required to submit the following particulars to the Regulatory Board as the case may be—

- (a) evidence that the applicant's board of directors complies with the standards set by the Regulatory Board under section 79 (2);
- (b) the technical and financial capability of the applicant to provide the services and perform the functions authorized by the licence;
- (c) evidence that the water services to be provided will be commercially viable;
- (d) the applicant's business plans for the provision of efficient, affordable and sustainable water services;
- (e) details of planned financial and infrastructural improvements;
- (f) a proposed tariff structure; and
- (g) any other information required by the Regulatory Board.

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

(4) The Regulatory Board shall have discretion to grant or refuse to grant an application for a licence submitted under subsection (1).

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

- (a) the applicant has the requisite technical and financial competence to provide the services to which the licence relates;
- (b) the applicant has demonstrated that the water services to be provided will be commercially viable;
- (c) the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable water service;
- (d) the applicant has proposed satisfactory performance targets and planned improvements and an acceptable tariff structure;
- (e) the applicant or any water services provider by whom the functions authorized 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;

- (f) where water services authorised by the licence are to be provided by a water services 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
- (g) the applicant has met any other requirements which the Regulatory Board may consider necessary for the efficient provision of the services to be provided under the licence.

87. (1) An application for a licence shall be subject to public participation.

Application for a licence subject to public consultation.

(2) Any person opposed to the grant of a licence may object, in writing, to the Regulatory Board.

(3) The Regulatory Board shall make a determination on an application for a licence within six months after the applicant lodges the application.

(4) The Regulatory Board shall notify the applicant and the objector of its decision and, in the event of the rejection of an application or objection, of the reasons for the decision.

(5) An applicant or objector may, if aggrieved by the decision of the Regulatory Board, appeal to the Tribunal within thirty days of the date of the notification of the decision.

(6) Where the Regulatory Board does not determine the application within six months of receipt of the application, any fee charged by the Regulatory Board under section 86(3) shall be refunded to the applicant.

88. (1) A licence shall only authorise a water services provider to provide water services in the area specified in the licence and shall not confer any rights of proprietorship and in particular, the licence shall not be capable of being sold, leased, mortgaged, transferred, attached, assigned, demised or encumbered.

Licence not to confer any rights of proprietorship to the licensee.

(2) 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 the licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(3) As a condition for the licence, a licensee shall, within twelve months of receipt of the licence, or such other longer period as the Regulatory Board may determine, formulate and present to the Regulatory Board, a development plan for extending services to persons not receiving water services within such licensee's area of operation, a time frame for the implementation of the plan and a resource mobilization strategy.

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

Licence fees.

(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.

90. (1) A licence shall be subject to—

Conditions of licence.

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

(2) Under this Act, Regulations may—

- (a) require the imposition of prescribed conditions in prescribed circumstances; and
- (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.

91. (1) A water services provider shall, as the licensee, be responsible for the efficient and economical provision of water services so as to fulfil the rights to water and any other conditions specified in the licence.

Duty to provide water services

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(2) For the purpose of the provision of water services, a water services provider, may—

- (a) purchase, lease or otherwise acquire, premises, plant, equipment and facilities; and
- (b) purchase, lease or otherwise acquire land, or request for its compulsory acquisition in accordance with the applicable laws.

92. Every water services provider shall establish a mechanism for handling consumer complaints which meets the standards set by the Regulatory Board.

Consumer complaints.

93. (1) A water services provider may enter into a public private partnership or public partnerships for the exercise and performance by another person of some or all of its functions as a licensee with respect to a part or the whole of its area of water service provision.

Public Private Partnerships.

(2) The partnership shall be in writing subject to the approval of the Regulatory Board.

(3) Where the person entering into an agreement with the water services provider owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which the assets may continue to be so used.

(4) A power or function conferred by a licence or otherwise conferred under this Act may be exercised or performed by another person acting under an agreement with the licensee and shall be deemed, when exercised or performed by that other person, to have been exercised or performed by the licensee.

94. (1) Nothing in this Act shall deprive any person or community of water services on the grounds only that provision of such services is not commercially viable.

Special provisions with respect to rural areas not commercially viable.

33. Every county government shall put in place measures for the provision of water services to rural areas which are considered not to be commercially viable for the provision of water services.

(3) The measures referred to in subsection (2) shall include the development of point sources, small scale piped systems and stand pipes which meet the standards set by the Regulatory Board and which may be managed by the

community associations, public benefits organizations or a private person under a contract with the county government.

(4) In order to implement its obligations under this section, a county government shall formulate and submit annually to the Regulatory Board and to the Cabinet Secretary, a five year development plan incorporating an investment and financing plan for the provision of water services in the rural areas referred to subsection (1) within its area of jurisdiction.

(5) The Cabinet Secretary shall provide technical, financial and other assistance to a county government to enable the county government to discharge its responsibility under this section.

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

Variation of terms or conditions of a licence

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

96. (1) The area of water service provision shall be prescribed by a licence and shall not be less than the area required for a commercially viable water service.

Areas of water service.

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

97. (1) The Regulatory Board may, on the application of the licensees —

Clustering of areas of water service provision

(a) permit the joint provision, by two or more licensees, of water services on such terms as it may approve; or

(b) permit the transfer of a water service, or a part thereof, from one licensee to another licensee.

(2) Where it appears necessary to the Regulatory Board, for the purpose of securing a commercially viable water service, it may, by notice in the *Gazette*, order a joint provision of water services or a transfer of water service and vary the relevant licenses accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provision as

the Regulatory Board considers necessary for the purpose of carrying out the order.

(4) The Cabinet Secretary in consultation with the Regulatory Board shall make rules, setting out circumstances under which the provision of joint water services may be ordered.

(5) A licensee aggrieved by the provisions of the order may appeal to the Tribunal.

98. (1) The Regulatory Board may vary the areas of water service provision prescribed by one or more licences—

Variation of areas of service

- (a) on the application of a licensee whose area of water service is 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 its area of jurisdiction or is otherwise unable to provide a commercially viable service.

(2) Where it appears to the Regulatory Board that it is necessary to vary the area of water service of a licensee and the Regulatory Board is satisfied that such a variation cannot be otherwise secured it may, by order published in the *Gazette*, effect the variation accordingly.

(3) An order made under this section may make such incidental, consequential and supplementary provisions as the Regulatory Board may consider necessary 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 Tribunal.

99. (1) Subject to any Regulations made under this Act, the Regulatory Board may direct a licensee to provide water services, outside its area of water services jurisdiction.

Provision of water service outside the area of supply.

(2) Where under this section a licensee, in this section called the “supplying licensee”, is providing water services to premises outside its area of supply, any other licensee within whose area of supply those premises are situated may, in the absence of any agreement to the contrary, give

not less than three months' notice to the supplying licensee that the licensee is able and intends to provide water services to the premises.

(3) A notice given under subsection (2) shall not be valid unless it relates to all the premises to which the water services are being provided by the supplying licensee in accordance with this section.

(4) If on the expiration of the notice 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 the supplying licensee, and of removing any pipes, plant or apparatus belonging to the supplying licensee, cease to have any rights or duties in respect of providing water services to the premises concerned.

(5) The supplying licensee shall not remove any pipes, plant or apparatus which are required by the licensee giving the notice, and any such pipes, plant or apparatus shall vest in the licensee giving the notice.

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

- (a) any expenses reasonably incurred by the supplying licensee for the purpose of providing water services to the premises referred to in the notice;
- (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.

(7) While the supplying licensee is in accordance with this section authorized to provide water services outside its area of service, any Regulations relating to its water service shall have effect as if the area to which those services were provided were within those limits.

100. (1) A person shall not supply water in bulk to a water services provider without a licence issued by the Regulatory Board.

Supply of bulk water.

(2) A water service provider may enter into an agreement with any other licensee or water services provider on terms and conditions to be approved by the Regulatory Board—

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- (b) for the supply of water in bulk for a specific period; or
- (c) where the supply is to be given by a water services provider, either within or outside the area of service of that water services provider.

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

- (a) it is expedient for—
 - (i) any licensee or water services provider to give the supply of water in bulk to another licensee or water service provider;
 - (ii) the other licensee or water services provider to take such supply; and
- (b) giving and taking of such a supply cannot be secured by agreement,

the Regulatory Board may, by order served on the parties, require the licensees concerned to give and take the supply of water in bulk for such a period and on such terms as the Regulatory Board may specify.

101. (1) If it appears to the Regulatory Board following a complaint made to or information received by a county government executive or the Regulatory Authority, that any licensee—

Default by a licensee.

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

the Regulatory Board, as the case may be, may inquire into the matter.

(2) If, after inquiry, the Regulatory Board is satisfied that there has been failure on the part of the licensee, the Regulatory Board may impose a special regulatory regime

on the water services provider for the purpose of remedying the default.

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

(4) A licensee declared to be in default by order under this section and who fails to comply with the order within the time specified, commits an offence.

102. (1) The Regulatory Board may, in consultation with the affected county government's executive, impose a special regulatory regime on a licensee who persistently contravenes the conditions of a licence or the requirements of this Act.

Special regulatory regime

(2) In taking the action contemplated in subsection (1) the licensee shall be given an opportunity to make presentations to the Regulatory Board.

(3) The Regulatory Board may under a special regulatory regime—

- (a) require the licensee to be under enhanced monitoring licence and reporting;
- (b) remove privileges from the licence; or
- (c) revoke the licence and appoint a special manager of the water services for a period of not more than six months or until the respective county government makes a new appointment whichever is the earlier.

(4) In determining withdrawal of a licence, the Regulatory Board shall consider the severity of the offence, the consequences of withdrawal of a licence and the sufficiency of any alternative sanction.

103. (1) If the Regulatory Board is satisfied that, notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the licensee, it shall subject to the Public Finance Management Act, 2012 in consultation with the concerned county government executive, by notice in the *Gazette*, order the transfer of water services to another licensee.

Transfer of functions of licensee

No 18 of 2012.

(2) The order of transfer shall make such provisions as appear to the Regulatory Board to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

(3) The transfer of a licence shall be a temporary measure not exceeding twelve months pending remedial action by a county government executive.

104. (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 the licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures, the control of vegetation or 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 protection of sources of water, etc.

(2) An agreement under this section may be registered against any proprietor of the applicable land, and shall be binding upon and enforceable against such person or successor in title.

105. (1) A licensee who is of the opinion that there is a serious deficiency or threat of a deficiency of water available for distribution, may with the approval of the Regulatory Board, for such period as the licensee considers necessary, prohibit or restrict with respect to the whole or any part of such licensee's limits of supply, the use for any specified purpose of water.

Power of licensee to prohibit or restrict use of water.

(2) Before the prohibition or restriction in subsection (1) comes into force, notice shall be given by the licensee, in one or more newspapers of daily circulation, 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 such prohibition or restriction shall come into force.

(3) Any person who contravenes the provisions of this section commits an offence.

106. (1) It shall be the duty of every county government executive to monitor and enforce the applicable Regulations made under this Act, and any

Duty to enforce Regulations on water services

county government executive who fails to do so shall be liable to an order by the Regulatory Board to take such action to enforce such Regulations as shall be specified in the order.

(2) Where a county government executive considers that the operation of any such Regulations would be unreasonable in any particular case, a county government may, in consultation with the Regulatory Board, by notice to any affected party, reduce or dispense with the requirements of the regulation.

107. (1) A licensee may, on any land belonging to it, or on land over or in which it 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 it is for the time being authorised to take, from being polluted.

Execution of
works for
protection of
water.

(2) The licensee shall before constructing any works, if the proposed works will affect or are likely to affect any water resource, obtain the consent of the Authority and the Regulatory Board.

(3) Any licensee proposing to construct any drain, sewer or other works may, with the consent of the state organ concerned and subject to such conditions as the state organ 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 area of water service of the licensee.

(4) 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 state organs concerned.

108. (1) It shall be the duty of a licensee receiving trade effluent into its sewerage system to ensure that it has in place measures for the receipt and handling of the effluent without causing—

Control of trade
effluent

(a) pollution of the environment;

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- (b) harm to human health;
- (c) damage to the sewerage system; or
- (d) a contravention of applicable laws or standards set by the Regulatory Board.

(2) A person shall not discharge any trade effluent from any trade premises into the sewers of a licensee without the consent of the licensee.

(3) 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 proposes 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.

(4) The licensee's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the licensee of charges for the discharge.

(5) 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 Regulatory Board.

(6) A person who contravenes the provisions of this section commits an offence.

(7) 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.

109. (1) The Regulatory Board may impose a sewerage services levy on all water services within the area of a licensee, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

Sewerage services
levy.

(2) A portion of the levy referred to in subsection (1) may, with the approval of the Regulatory Board, be set aside by the licensee for use in the expansion of the sewerage system within the area of service provision of the licensee.

110. (1) A licensee, or an applicant for a license, who requires the compulsory acquisition of land for any of its purposes, may apply to a county governor, or where necessary to the Cabinet Secretary, who, on being satisfied that such compulsory acquisition is desirable, may take the steps necessary to secure the compulsory acquisition of the land in accordance with the applicable laws.

Compulsory
acquisition of
land

(2) It shall be a condition of the licence that the licensee or an applicant for a licence shall, for the purposes of subsection (1) take any necessary action to ensure the protection—

- (a) of a source of supply which belongs to such licensee or will belong to the licensee following the acquisition;
- (b) against pollution or other degradation, whether on the surface or underground of any water resource within such licensee's area of jurisdiction.

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

111. (1) The Regulatory Board shall establish a national monitoring and georeferenced information system on water services.

Regulatory Board
to establish
Information
System

(2) 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.

(3) The Cabinet Secretary may make Regulations to facilitate the access to information by the public.

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

(5) Subject to any law relating to access to information and upon payment of the prescribed fee, a member of the public shall have access to information contained in any national information system.

112. Within three months after the end of each financial year, the Regulatory Board shall prepare an

Annual report

annual report of its work and activities and shall cause the report to be published and publicized.

PART V—WATER SECTOR TRUST FUND

113. (1) There is established a water sector financing institution to be known as the Water Sector Trust Fund.

Establishment of
the Water Sector
Trust Fund.

(2) The Fund is a body corporate with perpetual succession and a common seal and shall have power, in 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.

114. The object of the Fund is to provide conditional and unconditional grants to counties, in addition to the Equalisation Fund and to assist in financing the development and management of water services in marginalized areas or any area which is considered by the Board of Trustees to be underserved including—

Objects of the
Fund.

- (a) community level initiatives for the sustainable management of water resources;
- (b) development of water services in rural areas considered not to be commercially viable for provision of water services by licensees;
- (c) development of water services in the under-served poor urban areas; and
- (d) research activities in the area of water resources management and water services, sewerage and sanitation.

115. (1) The powers and functions of the Fund shall be exercised and performed under the direction of a Board of Trustees from time to time appointed and holding office under a trust deed to be drawn by the Cabinet Secretary.

Board of Trustees
of the Fund.

(2) The Board of Trustees shall consist of a chairperson and six other members recruited in accordance with the First Schedule.

(3) The First Schedule shall have effect with respect to the membership and procedure of the Board of Trustees of the Fund.

116. (1) The powers and functions of the Board of Trustees shall be to—

Functions of the
Board of Trustees.

- (a) manage the resources of the Fund;
 - (b) mobilize additional resources for the Fund;
 - (c) formulate and implement principles, Regulations and procedures in consultation with the national government and county governments for financing projects, including efficiency and effectiveness of funds;
 - (d) implement measures to ensure the efficient and equitable sharing of the resources of the Fund giving priority to resource allocation in—
 - (i) rural and urban areas where access to basic water services is below the national average; and
 - (ii) rural areas which are vulnerable to the degradation or depletion of water resources;
 - (e) monitor the implementation of projects;
 - (f) maintain and make public available information on the projects financed and impact of such projects;
 - (g) receive grants for onward lending to water services providers, counties, and registered community schemes towards water services and water resources management projects for the underserved areas and urban poor;
 - (h) establish and manage subsidiary funds as may be necessary for sustainable financing towards water services and water resource management; and
 - (i) in collaboration with relevant institutions develop incentive programmes for water resources management including disaster management, climate change adaptation and mitigation.
- (2) The provisions of subsection (1) (g) shall only apply to water service providers, counties and registered community schemes, that can afford the repayment of the funds advanced, and profits thereof used to finance water services and water resources management projects for the underserved areas and urban poor.
- (3) The Board of Trustees of the fund shall, following public consultation, gazette the criteria for qualification for funding from the Fund taking account of considerations of

equity and may from time to time following public consultation review the criteria.

117. (1) The monies of the Fund shall consist of monies—

Monies of the
Fund

- (a) appropriated by Parliament from the national budget for the purposes of the Fund;
- (b) provided to the Fund from the Equalisation Fund on agreed programmes;
- (c) provided to the Fund by a county government on agreed programmes;
- (d) received by the Fund from donations, grants, and bequests from other sources;
- (e) the proceeds of the levy imposed under subsection (2); and
- (f) payable into the Fund under any Act.

(2) The Cabinet Secretary may, by Regulations following public consultation prescribe a levy to be paid by consumers of piped water supplied by licensed water service providers, the proceeds of which shall be paid into the Fund established under section 113.

118. (1) The Fund shall have Chief Executive Officer who shall be appointed by the Board of Trustees on such terms and conditions of service as the Cabinet Secretary responsible for matters relating to public service on the advice of the Salaries and Remuneration Regulatory Authority may determine.

Staff of the Fund.

(2) The Chief Executive Officer shall be the accounting officer of the Fund and, subject to the directions of the Fund, shall be responsible for the management of the affairs of the Fund.

(3) The Fund may appoint such officers and other staff as may be necessary for the exercise and performance of its functions, upon such terms and conditions as the Cabinet Secretary responsible for matters relating to public service on the advice of the Salaries and Remuneration Commission may determine.

PART VI —DISPUTE RESOLUTION

119. (1) There is established a Water Tribunal.

Establishment of
the Water
Tribunal

(2) There shall be a chairperson of the Water Tribunal appointed by the Judicial Service Commission on such

terms and conditions as may be determined by the Judicial Service Commission.

120. The staff of the Tribunal shall be appointed, removed from office or otherwise disciplined by the Judicial Service Commission in accordance with Article 172 (1) (c) of the Constitution.

Staff of the Water Tribunal.

121. (1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority and Regulatory Board.

Jurisdiction of the Tribunal.

(2) In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism.

122. The Tribunal shall make Rules governing its procedures.

Proceedings of the Tribunal.

123. In determining an appeal, the Tribunal may affirm, quash or vary the decision or order.

Determination of appeals and disputes.

124. A person aggrieved by a decision of the Tribunal may, within twenty-one days from the date of that decision, appeal to the Land and Environmental Court, established under article 162(2) of the Constitution on an issue of law.

Appeals to the Land and Environment Court

125. A decision of a water basin organization, the Authority, the Regulatory Board or the Tribunal against which no appeal has been preferred within thirty days from the date on which the decision was made, shall be binding on all parties.

Decisions binding if no appeal within thirty days

PART VII —FINANCIAL PROVISIONS

126. The funds of the Authority, Regulatory Board, Water Storage Authority, Water Sector Trust Fund, and water works development agencies shall respectively consist of—

Funds of the Authority, Regulatory Board, Water Harvesting and Storage Authority and Water Works

(a) monies allocated by Parliament for the purposes of

the each body corporate established under this Act;

Development
Agencies

- (b) such monies or assets as may accrue to each body corporate in the course of the exercise of its powers or in the performance of its functions under this Act; and
- (c) all monies from any other source provided, donated or lent to each body corporate respectively.

127. The financial year of each body corporate established under this Act shall be the period of twelve months beginning the first July and ending on the thirtieth June in each year.

Financial year.

128. (1) Three months before the commencement of each financial year, each body corporate established under this Act shall cause to be prepared estimates of the revenue and expenditure of the body corporate for that year.

Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the respective body corporate for the financial year concerned and in particular, shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the body corporate;
- (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the body corporate;
- (c) the maintenance of the buildings and grounds of the body corporate;
- (d) the funding of training, research and development of activities of the body corporate; and
- (e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the body corporates may consider necessary.

129. (1) Every body corporate established under this Act shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities.

Accounts and
audit.

(2) Within a period of three months after the end of each financial year, each body corporate shall submit to the Auditor-General the accounts of the body corporate in respect of that year together with a—

No. 34 of 2015.

- (a) statement of the income and expenditure of the body corporate during that year; and
- (b) statement of the assets and liabilities of the body corporate on the last day of that financial year.

(3) The annual accounts of the body corporate shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act, 2015.

130. The Authority, the Regulatory Board and the Water Storage Authority may, subject to the Public Finance Management Act, 2012 retain in a fund managed by the respective bodies, the revenue from permit charges, water user fees, regulatory levy, licence fees and any other authorized charges and shall use such revenue in meeting the costs incurred in the performance of their functions.

Retention of charges and fees.
No. 12 of 2012.

131. (1) All funds collected for water services by the licensed water services providers holding county or national public assets on behalf of the public through water services bills and other sources, shall be used entirely for the purpose of covering costs for the provision of water services and asset development according to Regulations made by the Regulatory Board.

Funds collected by water services providers.

(2) The licensed water services providers shall not be required to pay any fees for the use of public assets for the provision of water services other than the repayments of loans acquired for the development of those assets.

(3) Dividends or other payments shall not be paid to the owners of public water services providers as long as the universal rights of access to safe and clean water have not been achieved in the designated service areas.

132. All income through water permits, abstraction and water user fees shall be entirely used for the conservation and management of water resources.

Income from water permits abstraction and water user fees.

PART VIII—GENERAL PROVISIONS

133. (1) Any notice required to be served under 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;
 - (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 such principal officer's office with a person employed there, or by registered post.
- (2) If any landholder is not known and, after diligent inquiry, cannot be found, such notice may be served by leaving it, addressed to such landholder, with an 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 the landholder.
- (3) Any notice required to be given to a landholder may be addressed to the owner of land or premises described in the address in respect of which the notice is given.

134. Any order, notice, consent, approval, permission, demand, objection, application, standard or other thing authorised or required by this Act to be given, made, set, determined or issued by or to the Cabinet Secretary, the Authority, Regulatory Board, a county government executive, a licensee or other state organ shall be in writing.

Order, etc., to be in writing.

135. (1) Any order, notice, consent, approval, demand or other document which the Authority, the Regulatory Board, county government executive, or other state organ is authorised or required by this Act to give, make or issue may be signed on its behalf —

Authentication of documents.

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

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

- (a) expressed to hold an office by virtue of which he or she is, under this section empowered to sign a document; or
- (b) expressed to be duly authorised by the respective state organ in subsection (1) 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, the Regulatory Board, or other state organ as the case may be.

136. The production of —

Permit or licence to be evidence of power or function.

- (a) a permit, or a copy of a permit, certified by the Chief Executive Officer of the Authority; or
- (b) a licensing certificate or copy of the licensing certificate, certified by the Chief Executive Officer of the Regulatory Board; or
- (c) a licence, or a copy of a licence, 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.

137. No matter or thing done or omitted by —

Protection from liability.

- (a) the Cabinet Secretary, the Authority, the Regulatory Board, or other state organ exercising powers or functions under this Act;
- (b) any person acting at the direction of the Cabinet Secretary; or
- (c) a person acting at the direction of the Authority, the Regulatory Board, or a state organ

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 person in his or her personal capacity to any action, suit, claim or demand whatsoever.

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

Application of Act to community land.

139. (1) A requirement imposed by or under this Act for a person in this section referred to as 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 at least one national newspaper of daily circulation; and
- (b) in at least one Kenyan radio station broadcasting in that locality.

(3) The notice shall—

- (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 not earlier than thirty days after publication of the notice by which any such comments are required be received.

(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 the proposed action at which the designated person was represented or pursuant to any other invitation to comment.

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

(6) Regulations made under this Act may require, the designated person to hold a public meeting in relation to the application or proposed action.

140. (1) If 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 may occur in any area, it may by order—

Special powers in case of shortage of water.

(a) declare that a crisis exists; and

(b) direct a person who has a supply of water in excess of his or her 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) A person directed by an order under this section who fails to comply with the provisions of the order commits 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 Authority 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 Authority may direct any person to—

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

- (b) 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.

(6) Any payment made when undertaking the action contemplated under subsection (4), or such proportion of it as the Authority may determine, may be recovered by the person acting under the direction of the Authority, as a debt due 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, commits of an offence.

141. An inspection of any works authorized to be constructed under this Act shall not be deemed to constitute or imply any guarantee of the works constructed, or to support or justify any claim against the Authority, the Regulatory Board, the Cabinet Secretary, a county government or a licensee in connection with any such works.

No warranty implied by inspection.

142. (1) The Cabinet Secretary may make Regulations 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 the carrying out or giving effect to this Act.

Regulations.

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

- (a) delegation by the Authority, the Board or a licensee of their respective powers and functions;
- (b) abstraction of ground water and works therefore, including the licensing of borehole constructors;
- (c) construction, extension or improvement of dams and the licensing of persons carrying on business as dam contractors;

- (d) the licensing of engineers and other persons offering professional services in respect of water resources or water services;
- (e) requirements in respect to bottled or mineral waters;
- (f) national public water works;
- (g) information to be made available to the public under the Act;
- (h) requirements for the keeping of records and the furnishing of information to the Authority or the Board;
- (i) the transfer of functions, assets, liabilities and staff;
- (j) rain water harvesting and household water storage; or
- (k) any saving, temporary or transitional provision in consequence of the repeal of the Water Act, 2002.

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(3) Regulations made under this section may create offences in respect of any contravention of the Regulations and may for any such offence impose penalties not exceeding one million shillings or imprisonment not exceeding two years, or both such fine and imprisonment.

(4) Regulations made under this Act shall be published in the *Gazette* and shall come into effect upon publication.

143. (1) A person shall not, without authority conferred under this Act—

- (a) wilfully obstruct, interfere with, divert or obstruct water from any watercourse or any water resource, or negligently allow any such obstruction, interference, diversion or abstraction; or
- (b) throw, convey, cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive 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 commits an offence.

Obstruction or pollution of watercourse or water resource

144. (1) Without prejudice to any other remedy or course of action, if a person contravenes any provision under this Act, then, the Authority, the Regulatory Board, the county government executive concerned or the licensee concerned may, by order served on the person concerned, require that person within a reasonable time specified in the order to remedy the contravention and in particular—

Remedy of defaults.

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

(2) Where the order in subsection (1) has not been complied with, the Authority, the Regulatory Board, the concerned county government executive or the licensee may take such steps as are necessary to remedy the contravention, and the expenses incurred in doing so shall be recoverable at the instance of the Authority, the Regulatory Board, the concerned county government executive or the licensee concerned through an application to the Tribunal.

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

145. A person shall not—

Miscellaneous offences.

- (a) wilfully obstruct, molest or hinder any inspector or employee of a person authorised by the Cabinet Secretary, the Authority, the Regulatory Board, a county government executive or a licensee in the exercise or performance of his or her powers and functions under this Act;
- (b) without the written permission of the Authority, Regulatory Board, or the county government executive, knowingly or wilfully—
 - (i) deface, alter or remove; or
 - (ii) cause to be defaced, altered or removed, any documents, survey mark, water gauge, weir or measuring device or other work, structure or approval installed with the approval of the

Authority, Regulatory Board or county government executive;

- (c) wilfully hinder or interrupt, or cause to be hindered or interrupted, any permit holder, employee, contractor or agent of a permit holder, 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 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 works of any permit holder which is capable of drawing water from that works;
- (f) unlawfully interfere with the works 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 commits an offence.

146. Without prejudice to the rights of any person to bring proceedings in respect of an offence under this Act, and subject to Article 157 of the Constitution, the Authority, the Regulatory Board, a county government executive or a licensee may institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any Regulations or Regulations made under this Act.

Criminal proceedings.

147. A person who commits an offence under this Act, or under any Regulations or made under this Act, shall, if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

General penalty

PART IX—TRANSITIONAL PROVISIONS

148. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water

Transfer of functions, assets, liability and staff from Water Resource Management

No. 43

Resources Management Authority established under the Water Act, 2002 shall upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority to the same extent as they were enforceable by or against the Water Resource Management Authority before the commencement of this Act.

Authority to the
Authority

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Resources Management Authority established under the Water Act, 2002 in respect of any matter shall continue by or against the Authority.

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(3) A person who immediately before the commencement of this Act was an employee of the Water Resources Management Authority established under the Water Act, 2002 shall, on the commencement of this Act, be deemed to be an employee of either the Authority or the basin water resources boards as the case may be on terms to be determined by the relevant bodies subject to the advice of the Salaries and Remuneration Commission.

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149. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements not linked to water services provision as provided for in section 148, existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the National Water Conservation and Pipeline Corporation established by the National Water Conservation and Pipeline Corporation Order, 1988 shall, upon the commencement of this Act be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Harvesting and Storage Authority to the same extent as they were enforceable by or against the National Water Conservation and Pipeline Corporation before the commencement of this Act.

Transfer of
functions, assets,
liability and staff
from National
Water
Conservation and
Pipeline
Corporation to
National Water
Harvesting and
Storage Authority

L N No 270 of
1988

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the National Water Conservation and Pipeline Corporation in respect of any matter, shall continue by or against the National Water Harvesting and Storage Authority.

(3) A person who immediately before the commencement of this Act was an employee of the National Water Conservation and Pipeline Corporation

shall, on the commencement of this Act, be deemed to be an employee of the National Water Harvesting and Storage Authority on terms to be determined by the Salaries and Remuneration Commission.

150. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Services Regulatory Board established by the Water Act, 2002 shall, upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Regulatory Board to the same extent as they were enforceable by or against the Water Services Regulatory Board before the commencement of this Act.

Transfer of functions, assets, liabilities and staff from the Water Services Regulatory Board to the Regulatory Board.

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Services Regulatory Board established under the Water Act, 2002 in respect of any matter shall continue by or against the Regulatory Board.

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(3) A person who immediately before the commencement of this Act was an employee of the Water Services Regulatory Board established under the Water Act, 2002 shall, on the commencement of this Act, be deemed to be an employee of the Regulatory Board on terms to be determined by the Salaries and Remuneration Commission.

No. 8 of 2002.

No. 8 of 2002.

151. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Water Services Trust Fund established by the Water Act, 2002 shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Sector Trust Fund to the same extent as they were enforceable by or against the Water Services Trust Fund before the commencement of this Act.

Transfer of functions, assets, liabilities and staff from the Water Services Trust Fund to the Water Sector Trust Fund

No. 8 of 2002

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the Water Services Trust Fund established under the Water Act, 2002 in respect of any matter shall continue by or against the Water Sector Trust Fund.

No. 8 of 2002.

(3) Any person who immediately before the commencement of this Act is an employee of the Water Services Trust Fund established under the Water Act, 2002 shall, on the commencement of this Act, be deemed to be an employee of the Water Sector Trust Fund on the terms to be determined by the Salaries and Remuneration Commission.

No. 8 of 2002

152. (1) Subject to the Transition to Devolved Government Act, 2012 all property, assets, rights, liabilities, obligations, agreements and other arrangements existing concerning the operation of water services boards at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the water services boards established by the Water Act, 2002 shall, upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the water works development agencies to the same extent as they were enforceable by or against the water services boards before the commencement of this Act.

Transfer of functions, assets, liability and staff from water services boards to water works development agencies.

No. 1 of 2012.

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the water services board established under the Water Act, 2002 in respect of any matter shall continue by or against the water works development agencies.

No. 8 of 2002

(3) A person who at the commencement of this Act is an employee of the water services boards established under the Water Act, 2002 shall be deployed as may be determined by the Cabinet Secretary to the public sector institutions or to the county governments.

No. 8 of 2002.

(4) The Cabinet Secretary will publish, in consultation with the county and public sector institutions referred to in subsection (3), a plan of transfer of staff, assets, liabilities and contracts.

153. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements linked to water service provision existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the water services boards and the National Water Conservation and Pipeline Corporation shall, upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on

Transfer of functions, assets, liabilities, obligations, agreements and other arrangements to county or cross-county water service providers.

behalf the county water services providers or cross county water services providers to the same extent as they were enforceable by or against the water services boards and the National Water Conservation and Pipeline Corporation before the commencement of this Act.

(2) Any other public property, liabilities and contract for water services provision shall be held in trust for the public by the water services provider subject to such terms or provisions as may be specified in the Regulations for the exception of public property, liabilities and contracts which shall be vested in cross-county water services providers.

(3) The county governments shall make agency agreements and provision for the use of the public property referred to in subsection (2), and any liabilities and contracts not held by water services boards or county water services providers in respect of such property.

154. The existing water services providers shall continue to operate as the county water services providers or cross county water services providers as the case may be within the period specified in the transfer plan published by the Cabinet Secretary.

Water service providers to continue to operate

155. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested, acquired, incurred or entered into by or on behalf of the Water Appeals Board established by the Water Act, 2002 shall upon commencement of this Act be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Water Tribunal to the same extent as they were enforceable by or against the Water Appeals Board before the commencement of this Act.

Transfer of functions, assets, liability and staff from Water Appeals Board to Water Tribunal

No. 8 of 2002.
No. 8 of 2002

No. 8 of 2002.

(2) Any legal proceedings pending in the Water Appeals Board established under the Water Act, 2002 in respect of any matter shall continue in the Water Tribunal.

(3) A person who immediately before the commencement of this Act is an employee of the Water Appeals Board established under the Water Act, 2002 shall, on the commencement of this Act be deemed to be an employee of the Water Tribunal on terms to be determined by the Salaries and Remuneration Commission.

156.(1) The Water Act 2002, is repealed.

Repeals, Savings
and Transitional
Provisions

(2) The National Water Conservation and Pipeline Corporation Order, 1988, is revoked.

No 8 of 2002

(3) Notwithstanding the repeals effected by this section—

L N 270/1988

(a) the Water Appeals Board, Water Resources Management Authority, a water services board or a water services provider and any other body established under an enactment repealed by this section shall be deemed to continue in being; and

No 8 of 2002

(b) any person or body performing any functions under the Water Act, 2002 shall continue to do so, and in so doing may exercise any power vested in that person or body with respect to the performance of those functions,

No 8 of 1999.

until the Cabinet Secretary, by notice in the *Gazette* revokes this subsection in full or in part as may be necessary.

(4) Without prejudice to subsection (3), Regulations made under section 142(2)(i) shall require that the transfer of functions, assets, liabilities and staff shall be completed within a period of three years following the commencement of the Act.

(5) The provisions of the Environmental Management and Coordination Act, 1999 relating to water resources conservation and protection and water pollution control shall be exercised subject to the relevant provision of this Act and only in the event that the Board has failed or neglected to take appropriate action to exercise its powers and functions under this Act.

157. 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.

No. 8 of 2002

(a) under any provision of the Water Act, 2002 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 repealed Crown Lands Ordinance, 1902 or

(d) by agreement or otherwise.

shall be deemed to be a right conferred by a permit under this Act.

158. A county government shall subject to sections 70(1) (a) and (b), 117 and 120 of the County Governments Act, 2012—

Responsibility of
a county
government

- (a) give effect to national water services standards and conditions set by the Regulatory Board for purposes of ensuring consumer protection; and
- (b) take into consideration the requirement relating to tariffs gazetted by the Regulatory Board while imposing tariff.

159. The County Governments Act, 2012 is amended in—

Consequential
amendments

- (a) section 117(1) by inserting the following new paragraph immediately after paragraph (a) —

No 17 of 2012.

“(aa) comply with the respective policy and standards provided by the National Government”;

- (b) section 120 by inserting the following new subsection immediately after subsection (1)—

“(1A) Notwithstanding subsection (1), a county government or any agency delivering services in the county shall adopt and implement tariffs and pricing policy subject to the existing National Government laws and policies.”

SCHEDULES**FIRST SCHEDULE (s. 14)****MEMBERSHIP AND PROCEDURE OF BOARDS,
AND COMMITTEES**

1. (1) This Schedule applies to—

Application of
this schedule.

- (a) the board of the Authority;
- (b) the board of the Regulatory Board ;
- (c) the board of the water works development agencies;
- (d) the board of Water Sector Trust Fund;
- (e) the board of the National Water Harvesting and Storage Authority ; and
- (f) a committee or tribunal established under this Act.

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

“board” means a board to which this Schedule applies;

“Chairperson” means the Chairperson of a board, Tribunal or Committee;

“member” means a member of a board, Tribunal or committee.

2. (1) In making an appointment to a board, the Tribunal or a committee, the person making the appointment shall have regard to—

Qualification of
members.

- (a) Article 10 of the Constitution of Kenya on national values and principles of governance;
- (b) Article 232 of the Constitution of Kenya on values and principles of public service;
- (c) the academic qualifications, professional experience, expertise, character and integrity of the potential candidates for appointment;
- (d) gender, regional and ethnic diversity; and
- (e) 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.

(2) The Chairperson and members shall be identified for appointment through an open competitive process.

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

Term of office.

(2) A member shall be eligible for re-appointment for one further term.

4. (1) A member may be appointed to act in the office of Chairperson during the illness or absence of the Chairperson, and a member so appointed shall have all the powers and be able to carry out all the functions of the Chairperson.

Acting
chairperson

(2) An appointment under this paragraph may be made, and at any time revoked, by the person or body who appointed or elected the Chairperson.

5. The terms and conditions of service of a member, including the remuneration, allowances and other expenses to which the member shall be entitled to, shall be prescribed by Regulations made under this Act.

Terms and
conditions of
service.

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

Vacancy in office
of member.

- (a) such member dies, resigns or is removed from office;
- (b) such member absents himself or herself from four consecutive meetings of the board or committee of which reasonable notice has been given to the member, 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 the four meetings, the member is excused by the board or committee for having been absent from the meetings;
- (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

- (d) such member is adjudged or declared by any competent court or tribunal to be of unsound mind; or
- (e) such member is convicted of an offence punishable by imprisonment for twelve months or more.

(2) If the office of a member becomes vacant, the respective appointing authority shall fill the vacancies as prescribed in this Act.

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

Disclosure of
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 or she 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 the member's knowledge, disclose the nature of the interest at a meeting of the board or committee.

(2) A disclosure to the Board or committee that the member concerned—

- (a) is a member, or is in the employment, of a specified company or any 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 the subject matter of the disclosure.

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

- (a) in relation to the Management Board, Regulatory Board, Board of Trustees or the Water Storage Board by the Cabinet Secretary;
- (b) in relation to a basin water resources committee by the Authority; or
- (c) in relation to a water services provider 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. Except as otherwise provided by or under this Act—

General
procedure.

- (a) meetings of a board or committee shall be held as often as maybe necessary for the dispatch of their business but they shall not be less than four any financial year.
- (b) a meeting of the board or committee shall be held on such date time and place as the chairperson may decide;
- (c) the chairperson shall, on the written application of one third of the members convene a special meeting of the board or committee;

- (d) unless the majority of the total membership of the board or committee otherwise agree, at least fourteen days written notice of every meeting of the board or committee shall be given to every member of the board or committee; and
- (e) the procedure for the convening of meetings and for the conduct of business at those meetings shall be as determined by the Chairperson.

9. A third of the members of a board or a committee shall constitute a quorum at any meeting of the board or committee. Quorum.

10. The Chairperson or, in the absence of the Chairperson, the acting Chairperson or in his or her absence, a member appointed by the members then present shall preside at a meeting of a board or committee. Presiding members.

11. (1) 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. Decisions.

12. Subject to paragraph 9, proceedings of the board or committee shall not be invalid by reason only of a vacancy among the members. Proceedings

13.(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. Record of proceedings.

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

14. (1) The first meeting of the board of the Authority, Regulatory Board, the Fund or the National Water Storage Authority shall be called by the Cabinet Secretary. First meeting.

(2) The first meeting of a basin water resources committee shall be called by the Authority in such manner as the Authority consider necessary.

(3) The first meeting of a water services provider shall be called by the county government establishing it in such manner as it considers necessary.

15. The First Schedule applies to the county and cross-county water services providers and the Regulatory Board will set additional criteria. Application of first schedule.

SECOND SCHEDULE (s. 41)**CONDITIONS RELATING TO CONSTRUCTION OF WORKS**

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

Meaning of “authorised works”.

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

Inspection of works during construction.

3. (1) Upon any inspection made under this Schedule, the Authority or Regulatory Board 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.

Works to be made secure

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

4. (1) A permit holder constructing any authorised works—

Road crossings

- (a) shall, during the 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 county government concerned or, at the option of the county government, refund to it the costs of construction by it —
 - (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 county government, with the approval of the Authority or Regulatory Board, may declare to be necessary in the public interest.

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(2) All respective bridges, approaches and appurtenances shall be maintained by the permit holder, or alternatively, at the option of the county government, by the county government at the expense of the constructor.

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

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

Completion
certificate and
inspection

(2) On submission of the certificate in sub-paragraph (1), an officer appointed for the purpose by the Authority or Regulatory Board, may make an inspection of the works 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 or Regulatory Board may specify.

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

Forfeiture of
rights if works not
completed within
time allowed

of, in such manner as the Authority or Regulatory Board may specify.

7. (1) Every permit holder shall maintain and retain his or her works in a good, proper and workman like manner to the satisfaction of the Authority or Regulatory Board.

Works to be kept
in repair.

(2) Pursuant to subparagraph (1), every permit holder shall ensure that—

- (a) the works at all times are 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. 39)**EASEMENTS**

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.

Encumbrances

2. (1) An easement shall include the right of access, along a route to be approved by the Authority or Regulatory Board 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.

Easement includes rights of access

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

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

Permit holder to avoid flooding lands and maintain canal satisfactorily.

(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.

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, and the Authority may by order require the permit holder to construct such additional works at his or her sole expense.

Damage caused by works of permit holder.

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

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 the land or interferes with his or her existing works, structures or devices upon the land shall, at his or own expense, construct and maintain in repair, to the satisfaction of the Authority or Regulatory Board and under such conditions as it may prescribe—

- (a) such bridges and other structures and devices as shall make communication safe and convenient; or
- (b) such works, structures or devices as the Authority or Regulatory Board considers necessary to enable the landholder 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 commits an offence.

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 the permit holder desires to acquire the easement, and shall in the notice state the following particulars, and such further particulars as may be required by Regulations 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;
 - (i) required for the purposes of inspection and maintenance of the works;

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

Permit holder desiring easement to serve notice on landholder.

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- (ii) required for the excavation or collection of material for the works, or for the deposit of soil or material derived from the works;
- (iii) required for a road or roads to obtain access to the works; or
- (iv) 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 or Regulatory Board.

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

Consent of
landholder to
easement.

- (a) shall execute a deed including the particulars of the claim as agreed and any other relevant matter; and
- (b) after the execution of the deed by the parties concerned, shall send two copies of the deed certified by the Registrar of Titles to the Authority.

8. If the landholder does not, within two months after the service of the notice provided for in paragraph 6 of 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 the Authority shall deem 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 or 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.(1) An easement acquired under this Act shall lapse—

Lapse of
easement

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

Permit holder to
keep works in
state of repair

(2) If the permit holder fails to keep the works in a state of repair the landholder may carry out the necessary

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repairs or cleaning and may recover the cost from the permit holder in any court of competent jurisdiction.

(3) The repairs or cleaning under this paragraph 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 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.

12. (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 or she may become entitled to divert, store or use under this Act.

Land holder may demand and obtain use of works.

(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) a 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 Tribunal.

(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 Tribunal.

(4) If such works require modification to enable the landholder to enjoy their use, he or she 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 due to altered conditions it is just and equitable to revise the rate of payment, 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 Tribunal.

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

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

- (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 or her own purposes; and
- (b) the landholder may remove such excavated material except 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.

14. 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.

Easements to be registered

15. (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.

Determination of easement.

(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.

16. 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

Registration of determination or variation of easement.

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 or her title to be freed from the easement or to record the variation, as the case may require.

FOURTH SCHEDULE (s.56)

ABSTRACTION OF GROUND WATER

1. This Schedule shall apply to the extraction of ground water.

Application of this Schedule.

2. (1) A person shall not construct or begin to construct a borehole or well without having first given to the Authority notice of his or her intention to do so.

Notice of intention to construct well

(2) A person intending to construct a borehole or well shall apply to the Authority for a permit and shall comply with such requirements as may be imposed by the Authority.

(3) 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.

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

- (a) to have 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.

(5) 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 or her rights under this paragraph shall be the obligation of the occupier of the land as well as of the person constructing the well.

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(6) 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. 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 —

Submission of
records

- (a) a complete copy of the record, together with the specimens referred to in the record;
- (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 level has returned to its natural level;
- (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.

4. (1) Where any well is being constructed within the proximity of an existing well at a distance to be specified by the Authority, 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.

Tests on
neighbouring
wells

(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 or her, and to supply to the Authority the particulars of the results of such tests.

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.

Contractor
deemed to be
constructor

6. (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—

Records may be
required to be
treated as
confidential.

- (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 the notice mentioned in subparagraph (1), the Authority shall, if sufficient cause has been shown, to 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.

(3) If at any time the Authority gives notice to the person constructing a well or the owner or occupier of the land on which the construction is being done, that, in its opinion, his or her consent is unreasonably being withheld the person may, within three months after the notice given by the Authority, appeal to the Tribunal.

(4) If, at the expiration of the period in the notice, no appeal has been made or, after hearing the appeal, the Tribunal does not make an order restraining it from doing so, the Authority may proceed as if such consent had been given.

7. (1) A person shall not, except with the written permission of the Authority —

Waste of ground
water.

- (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 except 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: Except 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. (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 except where the Authority or the Regulatory Board has approved the use of desalination systems to make such water potable.

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 commits 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.

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—

Instruction to deal with defective well

- (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. 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.

Authority may inspect the well

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

Sworn statement to be submitted.

- (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. (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.

Additional work on defective well

(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,
- (d) 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 there from over the surface of the ground or wasting from the well through the strata through which it passes.

Artesian wells to be cased.

18. (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.

Offence and penalty

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

(3) 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 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 Tribunal.

(4) Where any person has failed to comply with a requirement notified to him 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 the Tribunal recover from the owner or occupier concerned, as a debt, expenses reasonably incurred by him in so doing.

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(5) Expenses recoverable under subparagraph (4) do not include expenses incurred in respect of 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 the Tribunal recover from the owner or occupier concerned, as a debt expenses reasonably incurred by him in so doing.

(6) Expenses recoverable under subparagraph (4) 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.

(7) 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 references were references to two or more such licensees acting jointly.

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