

DRAFT WATER BILL 2012

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WATER ACT, 2012

An Act of Parliament to provide for water resources management and development, for water and sewerage services and the repeal of the Water Act 2002

ENACTED by the Parliament of Kenya as follows:

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Water Act, 2012 and shall come into operation on such date as the Cabinet Secretary responsible for water affairs may, by notice in the Gazette, appoint, and different days may be appointed for the coming into operation of different provisions.

Interpretation

2. (1) In this Act, unless the context otherwise requires—
"Basin" means an area designated as such under section 11;
"Basin Water Resources Board" means a water basin organization established by this Act under section 14,
"Basin area Advisory Committee" means the committee established under section 13;
"basin office" means an office of the Basin Water Resources Board established under this Act;
"Cabinet Secretary" means the Cabinet Secretary in charge of matters relating to water resources or, as the case may be, water services;
"Catchment area" means an area that is part of a basin designated as such under section 11;
"charges", in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;
"county government" means county government as provided for under the Constitution of Kenya 2010;
"easement" means the right to occupy so much of the lands of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred, by a permit;
"County water service provider" means a water service provider established and owned by the County Government
"Effectiveness of funds" means the allocation of funds following the principles of optimizing growth in national interest.
"Equalization Fund" means the Equalization Fund provided for in Article 204 of the Constitution of Kenya 2010;
"inspector" means a person appointed by the Cabinet Secretary responsible for water affairs, the Water Resource Regulatory Authority, a Basin Water Resources Board, the Water Services Regulatory Commission or county government, 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;
"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;
"Land and Environment Court" means the Land and Environment Court as established under the Constitution of Kenya 2010; article 162 (2)
"landholder", in relation to land, means the registered owner of the land or the person in whom the land is otherwise vested by law, and includes—
 - (a) any person who by any established right, custom or estate whatsoever is, or is entitled to be the holder or possessor of land;
 - (b) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and
 - (c) any person to whom a mining lease or mining location has been granted under the Mining Act, Chapter 306.

"licence" means a licence in force under this Act;

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

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

"national government" means national government as provided for under chapter 11 of the Constitution of Kenya 2010;

"National public water works" includes storage, water works bulk distribution and provision of water services, inter-basin water transfer facilities, 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

"peri-urban water services" means services provided in peri-urban areas as shall be defined by the Water Services Regulatory Commission from time to time

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

"National Land Commission" means the National Land Commission established by the Article 67 of the Constitution of Kenya 2010;

"person" includes a company or association or body of persons, corporate 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 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 119;

"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;

"Water Services Regulatory Commission" means the Water Services Regulatory Commission established by this Act.

"rural water services" means services provided in rural areas as defined by the Water Services Regulatory Commission

"Salaries and Remuneration Commission" means the Salaries and Remuneration Commission established under the Article 230 of the Constitution of Kenya 2010;

"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, treatment, of waste water originating from centralized and decentralized systems and does not include household sanitation facilities;

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

"state organ" mean a person a commission, office, agency or other body established under 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 on which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation;

"Trust Fund" means such moneys investments or other property as me be added there to by any person, company, organization, society, of trust, all accumulation of income lawfully made and the moneys, investment or other property representing the same.

"urban water services" means services provided in urban areas as shall be defined by the Water Services Regulatory Commission from time to time

"use of water", in relation to a water resource includes without any limitation:

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

"water user" means a person using water from a water resource;

"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 trans-boundary water resources within the territorial jurisdiction of Kenya;

"water services" means any services of or incidental to the supply of water and includes the provision of sewerage services;

"water service provider" means a company, non-governmental organization or other person or body providing water services under and in accordance with a license issued by the Regulatory Board for the service areas defined by the license

"water table" means—

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

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

"works" means any structure, apparatus, contrivance, device or thing for 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 rules made under this Act.

PART II – OWNERSHIP, USE AND MANAGEMENT OF WATER RESOURCES

Ownership of water resources

3. Every water resource is hereby vested in and shall be held by the national government in trust for the people of Kenya.

Regulation of management and use of water resources

- 4 The Water Resource Regulatory Authority shall, as an agent of the national government, regulate the management and use of water resources.

Right to use water resources

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

Power and function of the Cabinet Secretary

- 6 (1) The Cabinet Secretary shall formulate and publish in the Gazette a national water policy outlining the national government's objectives, principles and plans for the management and use of the water resources. The national water policy shall include details of the national government's policies and plans for the mobilization, enhancement and deployment of financial, administrative and technical resources for the management and use of water resources. All state organs and public officers shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the national water policy.

(2) The Cabinet Secretary shall also have the following powers and functions:

- (a) Formulate and publish a national water resource and water services strategies
- (b) Ensure the effective exercise and performance by any authorities or persons of powers and duties granted or imposed under this Act.
- (c) Inform and advise the National Land Commission on all matters of water resource management
- (d) Coordinate of all water sector institutions and whose activities have an impact on the development of water resources
- (e) Undertake national water sector planning
- (f) Establish a national water sector data base and information system which shall be provided by the sector institutions and all relevant other institutions
- (g) Publish definition on coverage for water services based on criteria for the right to water
- (h) Publish the report on the achievement of the right to water
- (i) Management of all matters related to trans-boundary waters
- (j) Ensure that the use and sustainable management of water resources stored in multi-purpose dams is in conformity with the rules developed by the Water Resources Regulatory Authority
- (k) Provision of technical assistance to the County Government in provision of water services in consultation with the County Government
- (l) In performing its duties the Cabinet Secretary shall be assisted by the Principal Secretary

National public water works

7. (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 national public water works on account of its national or strategic importance, or the cross county nature of the water resource on which it depends.

(2) National public water works includes water storage, water works for bulk distribution and provision of water services, inter-basin water transfer facilities, 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.

(3) A national public water works shall, subject to the acquisition of a permit from the Basin Water Resources Board or from the Resources Regulatory 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) 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 he may deem necessary or desirable 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.

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

Establishment of the Water Resources Regulatory Authority (WATER RESOURCES REGULATORY AUTHORITY)

8. (1) There is hereby established an agency of the national government to be known as the Water Resources Regulatory Authority.

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

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

- (a) a Chairman, who shall be appointed by the Cabinet Secretary; and
- (b) ten other members, who shall also be appointed by the Cabinet Secretary.

(4) The Chairman and members of the board shall be appointed following an open and competitive recruitment process and shall hold relevant professional qualifications and experience.

(5) The First Schedule has effect with respect to the membership and procedure of the governing board of the Water Resource Regulatory Authority.

Powers and functions of the Water Resources Regulatory Authority

9. (1) The Water Resource Regulatory Authority's powers and functions shall be to:—

- (a) formulate and implement standards, procedures and rules for the management and use of water resources and flood mitigation;
- (b) regulate the management and use of water resources in consultation with the National Land Commission established under Article 67 of the Constitution of Kenya
- (c) issue rules on water resources allocation including the issuance of permit;
- (d) monitor compliance by water users with the conditions of permits and the requirements of the Act;
- (e) delegate regulatory functions to the Basin Water Resources Board established by the Cabinet Secretary
- (f) determine and set permit and water use fees for water resources;
- (g) Collect and provide information for formulation by the Cabinet Secretary of the national water resource management, water storage and flood control strategies
- (h) collect, analyze and disseminate information on water resources;
- (i) Report to the public annually on water issue and performance of water resource institutions

- (j) ensure access to information on water resources;
- (k) liaise with other regional, national and international bodies for the better regulation of the management and use of water resources;
- (l) issue permits for inter-basin water transfer; and
- (m) advise the Cabinet Secretary on management and use of water resources.

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

(3) The Water Resource Regulatory Authority may, with the consent of the Director of Public Prosecutions, undertake the prosecution of any offences arising out of or in connection with the management or use of water resources.

Staff of the Water Resource Regulatory Authority

10. (1) There shall be a Director General of the Water Resource Regulatory Authority who shall be appointed by the Board of the Water Resource Regulatory Authority on such terms and conditions of service as the Board may determine taking account of the directions of the Salaries and Remuneration Commission.

(2) The Director General shall be the principal officer of the Water Resource Regulatory Authority and, subject to the directions of the Board, shall be responsible for the management of the affairs of the Water Resource Regulatory Authority.

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

Basin areas

11. (1) The Water Resource Regulatory Authority shall in consultation with the Cabinet Secretary by notice published in the Gazette designate a defined area from which rainwater flows into a watercourse to be a basin area for the purposes of this Act.

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

Basin area water resources management strategy

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

(2) The basin area water resources management strategy shall be formulated by the Basin Water Resources Board in consultation with the Water Resource Regulatory Authority and in consultation with 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; and
- (e) provide systems and guidelines to enable users of water resources within the basin participate in managing the water resources of the basin area.
- (f) provide a strategy for financing the management of the water resources of the basin.

(4) A basin area water resources management strategy, as is in force for the time being, shall be published in the Gazette.

Establishment of the Basin Water Resources Boards

13. (1) The Cabinet Secretary shall establish Basin Water Resources Boards by notice published in the Gazette and give it a name.

(2) The Basin Water Resource Boards shall be responsible for the management of the water resources within the basin area.

(3) A Basin Water Resources Board 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.

(4) The Basin Water Resources Board will operate under regulations made by the Water Resources Regulatory Authority

(5) The Chairman and members of the board of the Basin Water Resources Board shall be appointed by the Cabinet Secretary following an open and competitive recruitment process in accordance with the First Schedule and they shall be resident within the basin area.

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

14. Power and functions of the Basin Water Resources Boards

- (a) Protecting water resources and increasing water availability
- (b) Receive water permit applications for water abstraction, for water use and recharge, determine, issue and vary water permits and enforce the conditions of those permits
- (c) Enforcing regulations
- (d) Reporting to the users and public on water issues and their performance within the basin annually
- (e) Collecting water resources data, analyzing and managing the information system
- (f) In accordance to the rules, provide information to the Water Resource Regulatory Authority
- (g) Reviewing the basin area water resources management strategy
- (h) Facilitate the formation of Water Resource User Associations and their activities
- (i) Collecting water permit and water use charges
- (j) Carry out flood mitigation activities
- (k) Facilitating information sharing within the basin
- (l) Ensuring equitable water sharing within the basin through water allocation plans

Staff of the Basin Water Resources Boards

15. (1) There shall be a Chief Executive Officer of the Basin Water Resources Boards who shall be appointed by the Board of the Basin Water Resources Boards on such terms and conditions of service as the Board may determine taking account of the directions of the Salaries and Remuneration Commission.

(2) The Chief Executive Officer shall be the principal officer of the Basin Water Resources Boards and, subject to the directions of the Board, shall be responsible for the management of the affairs of the Basin Water Resources Boards .

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

Establishment and duties of Water Resource Users Association

16. (1) Water Resource Users Association shall be community based associations for collaborative management of water resources and resolution of conflicts concerning the use of water resources. The Water Resource Users Association shall be established as association of water resource users at the sub-basin level based on rules issued by the Water Resource Regulatory Authority.
- (2) Without prejudice to the generality of subsection (3) (e), the basin area water resources management strategy shall facilitate the establishment and operation of water resources users associations.
- (3) The Basin Water Resources Boards may contract Water Resource Users Associations as agents to perform some duties in water resource management.

Classification of water resources and resource quality objectives

17. (1) The Water Resource Regulatory Authority shall prescribe criteria for classifying water resources for the purpose of determining water resources quality objectives for each class of water resource.
- (2) The prescribed classification criteria shall take account of trans-boundary considerations, strategic functions served by the water resource, the use or potential for use of the water resource for inter-basin transfers, ecological functions of the water resource, vulnerability to degradation or depletion and other factors.
- (3) The Water Resource Regulatory 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.

Determination of reserve

18. (1) The Water Resource Regulatory Authority shall, by notice in the Gazette, determine the reserve for the whole or part of each water resource which has been classified.
- (2) A determination of the reserve shall ensure that adequate allowance is made for each aspect of the reserve.
- (3) All state organs shall, when exercising any statutory power or performing any statutory function in relation to the water resource concerned, take into account and give effect to the requirements of the reserve.

National monitoring and information system

19. (1) The Water Resource Regulatory Authority shall ensure that there is in place a national monitoring and information system on water resources.
- (2) For the purposes of any systems established under this section, the Water Resource Regulatory Authority may require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials.
- (3) Rules made under this Act may specify requirements for the keeping of records and the furnishing of information to the Water Resource Regulatory Authority.

- (4) On payment of the prescribed fee, any member of the public—
- (a) shall have access to any specific information contained in any national information system; and
 - (b) shall be supplied with a copy of any document contained in the information system which is accessible to the public.

Protection of catchment areas²⁰. (1) Where the Water Resource Regulatory 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.

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

Conservation of ground water

21. (1) Where the Water Resource Regulatory Authority is satisfied that, in any area, special measures for the conservation of groundwater are necessary in the public interest for—
- (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 groundwater resources; or
 - (c) ecological reasons.

it may by order published in the Gazette declare the area to be ground water conservation area.

(2) The Water Resource Regulatory Authority may impose such requirements or prohibit such conduct or activities, in or in relation to a ground water conservation area as it may deem necessary to impose, regulate or prohibit for the conservation of the ground water.

National Water Storage Authority

22. (1) There is hereby established an National Water Storage Authority of the national government to be known as the National Water Storage Authority.

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

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

- (a) a Chairman, who shall be appointed by the Cabinet Secretary; and
- (b) ten other members, who shall also be appointed by the Cabinet Secretary.

(4) The Chairman and members of the board shall be appointed following an open and competitive recruitment process and shall hold relevant professional qualifications and experience.

(5) The First Schedule has effect with respect to the membership and procedure of the governing board of the National Water Storage Authority.

Powers and functions of the National Water Storage Authority

23. (1) The National Water Storage Authority's powers and functions shall be:—

- (a) undertake on behalf of the national government the development of national public water works for water resources storage;
- (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) make rules and enforce water harvesting strategies
- (e) advise the Cabinet Secretary on any matter concerning national public water works for storage.

(2) The National Water Storage Authority may appoint agents for the operation, management and maintenance of storage infrastructure developed by National Water Storage Authority,.

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

Staff of the National Water Storage Authority

24. (1) There shall be a Director General of the National Water Storage Authority who shall be appointed by the board of the National Water Storage Authority on such terms and conditions of service as the Board may determine taking account of the directions of the Salaries and Remuneration Commission.

(2) The Director General shall be the principal officer of the National Water Storage Authority and, subject to the directions of the Board.

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

Water Rights and Works

Requirement for permit

25. A permit shall be required for any of the following purposes:—
- (a) any use of water from a water resource, except as provided by section 32
 - (b) the drainage of any swamp or other land;
 - (c) the discharge of a pollutant into any water resource;
 - (d) any purpose, to be carried out in or in relation to a water resource, which is prescribed by rules made under this Act to be a purpose for which a permit is required.

Permit not required for certain activities

26. (1) A permit is not required—
- (a) for the abstraction or use of water, without the employment of works, from or in any water resource for domestic purposes by any person having lawful access thereto
 - (b) for 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, where rules made under this Act provide that a permit shall be required for the carrying on of that activity in those circumstances.

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

- (4) Without prejudice to the generality of subsection (3), such rules may—
- (a) prohibit any such use of water in prescribed circumstances; or
 - (b) require the consent or permission of the Water Resource Regulatory Authority for any such water use of a prescribed kind or description.

Unauthorized construction and use of works

27. (1) A person who—
- (a) not being the holder of a permit, constructs or employs any works for a purpose for which a permit is required; or
 - (b) being the holder of a permit, constructs or employs any such works in contravention of the conditions of the permit,

shall be guilty of an offence.

(2) The holder of a permit authorising the construction of works who, without the permission of the Basin Water Resources Board or to the Water Resource Regulatory Authority in the case of inter basin water transfer, takes water from any water resource by means of any work not authorised by the permit before the whole of the works authorised by the permit have been certified, in accordance with the conditions of the permit, to be completed shall be guilty of an offence.

Easements for works

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

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

Procedure for obtaining permit

29. (1) An application for a permit shall be made to the Basin Water Resources Board or to the Water Resource Regulatory Authority in case of inter-basin water transfer.

(2) The application shall be made in the form prescribed by the Water Resource Regulatory Authority, by completing and lodging the prescribed form together with—

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

(3) The permit shall be determined within a period not exceeding six months after receipt of an application which meets such requirements as the Water Resource Regulatory Authority may prescribe.

(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.

(5) Any person opposed to the grant of a permit may object in writing to the basin organization within a period of 30 days after publication of the notice of the application.

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

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

Conditions of permits

30. (1) A permit shall be subject to—
- (a) such conditions as may be prescribed by or under this Act in relation to the permit; and
 - (b) such other conditions, not inconsistent with the conditions so prescribed, as the Basin Water Resources Board or the Water Resources Regulatory Authority in case of interbasin water transfer may impose by endorsement on, or instrument in writing annexed to, the permit.
- (2) Without prejudice to the generality of subsection (1), the provisions of the Second Schedule shall be conditions of every permit which authorises the construction of works.
- (3) Rules made under this Act may make provision imposing conditions on or with respect to the conditions which are or shall be imposed on permits generally or any class or description of permits.
- (4) Without prejudice to the generality of subsection (2), such rules may—
- (a) require the imposition of prescribed conditions in prescribed circumstances;
 - (b) require the payment by the permit holder of prescribed fees in respect of the exercise of rights under the permit.
 - (c) provide that a contravention of any or any specified conditions prescribed by or under this Act as conditions of permits shall constitute an offence punishable by a penalty prescribed by regulation.
- (5) The imposition of a penalty by a rule made in accordance with subsection (4) (c) shall not prejudice any remedy for the recovery of damages any loss, damage or injury sustained by any person reason of the contravention in respect of which penalty is imposed.

Charges for water use

31. (1) The conditions of a permit may require that, on issue of the permit and at prescribed intervals thereafter, the permit holder shall pay charges to the Basin Water Resources Board or the Water Resources Regulatory Authority in case of interbasin water transfer permits for use of water in accordance with the permit and the rules published by the Water Resources Regulatory Authority.
- (2) The charges shall be determined by reference to a schedule of charges published in the Gazette by the Water Resource Regulatory Authority following public consultation.

Considerations for the issue of permits

32. (1) In issuing a permit, and in fixing any conditions to be imposed on a permit, the Basin Water Resources Board or the Water Resources Regulatory Authority in case of inter-basin water transfer shall take into account such factors as it considers relevant, including—
- (a) existing lawful uses of the water;
 - (b) efficient and beneficial use of water in the public interest;
 - (c) any 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 Basin Water Resources Board or the Water Resource Regulatory 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 others who use same sources of supply or bodies of water.

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

Issue of permits in exceptional cases

33. (1) Exceptional cases shall be defined and decided by the Cabinet Secretary

(2) The Basin Water Resources Board or Water Resource Regulatory Authority in case of inter-basin water transfer may, if in its opinion exceptional circumstances warrant such action, grant a permit authorising, unconditionally or subject to conditions, the use of water from a water resource and construction of the works required therefore, without subjecting the application to public consultation.

(3) In considering whether or not to grant permit in accordance with this section, the Basin Water Resources Board or Water Resource Regulatory Authority in case of inter-basin water transfer shall have regard to the extent to which the grant such a permit would be likely to interfere with domestic requirements of other users.

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

Permit linked to land or undertaking

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

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

(2) Where, in the opinion of the Basin Water Resources Board or Water Resource Regulatory Authority in case of inter-basin water transfer -

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

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

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

- (a) subject to the condition that such easements, if any, as may be required be granted, within a period of two years after sub-division of the land or within such longer period as the Basin Water Resources Board may determine; and

- (b) subject to such other conditions, and with such other modifications, as seem to the Basin Water Resources Board to be necessary or desirable in the circumstances.

Variation of permit owing to change in circumstances, etc

35. (1) Whenever it is shown to the satisfaction of the Basin Water Resources Board that, owing to, natural changes, increased demand or other cause, the use of water under a permit, or the method or point of diversion or other manner in which the water is so used causes-
- (a) inequity;
 - (b) a deterioration in the quality of water;
 - (c) a shortage of water for domestic purposes; or
 - (d) a shortage of water for any other purpose which in the opinion of the Basin Water Resources Board or Water Resource Regulatory Authority in case of inter-basin water transfer should have priority,

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

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

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

Power to require permit applications or re-applications

36. (1) Where, in the opinion of the Basin Water Resources Board 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—
- (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 Water Resource Regulatory 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) Following receipt of applications or reapplications, the Basin Water Resources Board shall prepare a proposed allocation schedule specifying how water from the water resource in question will be allocated, taking into account the requirements of the reserve.

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

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

- (5) A preliminary allocation schedule shall become a final allocation schedule-
- (a) if no appeal is lodged within the time limited by subsection (4);
 - (b) if it has been amended following every successful appeal; or

(c) if every appeal has been dismissed.

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

(7) The Basin Water Resources Board 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.

Cancellation of permit

37. (1) A permit may be cancelled or varied by the Basin Water Resources Board or the Water Resource Regulatory Authority in case of inter basin water transfer if such cancellation or variation is necessary for the accommodation of additional water users of a water resource.

(2) No permit shall be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the holder and the permit holder has been afforded reasonable opportunity to show cause to the Basin Water Resources Board or the Water Resource Regulatory Authority in case of inter basin water transfer why the permit should not be cancelled or varied.

(3) A permit holder whose permit is cancelled under this section shall be paid compensation in such amount as may be agreed between the permit holder, the additional water user or users and the Basin Water Resources Board or the Water Resource Regulatory Authority in case of inter basin water transfer, and any disputes arising from such compensation shall be determined by the Tribunal.

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

38. (1) A permit may be cancelled or varied by the Basin Water Resources Board if the permit holder—
(a) contravenes any condition of the permit, or
(b) fails to make beneficial use of the water or any part thereof as determined by the Water Resource Regulatory Authority.

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

Variation of permit following hydrographical survey

39. Every permit shall be subject to subsequent variation by the Basin Water Resources Board after 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 at request of permit holder

40. (1) A permit may, at the request of the permit holder, be varied by the Basin Water Resources Board so as to—
(a) vary the point of diversion or abstraction of the water used under the permit;
(b) vary 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 whereby the permit is incomplete or indefinite in its terms and conditions; or
(f) vary any other term or condition of the permit,

if the Basin Water Resources Board is satisfied that the variation is not contrary to the public interest or the rights of others.

- (2) A variation relating to—
- (a) the use of water authorised by the permit; or
 - (b) a term or condition of a prescribed kind,

shall not be made without public consultation.

Abandonment of permitted activities

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

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

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

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

Surrender of permits

42. (1) Where—
- (a) a permit is to be cancelled or varied by the Basin Water Resources Board or the Water Resource Regulatory Authority in case of inter basin water transfer in pursuance of this Act or
 - (b) a permit has been granted erroneously or irregularly; or
 - (c) a permit has been granted in contravention of the provisions of any rules made under this Act with respect to the terms and conditions of such a permit,

the Basin Water Resources Board may, by notice served on the holder of the permit, require the permit holder, if he has not already done so, to surrender the permit to the Basin Water Resources Board

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

Register of permits

43. (1) There shall be a register established and maintained on basin and national level according to regulation.

(2) The Basin Water Resources Board shall establish and maintain a register of permits in force together with details of the permits and their terms and conditions and the results of monitoring and enforcement action taken by the Basin Water Resources Board regarding each permit and the same for all basins shall be maintained at the national by the Water Resources Regulatory Authority and the Cabinet Secretary in charge of water affairs.

(3) Information contained in the register shall be accessible by the public on payment of the fee prescribed by the Water Resource Regulatory Authority.

44. (1) Any party aggrieved by the decision of a Basin Water Resources Board may appeal to the Water Resource Regulatory Authority in the prescribed manner against such decisions within fourteen days from the date such decision was made.

(2) The Water Resource Regulatory Authority shall consider such an appeal and shall either vary, reverse or confirm the decision of the water basin organization, and any such decision that the Water Resource Regulatory Authority arise at shall be communicated to the parties concerned within fourteen days from the time the decision is made.

Ground Water

Abstraction of ground water

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

PART IV - WATER SERVICES

Right to clean and safe water

46. Every person in Kenya has the right to clean and safe water in adequate quantities, and to reasonable standards of sanitation as stipulated in Article 43 of the Constitution of Kenya.

National water services strategy, investments and financing plans

47. (1) As soon as practicable after the commencement of this provision the Cabinet Secretary shall, following public consultation, formulate a national water services strategy.

(2) The object of the national water services 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 national water services strategy shall contain, among others, details of:

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

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

(5) The Cabinet Secretary shall ensure the elaboration and regular up-dating of a national water sector investment and financing plan aggregated from the County Government plans to include, among others details, such as plans for the extension of water services to underserved areas, the time frames for the plans and an investment programme based on investment plans; and

Establishment of Water Works Development Boards

48. (1) There are hereby established as agencies of the national government to be known as the Water Works Development Boards.

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

(3) The powers and functions of the Water Works Development Boards shall be exercised and performed under the direction of boards, which shall consist of—

- (a) a Chairman, who shall be appointed by the Cabinet Secretary; and
- (b) ten other members, who shall also be appointed by the Cabinet Secretary.

(4) The Chairman and members of the boards shall be appointed following an open and competitive recruitment process and shall hold relevant professional qualifications and experience as provided for in the first schedule.

(5) The First Schedule has effect with respect to the membership and procedure of the governing board of the Water Works Development Boards.

49. The guiding principle of establishing boards shall be developed by the Cabinet Secretary in consultation with the stakeholders

50. The powers and functions of the Water Works Development Boards shall include
- a) Develop national public water works for water services

- b) Formulate development and investment plans for rural and urban areas aggregated from the county development plans and established by the county water service providers and through the County Government water services institutional structure for their designated areas
- c) Provide input to the national development and financing plan established by the Cabinet Secretary
- d) Provide technical assistance to the water services providers as County Government agents for County asset development in consultation with the respective County Governments
- e) Hand over developed public assets to the licensed county water services providers, cross-county water services providers or to the county water department according to the rules of the Cabinet Secretary.
- f) Facilitate the establishment of cross-county water service providers
- g) Employ staff to carry out its functions and activities as per the rules and regulation set by the regulator and public service commission

51. The Water Works Development Boards shall not execute works but will outsource them in line with national procurement rules.

52. The funds of the Water Works Development Boards shall consist of:

(1) such funds as may be vested in or accrue to the Water Works Development Boards in the performance of the function under this Act or any other written law

(2) Moneys allocated by Parliament through Treasury for the purposed Water Works Development Boards

(3) any grant, credits, gifts, donation and other endowments provided to the Water Works Development Boards as the Cabinet Secretary may approve

53. Once the development of the assets are completed by the Water Works Development Boards they shall be handed over to the county water services provider or cross-county water services provider with all rights and obligations in line with transition arrangements.

Establishment of the Water Services Regulatory Commission

54. (1) There is hereby established as an agent of the national government a board to be known as the Water Services Regulatory Commission whose principal object shall be to protect the interests and rights of consumers in the provision of water services.

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

(3) The powers and functions of the Water Services Regulatory Commission shall be exercised and performed under the direction of a board, which shall consist of—

- (a) a Chairman appointed by the Cabinet Secretary, and
- (b) six other members also appointed by the Cabinet Secretary.

(4) The Chairman and members of the board of the Water Services Regulatory Commission who shall have relevant professional experience and shall be identified through an open and competitive process as provided for in the first schedule.

(5) The First Schedule shall have effect with regard to the membership and procedure of the board of the Water Services Regulatory Commission.

Powers and functions of the Water Services Regulatory Commission

55. (1) The powers and functions of the Water Services Regulatory Commission shall be to—

- (a) determine and prescribe national standards for the provision of water services and asset development for water service providers;
- (b) validate the water and sewerage tariffs proposed by the county water service providers and approve their imposition in line with consumer protection;
- (c) issue licences for the provision of water services;
- (d) monitor and regulate licensees and enforce licence conditions;
- (e) develop a model Memorandum and Article of Association to be used by all water companies applying to be licensed by the Water Services Regulatory Commissions to operate as water service providers
- (f) monitor compliance with standards including for the design, construction, operation and maintenance of facilities for the provision of water services;
- (g) propose to the Cabinet Secretary the nature, extent and conditions of financial support to be accorded to water service providers for providing water services;
- (h) monitor progress in the implementation of the national water services strategy and make appropriate recommendations;
- (i) maintain a national data base 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) carry out inspections at water service providers
- (m) report annually to the public on issues of water supply and sewerage services and performance of relevant sector institutions
- (n) issue rules 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 right to water services; and
- (o) advise the Cabinet Secretary on any matter in connection with water services.

(2) The Water Services Regulatory Commission may, with the consent of the Director of Public Prosecutions, undertake the prosecution of any offences arising under this Act or in connection with the performance of its functions.

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

Staff of the Water Services Regulatory Commission

56. (1) There shall be a Director General of the Water Services Regulatory Commission who shall be appointed by the Cabinet Secretary on the recommendation of the Water Services Regulatory Commission, and whose terms and conditions of service shall be determined by the Water Services Regulatory Commission in accordance with the directions of the Salaries and Remuneration Commission.

(2) The Director General shall be the principal officer of the Water Services Regulatory Commission and, subject to the directions of the Board, shall be responsible for management of the Water Services Regulatory Commission.

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

Special regulatory regime

57. (1) The Water Services Regulatory Commission may impose a special regulatory regime on a licensee which persistently defaults in compliance with the conditions of its licence or the requirements of the Act.
- (2) Under a special regulatory regime, the Water Services Regulatory Commission may impose on the licensee requirements relating to enhanced monitoring and reporting, loss of privileges, the imposition of financial penalties, the removal of the senior management of the licensee, dissolution of the board of directors of the licensee, and the appointment of a special manager of the water services.

Establishment of water service providers

58. (1) Water services shall be provided by or on the basis of an agreement with water services providers established by county governments.
- (2) In establishing a water services provider a county government shall comply with standards of commercial viability set by the Water Services Regulatory Commission.
- (3) A water service provider established under this section shall be a company established under the Companies Act, Chapter 486 of the Laws of Kenya, non-governmental organization or other person or body providing water services as shall be approved by the Water Services Regulatory Commission.
- (4) Any Company wishing to be licensed as a water service provider, and to achieve the Constitutional right to clean and safe water, must submit its Memorandum and Articles of Associations that conform to the model developed and approved by the Water Services Regulatory Commission
59. (1) A water services provider shall be responsible for:
- (a) provision of water services within the area specified in the license and
 - (b) development of county assets for water service provision.
- (2) Licensed water service providers have such other powers and functions as may be conferred or imposed on it by or under this or any other Act.
60. Members of the board of directors of a water service provider shall be nominated to serve on the board in accordance with the Memorandum and Articles of Association in case of a company and shall possess qualifications which meet the standards set by the Water Services Regulatory Commission.
61. A member of the board of directors of a water service provider shall not be:
- (a) persons who are at the time of nomination for appointment to the board serving as elected members of the county government
 - (b) full time employees of the county government
 - (c) hold office in a political party
 - (d) a serving member of Parliament
62. On proposal by the licensed water service provider and with approval of the regulator the water service provider can extent their services to peri-urban and rural areas in the process of developing into urban areas.
63. (1) Any party aggrieved by the decision of a water service provider may appeal to the Water Services Regulatory Commission in the prescribed manner against such decisions within fourteen days from the date such decision was made.
- (2) The Water Services Regulatory Commission shall consider such an appeal and shall either vary, reverse or confirm the decision of the water service provider, and any such decision that the Water Services Regulatory Commission shall be communicated to the parties concerned within fourteen days from the time the decision is made.

64. For this purpose the county owned or the cross-county water service provider established as a public institution and operating and providing water services will hold the county or national public water services assets on behalf of the public.
65. (1) The guidelines for handing over of public assets to the county water service providers shall be developed by the Cabinet Secretary in accordance with national regulation of assets handing over and disposal.
- (2) These guidelines for asset handing over and holding shall include arrangement to protect public assets in case of private sector participation such as separation of operation from asset holding and development.

Provision of water services

66. (1) No person shall provide water services except under the authority of a license issued by the Water Services Regulatory Commission.
- (2) A person who provides water services in contravention of this section shall be guilty of an offence.
- (3) Nothing in this section prohibits the provision of water services —
- (a) by a person to his employees;
 - (b) on the premises of an institution including a hospital, factory, school, hotel, research station or other institution of a like nature to the occupants thereof, 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 it in bulk by a licensee;
 - (c) in circumstances which are prescribed by rules made by the Water Services Regulatory Commission to be exempt from the requirement for a license.

Procedure and requirements for obtaining license

67. (1) An application for a license shall be made to the Water Services Regulatory Commission.
- (2) The Water Services Regulatory Commission shall prescribe a form for use in making such an application, which shall require at least the following particulars to be furnished by the applicant—
- (a) evidence that the applicant's board of directors complies with the standards set by the Water Services Regulatory Commission under section 55 above;
 - (b) the technical and financial capability of the applicant to provide the services and perform functions authorized by the license;
 - (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) performance targets;
 - (f) details of planned financial and infrastructural improvements;
 - (g) a proposed tariff structure; and
 - (h) any other information required by the Water Services Regulatory Commission
- (3) The application shall be made by completing and lodging the prescribed form together with the supporting documentation and the prescribed fee.
- (4) The Water Services Regulatory Commission shall determine an application for a license by granting the licence or rejecting the application.
- (5) The application shall not be granted unless the Water Services Regulatory Commission is satisfied that—
- (a) the applicant has the requisite technical and financial competence to provide the services to which the license 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; and
- (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 licence are to be provided by a water service provider which conducts some other business or performs other functions not authorised by the licence, the supply of those services will be undertaken, managed and accounted for as a separate business enterprise; and
- (g) the applicant has met any other requirements which the Water Services Regulatory Commission considers are called for by the services to be provided under the license.

Determination of application

68. (1) An application for a license shall be the subject of public consultation.

(2) Any person opposed to the grant of license may object in writing to the Water Services Regulatory Commission.

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

(4) It shall be the duty of the Water Services Regulatory Commission to determine an application for a licence as soon practicable after lodgement of the application.

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

Licences

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

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

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

(4) As a condition of its licence the licensee shall, within twelve months of receipt of the licence, or such longer period as the Water Services Regulatory Commission may determine, formulate and present to the Water Services Regulatory Commission, a development plan for extending services to un-served persons within its area, a time frame for the implementation of the plan and a resource mobilization strategy.

License fees

70. (1) A licensee shall pay to the Water Services Regulatory Commission, on issue of the licence and at prescribed intervals thereafter, such licence fees as the Water Services Regulatory Commission may determine.
- (2) The fee shall be determined by reference to a schedule of fees published in the Gazette from time to time by the Water Services Regulatory Commission following public consultation.

Conditions of license

71. (1) A license shall be subject to—
- (a) such conditions as may be prescribed by or under this Act in relation to the license; and
 - (b) such other conditions, not inconsistent with the conditions prescribed, as the Water Services Regulatory Commission may impose by endorsement on, or instrument in writing annexed to, the licence;
- (2) Rules made under this Act may make provision for imposing conditions on, or with respect to the conditions which are or shall be imposed on licences generally or any class or description of licences.
- (3) Without prejudice to the generality of subsection (2), such rules may—
- (a) require the imposition of prescribed conditions in prescribed circumstances;
 - (b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the licence or for meeting any other prescribed contingency.
 - (c) provide that a contravention of any, or of any specified, conditions prescribed by or under this Act as conditions of licences shall constitute an offence punishable by a penalty specified in the licence.
- (4) The imposition of a penalty by a regulation made in accordance with subsection (3) (c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

Duty to provide water services

72. (1) A water services provider shall, as licensee, be responsible for the efficient and economical provision of water services fulfilling the rights to water authorised by the license and to the extent required by the license.
- (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 arrange for its compulsory acquisition in accordance with the applicable laws.
- (3) As part of its duty a water services provider shall establish a mechanism for handling consumer complaints which meets the standard set by the Water Services Regulatory Commission.

Public Private Partnerships

73. (1) A water services provider may enter into a public private partnership 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.
- (2) Such a partnership shall be reduced to an agreement in writing the terms of which and any amendment of which shall be of no force and effect unless and until approved by the Water Services Regulatory Commission.

(3) Where the person entering into the 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 license or otherwise conferred by or 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 under the Water Services Regulatory Commission license.

Special provisions with respect unviable rural areas

74. (1) It is the responsibility of the county government to put in place measures for the provision of water services to rural areas which are considered by Water Services Regulatory Commission to be unviable for the provision of water services on a commercial basis.

(2) The measures taken by the county government shall include developing point sources, small scale piped systems and stand pipes which meet the standard set by the Water Services Regulatory Commission and which may be managed by the community associations, non-governmental organizations or by a private person under a contract with the county government.

(3) In order to implement its obligation under this section a county government shall formulate and submit annually to the Water Services Regulatory Commission and to the Cabinet Secretary an up to date 5 year development plan incorporating an investment and financing plan for the provision of water services in unviable rural areas within its area of jurisdiction.

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

Variation of terms or conditions of licence

75. (1) The Water Services Regulatory Commission may, on the application of a licensee, vary the terms and conditions of a licence.

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

Areas of water service

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

Clustering of areas of water service provision

77. (1) The Water Services Regulatory Commission may, on the application of the licensees concerned—
(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 part thereof, of one licensee to another licensee.

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

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

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

Variation of areas of service

78. (1) The Water Services Regulatory Commission may vary the areas of water service prescribed by one or more licences

- (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 Water Services Regulatory Commission is satisfied that the other licensee is unable to meet the demands for water in its or is otherwise unable to provide a commercially viable service.

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

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

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

Provision of water service outside the area of supply

79. (1) With the consent of the Water Services Regulatory Commission, and subject to any rules made under this Act and to such conditions as the Water Services Regulatory Commission may impose, a licensee may provide water services outside its area of water service.

(2) Where under this section a licensee (in this section called "the supplying licensee") is providing water services to premises outside its area, any other licensee within whose area those premises are situated may, in the absence of any agreement to the contrary, at any time give not less than three months' notice to the supplying licensee that he is able and intends to provide water services to the premises: Provided that a notice given under this section shall not be valid unless it relates to all the premises to which water services are being provided by the supplying licensee in accordance with this section.

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

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

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

- (a) such portion of any expenses reasonably incurred by it 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 Water Services Regulatory Commission.

(5) 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.

Supply of water in bulk

80. (1) No person shall supply water in bulk to a water services provider without a license issued by the Water Services Regulatory Commission.

(2) Any water services provider may enter into an agreement with any other licensee or water services provider for the supply of water in bulk for any period and on terms and conditions to be approved by the Water Services Regulatory Commission, and where the supply is to be given by a person which is itself a water service provider, either within or outside the area of service of that water services provider.

(3) Where it appears to the Water Services Regulatory Commission that –

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

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

Default by the licensee

81. (1) If, following a complaint made to or information received by the Water Services Regulatory Commission, it appears to that Board that any licensee -

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

the Water Services Regulatory Commission may inquire into the matter.

(2) If, after inquiry, the Water Services Regulatory Commission is satisfied that there has been any such failure on the part of the licensee in question, it 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 who is dissatisfied with an order of the Water Services Regulatory Commission 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 who fails to comply with any requirement of the order within the time specified for compliance with the requirement shall be guilty of an offence.

Transfer of functions of licensee

82. (1) If the Water Services Regulatory Commission 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, by notice in the Gazette, order the transfer to another licensee of the water services in question.

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

Agreements as to protection of sources of water, etc.

83. (1) A licensee may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the licensee considers necessary or as the conditions of his licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures or the control of vegetation or more effectively collecting, conveying or preserving the purity and quantity of water which the licensee is for the time being authorised to take.

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

Power of licensee to prohibit or restrict use of water

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

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

(3) Rules made under this Act may provide that any person who, while such prohibition or restriction is in force, contravenes its provisions shall be guilty of an offence and liable on conviction to a penalty fixed by Regulation.

Duty to enforce rules on water services

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

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

Execution of works for protection of water

86. (1) A licensee may, on any land belonging to it, or 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 time being authorised to take, from being polluted:

Provided that before constructing any works the licensee, if the proposed works will affect or be likely to affect any water resource, it shall obtain the consent of the Water Resource Regulatory Authority and the Water Services Regulatory Commission.

(2) Any licensee proposing to construct any such 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.

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

Control of trade effluent

87. (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 pollution of the environment, harm to human health, damage to the sewerage system, a contravention of applicable laws or contravention of standards set by the Water Services Regulatory Commission.

(2) No person shall 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 is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) any other information required by the licensee.

(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 Water Services Regulatory Commission

(6) A person who contravenes the provisions of this section shall be guilty of 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.

Sewerage services levy

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

(2) A portion of the levy may, with the approval of the Water Services Regulatory Commission, be set aside by the licensee for use in the expansion of the sewerage system within the area of service of the licensee.

Compulsory acquisition of land

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

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

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

90. (1) The Water Services Regulatory Commission shall establish a national monitoring and information system on water services.

(2) For the purposes of any systems established under this section, the Water Services Regulatory Commission 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) Rules made under this Act may specify requirements for the keeping of records and the furnishing of information to the Water Services Regulatory Commission.

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

(5) On payment of the prescribed fee, any member of the public:

(a) shall have access to information contained in any national information system; and

(b) shall be supplied with a copy of the Water Services Regulatory Commission's annual report.

PART V – FINANCIAL PROVISIONS

Establishment of Water Sector Trust Fund

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

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

(3) The object of the Fund is to assist in financing water resources management and development of water services for the poor including:

(a) community level initiatives for the sustainable management of water resources

(b) development of water services in rural areas considered commercially unviable for provision of water services by licensees; and

(c) development of water services in the under-served poor urban areas

(4) There shall be paid into the Fund such monies as may be —

(a) appropriated by Parliament from the national budget for the purposes of the Fund;

(b) provided to the Fund from the Equalization Fund;

(c) provided to the Fund by a county government;

(d) received by the Fund from donations, grants, and bequests from other source; and

(e) payable into the Fund, by or under any Act.

(5) 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. The Board of trustees shall consist of a Chairman and six other members in an open competitive process as provided for in the first schedule.

(6) The First Schedule shall have effect with respect to the membership and procedure of the trustees of the Fund.

Powers and functions of the Water Sector Trust Fund

92. The powers and functions of the Fund shall be to:—
- (a) Manage the resources of the Fund;
 - (b) Mobilize additional resources for the Fund;
 - (c) Formulate and implement principles, rules and procedures for financing projects, including efficiency and effectiveness of funds;
 - (d) Implement measures to ensure efficient and equitable sharing of the resources of the Fund giving priority in resource allocation to:
 - (i) areas in rural and urban which access to basic water services is below the national average;
 - (ii) in rural areas which are vulnerable to the degradation or depletion of water resources;
 - (e) Provide support to local communities in the identification of projects and formulation of project proposals;
 - (f) Provide support to local communities to build capacity in project implementation and management;
 - (g) Pay out of the Fund such grants as the trustees may authorize from time to time;
 - (h) Monitor the implementation of projects;
 - (i) Maintain and make publicly available information on the projects financed and project impact; and
 - (j) Elaborate national implementation concepts which ensure efficient use of water and sustainability of developed infrastructure

Staff of the Water Sector Trust Fund

93. (1) There shall be a Chief Executive Officer of the Fund who shall be appointed by the trustees on such terms and conditions of service as the trustees may determine taking account of the directions of the Salaries and Remuneration Commission.
- (2) The Chief Executive Officer shall be the principal 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 powers and functions, upon such terms and conditions as it may determine.

Retention of charges and fees of Water regulatory Authority and Water Services Regulatory Commission

94. The Water Resource Regulatory Authority, the Water Services Regulatory Commission and the Basin Water Resources Board may retain in a fund managed by it the revenue from permit charges, water user fees, regulatory levy, license fees and any other authorized charges and shall use such revenue in meeting costs incurred in the performance of its functions.

Finances of sector institutions

95. (1) The Cabinet Secretary shall, out of monies provided by Parliament, or from any other source, provide funds to a sector institution exercising functions under this Act for the discharge of its functions and to be used in meeting the costs incurred in the discharge of its functions on the basis of a budget agreed between the sector institutions and the Cabinet Secretary.

(2) A sector institution exercising functions under this Act shall keep proper books of account of its income, expenditure, assets and liabilities.

(3) The accounts of a sector institution exercising functions under this Act shall be audited and reported on in accordance with the applicable laws.

Funds collected by licensed water service providers

96. (1) All funds collected for water services by the licensed water service 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 rules by the Water Services Regulatory Commission.

(2) the licensed water service 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) No dividend or other payment shall be paid to the owners of public water service providers as long as universal access and the right to water services have not been achieved in the designated service areas.

Income from water permits, abstraction and water user fees

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

PART VI - GENERAL AND SUPPLEMENTAL

Entry on Land

Entry by permit holder

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

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

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

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

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

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

Entry by the Water Resource Regulatory Authority

99. An employee or agent of the Water Resource Regulatory Authority appointed by the Water Resource Regulatory Authority for the purpose may without warrant enter on to any land and inspect any water resource located within or accessible from the land concerned, in order to take such measures as the Water Resource Regulatory Authority may think fit for the purpose of -
- (a) conserving or regulating the water resource, or preserving it from pollution or protecting the bed over which it lies; or
 - (b) removing any obstruction from, or for clearing and deepening, the bed; or
 - (c) preventing the excessive or illegal diversion, waste or pollution of the water resource or interference with any such bed.

Entry by licensee

100. (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 —
- (a) preserving the water from pollution or protecting the bed over which it lies or flows; or
 - (b) removing any obstruction from, or for clearing and deepening, the bed; or
 - (c) prevent the excessive or illegal diversion, waste or pollution of the water or interference with any such bed.
- (2) An employee or agent of a licensee authorised by the licensee for the purpose may enter on to any kind or premises in the area to which any regulations of the licensee apply, for the purpose of —
- (a) ascertaining whether there is or has been any contravention of any such regulations;
 - (b) in the case of any regulations in respect of tariffs and the payment therefore, exercising any right conferred on the licensee to cut off supplies for non-payment; or
 - (c) in the case of any regulations made for preventing water degradation—
 - (i) ascertaining whether or not circumstances exist which would justify the licensee's imposing a requirement to execute works or take other action to prevent degradation; or
 - (ii) exercising any right conferred on the licensee to execute and maintain works or take other action

Entry by inspector

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

Manner of entry

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

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

Provided that an inspector may enter without giving notice if—

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

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

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

Powers of inspectors

103. (1) Every permit holder or licensee, and any employee or agent of a permit holder or licensee, shall on demand by an inspector—
- (a) afford to the inspector such information as is within his knowledge in all matters relating to any inquiry held by the inspector under this Act; and
 - (b) produce for inspection any licence, map plan, specification, drawing or other document or record relating to—
 - (i) the permit or licence;
 - (ii) any works constructed under the permit or licence; or
 - (iii) the flow of water in any such works or in any water resource affected by them.
- (2) A person who contravenes this section shall be guilty of an offence.

Requirement to state name and address

104. (1) Any person who has committed, or has been accused of committing, an offence under this Act who—
- (a) refuses, on demand of an inspector, to give his name and place of abode and other particulars which the inspector may reasonably require; or
 - (b) in purported compliance with such a demand, gives a name, place of abode or other particulars which the inspector has reason to believe to be false,
- may be arrested by the inspector without warrant, and handed over to the nearest police officer.
- (2) When his true name and place of abode or other particulars have been ascertained, the person concerned shall be released on his executing a bond, if so required, with or without sureties, to appear before a magistrate.
- (3) Should the person's true name and place of abode other particulars not be ascertained within twenty hours from the time of his arrest, or should he fail to execute such a bond or, if so required, to furnish sufficient sureties, he shall forthwith be brought before a magistrate having jurisdiction in the area:

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

Service of notices

105. (1) Any notice required to be served in pursuance of this Act shall be served—
- (a) by delivering it personally to the person required to be served, or, if such person is absent or cannot be found—
 - (i) by leaving it at the person's usual or last known place of abode in Kenya; or
 - (ii) by post, addressed to the person's usual or last known address in Kenya; or
 - (b) in the case of a notice required to be served on a local authority, company or other corporate body, by delivering it to its principal officer or by leaving it at his office with some person employed there, or by post.
- (2) If any landholder is not known and, after diligent inquiry, cannot be found, such notice may be served on him by leaving it, addressed to him, with some occupier of the land or, if there is no apparent occupier, by causing it to be put in a conspicuous position on the property in Kenya last known to have been occupied by him.
- (3) Any notice required to be given to landholder may be addressed to "the owner" of land or premises described in the address in respect which the notice is given, without further name description.

Order, etc., to be in writing

106. 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 Water Resource Regulatory Authority, Water Services Regulatory Commission, a licensee or other state organ shall be in writing.

Authentication of documents

107. (1) Any order, notice, consent, approval, demand or other document which the Water Resource Regulatory Authority, the Water Services Regulatory Commission, or other state organ is authorised or required by or under this Act to give, make or issue may be signed on behalf of the respective state organ —
- (a) by the Director General or Chief Executive Officer of the 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 is under this section empowered to sign a document; or
 - (b) expressed to be duly authorised by the respective state organ in sub section (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 Water Resource Regulatory Authority, the Water Services Regulatory Commission, or other state organ as the case may be.

Permit or licence to be evidence of power or function

108. The production of —
- (a) a permit, or a copy of a permit, purporting to be certified by the Director General of the Water Resource Regulatory Authority; or
 - (b) a licence, or a copy of a licence, purporting to be certified by the Director General of the Regulatory Board,

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

Protection from liability

109. No matter or thing done or omitted by—
- (a) the Cabinet Secretary, the Water Resource Regulatory Authority, the Water Services Regulatory Commission, or other state organ exercising powers or functions under this Act;
 - (b) any person acting at the direction of the Cabinet Secretary; or
 - (c) any member of or person acting at the direction of the Water Resource Regulatory Authority, the Water Services Regulatory Commission, 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 personal capacity to any action, suit, claim or demand whatsoever

Application of Act to Trust land

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

Public consultation

111. (1) A requirement imposed by or under this Act for a person (in this section called the "designated person") to undertake public consultation in relation to any application made, or action proposed to be taken, under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action.
- (2) The designated person shall publish a notice, in relation to the application or proposed action
- (a) in the Gazette;
 - (b) and / or in at least one national newspaper circulating in the locality to which the application or proposed action relates
 - (c) or / and in at least one Kenyan radio station broadcasting in that locality.
- as the case may require
- (3) The notice shall in each case —
- (a) set out a summary of the application or proposed action;
 - (b) state the premises at which the details of the application or proposed action may be inspected;
 - (c) invite written comments on or objections to the application or proposed action;
 - (d) specify the person or body to which any such comments are to be submitted; and
 - (e) specify a date by which any such comments are required be received, not being a date earlier than 30 days after publication of the notice.
- (4) The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession of the designated person.
- (5) The designated person shall consider —
- (a) any written comments received on or before the date specified under subsection (3) (e); and
 - (b) any comments whether in writing or not received at any public meeting held in relation to the application or the proposed action at which the designated person was represented or pursuant to any other invitation to comment.
- (6) The designated person shall publish through the same media as were employed pursuant to subsection (2) notice of the fact that a copy of the decision in writing of the designated person in relation to the application or proposed action and of the reasons therefore is available for public inspection at the same premises as were notified under subsection (3)(b).
- (7) Where rules made under this Act so require the designated person shall cause a public meeting to be held in relation to the application or proposed action.

Emergency powers in case of shortage of water

112. (1) If the Water Resource Regulatory Authority is satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists or is threatened in any area, it may by order—
- (a) declare that an emergency exists; and
 - (b) direct a person who has a supply of water in excess of his needs for domestic purposes to supply to the area concerned, or to a specified person in the area, such quantity of water, and for such period, as the order may specify.
- (2) Any person so directed by an order under this section who fails to comply with the provisions of the order concerned shall be guilty of an offence.
- (3) An order under this section may require or authorise—
- (a) the laying of pipes and the construction of works on any land;

- (b) the entry on to any land by servants or agents of the Water Resource Regulatory Authority; and
- (c) such other measures as the Water Resource Regulatory 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 Water Resource Regulatory 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 in so doing.

(6) A payment made under subsection (5), or such proportion of it as the Water Resource Regulatory Authority may determine, may be recovered by the person acting under the direction or of the Water Resource Regulatory 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 order under this section, or interferes with any works constructed or under construction in pursuance of such an order, shall be guilty of an offence.

No warranty implied by inspection

113. No inspection, in pursuance of this Act, of any works authorized to be constructed under this Act shall be deemed to constitute or imply any guarantee of the works constructed, or to support or justify and claim whatsoever against the Water Resource Regulatory Authority, the Water Services Regulatory Commission, the Cabinet Secretary or a licensee in connection with any such works.

Rules

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

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

- (a) delegation by the Water Resource Regulatory Authority, the Water Services Regulatory Commission 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 the licensing of persons carrying on business as dam constructors;
- (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) the transfer of functions, assets, liabilities and staff;
- (i) any saving, temporary or transitional provision in consequence of the repeal of the Water Act, 2002.

(3) The Water Resource Regulatory Authority or the Water Services Regulatory Commission may make rules, not inconsistent with this Act, for or with respect to any matter which by this Act the Water Resource

Regulatory Authority or the Water Services Regulatory Commission is required, permitted or empowered to prescribe.

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

(5) Rules made under this Act shall be published in the Gazette and shall come into effect upon such publication.

Obstruction or pollution of watercourse or water resource

115. (1) No person shall, without authority 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 or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or be likely to cause, pollution of the water resource.

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

Remedy of defaults

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

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

(2) In default of the person's compliance with such an order, the Water Resource Regulatory Authority, the Water Services Regulatory Commission 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 Water Resource Regulatory Authority, the Water Services Regulatory Commission 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.

Miscellaneous offences

117. (1) No person shall—

- (a) wilfully obstruct, molest or hinder any inspector or other employee of or person authorised by the Cabinet Secretary, the Water Resource Regulatory Authority, the Water Services Regulatory Commission, or a licensee acting in the exercise or performance of his powers and functions under this Act;
- (b) without the written permission of the Water Resource Regulatory Authority and Water Services Regulatory Commission 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 Water Resource Regulatory Authority or Water Services Regulatory Commission of water control or investigation;
- (c) wilfully hinder or interrupt, or cause be hindered or interrupted, any permit holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act;
 - (d) without lawful authority, wilfully let off or discharge water from the works 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 shall be guilty of an offence.

Proceedings for offences

118. Without prejudice to the rights of any person to bring proceedings in respect of an offence, the Water Resource Regulatory Authority, the Water Services Regulatory Commission, 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 rules or regulations made under this Act.

Penalties for offences

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

PART VII - DISPUTE RESOLUTION

Establishment of Water Tribunal

120. (1) There is established a tribunal to be known as the Water Tribunal which shall be a subordinate court as provided for in article 169 (1) (d) of the Constitution of Kenya.

(2) There shall be a chair person of the Water Tribunal who shall be appointed by the Judicial Service Commission on such term and conditions as may be determined by the Judicial Service Commission

Staff of the Water Tribunal

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

Jurisdiction of the Tribunal

122. (1) An appeal shall lie to the Water Tribunal at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Water Resource Regulatory Authority and Water Services Regulatory Commission or of any person acting under the authority of the Cabinet Secretary, the Water Resource Regulatory Authority and Water Services Regulatory Commission.

(2) Without prejudice to the generality of sub-section (1) above the Tribunal shall have such other powers and functions to hear and determine disputes as conferred or imposed on it by or under this Act.

(3) In addition, the Tribunal shall have jurisdiction 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.

Proceedings of the Tribunal

123. The Tribunal shall make rules governing its procedures and such rules as are in force shall be published in the Gazette.

Determine of appeals and disputes

124. (1) In determining an appeal the Tribunal may affirm, quash or vary the decision or order concerned as the justice of the matter may require.

(2) In determining a dispute or in the exercise of its judicial function the Tribunal shall decide the matter on the merits of the case and may make such order as will do justice between the parties.

(3) A decision of the Tribunal shall be final provided that on a matter of law an appeal shall lie to the Land and Environment Court.

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

Provided that no appeal shall be admitted by the Land and Environment Court unless that Court has certified the existence of an issue of law.

126. A decision of a water basin organization or the water resource regulatory authority or the Water Services Regulatory Commission or the water 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.

PART VIII – TRANSFER OF FUNCTIONS, ASSETS, LIABILITIES AND STAFF

On such date as may be specified in rules made by the Cabinet Secretary under section 122(2)(h):

127. Transfer of functions, assets, liability and staff from Water Resource Management Authority to Water Resources Regulatory Authority

(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 Resources Management Authority established under the Water Act, 2002 (now repealed) 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 Resource Regulatory Authority to the same extent as they were enforceable by or against the Water Resource Management Authority before the commencement of this Act;

(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 (now repealed) in respect of any matter shall continue by or against the Water Resource Regulatory Authority; and

(3) every person who immediately before the commencement of this Act was an employee of the Water Resources Management Authority established under the Water Act, 2002 (now repealed) (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of

either the Water Resource Regulatory Authority or the Basin Water Resources Boards on the terms as relevant or may be determined by the Salaries and Remuneration Commission;

(3) vesting rules made under this section shall contain a schedule of assets, liabilities and contracts which are so vested.

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

(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 National Water Conservation and Pipeline Corporation established by legal notice 270 of 1988 (now repealed) 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 National Water 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;

(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 established under legal notice 270 of 1988 (now repealed) in respect of any matter shall continue by or against the National Water Storage Authority;

(3) every person who immediately before the commencement of this Act was an employee of the National Water Conservation and Pipeline Corporation established under legal notice 270 of 1988 (now repealed) (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of the National Water Storage Authority on the terms as relevant or may be determined by the Salaries and Remuneration Commission;

(3) vesting rules made under this section shall contain a schedule of assets, liabilities and contracts which are so vested.

129. Transfer of functions, assets, liability and staff from Water Services Regulatory Board to Water Services Regulatory Commission

(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 (now repealed) 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 Services Regulatory Commission to the same extent as they were enforceable by or against the Water Services Regulatory Board before the commencement of this Act;

(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 (now repealed) in respect of any matter shall continue by or against the Water Services Regulatory Commission;

(3) every person who immediately before the commencement of this Act was an employee of the Water Services Regulatory Board established under the Water Act 202 (now repealed) (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of the Water Services Regulatory Commission on the terms as relevant or may be determined by the Salaries and Remuneration Commission;

(3) vesting rules made under this section shall contain a schedule of assets, liabilities and contracts which are so vested.

130. Transfer of functions, assets, liability and staff from Water Services Trust Fund to Water Sector Trust Fund

(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 (now repealed) 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 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;

(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 (now repealed) in respect of any matter shall continue by or against the Water Sector Trust Fund;

(3) every person who immediately before the commencement of this Act was an employee of the Water Services Trust Fund established under the Water Act 202 (now repealed) (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of the Water Sector Trust Fund on the terms as relevant or may be determined by the Salaries and Remuneration Commission;

(3) vesting rules made under this section shall contain a schedule of assets, liabilities and contracts which are so vested.

131. Transfer of functions, assets, liability and staff from Water Services Boards to Water Works Development Boards

(1) 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 (now repealed) 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 Boards to the same extent as they were enforceable by or against the Water Services Boards before the commencement of this Act;

(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 (now repealed) in respect of any matter shall continue by or against the Water Works Development Boards;

(3) Every person who at the commencement of this Act is an employee of the Water Services Boards established under the Water Act, 2002 (now repealed) (not being under a notice of dismissal or resignation) shall be deployed as decided by the Cabinet Secretary to the public sector institutions or as technical assistance to the Counties. For this the Cabinet Secretary will publish in consultation with the Counties and public sector institutions a plan of transfer of staff, assets, liabilities and contracts.

(4) vesting rules made under this section shall contain a schedule of assets, liabilities and contracts which are so vested.

132. Transfer of assets, right, liabilities, obligations, agreements and other arrangements to County or cross-County water service providers

(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 established under the Water Act, 2002 or the legal notice 270 of 1988 (now repealed) 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 County Water Service Provides or Cross County Water Service Providers to the same extent

as they were enforceable by or against the Water Service Boards and 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 vest in and become property, liabilities or contract of the County water service provider or County water service providers of as the case may be, established by the County Government subject to such terms or provisions as may be specified in the rules for the exception of public property, liabilities and contracts which shall be vested in cross-county water service providers;

For these other public property, liability and contract not held by Water Services Boards, County water service providers the Counties shall make agency agreements for the use of this public property.

(3) 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 (now repealed) in respect of any matter and which concerns the provision of water services within the area of jurisdiction of a county government shall continue by or against the respective water services provider or providers established by the county government

(4) vesting rules made under this section shall contain a schedule of assets, liabilities and contracts which are so vested.

133. The existing public water service providers shall be absorbed by the County water service providers or cross county water service providers within the period specified in the transfer plan published by the Cabinet Secretary.

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

(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 Appeals Board established by the Water Act 2002 (now repealed) 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;

(2) any legal proceedings pending in any court against the Water Appeals Board established under the Water Act 2002 (now repealed) in respect of any matter shall continue by or against the Water Tribunal;

(3) every person who immediately before the commencement of this Act was an employee of the Water Appeals Board established under the Water Act 202 (now repealed) (not being under a notice of dismissal or resignation) shall on the commencement of this Act be deemed to be an employee of the Water Tribunal on the terms as relevant or may be determined by the Salaries and Remuneration Commission;

Repeals, Savings and Transitional Provisions

135. (1) The Water Act 2002 is hereby repealed.

(2) The legal notice 270 of 1988 is hereby repealed

(3) Notwithstanding the repeals effected by this section —

(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

(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 the person or body in connection with the performance of such functions,

until the Cabinet Secretary, by rules made under section 114 (2)(i), revokes this subsection in full or in part as may be necessary.

(4) Without prejudice to subsection (3) herein rules made under section 114 (2)(h): 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.

Existing water rights

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

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

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

SCHEDULES
FIRST SCHEDULE (ss. 8, 10, 14, 23, 49, 55,97)

(MEMBERSHIP AND PROCEDURE OF BOARDS, AND COMMITTEES)

Application of this Schedule

1. (1) This Schedule applies to—
 - a. the board of the Water Resources Regulatory Authority;
 - b. the board of the Water Services Regulatory Commission;
 - c. the board of the Water Works Development Boards
 - d. the board of Water Sector Trust Fund
 - e. the board of the National Water Storage Authority
 - f. the board of the Basin Water Resources Board
 - g. the Basin Area Advisory Committees

- (2) In this Schedule, unless the context otherwise requires—
 - "board" means a board to which this Schedule applies;
 - "Chairman" means the Chairman of a board, Tribunal or Committee;
 - "member" means a member of a board, Tribunal or committee.

Qualification of members

2. (1) In making an appointment to a board, the Tribunal or a committee, the person making the appointment shall have regard to—
 - (a) Article 10 of the Constitution of Kenya 2010 on national values and principles of governance
 - (b) Article 232 of the Constitution of Kenya 2010 on values and principles of public service
 - (c) the educational qualifications, professional experience, expertise, character and integrity of potential candidates for membership; and
 - (d) Gender, regional and ethnic diversity
 - (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 Chairman and members shall be identified for appointment through a process of open competition.

Term of office

3. (1) A member shall hold office for such term, not exceeding three years, as may be specified in the instrument of his appointment.
- (2) A member shall be eligible (if otherwise qualified) for re-appointment from time to time.

Acting Chairman

4. (1) A person may from time to time be appointed to act in the office of Chairman during the illness or absence of the Chairman, and a person so appointed shall, while so acting, have all the functions of the Chairman and shall be deemed to be the Chairman.
- (2) An appointment under this paragraph may be made, and at any time revoked, by the person or body who appointed or elected the Chairman or by any of their successors in office.
- (3) For the purposes of this paragraph, a vacancy in the office of Chairman shall be deemed to be an absence from office of the Chairman.

Terms and conditions of service

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

Vacancy in office of member

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

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

Disclosure of pecuniary interests

7. (1) A member who has a direct or indirect pecuniary interest—
- (a) in a matter which is being considered, or is about to be considered, at a meeting of a board or committee of which he is a member; or
 - (b) in a thing being done or about to be done by the board or committee,

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

- (2) A disclosure at such a meeting that the member concerned—
- (a) is a member, or is in the employment, of a specified company or other body;
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or a specified person,

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

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

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

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

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

- (a) in relation to the governing board of the Water Resource Regulatory Authority, Water Services Regulatory Commission, the Trust Fund or the National Water Storage Authority —by the Cabinet Secretary;

- (b) in relation to a basin area Advisory Committee—by the Water Resource Regulatory 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.

General procedure

8. Except as otherwise provided by or under this Act—
- (a) meetings of a board or committee shall be held as often as maybe necessary for the dispatch of their business but there shall be at least four meetings in 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 chair person 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 of committee
 - (e) the procedure for the convening of meetings and for the conduct of business at those meetings shall be as determined by the Chairman.

Quorum

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

Presiding members

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

Decisions

11. A decision supported by a majority of the votes cast at a meeting of a board or committee at which a quorum is present shall be the decision of the board or committee.
12. Subject to rule 9, no proceedings of the board or committee shall be invalid by reason only of a vacancy among the members thereof.

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

First meeting

14. (1) The first meeting of the governing board of the Water Resource Regulatory Authority, Water Services Regulatory Commission, the Trust Fund or the National Water Storage Authority shall be called by the Cabinet Secretary in such manner as he affairs thinks fit.
- (2) The first meeting of a basin area Advisory Committee shall be called by the Water Resource Regulatory Authority in such manner as the Water Resource Regulatory Authority thinks fit.

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

15. The first schedule applies to the county and cross-county water service providers and the regulatory board will set additional criteria.

SECOND SCHEDULE (S 26)
(CONDITIONS RELATING TO CONSTRUCTION OF WORKS)

Meaning of "authorised works"

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

Inspection of works during construction

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

Works to be made secure

3. (1) Upon any inspection made under this Schedule the Water Resource Regulatory Authority or Water Services Regulatory Commission may order the permit holder to make any addition or alteration which it considers necessary for the security of any authorised works, whether completed or in the course of construction.
(2) If such an order is not complied with to the satisfaction of the Water Resource Regulatory Authority or Water Services Regulatory Commission within such period as it may specify, the permit authorising construction of the works may be cancelled or modified by the Water Resource Regulatory Authority or Water Services Regulatory Commission.

Road crossings

4. (1) A Permit holder constructing any authorised works—
(a) shall, during their construction, keep open for safe and convenient travel all public roads and rights of way, publicly used as such, when they are crossed or interfered with by the works; and
(b) shall, before water is admitted to the works, construct to the satisfaction of the county government concerned (or, at the option of the county government, refund to it the costs of construction by it of)—
(i) a substantial bridge with proper and sufficient approaches thereto over the works; and
(ii) such railings, fences, guard posts, culverts, face-walls and other structures and appurtenances as the county government, with the approval of the Water Resource Regulatory Authority or Water Services Regulatory Commission, may declare to be necessary in the public interest.
(2) All such bridges, approaches and appurtenances shall be maintained by the permit holder, while his permit is valid or alternatively, at the option of the county government, by the county government at the expense of the constructor.
(3) The county government concerned may at any time as its own cost, renew or alter any such bridge or any structure or works in connection therewith.

Completion certificate and inspection

5. (1) Upon the expiration of the time limited by a permit for construction of works authorised by the permit, or before the expiration of that time, if the construction be sooner completed the permit holder shall submit a completion certificate in the prescribed form.
(2) Thereupon an inspection may be made, by an officer appointed for the purpose by the Water Resource Regulatory Authority or Water Services Regulatory Commission, 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 Water Resource Regulatory Authority or Water Services Regulatory Commission may specify.

Forfeiture of rights if works not completed within time allowed

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

Works to be kept in repair

7. Every permit holder shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Water Resource Regulatory Authority or Water Services Regulatory Commission, so that—
- (a) they are, at all times, of sufficient strength and capacity for the fulfilment of the purposes for which they were constructed; and
 - (b) no damage occurs to any road, property or work in their vicinity.

THIRD SCHEDULE (S. 29)
(EASEMENTS)

Encumbrances

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

Easement includes rights of access

2. (1) An easement shall include the right of access, along a route to be approved by the Water Resource Regulatory Authority or Water Services Regulatory Commission after consultation with the owner, to any piece of land contiguous to the water of the permit holder in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the permit holder and for any purpose necessary for the effective enjoyment of the easement.
- (2) The permit holder shall, however, give reasonable notice to the occupier of the land over which the easement is held of his intention to enter the land for any of the purposes mentioned in this paragraph.

Permit holder must avoid flooding lands and maintain canal satisfactorily.

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

Damage caused by works of permit holder

4. (1) If damage is caused, as the result of works of a permit holder, to the land over which the easement is held, the landholder may require the permit holder to construct such additional works as are necessary, in the opinion of the Water Resource Regulatory Authority to prevent such damage or any recurrence thereof, and the Water Resource Regulatory Authority may by order require the permit holder to construct such additional works at his sole expense.

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

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

5. (1) A permit holder who has acquired an easement for the construction of works on another landholder's land which prevents the landholder passing freely over or on his land as he could before, or interferes with his existing works, structures or devices upon his land, shall, at his own expense, construct and maintain in repair, to the satisfaction of the Water Resource Regulatory Authority or Water Services Regulatory Commission and under such conditions as it may prescribe—
- (a) such bridges and other structures and devices as will make communication safe and convenient; or
 - (b) such works, structures or devices as the Water Resource Regulatory Authority or Water Services Regulatory Commission considers necessary to enable the landholder effectually to enjoy the use of any work, structure or device interfered with.
- (2) Any permit holder who fails to comply with the provisions of this paragraph shall be guilty of an offence.

Permit holder desiring easement to serve notice on landholder

6. (1) A permit holder claiming an easement under this Act serve a notice on the holder of the land on, over or through which he desires to acquire the easement, and shall in such notice state the following particulars, and such further particulars as may be required by rules made under this Act—
- (a) a description of the proposed works and a statement of their use;
 - (b) a statement of the quantity or discharge of water, if any, to be diverted or dealt with;
 - (c) a map showing clearly the nature and locality of any works or area of swamp or land to be reclaimed, if the easement is for reclamation of a swamp or lands;
 - (d) a statement of the area of the land (if any) which is or will be—
 - (i) occupied by the works;
 - (ii) flooded as a result of the works;
 - (iii) required for the purposes of inspection and maintenance of the works;
 - (iv) required for the excavation or collection of material for the works, or for the deposit of soil or material derived from the works;
 - (v) required for a road or roads to obtain access to the works; or
 - (vi) required for the control or prevention of pollution of the water to be used; and
 - (e) a statement of the compensation which is offered and the period of time during which the permit holder wishes to enjoy the easement.
- (2) A copy of the notice shall be sent by the permit holder to the Water Resource Regulatory Authority or Water Services Regulatory Commission.

Consent of landholder to easement

7. If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the permit holder—
- (a) shall embody the particulars and other matters pertaining thereto in a deed or other instrument suitable for registration; and
 - (b) after its execution by the parties concerned, shall send two copies of such deed or other instrument, certified by the Registrar of Titles, to the Water Resource Regulatory Authority.

Application where landholder does not consent

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

Determination of application for easement

9. (1) The Water Resource Regulatory Authority may either dismiss the claim for an easement or grant the claim with or without modification and subject to such conditions, and to the payment of such compensation, as to the Water Resource Regulatory Authority seems just.
- (2) The Water Resource Regulatory 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 Water Resource Regulatory Authority to execute and deliver the deed or instrument to the permit holder, the Water Resource Regulatory Authority may do so on his behalf, and thereupon the deed or instrument shall have the same effect as if it had been executed by the landholder.
- (5) The Registrar of Titles shall register the deed or instrument against the title affected, and two copies of such deed or instrument, certified by the Registrar of Titles, shall be sent by the permit holder to the Water Resource Regulatory Authority.
- (6) Where an appeal has been lodged under subparagraph (2) of this paragraph, no action shall be taken under subparagraphs (3), (4) or (5) of this paragraph until the appeal has been decided.

Lapsing of easement

10. (1) An easement acquired under this Act shall lapse-
- (a) if the works authorised are not completed and the water is not utilized within one year from the date of acquiring the easement or within such further period as the Water Resource Regulatory 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 Water Resource Regulatory Authority may, from time to time, in any particular case, determine.
- (2) Upon the lapse of an easement, the Water Resource Regulatory Authority shall notify the Registrar of Titles, who shall, without charge, cancel the registration of the easement against the title affected.

Permit holder to keep works in state of repair

11. (1) if any work constructed on the land of a person other than the permit holder is out of repair or requiring cleaning, the permit holder or his agent shall, if required in writing by the landholder to repair or clean such work, carry out such requirements within a reasonable time.
- (2) If the permit holder fails so to do the landholder may cause to be done all things necessary for carrying out such repairs or cleaning, and may recover the cost thereof from the permit holder in any court of competent jurisdiction.
- (3) Such repairs or cleaning shall not be unreasonably demanded, and, in the event of a dispute between the parties, the Water Resource Regulatory Authority shall decide what constitutes reasonable repairs or cleaning.
- (4) A permit holder who allows or suffers any such works to fall into disrepair or, in the opinion of the Water Resource Regulatory Authority to be in such a state as to require cleaning shall be liable for all damage which may arise as a consequence.

Land holder may demand and obtain use of works

12. (1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Water Resource Regulatory Authority either before or after the construction of any works, apply for a permit to make use of such works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, store or use under this Act.
- (2) Before such a permit or authorisation is issued by the Water Resource Regulatory Authority—
- (a) the landholder shall prove, to the satisfaction of the Water Resource Regulatory Authority, that the works of the permit holder can be satisfactorily used for the purpose of the landholder and without material detriment to the permit holder; and

- (b) such proportionate cost of the works shall be paid by the landholder to the permit holder who constructed or is constructing the works as may be agreed on between the parties or, failing agreement, as may be determined by the 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 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 Water Resource Regulatory Authority; and
 - (b) the cost of constructing and maintaining such devices for apportioning the quantities of water as the Water Resource Regulatory Authority may prescribe or approve.
- (5) When it is proved to the satisfaction of the Water Resource Regulatory Authority that altered conditions have rendered revision of such rate of payment just and equitable, the Water Resource Regulatory 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.

Landholder may use land occupied by excavated material for own purposes

- 13. When works have been excavated by a permit holder on another person's land—
 - (a) any land used solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the landholder for his own purposes; and
 - (b) the landholder may remove such excavated material:

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

Easements to be registered

- 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 Water Resource Regulatory Authority of, the Director of Surveys, shall be attached to each document granting the easement.

Determination of easement

- 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.
- (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 Water Resource Regulatory Authority at the request of the other person.

Registration of determination or variation of easement

- 16. On the determination or variation of an easement, the Water Resource Regulatory Authority shall notify the landholder over whose land the easement was granted, and the Registrar of Titles and the landholder concerned may, at the expense of the person in whose name the easement is registered, take such action as is necessary to cause his title to be freed from the easement or to record the variation, as the case may require.

FOURTH SCHEDULE (S. 46)
(ABSTRACTION OF GROUND WATER)

Application of this Schedule.

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

Notice of intention to construct well

2. (1) No person shall construct or begin to construct a well without having first given to the Water Resource Regulatory Authority notice of his intention to do so.
(2) A person intending to construct a borehole or well shall apply to the Water Resource Regulatory Authority for a permit and shall comply with such requirements as may be imposed by the Water Resource Regulatory 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.
- (3) A person to whom subparagraph (2) applies shall allow any person authorized by the Water Resource Regulatory Authority, at any reasonable time—
 - (a) to have free access to the well;
 - (b) to inspect the well and the material excavated from it;
 - (c) to take specimens of such material and of water abstracted from the well; and
 - (d) to inspect and take copies of or extracts from the record required to be kept under this paragraph.

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

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

Submission of records

3. A person constructing a well, if required to keep records under this Part, shall, within one month of the cessation of the construction, send to the Water Resource Regulatory Authority—
 - (a) a complete copy of the record, together with the specimens referred to in the record; and
 - (b) particulars of any test made, before such cessation of the construction, of the yield of water, specifying—
 - (i) the rate of flow throughout the test and the duration of the test; and
 - (ii) where practicable, the water levels during the test and thereafter until the water level has returned to its natural level; and
 - (c) a statement of whether, in his opinion (as determined by tasting) the water is suitable for drinking or is highly mineralized, as the case may be; and
 - (d) if required by the Water Resource Regulatory Authority, such water samples as it may consider necessary.

Tests on neighbouring wells

4. (1) Where any well is being constructed within the proximity of an existing well at a distance to be specified by the Water Resource Regulatory Authority, the Water Resource Regulatory 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 Water Resource Regulatory Authority the particulars of the results of such tests including the rate of pumping and rest levels of water.

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

Contractor deemed to be constructor

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

Records may be required to be treated as confidential

6. (1) A person constructing a well or the owner or occupier of the land on which construction takes place may give notice to the Water Resource Regulatory Authority requesting that—
- (a) any copy of, or extract from, the record required to be kept under this Act; or
 - (b) any specimen taken or any other particulars connected with the well, be treated confidentially
- (2) In response to such a notice, the Water Resource Regulatory Authority shall, if sufficient cause has been shown, thereupon not allow such copy, extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person other than a member of the Water Resource Regulatory Authority without the consent of the person giving the notice: Provided that, if at any time the Water Resource Regulatory Authority gives notice to the person that, in its opinion, his consent is unreasonably withheld—
- (i) the person may, within three months after the notice given by the Water Resource Regulatory Authority, appeal to the Tribunal; and
 - (ii) If, at the expiration of that period, no such appeal has been made or, after hearing the appeal, the Tribunal does not make an order restraining it from doing so, the Water Resource Regulatory Authority may proceed as if such consent had been given.

Waste of ground water

7. (1) No person shall, except with the written permission of the Water Resource Regulatory Authority—
- (a) cause any ground water to run to waste from any well, except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the well;
 - (b) abstract from any well water in excess of his reasonable requirements and which he cannot use in a reasonable and beneficial manner;
 - (c) conduct the water from any well through any channel or conduit so that more than twenty per cent of the water is lost between the point of appropriation and the point of beneficial use: Provided that, where the water from any well is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent of the water in conducting the water from the point of appropriation of the well water to the point of beneficial use;
 - (d) use any water from any well for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste: Provided that, where ground water interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the Water Resource Regulatory 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.

Defective wells

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 WATER RESOURCES REGULATORY AUTHORITY or the Regulatory Board has approved the use of desalination systems to make such water potable.
- (2) This paragraph shall apply to wells constructed before or after the commencement of this paragraph.

Interference with defective well

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 Water Resource Regulatory Authority shall be guilty of an offence.

Application to carry out work on a 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 Water Resource Regulatory Authority an application for permission to carry out such re-casing or the removal of the plugs or seals.

(2) The application shall contain such information as the Water Resource Regulatory 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 Water Resource Regulatory 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.

Instruction to deal with defective well

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

- (a) the work that shall be done by the owner to place it in a satisfactory condition; and
- (b) the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Water Resource Regulatory Authority may inspect the well

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

Sworn statement to be submitted

13. (1) Upon completion of the works in pursuance of any instructions issued under this Schedule—
- (a) the contractor who carries out the work; or
 - (b) if the work is done without a contractor, the owner of the well, shall file with the Water Resource Regulatory Authority a statement sworn or affirmed specifying in detail the manner in which such work was done.

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

Additional work on defective well

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

(2) If the Water Resource Regulatory 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 Water Resource Regulatory Authority as provided for in paragraph 13.

Contamination and pollution of ground water

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

Water Resource Regulatory Authority may order special measures to safeguard ground water resources.

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 Water Resource Regulatory Authority this is likely to prove detrimental to the ground water resources of the area,
 - (d) the Water Resource Regulatory 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.

Artesian wells to be cased

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

Offence and penalty

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.
- (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 —
- (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.
- (5) Expenses recoverable under subsection (8) 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 subsection (8) do not include expenses incurred in respect of —
- (a) works the construction of which; or
 - (b) action which, could not lawfully have been required otherwise than upon payment of compensation by the licensee.
- (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.