



**COMPLIANCE AND ENFORCEMENT STRATEGY**

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**1. MANDATE TO ENSURE COMPLIANCE**

Ensuring compliance with the Water Act 2002 and enforcing the law is one of WASREB key objectives in the Strategic Plan. Water Act 2002. WASREB is supposed to formulate and implement a compliance and enforcement strategy.

As best practice internationally a regulatory body should:

1. Publish a compliance and enforcement strategy
2. Measure outcomes not just outputs
3. Justify its choice of enforcement actions year on year to stakeholders, Minister and the public.

WASREB powers to ensure compliance and to enforce the law are drawn from the following sections of the Water Act 2002.

<b>Section</b>	<b>Mandate</b>
47	Power to issue licence, determine service standards, monitor compliance with standards on infrastructure development and maintenance, monitor and enforce licenses, determine tariffs, monitor handling of consumer complaints , collect information for water services sector, disseminate information, promote demand management, prosecution in consultation with AG.
50	Gather information, samples and materials on order for the national systems on water services
55	Approve agreements between WSBs and WSPs
56	Creates offence for providing water without a license
58	Performance guarantee required from licensee
60	Payment of license fee to regulatory board
61	Conditions of license in an instrument endorsed by WASREB ( in absence of rules )
63	Order combination of license undertakings to two licensees to secure more reliable supply and vary license accordingly
68	Procedure on default given by Act. On receipt of complaint WASREB may : Notify rectification Investigate deeper

	<p>Give orders to cure</p> <p>Require aggrieved party to be paid penalty by licensee</p> <p>If no action by licensee it becomes offence for prosecution- maximum fine Kshs 100,000.</p>
69	Transfer of functions of licensee ( consultations with Minister )
73	Ensure Licensee has regulations and is enforcing regulations on conditions of water service targeted at WSPs, consumers , occupiers of premises , owners of premises, land owners whose activities have the potential to degrade or interfere with water licensee is authorised to take ( section 71 and 91)

***For ease of reference the sections are produced at the end of this paper as an annex.***

## **2. PURPOSE OF COMPLIANCE AND ENFORCEMENT STRATEGY**

The aim is:

1. To ensure conformity to the Water Act 2002, rules and regulations made there under and guidelines issued by WASREB.
2. To prevent future violations as much as possible through voluntary effort.
3. To improve the standards of water service delivery in a sustainable manner in the whole country.

## **3. METHODS TO ENSURE COMPLIANCE**

The compliance and enforcement strategy of WASREB is grounded on the following methods:

1. **Education** to foster learning, inducement and self regulation.
2. **Prevention** through selective and targeted surveillance and a graduated warning approach.
3. **Enforcement** as a last resort using the traditional methods of coercion and deterrence.

This is because effective compliance is influenced to a large degree by the situations and attitudes of the regulated and therefore different approaches have to be used. The following **fundamental attitudes** toward compliance with the laws have been discerned in the water services sector.

1. WSBs and WSPs and other water operators want to comply with the law and regulatory requirements and are actively complying.
2. WSBs and WSPs and other water operators need more knowledge and understanding of the obligations in the regulations.

3. WSBs and WSPs are hampered by the current financial situation and human resource constraints in their capacity to comply. For small WSPs in particular, the burden of assimilating and complying with many complex and technical rules can be unreasonable and undermine confidence in WASREB and the regulatory structure. Harsh approaches to enforcement will not improve matters.
4. WSBs and WSPs and other water operators want to comply but the operating environment makes it difficult for them to comply especially catchment degradation and partial implementation of Transfer Plan.
5. WSBs and WSPs and other water operators know the regulatory requirements and choose not to comply nor show any desire to comply.
6. The benefits of non compliance out weigh any benefits of compliance to the key management staff.

WASREB will use the following approaches to achieve compliance based on the underlying attitudes described previously.

#### **A. APPROACH ONE –INFORMING**

WASREB wants WSBs, WSPs and other water operators and consumers to understand their responsibilities. WASREB will provide:

1. Information in a variety of formats including newsletters, publications, hotlines, front counter services and online information and services. This is where the public relations and communication strategy of WASREB is useful.
2. Due to the two tier structure WASREB will ensure that the license obligations and SPA requirements include providing information to the public at the regional and local level through those entities having hotlines, online information services, front counter services and publications on water services investment and performance.

#### **B. APPROACH TWO –ENCOURAGING**

WASREB will undertake a number of activities aimed at encouraging compliance. These include:

1. Targeted campaigns promoting compliance in high risk areas of water safety and infrastructure safety as well as governance.
2. Acknowledgement of compliance with rewards and incentives either built into the tariffs or through media acknowledgement and trophies.
3. Disseminate best practices from WSBs and WSPs to other WSBs and WSPs.
4. Benchmarking of the quality of service and processes of the WSBs and WSPs.
5. Creating a system of regulatory compliance grading to show which entities have systems that fully comply with the requirements of the Water Act 2002.

6. Using the media as an avenue to encourage compliance by publicizing the commitments and obligations of the licensee and water service providers.

WASREB has already started doing this through **IMPACT** and will continue to entrench the method as a system of ensuring compliance.

### **C. APPROACH THREE – ASSISTING**

WASREB will help and support WSBs, WSPs and other water operators who are endeavoring to comply with regulation. This will assist in transfer of know how, change of attitude and values and encourage self regulation and reporting on non compliances. WASREB will do this through:

1. Training by own staff or partnering with the Kenya Water Institute and other third parties to offer training.
2. Conduct or invite advisory visits to the WSBs and WSPs.
3. Hold workshops to disseminate technical information and obtain feedback on compliance.
4. Offer conciliation or its good offices to resolve disputes between the WSBs and WSPs.
5. Issue of advisory circulars to the WSBs explaining technical aspects of guidelines.

### **D. APPROACH FOUR –MONITORING**

WASREB will check whether WSBs and WSPs are complying with the regulatory obligations. WASREB will use the following methods:

1. Checklists from the license obligations.
2. Proactive inspections in WSBs and WSPs targeting:

The larger and sustainable WSPs to ensure systems in those WSPs are well run and there is compliance.

Targeted surveillance on problematic WSPs and WSBs to entrench compliance or areas

3. Use of specialized part time inspectors in specialized and technical areas especially infrastructure development, finance and water quality.
4. Investigation of complaints by inquiry under section 68 of the Act, especially where there are complaints of the same nature from a license area and there seems to be no resolution.
5. Analysis of the various reports to WASREB under the license and WARIS system.
6. Ensuring that WSBs conduct and report to WASREB on Inspections and audits of all WSPs.
7. The position of Inspector is created under the Water Act 2002 and given powers to demand information from WSBs and WSPs. Therefore officers in WASREB who are Inspectors must abide by a Code of Conduct to be created and undergo training to deepen their understanding of their powers as stated in section 97 and 98.
8. Likewise aspects of Inspection have been delegated to the Licensees through the licenses issued.

9. There will be use of the media to encourage the public to report and publicize issues of compliance.

#### **E. APPROACH FIVE –WARNING**

Where appropriate after monitoring has been done:

1. WASREB will notify and caution WSBs and WSPs that are not complying with their obligations and give a time frame within which there should be rectification
2. WASREB will issue orders prohibiting the doing of particular things with immediate effect and follow through with prosecution if this is not complied with.
3. WASREB will issue cure notices instructing the WSBs to ensure non-compliance is cured within a particular time frame. If the cure notice is not complied with WASREB will:
  - a. fine the licensee
  - b. Use the performance guarantee to cure the problem
  - c. Issue an order which if not complied will be followed by prosecution.
  - d. WASREB will issue orders on variations of areas of supply
4. WASREB will order the WSB to enforce its regulations under section 73 of the Water Act 2002 in its area of supply.
5. WASREB will use the media in publicizing warnings against offenders of the Water Act 2002.

#### **F. APPROACH SIX-FULL FORCE OF LAW**

Where the first five approaches fail and depending on the severity of the non compliance WASREB will have to use the full force of the law- which is the traditional enforcement action in the following manner:

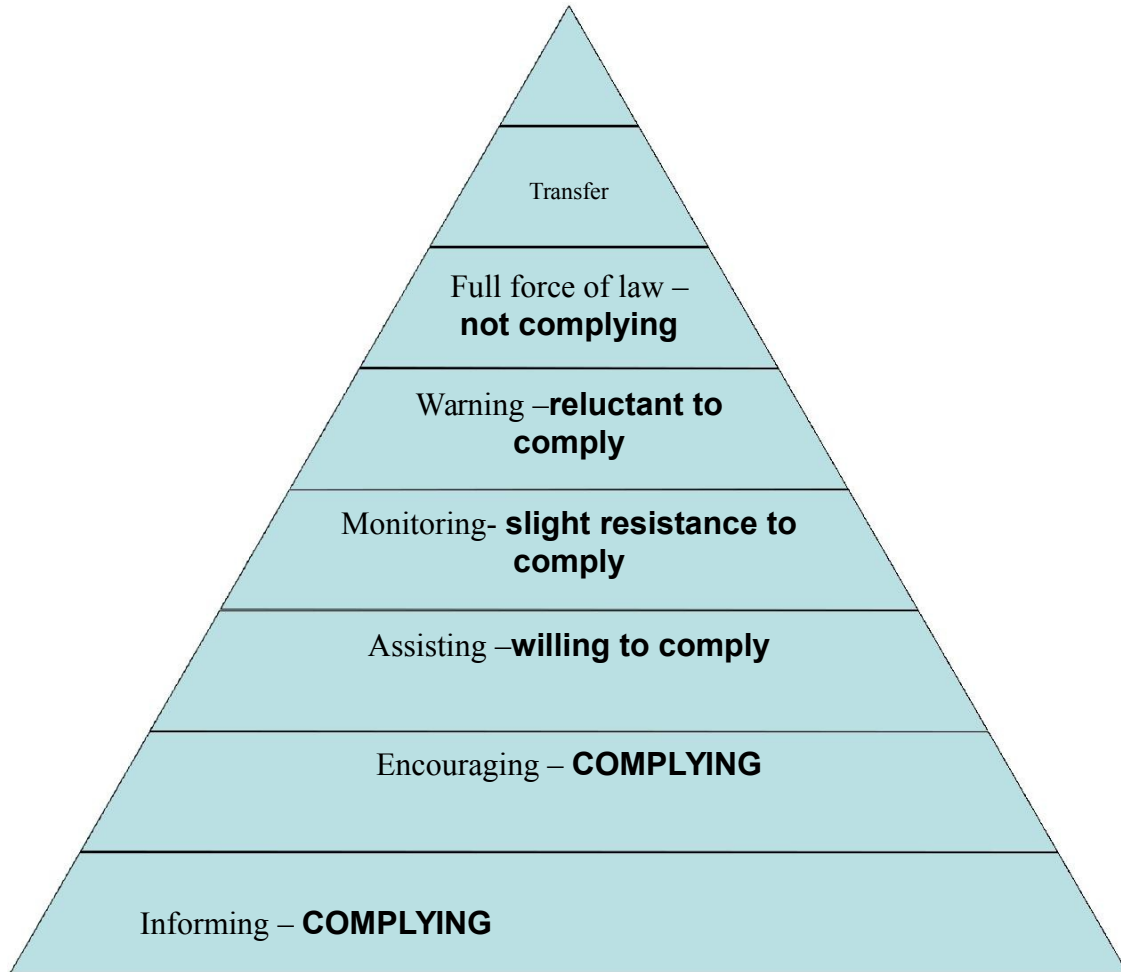
1. Issuing of fines under the license –clause 3.3
2. Ordering the payment of penalties by licensees to third parties aggrieved by the non action or action of the licensee.
3. Levying of penalties for non payment of regulatory levy under LN 36 of 2008.
4. Prosecution of offences committed by the licensee under the Water Act or recommending of prosecution of culprits to other concerned public agencies if offence is in relation to any other Act.
5. Use of court action in judicial review proceedings.
6. Recommending to the Ministry the removal of the top management and board of directors of the WSB if Inspection Reports are not followed up by licensee.
7. Order the removal of top management team of WSP and board of directors under section 47 (1j) and section 68.
8. Cancellation of SPA

9. Transfer of license to another licensee.

**Where full force of the law is used, the sanctions employed by WASREB shall:**

1. Aim to change the behaviour of the offender
2. Aim to eliminate any financial gain or benefit from non-compliance.
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction.
4. Be proportionate to the nature of the offence and the harm caused.
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate.
6. Aim to deter future non-compliance.
7. Board of Directors ratification or resolution will always be sought.

A pictorial description of the graduated strategy is as follows:



#### G. JUSTIFICATION AND FURTHER PROCEDURE ON USE OF FULL FORCE OF LAW

##### Penalties set out in the License

1. The level of sanctions is a policy issue set by the Board of Directors in the license conditions, and the certainty of sanctions is an issue of the capacities and organizational effectiveness within WASREB.

2. The deterrent effect of sanctions will depend on their certainty, severity, celerity, and uniformity.
  
3. WASREB will:
  - a. Review the monetary penalties (fines) in the license periodically to avoid having fines devalued by inflation.
  - b. Set penalties at a senior level after review of all evidence.
  - c. Reward good behavior such as rapid correction of problems by setting lower penalties.
  - d. Adhere always to the graduated approach, with and warnings and as a first choice and prosecution and transfer of license as a last choice
  
4. Encouraging voluntary compliance shall always be the first step. WASREB will support efforts to voluntarily comply, through voluntary disclosure policies especially in the technical areas of asset management and water and effluent quality. If an entity discovers violations of the regulation through the operation of its own internal compliance or self-regulatory system, and reports to WASREB those violations and the corrective action taken, the entity will not be liable for fines and penalties.
  
5. Voluntary compliance will depend on ensuring that non-compliers do not profit from their non-compliance. Co-operative compliance is contingent upon persuading those of goodwill that their compliance will not be exploited by free riders who will get away with the benefits of noncompliance without being held to account.
  
6. Deterrent and punitive sanctions will always be available in the background for use by WASREB and will be influenced further by:
  - a. The size of the WSB.
  - b. The capital and resources of the WSB.
  - c. The type and nature of irregularity.
  - d. The compliance history of the WSB
  
7. In setting price limits for WSPs at a tariff review, WASREB will exclude any direct costs associated with financial penalties imposed under the Water Act 2002 i.e. investors and employees in the WSB/WSP will bear the full direct costs of the penalty.
  
8. Where a penalty has been imposed on an WSP or a WSB this will be considered when price adjustments are made in relation to any other service related incentive mechanism such as WASREBS overall performance assessment.



9. In considering any case in which a financial penalty might be imposed, WASREB will need to address the following questions:
- i) The licensee or WSP has contravened or is contravening any relevant condition of its appointment or licence; or
  - ii) The licensee or WSP has contravened or is contravening any statutory or other requirement which is enforceable under the Water Act 2002; or
  - iii) The licensee or WSP has contributed or is contributing to a contravention by another; or
  - iv) The licensee or WSP has failed to achieve any standard of performance prescribed under the service provision agreement.
10. Once satisfied that a contravention or failure of service has occurred or is occurring, WASREB will have to decide whether a financial penalty should be imposed and at what level.
11. When considering whether to impose a penalty, a penalty is more likely where:
- i. The contravention or failure has damaged the interests of customers or other market participants or damaged the environment; or
  - ii. Applying a penalty would be likely to create an incentive to comply and deter future contraventions or failures.
12. A financial penalty will be less likely to be imposed where:
- i. The contravention or failure was or is of a trivial nature; or
  - ii. The contravention or possibility of a contravention would not have been apparent to a diligent licensee or WSP undertaker.
13. To avoid double jeopardy a financial penalty will not be imposed where:
- i. The licensee is being or has been prosecuted in respect of the failure or contravention, although a penalty might be appropriate in respect of different consequences of such a contravention or failure (e.g. for inadequate arrangements for communicating with customers in the event of an environmental or drinking water incident).
  - ii. WASREB will also take into account any potential prosecutions and will liaise with outside bodies to determine who should take enforcement action.

14. Having considered the broad level of penalty, other factors may be taken into consideration. Aggravating factors tending to lead to a higher penalty than otherwise may include, but would not necessarily be limited to:
  - i. Repeated contravention or failure;
  - ii. continuation of contravention or failure or making no attempts to rectify that contravention or failure after either becoming aware of the contravention or failure or becoming aware of the start of the enforcement authority's investigation;
  - iii. The involvement of senior management in any contravention or failure;
  - iv. The absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure;
  - v. Failure to compensate those affected; and
  - vi. Any attempt to conceal the contravention or failure from the relevant enforcement authority and if so to what extent.
  
15. Mitigating factors tending to decrease the level of any penalty will include, but not necessarily be limited to:
  - i. The extent to which the WSP or licensee had taken steps to avoid contraventions or failures, either specifically or by maintaining an appropriate compliance policy, with suitable management supervision;
  - ii. Appropriate action to remedy the contravention or failure;
  - iii. Evidence that the contravention or failure was genuinely accidental or inadvertent or outside management control;
  - iv. The extent to which the licensee had compensated those affected;
  - v. Proactive reporting of the contravention or failure to the enforcement authority; and
  - vi. Co-operation with any investigation.

#### **Use of civil court action**

WASREB will include in its use court action injunctions or compelling undertakings in the WSBs and WSPs. It will also use court action to recover outstanding debt due to it from undertaking an enforcement action on behalf of a licensee or recovery of debts from outstanding levies or licensee fees. A resolution of the Board has to be obtained and the merits of the case agreed upon as the only viable method of proceeding before a court action is initiated.

Where WASREB is the defendant the matter will be reported to the Board of Director at the next meeting after WASREB has been sued.

This should be distinguished from the alternative dispute resolution mechanism in the license, which the licensee shall use to appeal an order of WASREB under the license.

### **Use of Prosecution**

Where an offence is established as against a WSB or a WSP pursuant to failure by any of those entities to obey a lawful order given by WASREB and or contravening and rules and regulations made under section 73 and 110 or section 50 and 56 of the Act, WASREB will prosecute the offender after Board of Directors approval. The maximum penalty under the Water Act is Kshs 100,000 or to a prison term not exceeding 12 months. (*Ref. section 61 and 105 of the Act*)

### **KEY AREAS IN LICENSE THAT WASREB WILL MONITOR COMPLIANCE**

1. The following are the key areas where WASREB will focus on in ensuring compliance by the Water Service Boards. For each key area before the full force of the law starting with the fines in the license are issued by WASREB the staff in WASREB will have used some or all of the graduated approaches in order to have willful compliance.
2. As more guidelines are formulated the areas will expand as guidelines according to the license and SPA conditions are an integral part of the license or SPA.
3. According to section 58 of the Act on performance guarantee it may be used to pay the fine in the license or also used by WASREB to cure the non – compliance by the Licensee. The amount currently is Kshs 1,000,000.

LEAD SKILL CHECKING COMPLIANCE	INDICATOR	ASPECTS OF COMPLIANCE & ENFORCEMENT
<b>1. FINANCE</b>	Change in outstanding debt	Track payment of regulatory levy to WASREB
	Change in number of distressed WSPs	Monitor operation of revenue account
	No. of WSPs compliance with benchmark	Monitor Capital expenditure
	No. of WSPs meeting target	<b>SI 4</b> Monitor billing for Services
	No of WSPs meeting target	<b>S1 14</b> Monitor Collect Efficiency
		Monitor%ofoperationand maintenance expenditure
		Monitor % of staff costs relative to operations in licensee area
		Monitor % of board costs relative to operations
		Monitor Payment of licensee remuneration levy and running of contingency fund in licensee
		Analyze financial statements and systems of WSBs and WSPs
	Track payment of taxes and levies in each licensee	
<b>2. ENGINEERING</b>  <b>Facility /Asset Management according to the Asset Management Guideline</b>	No of WSPs with inventory	Ensure facilities Inventory in licensee area
	No of WSPs with asset valuation	Ensure facilities valuation in licensee area
	Rating of efficiency in maintenance	Ensure facilities evaluation in licensee area
	Change in <u>No</u> of WSPs with plans	Ensure that there are water assets management plans in licensee area
	Change in No of WSPs with schedules	Ensure that there are waste water assets management plans in licensee.
	Change in No of WSPs with schedules	Ensure that there are water asset management schedules area
	Change in <u>No</u> of WSPs with	Ensure that waste water assets

	schedules	management schedules in area
	No of patrollers per WSPs No of illegal connections detected	Roll and schedule of water services line patrollers in licensee area
	No of Reports on compliance with standards for all capital works	Monitor and Investigate implementation by licensee, of the capital works plan to ensure standards of design, construction and operation are complied with.
	No of networks mapped and digitized	Monitor and Investigate the implementation of the mapping in digitized format:  of the WSP areas  of the network systems of the WSBs and WSPs
<b>Water demand management and conservation guideline</b>	No of : Events publishing demand management  Technologies adopted for demand management	Ensure promotion of water demand management measures in license, regulations under section 73 and rules under section 110 of the Act.
<b>3. ECONOMICS Economic Regulation – implementation of tariff guideline and license provisions on tariff</b>	No of complete tariffs justifications received by WASREB	Monitor , investigate , design and perform analysis of tariffs
	No of business plans analysed and amendments made	Analyze, approve and monitor implementation of business plans and service plans from licensee to ensure costs are properly allocated.
	No of reports on follow up actions	Monitor compliance with regulatory performance targets related to tariff adjustments.
	No of reports on provider income and licensee remuneration	Investigation of justification of licensee remuneration and provider remuneration and any subsidies and grants in the licensee.
<b>4. WATER QUALITY</b>	No of water safety plans	Monitor availability Water safety plans

<b>Water and Effluent Quality Guideline</b>	No of compliance with daily reporting	Monitor availability of daily reports on water quality
	No of compliance with monthly and annual reporting	Availability of monthly and annual reports on effluent quality
	No of non compliance incidents self reported	Report to WASREB for non- compliance by licensee
	No of approvals per licensee	Monitor approvals issued to disposers of trade effluent by licensee under section 76 of Act.
	No of offenders per licensee	Monitor records of non compliance with offenders under section 76 created by Licensee
	Register of sludge disposal	Monitor disposal of sludge
<b>5. LEGAL Legalizing Water services operators in area</b>	No of Notices issued	Monitor notice of registration in board area of water operators
	No of operators captured	Inspectregisterofwaterservice operators and legal status of each
	Reports on sources and quality per operator	Monitor sources of water identified and production and quality monitored and reported on Licensee
	No of operating licenses issued	Monitor Process of and issue of annual license to very small operators
	No of public meetings held	Monitor frequent stakeholder meetings and education on clustering
<b>Corporate Governance guideline</b>	No. of AGM held in Board area.	Monitor compliance by WSB in the appointment of WSPS and running of the operations of the WSPs in SPA approvals and reports
	% of women in leadership positions in WSPs	
	% of stakeholder groups in WSPs BODs	
<b>Customer complaints – according to guideline issued and license provision</b>	No. of licensee regulations containing customer component	Ensure regulations by licensee under section 73 contain customer component
	No. of available contracts	Ensure customer contracts available
	Reports of surveys	Ensure customer satisfaction surveys

		are done by licensee and reports made public
	No of complaints officers	Ensure licensee has Complaints officer and department /unit for complaints processing
	% of complaints resolved	Ensure there is a complaints register and resolution rate
	No of hotlines working	Ensure each licensee has working hot line or technology for public to report leaks, sewer bursts, vandalism
	No of disputes at WAB or appeals in the High Court	Institute / defend, monitor disputes from customer dissatisfaction in licensee and get advisory opinions
<b>Water service regulations- section 73</b>	No of water cases in magistrates courts or High Court initiated by WSB under their regulations	Institute / Defend / Monitor, investigate implementation by licensee of published regulations under section 73 and issue orders to ensure compliance by licensee.
<b>6. COMMUNICATION</b>	No. of activities to WSBs, WSPs and public on compliance and enforcement strategy	Publishing of Public Notices, Warnings, Workshops, Seminars, advisory radio programmes, leaflets, booklets and annual stakeholder forums held by licensee and WSP under license and SPA.
<b>7. HUMAN RESOURCES</b> According to guideline		WASREB to monitor to ensure WSBs adopt the standards in guideline in a manner that allows them to maintain the required staff ratios and have the appropriate resource capacity. LN 101 of 2005. Monitor percentage of turnover spent on training as per NWSS
<b>8. Submission of Reports</b> <b>ALL</b>	<b>No of reports</b>	Annual WARIS Reports

	No of Reports in Licence	Annual report under license which has : <ol style="list-style-type: none"> <li>1. Capital works implementation report</li> <li>2. Licensee achievement report</li> <li>3. Service obligation and performance report of all the WSPs in the area ( consolidated report of Schedule D1 WSB area)</li> <li>4. Financial report – reflecting levels of tariff revenues, subsidies for whole board area.</li> </ol>
		Appointment of public information officer by WSB
		Dissemination of annual achievement report of licensee to the public within the board area.



## **ANNEX – QUOTED PROVISIONS OF THE ACT**

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

*47. The Regulatory Board shall have the following powers and functions:-*

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

(o) *in accordance with the national water services strategy, to determine fees, levies premiums and other charges to be imposed for water services;*

(q) *To gather and maintain information on water services and from time to time publish forecasts, projections and information on water services;*

(r) *To liaise with other bodies for the better regulation and management of water*

**(s) to advise the Minister concerning any matter in connection with water services.**

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

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

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

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

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

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

(2) *The systems shall provide for:-*

(a) *The collection and management of data and information regarding water services; and*

(b) *Procedures for gathering data and the analysis and dissemination of information on water services.*

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

**55. Water service providers.**

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

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

**56. Requirement for licence.**

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

(a) provide water services to more than twenty households; or

(b) supply:-

(i) More than twenty-five thousand litres of water a day for domestic purposes; or

(ii) more than one hundred thousand litres of water a day for any purpose, except under the authority of a licence.

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

**58. Licences.**

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

**60. Licence fees.**

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

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

**61. Conditions of licence.**

61. (1) A licence shall be subject to:-

(a) such conditions as may be prescribed by or under this Act in relation to the licence; and

**(b) such other conditions, not inconsistent with the conditions prescribed, as the Regulatory Board may impose by endorsement on, or instrument in writing annexed to, the licence;**

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

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

(a) require the imposition of prescribe conditions in prescribed circumstances;

(b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment facilities or works used for the purposes of the licence or for meeting any other prescribed contingency.

**(c) provide that a contravention of any, or of any specified, conditions prescribed by or under this Act as conditions of licences shall constitute an offence punishable by a penalty not exceeding one hundred thousand shillings.**

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

**63. Combination or transfer of undertakings.**

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

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

(b) permit the transfer of the undertaking, or part thereof, of one licensee to another licensee.

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

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

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

**68. Default by licensee.**

68. (1) If, following a complaint made to licensee, information received by the Regulatory Board, 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 he supplying, or has failed to give any supply which he is lawfully required to give; or

(c) having been notified by the Regulatory Board to take such steps as are reasonably practicable in order to remedy any such failure as is mentioned in paragraph (a) or (b), has failed to do so, Regulatory Board may **inquire into the matter.**

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

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

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

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

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

*(a) to another licensee; or*

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

**73. Power to make regulations.**

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

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

*(a) defining the area within which he deems necessary to exercise control;*

*(b) prohibiting or regulating the doing, within that area, of any act prescribed by such regulations; and*

*(c) prescribing penalties not exceeding fifty thousand shillings for contravention of any such prohibition or regulation*

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

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

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

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

(a) to execute and keep in good repair such works; or

(b) to take such other action, as the licensee considers necessary for preventing degradation of such water.

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

(a) any curtailment of or injury to his legal rights by restrictions imposed by such regulations; and

(b) any expenses incurred by him complying with a requirement to construct and maintain any works, or take other action, which would not, but for the provisions of this Act, lawfully have been required,

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

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

(a) he has not appealed against the requirement and the time for appeal has expired; or

(b) his appeal has been dismissed or the requirement has been affirmed or varied in consequence of his appeal and he has failed to comply with the requirement as so affirmed or varied, the licensee may, without prejudice to his right to take proceedings in respect of such

*failure, execute and keep in good repair the works specified in the requirement as originally made or as varied on appeal and may in any court of competent Jurisdiction recover from the owner or occupier concerned, as a debt, expenses reasonably incurred by him in so doing.*

*(9) Expenses recoverable under subsection (8) do not include expenses incurred in respect of the licensee may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as varied on appeal and may in any court of competent Jurisdiction recover from the owner or occupier concerned, as a debt expenses reasonably incurred by him in so doing.*

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

*(a) works the construction of which; or*

*(b) action which,*

*could not law fully have been required otherwise than upon payment of compensation by the licensee.*

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

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

**74. Duty to enforce regulations.**

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

**105. Penalties for offences.**

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



***END***