

CHAPTER 372

THE WATER ACT

Commencement: 7th May, 1952

An Act of Parliament to make better provision for the conservation, control, apportionment and use of the water resources of Kenya, and for purposes incidental thereto and connected therewith

PART I—PRELIMINARY

1. This Act may be cited as the Water Act.
2. (1) In this Act, except where inconsistent with the context—

“applicant” means any person who has applied for a permit under this Act or who has applied for a water right or sanction under the Water Ordinance, 1929 (now repealed);

“aquifer” means a geological formation or structure which transmits water and which may supply water to wells, boreholes or springs;

“arbitration” means arbitration under the Arbitration Act;

“artesian well” means a well in which water rises to the surface of the ground by natural pressure, and “sub-artesian well” means a well in which water rises by natural pressure above the base of the first impermeable stratum immediately overlying the aquifer in which the water was encountered, but does not rise to the surface of the ground;

“authorization” means an authorization to construct works under this Act;

“authorized” means authorized under this Act;

“body of surface water” means water flowing continuously or intermittently in natural surface channels or depressions and water flowing through, or into, lakes, ponds, swamps and marshes, but does not include the water in a spring which is situated wholly within the boundaries of the land owned by any one landholder and which does not naturally discharge water into a watercourse extending beyond the boundaries of such land, or abutting on the boundaries of such land;

56 of 1951
 39 of 1956 ✓
 24 of 1957 ✓
 27 of 1959 ✓
 59 of 1960 ✓
 15 of 1961 ✓
 7 of 1962 ✓
 25 of 1963 ✓
 L.N. 256/1963 ✓
 L.N. 741/1963 ✓
 21 of 1964 ✓
 L.N. 279/1964 ✓
 L.N. 374/1964 ✓
 21 of 1966 ✓
 39 of 1968

Short title.

Interpretation.
 24 of 1957, s. 2.
 59 of 1960, s. 2.
 15 of 1961, Sch.
 7 of 1962, s. 2.
 L.N. 741/1963.
 L.N. 374/1964.
 21 of 1966.
 1st Sch.
 35 of 1929.

Cap. 49.

“body of water” means ground water and water contained in, or flowing in, a spring, stream, natural lake or swamp, or in, or beneath, a watercourse, or in a zone of saturation, and includes the water diverted or abstracted therefrom, or stored therein, by means of works carried out under a licence, sanction or permit, but does not include the water in a spring which is situated wholly within the boundaries of the land owned by any one landholder, and which does not naturally discharge into a watercourse extending beyond the boundaries of such land or abutting on the boundaries of such land;

“Catchment Board” means a Catchment Board appointed under section 23 of this Act;

“the chairman” means the chairman of the Water Apportionment Board, and includes the vice-chairman, if any, and any person acting on his behalf;

“community project” means a community project as described in section 41 of this Act;

“company” means any incorporated or limited company the objects and powers of which extend to or include the construction or operation of works for the exercise of a permit;

“defective well” means any well drilled, dug or excavated which encounters salt water, and which well is not securely cased, plugged or sealed off so that the salt water is not confined to the strata in which it is found but may escape into other water-bearing strata or on to the surface of the ground;

“develop” means make available for reasonable beneficial use;

“drilling” means drilling for the purpose of abstracting ground water;

“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 authorized works or the exercise of a permit;

“flood water” means any water flowing in a stream in excess of the normal flow;

“ground water” means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, including the water in the zone of saturation;

“irrigation” means the practice of causing water to flow upon or spread over or under the surface of land, by any means, for agricultural purposes;

“landholder” in relation to land means the Government or a county council, or the registered owner of the land, or the person in whom the land is vested by law, or any person to whom a mining lease or mining location has been granted under the Mining Act, and includes—

(a) 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;

(b) any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land;

“land surveyor” means a surveyor licensed under rules made under the Survey Act;

“licence” means the document issued under the provisions of the Water Ordinance, 1929 (now repealed), conveying a water right authorizing the abstraction, diversion, obstruction, storage or use of water;

“licensee” means the holder of a licence;

“limits of supply” in relation to any water undertaking means the limits within which the water undertakers are for the time being authorized to supply water;

“Local Water Authority” means a person or persons appointed to be a Local Water Authority under section 27 of this Act;

“normal flow” means the ordinary flow at any particular point of a stream as certified by the Water Apportionment Board from time to time to be the normal flow at that point;

“operator” means any person authorized to construct works under this Act by authorization, or to divert, abstract or use water by licence, sanction or permit;

“permit” means a document issued under this Act authorizing the abstraction, diversion, obstruction, storage or use of water or the drainage of lands;

“person” means any person or body of persons or body corporate, and the heirs, executors, administrators, assigns or other legal representatives of such person, and the successors of such body corporate to whom the context may lawfully apply, and includes a water undertaker;

Cap. 306.

Cap. 299.

“public authority” means the Government or any department or branch of the Government;

“qualified engineer” means a person registered under this Act as a qualified engineer;

“Regional Water Committee” means a Regional Water Committee appointed under section 24 of this Act;

“Registrar of Titles” means the person appointed under any Act for the purpose of the registration of title to land or of documents relating to land;

“reserved area” means an area of land forming part of Trust land;

“rest level” means the maximum level to which the water in a well will rise without being pumped;

“salt water” means water containing salt or other minerals or substances in such quantities as, in the opinion of the Water Apportionment Board, to be injurious to vegetation, agriculture, husbandry or health, having due regard to the purposes for which it is to be used and the availability of alternative supplies;

“sanction” means a document issued under the Water Ordinance, 1929 (now repealed), authorizing the abstraction, diversion, obstruction, storage or use of water or the drainage of land;

“sanction holder” means the holder of a valid sanction which has not lapsed or been determined;

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

“state scheme” means—

(a) a scheme, whether formulated in detail or not, for the use for any public purpose of the water or any portion of the water of any body of water; or

(b) a reservation by the Minister, after consultation with the Water Resources Authority, of the water or any portion of the water of a body of water for use for any public purpose; or

(c) a scheme for draining land, which has been declared by the Minister, after consultation with the Water Resources Authority, to be a state scheme for purposes of this Act;

“storage” means the collection, impounding and conservation of water for beneficial use for any of the purposes specified in section 35 of this Act;

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

“supply of water in bulk” means a supply of water for distribution by the water undertakers taking the supply, and “supplying water in bulk” has a corresponding meaning;

“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:

Provided that this definition shall be subject to the provisions of section 31 of this Act;

“Water Appeal Board” means the Water Appeal Board established by section 163 of this Act;

“Water Apportionment Board” means the Water Apportionment Board appointed under section 25 of this Act;

“water bailiff” means any person authorized under this Act to perform the duties of a water bailiff;

“watercourse” means a natural channel or depression in which water flows, either continuously or intermittently:

Provided that this definition shall be subject to the provisions of section 31 of this Act;

“Water Resources Authority” means the Water Resources Authority established by section 19 of this Act;

“water table” means—

(a) in previous 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;

(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;

“well” means any orifice made in the ground by any means for the purpose of abstracting ground water therefrom, and includes a borehole, tunnel and adit;

“well construction” includes the extension or the improvement of any well;

“works” means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilizing water, excepting hand utensils or such other contrivances as may be specified by the Water Apportionment Board, by order in the Gazette;

“zone of saturation” means the zone below the water table, in which the interstices are filled with ground water.

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

PART II—OWNERSHIP AND CONTROL OF WATER

3. The water of every body of water under or upon any land is vested in the Government, subject to any rights of user in respect thereof which, by or under this Act or any other written law, have been or are granted, or recognized as being vested, in any other person.

4. The control of every body of water shall be exercised by the Minister in accordance with this Act.

5. Except as to rights acquired under the Water Ordinance, 1929 (now repealed), or specifically granted before the 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 in any written agreement, and existing at the commencement of this Act, the right to the use of every body of water is hereby declared to be vested in the Minister, and, except in accordance with any such right, no person shall divert, abstract, obstruct or use water from a body of water otherwise than under this Act.

6. 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 any interest or privilege in respect of any body of water, and from and after such commencement no such property, right, interest or privilege shall be acquired otherwise than under this Act.

7. It shall be the duty of the Minister to promote the investigation, conservation and proper use throughout Kenya of the water resources of Kenya and the provision of water supplies in Kenya, and to secure throughout Kenya effective exercise by any authority or person under the control of the Minister of their powers and duties in relation to water.

Water vested in Government. 39 of 1968. s. 13.

Control of water exercisable by Minister. L.N. 741/1963.

Right to use water vested in Minister. 35 of 1929. 21 of 1966. 1st Sch. Cap. 280. 21 of 1902.

Right to use water may be acquired only under Act.

Duties of Minister.

PART III—GENERAL POWERS OF MINISTER

8. (1) If the Minister decides, on the recommendation of the Water Resources Authority, that it is in the public interest so to do, he may purchase or acquire land by any other means for the conservation, improvement or use of water.

Power to acquire land. L.N. 741/1963.

(2) The acquisition of land for any of the purposes of this Act shall be deemed to be an acquisition for a public purpose under any law for the time being in force relating to the compulsory acquisition of land.

9. (1) The Minister may, on the recommendation of the Water Resources Authority, and after reasonable notice to the landholder concerned, if it appears to him to be in the public interest so to do, construct and maintain upon any land such works as he may deem necessary or desirable for any of the following purposes—

Power to construct works.

- (a) the protection of the source or course of any body of water;
- (b) the disposal or control of flood water;
- (c) the conservation of water;
- (d) the distribution, apportionment or measurement of water.

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

(3) The cost of construction and maintenance of such works may be paid from public moneys.

10. (1) When the cost of works constructed under subsection (1) of section 9 of this Act has been paid from public moneys, any person who, in the opinion of the Minister on the advice of the Water Resources Authority, has benefited by the construction of such works shall, if so decided by the Minister on the advice of the Water Resources Authority, pay to the Government a water rate or other charge for such benefit, and such water rate or charge shall be decided by the Minister on the advice of the Water Resources Authority.

Power to impose water rate upon person benefiting. L.N. 374/1964.

(2) Any person who is aggrieved by a decision of the Minister made under the provisions of this section may appeal to the Water Appeal Board.

Power to impose water rate in connexion with community project.
L.N. 374/1964.

11. (1) When the cost of works constructed under subsection (1) of section 9 of this Act has been paid from public moneys and such works are required for the purpose of a community project, a water rate or other charge shall, if so decided by the the Minister on the advice of the Water Resources Authority, be payable to the Government by all persons who, in the opinion of the Minister on the advice of the Water Resources Authority, have benefited or could benefit as a result of such works.

(2) The water rate or charge payable under this section shall be decided by the Minister on the advice of the Water Resources Authority.

(3) No works shall be constructed for the purpose of a community project except upon the request of two-thirds of the persons who could benefit by such works.

Power to impose water rate on local authorities in reserved areas.
L.N. 374/1964.

12. Where the works constructed under subsection (1) of section 9 of this Act have been paid from public moneys and such works are required for the purpose of a community project in a reserved area, a water rate or other charge shall, if so decided by the Minister on the advice of the Water Resources Authority, be payable to the Government by all local authorities in such reserved area who have, in the opinion of the Minister on the advice of the Water Resources Authority, benefited or could benefit as a result of such works:

Provided that no such works shall be constructed for the purpose of a community project in a reserved area unless at the request of a majority of the local authorities in such reserved area.

Power to order drainage of swamp.
24 of 1957, s. 17,
59 of 1960, s. 25.

13. (1) If there exists, wholly or partly, upon any land, any swamp or any obstruction to the natural flow of water as determined by the Water Apportionment Board and which is not authorized by the Board, and which tends to cause a diminution of the flow by evaporation, absorption or otherwise, the Minister, upon application by the Water Apportionment Board, and on the advice of the Water Resources Authority, and subject to the payment of such compensation as may be decided, may order that such swamp be drained or that such obstruction be removed; and, in this subsection, "drained" includes the by-passing of the flow around any such swamp.

(2) The Minister may, for the purpose of such drainage or removal, order such work and such method of execution of work as the public interest may appear to justify or require, and may make such order as to the allocation and collection

of the cost of such works, including such compensation as may be payable, and as to their subsequent maintenance as may appear to be equitable having regard to the benefits which will accrue to other parties from the execution of such works and the increased provision of water expected therefrom, and such order may provide that such work shall be aided by public moneys, to such extent as may be authorized by Parliament:

Provided that, except by agreement or on payment of compensation, or on supplying water from other sources or by other means, no works involving the drainage of a swamp shall deprive of reasonable access to water any landholder with a licence, sanction or permit to divert or abstract water from such swamp or any other person who before such drainage had lawful access thereto.

(3) If there exists upon any land any obstruction to the natural flow of water as determined by the Water Apportionment Board and which is not authorized by the Board, and which causes or is likely to cause flooding, or the accumulation of water, to the prejudice of any person or to the detriment of any land, the Minister, upon the application of the Water Apportionment Board, may order the owner or occupier of the land upon which such obstruction exists to remove such obstruction within such period as may be specified in the order or within such further period as the Minister may determine; and any person who, without reasonable cause or excuse, fails to comply with an order served upon him in accordance with this subsection shall be guilty of an offence.

(4) Where any person has, without reasonable cause or excuse, failed to comply with an order served upon him in accordance with subsection (3) of this section, the Minister may cause entry to be made on the land of such person for the purpose of removing such obstruction and may cause such obstruction to be removed, and may recover from such person the costs necessarily incurred in removing the obstruction, and no compensation or damages shall be payable to such person for any damage occasioned to the land, or any part thereof, or anything thereon, by virtue of the exercise of the powers conferred by this subsection.

14. Where the Minister, after consultation with, or on the advice of, the Water Resources Authority, is satisfied that special measures are necessary for the protection of the water resources in or derived from any area, he may declare such area, or any part thereof, to be a protected catchment

Power to establish protected catchment area.

area, and may, by order, require, regulate or prohibit the doing by any person in such protected catchment area of any act which he considers necessary for the protection of such area or for the protection of the water supply obtained therefrom; and any person so ordered who fails to comply with the provisions of such order shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

Powers to expropriate works.
L.N. 741/1963.

15. Subject to the payment of compensation therefor and to the giving of reasonable notice to the operator, the Minister may, on the advice of the Water Resources Authority, if at any time he deems it advisable in the public interest so to do, take over and operate or otherwise dispose of the works, or any part thereof, of any operator when such works, or the site thereof, are required for a public purpose, and in such event any licence, sanction or permit granted in connexion with such works shall be returned to the Water Apportionment Board, which may issue a permit to such operator as it may approve.

Powers in relation to abandoned works.
24 of 1957, s. 18.

16. (1) It shall be lawful for the Minister, on behalf of the Government, to enter upon, use, order the use of, maintain, vary, destroy or remove abandoned works, wherever situated.

(2) Works shall be deemed to be abandoned when it is proved to the satisfaction of the Water Apportionment Board that they have remained substantially unused, for any of the purposes of this Act, by any licensee or sanction or permit holder lawfully entitled to make use of them under this Act for a period of two years, or such longer period as the Water Apportionment Board may in any particular case determine.

(3) No action shall be taken by the Water Apportionment Board under this section, except after publication of a notice in the Gazette to the effect that works have been proved to the satisfaction of the Water Apportionment Board to be abandoned and that, failing lawful use or disposal thereof within the period of one month from the date of such publication, or within such longer period as the Minister may decide, the right to use, vary or dispose of such works will be assumed by the Minister without payment of compensation therefor and the Minister may destroy or remove such works at the cost of the licensee or sanction or permit holder.

(4) The onus of proving that such works have been lawfully used within such period of one month, or within such longer period as the Minister may have decided, shall be on the licensee or sanction or permit holder, who shall in

such case notify the Water Apportionment Board, within such period, that the works are being lawfully used in accordance with the terms of his licence, sanction or permit.

(5) Where any works are deemed to have been abandoned in accordance with this section, and the Minister has thereafter destroyed or removed such works, the cost reasonably incurred in such destruction or removal, or so much thereof as the Minister may determine, may be recovered from the licensee or sanction or permit holder concerned as a civil debt.

17. (1) If the Minister, on the advice of the Water Resources Authority, is satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists, or is threatened, in any area, he may by order declare that an emergency exists, and direct that any person who has a supply of water in excess of his domestic purposes shall supply to such area or to any other person, for such period as the Minister may state in such order, such water, as the Minister shall specify, from such excess quantity of water; and any person so directed by the Minister who fails to comply with the provisions of such direction shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

Powers in emergency.
59 of 1960, s. 5.
L.N. 374/1964

(2) Any order given under subsection (1) of this section may require or authorize the laying of pipes and the construction of works on any land, and the entry on to any land, and any other matters necessary for the giving and taking of any such water, and no other authority to do any of the things mentioned in this order, except the authority of this section, shall be required:

Provided that, where the laying of pipes or the construction of works is likely to interfere with a railway track of the East African Railways Corporation or of a road under the control of a road authority, no such laying of pipes or construction of works shall be commenced without prior notification to such Corporation or road authority.

(3) If a person upon whom an order under this section is made fails to comply with such order, the Minister, or any person deputed by him for that purpose, may take possession of the water supply and operate the water works of any such person, and shall have and may exercise all or any of the powers of such person in connexion therewith during the period of such order and subject to any conditions which may be imposed thereby.

(4) The amount of any compensation payable for water supplied under an order made under this section, or for any loss or damage suffered as a result of any act done under such order, shall be determined and paid by the Minister, who may recover such payment, as a debt due to the Government, from the person benefiting by the supply of such water, in such proportion as the Minister may decide, and if the decision of the Minister is not acceptable to the parties concerned the matter shall be referred to arbitration.

(5) Any person who, without lawful authority, interferes with any work constructed under this section shall be guilty of an offence.

(6) No person shall apply for any injunction or other process or order restraining the Minister from exercising any of his powers under this section.

Financial powers.
L.N. 374/1964.

18. (1) The Minister may, from funds provided by or with the authority of Parliament for that purpose, pay such expenses as he may determine of any authority, board, committee or body established under this Act.

(2) The Minister may expend, for the purposes of this Act, in such manner as he thinks fit, all moneys granted to him for those purposes by Parliament.

PART IV—WATER RESOURCES AUTHORITY

Water Resources Authority.
L.N. 741/1963.

19. (1) There is hereby established an Authority, to be known as the Water Resources Authority, which shall exercise such powers and perform such duties as are conferred and imposed upon it by this Act.

(2) Any of the powers conferred or duties imposed by this Act on the Water Resources Authority may, by resolution of the Water Resources Authority, be delegated to any authority, board, committee, body or person.

(3) The Water Resources Authority shall consist of—

- (a) the chairman and one other member appointed by the Minister in his discretion;
- (b) the Director of Agriculture;
- (c) the Chief Conservator of Forests;
- (d) the chairman of the Central Board of Agriculture;
- (e) the Permanent Secretary to the Ministry for the time being responsible for health;

(f) one member appointed by the Minister, on the advice of the Minister responsible for the time being for commerce and industry;

(g) two members appointed by the Minister from amongst persons nominated by the Central Board of Agriculture;

(h) seven members, being each appointed by the Minister from amongst persons nominated by each of the seven Regional Water Committees respectively; and

(i) one person appointed by the Minister from amongst persons nominated by the Nairobi City Council.

(4) }
(5) } (Deleted by L.N. 741/1963.)

(6) No member of the Water Apportionment Board who is also a member of the Water Resources Authority shall vote on any appeal submitted to the Water Resources Authority from the decision of the Water Apportionment Board.

(7) The technical adviser of the Water Resources Authority shall be the Chief Hydraulic Engineer, who shall not be a member of such Authority.

20. (1) It shall be the duty of the Water Resources Authority—

Duties of Authority.

- (a) to investigate the water resources of Kenya and to advise, and make recommendations to, the Minister in regard to the improvement, preservation, conservation, utilization and apportionment of such resources, and as to the provision of additional water supplies;
- (b) to carry out a survey of the existing consumption of, and demand for, water supplies, and of the water resources of Kenya;
- (c) to prepare estimates of the future water supply requirements of any area of Kenya;
- (d) to formulate proposals for meeting the existing and future water supply requirements of any area, by water undertakers, bodies or persons;
- (e) to furnish to the Minister, and by his direction to water undertakers, bodies or other persons, such information relating to water supplies or resources as is available.

(2) Where any of the duties referred to in subsection (1) of this section have been delegated to any board, committee, authority or person, the Water Resources Authority may from time to time require such board, committee, authority or person to submit reports thereon to it within such time as it may specify.

Authority may
require or
obtain
information.

21. (1) The Water Resources Authority may require any person to furnish information relating to any existing or proposed waterworks of such person, including particulars as to the use of, and demand for, water supplies.

(2) The Water Resources Authority may require any person to keep such records and furnish such returns as to the quantity and quality of water abstracted by him from any source and to such matters relating to such source as may be required by the Water Resources Authority:

Provided that if, upon representation by any such person so required to furnish information under this section, the Minister is satisfied that, in all the circumstances, compliance with such requirements is impracticable or unnecessary or that undue expense would thereby be incurred, he may excuse such compliance.

(3) (a) A water bailiff shall have the right at all reasonable times to enter any premises and inspect any records required to be kept under this section, and to take copies of or extracts from such records.

(b) The Water Resources Authority or any board, committee, authority or person authorized by it shall have the right to enter any premises for the purposes mentioned in this subsection, after first giving twenty-four hours' notice to the occupier of the intention so to do.

(4) For the determination of any subject under its consideration, the Water Resources Authority may request any person to submit to it any book, plan, document or information, and if any person fails to comply with such request within thirty days of receipt thereof the Water Resources Authority may apply to the court for an order for the production of such book, plan, document or information, and the court may make an order accordingly.

PART V—LOCAL PLANNING

22. The Water Resources Authority shall divide Kenya into catchment areas, and may from time to time subdivide or amend such catchment areas.

Catchment
areas.
L.N. 741/1963.

23. (1) The Minister, in consultation with the Water Resources Authority, shall appoint for each catchment area a Catchment Board.

Catchment
Boards.
L.N. 741/1963.

(2) It shall be the duty of the Catchment Board, in respect of its catchment area, to advise the Water Apportionment Board on the following matters—

- (a) the apportionment and use of existing and potential water supplies; and
- (b) the adjustment, cancellation or alteration of any licence, sanction or permit,

and to exercise such powers as may be delegated to it under this Act by the Water Apportionment Board.

24. (1) There shall be for each province a Regional Water Committee appointed by the Minister, whose duties and responsibilities in respect of such province shall be—

Regional Water
Committees.
L.N. 741, 1963.
21 of 1966,
1st Sch.

- (a) to advise the Minister on water conservation, development and policy;
- (b) to submit to the Water Resources Authority recommendations on water development;
- (c) to receive proposals for water development projects from local authorities and to consider and advise the Water Resources Authority thereon; and
- (d) to submit to the Minister nominations for appointment to the Water Resources Authority.

(2) The Water Resources Authority may, from time to time, require a Regional Water Committee to submit written reports on any matter referred to in subsection (1) of this section, and all such requirements shall be complied with:

Provided that if, upon the representation of a Regional Water Committee required to furnish such information, the Minister is satisfied that compliance with any such requirement is impracticable or unnecessary, or that undue expense would thereby be incurred, he may direct that there need not be such compliance.

(3) Each Regional Water Committee shall consist of the following persons appointed by the Minister—

- (a) a chairman;
- (b) a Provincial Agricultural Officer;
- (c) a Divisional Forest Officer nominated by the Chief Conservator of Forests;

(d) one person nominated by the Regional Agricultural Committee; and

(e) not less than three, or more than five persons representing local authorities within the Province.

(4) The technical adviser of the Regional Water Committee shall be an officer designated by the Chief Hydraulic Engineer, but such officer shall not be a member of the Committee.

PART VI—WATER APPORTIONMENT BOARD AND LOCAL WATER AUTHORITIES

25. (1) There shall be appointed by the Minister a Board, to be known as the Water Apportionment Board, which shall be subordinate to the Water Resources Authority, and which shall exercise such powers and perform such duties as are mentioned in this Part.

(2) The Water Apportionment Board shall consist of—

(a) a chairman appointed by the Minister;

(b) the Director of Agriculture; and

(c) eleven members appointed by the Minister, of whom—

(i) one shall be nominated by the Central Board of Agriculture;

(ii) one shall be nominated by the Minister for the time being responsible for commerce and industry; and

(iii) one shall be nominated by each Catchment Board, but shall not also be a member of the Catchment Board while serving as a member of the Water Apportionment Board.

(3) The chief technical adviser of the Water Apportionment Board shall be the Chief Hydraulic Engineer, who shall not be a member of the Water Apportionment Board.

(4) }
(5) } (Deleted by L.N. 741/1963.)

26. (1) Any of the powers, duties or obligations vested in the Water Apportionment Board under this Act may, by resolution of the Water Apportionment Board, be delegated by it to any authority, board, committee or person:

Water Apportionment Board. 24 of 1957, s. 5, L.N. 741/1963.

Delegation of powers of Board. 24 of 1957, s. 6.

Provided that the Board shall not, without the prior approval of the Minister in that behalf, delegate the power to grant, amend or cancel licences, sanctions, permits or easements; and every such delegation approved by the Minister shall be published in the Gazette.

(2) The chairman may, in writing, authorize any person employed in the public service, or any servant, agent or contractor of such person, to perform any of the powers, duties or obligations conferred upon or delegated to him.

27. The Minister may appoint any person or any number of persons to be a Local Water Authority for the management and use of water or the drainage or reclamation of lands in any area under a permit granted to it in respect of a community project, and to exercise any powers, duties or obligations that may be delegated to the Local Water Authority by the Water Apportionment Board, and also, subject to the approval of the Minister, to investigate, construct, operate or maintain any community project or any other project for the provision of water within its area.

Local Water Authorities. 59 of 1960, s. 6.

28. (1) The Water Apportionment Board may prescribe in a permit that the operator shall construct, fix and maintain in a sound and efficient manner weirs, flumes, sluice gates, valves or other controlling or measuring devices, ensuring that only the quantity of water, or proportion of the flow of the stream, which the operator is authorized to abstract, divert, use or store shall be abstracted, diverted, used or stored by the operator in exercise of such permit, or it may, at any time after the issue of such permit or of a licence or sanction, require the operator to construct, fix and maintain such weir, flume, sluice gates, valve or other controlling or measuring device.

Board may prescribe measuring and controlling devices.

(2) The Water Apportionment Board may determine the design, materials and method of construction of any such controlling or measuring devices, having regard to local conditions and circumstances.

(3) Every operator storing water in a reservoir shall, at the discretion of the Water Apportionment Board, and according to plans approved by it, construct, fix and maintain in a sound and efficient manner flumes, weirs, sluice gates, valves or other controlling or measuring devices at points on the stream to be determined by such Board and, if required so to do, on each and every stream or body of water discharging into or from such reservoir, for the purpose of determining the amount of water flowing into or stored in such reservoir or the flow below such reservoir, or both.

(4) If any operator neglects or refuses to commence the construction or fixation of such flumes, weirs, sluice gates, valves or other controlling or measuring devices, within three months after notice to do so by the Water Apportionment Board, or to prosecute the said construction diligently, or to maintain the same satisfactorily, the Water Apportionment Board may—

- (a) construct, fix, maintain or cause to be constructed, fixed and maintained the said flumes, weirs, sluice gates, valves or other controlling or measuring devices;
- (b) open or cause to be opened the sluice gates, valve or outlet of any reservoir, or, failing such outlet, demolish or cause to be demolished any works in order to provide an outlet, or close or cause to be closed any canal or pipe or other work for diverting or abstracting water, to permit such quantity of water to flow down the stream for the use of other persons, as the Water Apportionment Board may deem proper, until the said operator constructs, fixes or maintains the said flumes, weirs, sluice gates, valves or other controlling or measuring devices.

(5) All costs and charges in connexion with any such operation shall be paid by the operator and, if not so paid, shall, in addition to any other penalty provided under this Act, be recoverable as a debt due to the Government, and, if the operator further refuses or fails to comply with the said requirements, the Water Apportionment Board may cancel his licence, sanction or permit.

Powers of Water Apportionment Board during drought.

29. (1) During a drought, or at any time in the case of small watercourses, the Water Apportionment Board may, in its absolute discretion by order, require any person, notwithstanding the fact that he may be using water under a licence, sanction or permit, to allow to pass such proportion of the water in the watercourse as appears to the Water Apportionment Board to be equitable, and may prohibit any practice which, in the opinion of the Water Apportionment Board, causes undue reduction of the water in any watercourse.

(2) Any person who fails to obey an order of the Water Apportionment Board given under subsection (1) of this section shall be guilty of an offence.

30. (1) The use of water shall be reasonable as well as beneficial in relation to others who use the same sources of supply or bodies of water.

Questions as to efficient utilization to be determined by Board. 59 of 1960, s. 16.

(2) All questions as to full, efficient, reasonable and beneficial utilization, as to adverse effect of works or as to limitation of supply owing to abnormal conditions shall, from time to time, be decided by the Water Apportionment Board.

(3) Any person aggrieved by a decision of the Water Apportionment Board given under subsection (2) of this section may appeal to the Water Resources Authority, whose decision shall be final.

(4) In deciding any such question, the Water Apportionment Board shall have regard to the particular circumstances of the area concerned, the time at and the period during which the water is used and any other circumstances relevant to the question.

31. The Water Apportionment Board may declare that a particular channel or depression or swamp is not a water-course, and whether a particular body of water or body of surface water is a stream, swamp, natural lake or spring, and whether any particular ground water is tributary to any such stream, swamp, natural lake or spring, and may also declare, define or delineate the boundaries thereof and all matters pertaining thereto, and may vary any such declaration, and any such declaration, until varied, shall be conclusive of any fact stated therein.

Board may declare matters pertaining to bodies of water.

32. (1) The Water Apportionment Board may require any application or statement called for under this Part or under any rules made under this Act to be verified by oath, affirmation or declaration.

Board may require statement under oath.

(2) Any person who, being required so to do under subsection (1) of this section, verifies by oath, affirmation or declaration any application or statement which he knows to be false or does not believe to be true shall be guilty of an offence.

PART VII—STATE SCHEMES

33. (1) The Minister may, from time to time, publish in the Gazette a notice setting out the land required for the development of any state scheme.

State schemes. L.N. 741/1963.

- (2) }
- (3) } (Deleted by L.N. 741/1963.)

(4) When any land is required for a state scheme, such land may be acquired in accordance with the law for the time being in force relating to the acquisition of land for public purposes.

(5) A state scheme shall, due regard being given to the satisfaction of the water rights previously acquired, take precedence over all other schemes for the use of water or the drainage of land.

(6) Where any land or portion thereof acquired under subsection (4) of this section is not immediately required for the full development of a state scheme, such land may be leased by the Commissioner of Lands, with the approval of the Minister, to the previous owner of the land or, if not required by him, to any other person in accordance with the law for the time being in force relating to the leasing of such land.

(7) Permits may be issued by the Water Apportionment Board, on such terms and conditions as it may specify, for the use of the water or any portion thereof reserved for a state scheme, but such permits shall be valid only until such time as water is required for the state scheme, or, as the case may be, for as long as any water is available in excess of the requirements of such state scheme.

34. (1) The Minister, after consultation with the Water Resources Authority, may direct that state schemes may be executed in augmentation, modification or improvement and, subject to the provisions of this Act, in supersession of any other works for, or comprising the employment of, waters, and he may, at any time, order that any works contemplated or under execution or completed shall be aided from public moneys to such extent as may be authorized by Parliament.

(2) Any operator who is aggrieved by any direction given under this section may appeal to the Water Appeal Board.

PART VIII—WATER PERMITS

35. The purposes for which a permit may be acquired are as follows—

- (a) a domestic purpose, which expression means the provision of water for household and sanitary purposes and the watering and dipping of stock;
- (b) a public purpose, which expression means the provision of water for municipalities, townships, villages and communities, and for all reasonable

Execution of state schemes in relation to other works.

Purposes for which permit may be acquired.

demands for steam-raising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power;

- (c) a minor irrigation purpose, which expression means the provision of water for the irrigation of land, not exceeding two acres, used for orchards, gardens, nurseries or land farming operations;
- (d) an industrial purpose, which expression means the essential requirements of any industry, including mining and the washing and treating of coffee, vegetable fibre or other agricultural or mineral produce, or the essential requirements of other industries and mining;
- (e) a power purpose, which expression means the provision and employment of water for the development of power;
- (f) a general irrigation purpose, which expression means the provision of water for the irrigation of land exceeding two acres in extent;
- (g) any other purpose approved by the Water Apportionment Board.

36. (1) In all cases of proposed diversion, abstraction, obstruction, storage or use of water from a body of water other than those referred to in section 38 of this Act, application must be made in the manner prescribed by this Act for a permit for such diversion, abstraction, obstruction or storage of water from or in such body of water.

When permit required.

(2) Any person who executes, constructs, erects or employs works for the diversion, obstruction, abstraction or storage of water, or diverts, obstructs, abstracts or stores water from a body of water, except as permitted by this Act, without, or before the receipt of, an authorization or permit issued under this Act, shall be guilty of an offence.

37. (1) No person shall drain, obstruct or otherwise interfere with any swamp unless such swamp has been declared under section 31 of this Act not to be a watercourse, without first having obtained an authorization or permit under this Act.

Permit required for drainage of swamp.
59 of 1960, s. 8.

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

When permit not required.

38. A permit is not required—

- (a) for the abstraction or use of water from any body of water for domestic purposes by any person having lawful access thereto, if such abstraction is made without the employment of works;
- (b) when the works for the development of ground water are not situated within one hundred yards of any body of surface water:

Provided that this paragraph shall be subject to the provisions of sections 50 and 74 of this Act;

- (c) for the storage of water in, or the abstraction of water from, a dam constructed in any channel or depression which has been declared not to be a watercourse under section 31 of this Act.

Classification of projects.

39. Projects for the use of water, or for the drainage of land, are of four classes, namely—

- (a) private projects;
- (b) community projects;
- (c) public projects;
- (d) urban projects.

Private projects conducted by association of operators.

40. (1) Private projects are those which concern the use of water or the drainage of swamps within the limits of the land of the operator, whether works are constructed entirely on the land of the operator, or partly on the land of the operator and partly on the land of other persons.

(2) (a) Two or more operators who have a common interest in the employment of water or in the drainage of swamps may unite in an association for the exercise of a permit for a private project.

(b) Any application for a permit in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules under which the association proposes to exercise the permit shall be specified and submitted to the Water Apportionment Board for approval, and any variation of such rules subsequently made shall also be submitted for the approval of the Water Apportionment Board.

(c) The proportion of participation shall be presumed to be equal between members, unless the contrary is specified by rules made and agreed by the association and approved as provided in paragraph (b) of this subsection.

(d) The grant of a permit to an association of operators under this section shall be subject to such terms governing action to be taken during operation, or upon withdrawal of members of the association, or upon dissolution of the association, as the Water Apportionment Board may specify or as may be prescribed.

41. Community projects are such projects, other than public or urban projects, as are conducted in accordance with rules approved by the Water Apportionment Board and agreed by a Local Water Authority operating under a permit for one or more of a series of authorized purposes connected with the use of water, or the drainage or reclamation of land situate entirely, or for the greater part, within the area in respect of which such Local Water Authority is appointed.

Community projects, 59 of 1960, s. 9.

42. Public projects include projects which involve the supply of water, or of electrical energy derived from the energy of moving water, to persons other than the operator, in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor.

Public projects.

43. Urban projects mean projects undertaken, operated or maintained by a municipal authority, corporation or other body, for the supply of water to municipalities or townships, and include projects, however originated and constructed, which are acquired and operated by a municipal authority, corporation, water undertaker or other water works authority, for the supply of water to a municipality or township, trading centre or other urban community.

Urban projects.

44. The Water Apportionment Board may determine to which class any proposed project shall be deemed to belong.

Board to determine class of project.

45. (1) In the case of all licences, sanctions or permits involving the irrigation of land, provision shall be made by the operator for the efficient drainage of such lands and the delivery of the residue of used or unused water to a watercourse or a body of water by drainage or other works.

Permits, etc., involving irrigation of land.

(2) Whenever, in the opinion of the Water Apportionment Board, no provision, or insufficient provision, has been made by the operator for the delivery of used or unused water to a watercourse or body of water, or for the drainage of irrigated lands or swamps created by any diversion or abstraction of water, it may order the operator to construct and maintain such works as will, in its opinion, cause such water to be so delivered or as will drain such irrigated lands or swamps.

(3) If any operator fails within a reasonable time to obey any order of the Water Apportionment Board given under this section, his licence, sanction or permit may be cancelled by the Water Apportionment Board, and the licence, sanction or permit shall thereupon become null and void, and he shall be guilty of an offence.

Conversion of licences and sanctions.

46. (1) A licensee may at any time apply to the Water Apportionment Board for a permit in lieu of his licence.

(2) Upon the termination of a sanction or before such termination if so desired by the sanction holder, the Water Apportionment Board may issue to the sanction holder a permit in lieu of the sanction.

Issue of permits without usual procedure in exceptional cases.

47. (1) Notwithstanding anything contained in this Act, the Water Apportionment Board* may, if in its opinion exceptional circumstances warrant such action, authorize by permit, for a period not exceeding one year, the diversion, abstraction, obstruction or use of water and the works required therefor according to such terms and conditions as the Water Apportionment Board* may specify in such permit, regard being had to the extent to which the authorization of such permit would be likely to interfere with the domestic requirements of other users.

(2) In the event of any works not being in conformity with a permit issued under this section, or in the event of such permit having been terminated, the Water Apportionment Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court, and the permit holder shall surrender his permit to the Water Apportionment Board, which shall endorse it accordingly.

Permit to be appurtenant to land for which issued.
59 of 1960, s. 19.

48. (1) When issuing a permit, the Water Apportionment Board 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 such permit shall thereupon, save as herein provided, be appurtenant to such portion of land or such undertaking, and such permit shall pass with any demise, devise, alienation, transfer or other disposition thereof, whether by operation of law or otherwise:

* Power delegated to the chairman of the Board by L.N. 474/1958, subject to the proviso that permits granted by him shall be valid for three months only.

Provided that, if in the opinion of the Water Apportionment Board circumstances, not under the control of the permit holder, have changed since the issue of the permit and the water concerned cannot in such circumstances be reasonably beneficially used by such permit holder on the particular portion of land to which such permit is appurtenant, the Water Apportionment Board may, on application by such permit holder and provided it is in the public interest and the rights of others are not adversely affected thereby, transfer such permit to another portion of the land owned by such permit holder.

(2) When the land or undertaking to which the permit is appurtenant passes to another landholder or owner, the permit shall be surrendered to the Water Apportionment Board for endorsement thereon of the name of the new landholder or owner.

(3) Notwithstanding anything contained in subsection (1) of this section, if the land to which the permit is appurtenant has been, or is about to be, divided in ownership, the permit shall be surrendered to the Water Apportionment Board, and any new permit as may be issued by the Water Apportionment Board shall be dependent upon the acquisition of such easements, if any (to be acquired within a period of two years of the date of the registration of transfer of the subdivision of land, or such longer period as the Water Apportionment Board may decide), as may be required, and may be issued with such modifications of the original permit as, in the opinion of the Water Apportionment Board, may be rendered necessary or desirable by the circumstances.

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

49. The right of a licensee or the privilege of a sanction or permit holder to divert, abstract, use or store water shall be exercised in accordance with the conditions of his licence, sanction or permit, and shall be limited to the quantity or proportion of the discharge of the body of water concerned, whether it is normal flow or flood discharge permitted by such licence, sanction or permit.

Conditions of permits, etc., to be observed.

PART IX—ABSTRACTION OF GROUND WATER AND PERMITS THEREFOR

50. (1) No person shall construct or begin to construct a well or abstract any water from a well if such well is to be constructed or is situated within one hundred yards of any

Permits required for certain wells.
24 of 1957, s. 7.

body of surface water, unless such person has been duly authorized by a permit so to do.

(2) No person shall construct or begin to construct a well or abstract any water from a well if such well is to be constructed or is situated within half a mile of another well, without first having obtained the written authority of the Water Apportionment Board so to do.

(3) Any person applying for the necessary permit in compliance with subsection (1) of this section, or for authority under subsection (2) of this section, shall give such particulars relative to his application as the Water Apportionment Board may require, and such Board may, after consideration of the application, grant upon such conditions as it may deem necessary or refuse the application.

(4) Any person aggrieved by a decision of the Water Apportionment Board given under subsection (3) of this section may, within thirty days after notification of the decision, appeal to the Water Resources Authority, whose decision shall be final and binding.

(5) Any person who fails to comply with the provisions of subsection (1) or subsection (2) of this section shall be guilty of an offence.

51. (1) No person shall construct or begin to construct a well without having first given to the Water Apportionment Board notice of his intention to do so, and shall notify the Water Apportionment Board when construction commences and, unless otherwise exempted, keep a record of the progress of the work, which shall include measurements of the strata passed through, specimens of such strata, the levels at which water was struck, the quantity of water obtained at each level and the quantity finally obtained and the rest level thereof.

(2) Such person shall allow any person authorized by the Water Apportionment Board, at all times—

- (a) to have free access to any such well;
- (b) to inspect such well and the material excavated therefrom;
- (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 section.

Notice of
intention to
construct well.
24 of 1957, s. 8.

(3) Where the person constructing a well on any land is not the occupier of such land, the obligation to allow any person authorized by the Water Apportionment Board to exercise his rights under this section shall be the obligation of the occupier of the land as well as of the person constructing the well.

52. The person constructing such well, if required to keep records under subsection (1) of section 51 of this Act, shall, within one month of the cessation of the construction, send a complete copy of the record, together with the specimens referred to in such record, to the Water Apportionment Board, and shall also send to the Water Apportionment Board particulars of any test made, before such cessation of the construction, of the yield of water, and shall specify the rate of flow throughout the test and the duration of the test, and also, where practicable, the water levels during the test and thereafter until the water has returned to its natural level; and the person constructing the well shall further state, on the record, his opinion as to whether the water, as determined by tasting, is suitable for drinking or is highly mineralized, as the case may be, and shall, if required by the Water Apportionment Board, send to such Board such water samples as the Board may deem necessary.

Submission of
records of well.
24 of 1957, s. 9.

53. Where any well is being constructed within half a mile of an existing well, the Water Apportionment Board may, by notice in writing, require the person constructing the well to apply tests, to be specified in the notice, to the existing well and to supply to the Board the particulars of the results of such tests, including the rate of pumping and rest levels of the water:

Tests on
neighbouring
wells.
24 of 1957, s. 10

Provided that, 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 such person is unable for any reason to apply such tests, the Board may, by notice in writing, require the person upon whose property the existing well is situate, whether he is the owner or occupier of such property, to apply the tests to be specified in the notice to him, and to supply to the Board the particulars of the results of such tests including the rate of pumping and rest levels of water.

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

Contractor
deemed to be
constructor.

Records may be required to be treated as confidential.

55. The person constructing such well or, if a different person, the owner or occupier of the land on which such construction takes place may give notice to the Water Apportionment Board requiring any copy of, or extract from, the record required to be kept under section 51 of this Act, or any specimen taken, or any other particulars connected with the well, to be treated confidentially, and the Water Apportionment Board shall 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 not being an officer of the Water Resources Authority or the Water Apportionment Board, unless the person giving such notice consents thereto:

Provided that, if at any time the Water Apportionment Board gives notice to such person that, in its opinion, his consent is unreasonably withheld, then that person may, within three months after the notice given by the Water Apportionment Board, appeal to the Minister, and, if at the expiration of that period no such appeal has been made, or if, after hearing the appeal, the Minister does not make an order restraining it from so doing, the Water Apportionment Board may proceed as if such consent had been given.

Non-compliance with sections 51, 52 and 53 an offence.

56. Any person who fails to comply with any of the obligations imposed upon him by sections 51, 52 and 53 of this Act shall be guilty of an offence.

Waste of ground water. 24 of 1957, s. 11.

57. (1) No person shall, except with the written authority of the Water Apportionment Board—

- (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 such 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 thereof 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 therefrom:

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 Apportionment Board may, in any particular case, agree that such water may be allowed to waste upon such conditions regarding quantity and method of disposal as it may specify.

(2) Any person who contravenes any provision of this section shall be guilty of an offence and liable, for a first offence, to a fine not exceeding five hundred shillings, and for a second or subsequent offence to a fine not exceeding one thousand shillings, and the Water Apportionment Board may, on the conviction of any such person, order that the well concerned be effectively sealed, or may make such other order as appears to it to be necessary to prevent waste of water.

(3) If any person fails to comply with any order given under this section, the Water Apportionment Board may take such steps as it may consider necessary to execute the order, and any expenses incurred in taking such steps shall be recoverable as a civil debt from the person upon whom such order is made.

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

Defective wells.

(2) Subsection (1) of this section shall also apply to all wells constructed before the commencement of this Act.

59. Any person who recases 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 authority of the Water Apportionment Board, shall be guilty of an offence.

Interference with defective well.

Application to carry out work on defective well.

60. (1) Before any defective well is recased or the plugs or seals removed, the owner of the well, or his duly authorized representative, shall file with the Water Apportionment Board an application for authority to carry out such recasing or the removal of the plugs or seals.

(2) Such application shall contain as complete information as possible in regard to the name and address of the owner of the well, its location, depth and size and the amount and location of casing or sealing in the well, the distance below the surface of the ground to the water level in the well, the strata penetrated, 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 shall give all other available information regarding the condition of such well, and shall also state the methods proposed for recasing, replugging or resealing off such well.

Instructions to deal with defective well.

61. The Water Apportionment Board, after consideration of any application under section 60 of this Act, 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 issue instructions to the applicant, specifying the work which shall be done by the owner to place it in a satisfactory condition and designating the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Board may inspect well.

62. The Water Apportionment Board 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 issue instructions for curing any defects in such well, and such instructions shall have the same force and effect as instructions issued under section 61 of this Act.

Sworn statement to be submitted.

63. Upon completion of the works in pursuance of any instructions issued under section 61 of this Act, the contractor who carries out the work or, if the work is done without a contractor, the owner of the well shall file with the Water Apportionment Board a statement sworn or affirmed specifying in detail the manner in which such work was done; and failure to file such a statement within thirty days after the completion of such work shall be an offence.

Additional work on defective well.

64. (1) Upon receipt of such statement, the Water Apportionment Board shall determine, either from the statement or from inspection or test, whether the work has been

satisfactorily performed, and, if it determines that the work has not been satisfactorily performed, it shall 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.

(2) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the Water Apportionment Board as provided for in section 63 of this Act, and failure to file such a statement shall be an offence.

65. (1) The owner of any defective well shall be guilty of an offence if he fails to carry out any order of the Water Apportionment Board within the period specified therefor in the order.

Penalty for failure to carry out order. 24 of 1957, s. 12.

(2) If such owner fails to comply with an order of the Water Apportionment Board, the Board may itself take such steps as may be necessary to execute such order, and any expenses incurred in so doing shall be recoverable at the suit of the Board as a civil debt from such owner.

66. (1) Notwithstanding anything contained in this Act, no well shall be constructed within the limits of supply of a water undertaker without the consent of the Minister*.

Well not to be constructed within limits of supply of water undertaker without consent.

(2) Any person contravening the provisions of this section shall be guilty of an offence.

67. Where under this Act a permit is required for the abstraction of ground water, the Water Apportionment Board may, on the application of any person, grant such permit with or without conditions, or may refuse to grant such permit.

Permit for abstraction of ground water.

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

Contamination and pollution of ground water.

(a) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;

(b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe;

* Power delegated to the Chief Hydraulic Engineer by L.N. 369/1956, subject to the condition that he shall not refuse consent without prior reference to the Minister.

- (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 eight inches 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 well or ground water; and
- (g) carry out such other work as the Water Apportionment Board may direct, from time to time, for the prevention of contamination or pollution.

(2) The provisions of paragraphs (f) and (g) of subsection (1) of this section shall also apply to persons other than the person abstracting such ground water, but, where any such work is carried out, the Water Apportionment Board may order that it shall be carried out by the person abstracting the ground water and may apportion the expense; and, where an order is made under this subsection for the carrying out of any work, such order shall specify the work which is to be carried out, and no departure from such order shall be made without the prior authority of the Water Apportionment Board.

(3) If any person fails to comply with an order of the Water Apportionment Board given under this section, the Water Apportionment Board may take such steps as may be necessary to execute such order, and any expenses incurred in taking such steps shall be recoverable at the suit of the Board as a debt from the person upon whom such order was made.

(4) For the purposes of this section, the Water Apportionment Board, or any person deputed by it, may enter any land or premises for the purposes of ascertaining any information required, after giving twenty-four hours' notice to the occupier of the intention so to enter.

(5) Any person who fails to comply with any of the provisions of this section, or who fails to obey an order given under this section, shall be guilty of an offence.

69. (1) If, during the construction of a well, water is encountered in an aquifer and water from a water table or higher aquifer tends to flow from the upper aquifer to the lower aquifer, and if, in the opinion of the Water Apportionment Board, this is likely to prove detrimental to the ground water resources of the area, the Water Apportionment Board 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.

Board may order special measures to safeguard ground water resources. 59 of 1960, s. 10.

(2) Any person who contravenes or fails to comply with an order given by the Water Apportionment Board under subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

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

Artesian wells to be cased. 59 of 1960, s. 11.

(2) Any owner of a well who fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence.

71. (1) No borehole contractor shall carry out any contract to construct a borehole until he has been licensed by the Water Apportionment Board.

Licensing of borehole contractors.

(2) Every application for a borehole contractor's licence shall be made in the prescribed form.

(3) If, on receipt of an application, the Water Apportionment Board is satisfied that the applicant is a fit person to be licensed, it shall issue a borehole contractor's licence for such period and subject to such conditions as are specified therein, and shall keep a register containing the particulars of all such licences.

(4) The Water Apportionment Board may at any time cancel any borehole contractor's licence if the contractor has—

- (a) conducted any drilling operation improperly; or
- (b) intentionally made a misstatement of fact in any report required from him under this Act; or
- (c) failed to submit any report required from him under this Act; or
- (d) failed to comply with the provisions of this Act.

Penalty for constructing borehole without being licensed. 59 of 1960, s. 12.

Conditions of permit to abstract ground water.

72. Any person not licensed as a borehole contractor who carries out any contract to construct a borehole, or any drilling operation, shall be guilty of an offence:

Provided that landholders who drill on their own holdings shall be exempt from the provisions of this section.

73. (1) The following shall be the conditions of a permit for the abstraction of ground water—

- (a) that the right of the permit holder shall relate to a specific quantity of water which may be obtained with a maximum pumping lift found by the Water Apportionment Board to be reasonable or feasible at the time of granting the permit;
- (b) that the permit does not include the right to have the rest level in the well of the permit holder maintained at any level higher than the level necessary to make effective such reasonable or feasible pumping lift;
- (c) that the Water Apportionment Board may revise both the quantity of water and the maximum pumping lift in the light of changed conditions as provided in section 98 of this Act.

(2) Nothing in paragraph (b) of subsection (1) of this section shall be so construed as to prevent the granting of permits to other applicants later in time, on the grounds that abstractions under such later appropriations may cause the rest level at the point of abstraction of a prior appropriator to be lowered, so long as the rights of existing holders of permits can be satisfied.

Conservation areas.

74. (1) Where the Minister, after consultation with the Water Resources Authority, is satisfied that, in any area, special measures for the conservation of ground water are necessary in the public interest, whether for the protection of public water supplies or for the protection of water supplies used for industrial or other purposes, he may make an order (in this Act called a conservation area order) declaring that such area is a conservation area, and thereupon the provisions of sections 75 and 76 of this Act shall apply to such area either until further order or for such period as may be specified in the order.

(2) Before such order is made, the Minister shall publish in the Gazette and in a newspaper circulating in the district a notice of his intention to make such order, and any person

who may be aggrieved by the making of such order may, within thirty days of the date of publication of the notice, appeal to the Water Resources Authority.

75. (1) Every person who has been, before the making of a conservation area order, diverting or abstracting water or allowing water to be diverted or abstracted from ground water, by mechanical means within any conservation area, and who desires to continue to do so, shall, within six months of the date of the order, or within such further period as may be determined by the Minister by notice in the Gazette, apply to the Water Apportionment Board for a permit.

(2) Any person who fails to apply for a permit in accordance with subsection (1) of this section shall be guilty of an offence.

76. (1) In a conservation area no person shall—

- (a) construct or commence to construct any well for the purpose of abstracting ground water therefrom; or
- (b) extend any existing well for the purpose of abstracting additional ground water therefrom,

unless he has obtained a permit from the Water Apportionment Board so to do.

(2) The provisions of this section shall not apply to any well from which the water is abstracted otherwise than by mechanical means.

(3) No person shall abstract ground water by mechanical means from any well within a conservation area unless he has obtained the necessary permit.

(4) Any person who contravenes any of the provisions of subsections (1) and (3) of this section shall be guilty of an offence.

77. Priorities for the use of ground water may be established separately in each area which constitutes, in the opinion of the Water Apportionment Board, a separate source of supply.

PART X—PROCEDURE ON ISSUE OF PERMITS

78. Except where otherwise expressly provided in this Act, every applicant for a permit shall complete and file with the Water Apportionment Board the following document in triplicate, accompanied by the prescribed fee—

User of ground water before making of conservation area order to apply for permit.

Construction and use of wells in conservation area for abstraction of water by mechanical means. 59 of 1960, s. 14.

Priorities for use of ground water.

Application for permit.

(a) an application in the prescribed form together with such plan or plans, drawn in such a manner and to such scale as will allow all requisite details to be legibly recorded, as may be required under this Act or by the Water Apportionment Board;

(b) an application, where necessary, for the right to construct work across a road, railway, road reserve or railway reserve.

Application for permit involving reclamation or drainage.

79. In any application for permits involving reclamation or drainage of land, an applicant shall furnish such particulars as the Water Apportionment Board may specify.

Amendment of application.

80. (1) Upon receipt of an application, map or plan (if any) by the Water Apportionment Board, or at any time after such receipt, and whether objections have been received or not, the Water Apportionment Board may amend or vary the application, map or plan in any respect.

(2) Such application, map or plan (if any), or true copies thereof, shall be open for inspection by the public at all times during office hours at the office of the chairman, and at any other place deemed desirable by the Water Apportionment Board or the chairman.

Approval of application.
24 of 1957, s. 13.

81. After receipt by the Water Apportionment Board of the application, together with all particulars, map and plan (if any) which it may have required the applicant to furnish, so as to enable a full understanding to be obtained of the applicant's proposals, either as originally submitted or as varied, the Water Apportionment Board, if in its opinion the permit applied for would be likely to be in the public interest, or not adverse to it, shall endorse its conditional approval on the original and all copies of the application, map and plan (if any) connected therewith.

Consideration of applications and precedence of use of water.
59 of 1960, s. 7.

82. (1) Applications for permits for the same purpose or for different purposes shall receive consideration in accordance with the circumstances of each case.

(2) The use of water for domestic purposes shall take precedence over the use of water for any other purpose, and the Water Apportionment Board may reserve such part of the flow of a body of water as in its opinion is required for domestic purposes.

(3) The applicant and any person who may have objected to the application shall be notified of the decision of the Water Apportionment Board and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefor, and may, if aggrieved by such decision, within thirty days after the date of such notification, lodge with the chairman of the Water Apportionment Board a notice of appeal to the Water Resources Authority against such decision.

(4) The decision of the Water Resources Authority on any such appeal shall be final and binding on all parties concerned.

83. If an applicant fails to complete his application to the satisfaction of the chairman within a period of one year, or such other period as the Water Apportionment Board may in any particular case specify, from the date of its first receipt at the office of the Water Apportionment Board, the application shall be deemed to be abandoned and shall be cancelled.

Cancellation of application.

84. (1) If the application and map or plan (if any) have been conditionally approved under section 81 of this Act, or if before such conditional approval the chairman considers it desirable so to do, the chairman shall prepare a notice setting forth—

Advertising application.

(a) the name and address of the applicant;

(b) the body of water from which it is proposed to abstract or divert water or on which it is proposed to impound water;

(c) the place at which the water is proposed to be used;

(d) the purpose for which the water is proposed to be used;

(e) a statement that any objection must be filed with the Water Apportionment Board within thirty days from the date of the first publication of such notice and that a copy of any objection shall be served on the applicant; and

(f) any further information considered by the Water Apportionment Board to be necessary.

(2) Such notice shall be transmitted to the applicant, who shall, if he still desires to acquire a permit, within twenty-one days from the date of the receipt of such notice, unless such time is extended by the Water Apportionment Board, cause it to be published in some newspaper, which may be specified by the Water Apportionment Board, published in Kenya, and having circulation in the locality in which the proposed works would be situated, and in addition in one issue of the Gazette.

(3) If it appears to the Water Apportionment Board to be in the public interest so to do, it may require the applicant to publish such notice in such newspaper and in a second newspaper having circulation in the locality of the proposed works, on not more than four occasions within thirty days, or may require such notice to be published in a modified or altered form.

(4) The Water Apportionment Board may, in any particular case, exempt any applicant from compliance with the requirements of this section.

Procedure if
objection
received.

85. (1) Any objection to an application shall be filed with the Water Apportionment Board in duplicate within thirty days from the date of the first publication of such notice or of such altered or modified notice, and shall contain the name and address of the objector and the specific grounds of objection, and a copy of such objection shall forthwith be served, by the objector, on the applicant.

(2) The Water Apportionment Board shall consider such objection, and if, in its opinion, the grounds of objection are not prima facie sufficient to warrant an inquiry, it shall so decide, and shall notify the objector of such decision, but if it considers the alleged grounds sufficient to warrant public inquiry it shall fix a day for the holding of such inquiry.

(3) The Water Apportionment Board may, for the purpose of such inquiry, summon and examine witnesses upon oath or affirmation, adjourn the hearing to obtain further evidence or until the applicant has submitted plans, or altered plans, or other documents, dismiss the objection, direct the applicant to amend his application or dismiss the application.

(4) If the powers of the Water Apportionment Board under subsection (3) of this section are delegated to any person, such person shall report in writing to the Water Apportionment Board, and the Board may decide the application upon such report.

Final approval
or refusal of
application,
39 of 1960, s. 14.

86. The Water Apportionment Board may, after consideration of any objection which may have been made to an application—

- (a) finally approve the application;
- (b) refuse the application; or
- (c) approve the application in part only.

87. (1) If the application, as filed or as amended by the Water Apportionment Board, is finally approved by the Water Apportionment Board, the Board shall authorize the construction of the works by an authorization, and may specify in such authorization the time within which the construction of such works is to be commenced and to be completed.

Authorization
of works.

(2) The authorization for the construction of such works shall be in the form prescribed by the Water Apportionment Board, or by rules made under this Act, and shall be numbered.

(3) The permit issued on completion of the works, in accordance with the authorization and any modification thereof to the satisfaction of the Water Apportionment Board, shall bear the same number as was endorsed upon the authorization.

(4) A copy of the application, map or plan (if any) as approved shall be returned to the applicant with the authorization.

(5) No material deviation from the application, map or plan as filed, or amended by the Water Apportionment Board, shall be made without the consent of such Board, and any question arising as to whether any deviation is material shall be determined by the Water Apportionment Board.

88. If, after receipt by the Water Apportionment Board of such application and any map and plan, together with such particulars of the applicant's proposals as it may have required, the Water Apportionment Board considers that the proposed permit would not be in the public interest, or would unduly interfere either with the undertakings of other operators or with other users, it shall endorse its disapproval upon each copy of the application and any other necessary documents relating thereto, and shall state its reasons for such disapproval, and shall return one copy of each such document to the applicant.

Procedure if
application for
permit not
approved.

PART XI—DAMS

89. (1) No person shall construct, for another person, any dam required by rules made under this Act to be constructed only by a licensed dam contractor, unless he is the holder of a valid dam contractor's licence.

Licensing
of dam
contractors,
24 of 1957, s. 14

(2) Every application for a dam contractor's licence shall be made to the Water Apportionment Board in the prescribed form.

(3) If, on receipt of an application for a dam contractor's licence, the Water Apportionment Board is satisfied that the applicant is a fit person to be licensed, it shall issue to him a dam contractor's licence for such period and subject to such conditions as are specified thereon, and shall keep a register containing the particulars of all such licences.

(4) The Water Apportionment Board may at any time cancel a dam contractor's licence if the holder thereof has—

(a) constructed any dam in an improper, unsafe or dangerous manner;

(b) failed to submit any report required to be submitted by him under this Act;

(c) intentionally made a misstatement of fact in any report submitted by him;

(d) failed to comply with any provision of this Act; or

(e) knowingly been a party to any other person's failure to comply with any provision of this Act.

(5) Any person who, not being the holder of a dam contractor's licence, constructs any dam for another person which is required by rules to be constructed only by a licensed dam contractor shall be guilty of an offence.

(6) For the purposes of this section, "construct", when used in relation to a dam, includes the extension or improvement of an existing dam.

90. (1) An operator or the owner or the person having the control of any dam which exceeds fifteen feet in height or which holds more than thirty acre feet of water shall, in the event of the failure of or serious damage to such dam, immediately report the same to the Chief Hydraulic Engineer, Nairobi, by telegram or other urgent means of communication.

(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence.

PART XII—EXECUTION AND MAINTENANCE OF WORKS

91. (1) Any works authorized under this Act may, if the Water Apportionment Board so determines, be inspected, during construction, by officers of the Ministry for the time being responsible for water or of the Water Resources Authority.

(2) No such inspection shall be deemed to imply a Government guarantee of the works constructed, or to support or justify any claim whatsoever against the Government in connexion with such works.

Failure of or damage to dam to be reported. 59 of 1960, s. 22.

Inspection of works during construction. L.N. 374/1964.

92. Upon any inspection made under section 91 of this Act, the Water Apportionment Board may order the operator to make any addition or alteration which it considers necessary for the security of any works, whether completed or in the course of construction, and, if such order is not complied with to the satisfaction of the Water Apportionment Board within such period as may be specified by such Board, the authorization for such works may be cancelled or modified by the Water Apportionment Board.

Works to be made secure.

93. (1) Any operator constructing any works under this Act, shall during such construction, keep open for safe and convenient travel all public roads and rights of way therefor, publicly used as such, when they are crossed or interfered with by such works, and shall, before water is admitted to such works, construct to the satisfaction of the authority concerned, or at the option of such authority refund to it the costs of construction by it of, a substantial bridge with proper and sufficient approaches thereto over such works, and such railings, fences, guard posts, culverts, face-walls and other structures and appurtenances as such authority, with the approval of the Water Apportionment Board, may declare to be necessary in the public interest, and all such bridges, approaches and appurtenances shall thereafter be maintained by the operator, while his permit is valid, or alternatively, at the option of the authority, at the expense of the operator.

Road crossings. 59 of 1960, s. 17.

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

(3) Any operator who fails to comply with subsection (1) of this section shall be guilty of an offence.

94. (1) Upon the expiration of the time mentioned in an authorization for the construction of works, or at any time before such date, if such construction is sooner completed, the operator shall submit a completion certificate in the prescribed form.

Completion certificate and inspection.

(2) Thereupon an inspection may be made, by an officer appointed for the purpose by the Water Apportionment Board, to ascertain that the works have been completed in accordance with the authorization, that the easements, if any, for the works have been obtained, that 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 operator or for the drainage of lands, and that the works as constructed are of the required capacity.

(3) If the work is not completed within the time mentioned in the authorization, a progress report shall be submitted in lieu of completion report, and the operator may apply for an extension of the time limit of the authorization.

(4) Such extension may be refused or may be sanctioned upon such terms as the Water Apportionment Board may specify; and the operator, if he is aggrieved by the decision of the Water Apportionment Board, may, within thirty days of notification of such decision, appeal to the Water Resources Authority, whose decision shall be final and binding.

95. (1) Upon completion of the works to the satisfaction of the chairman and in accordance with the terms of the authorization or amended authorization, the Water Apportionment Board shall issue to the operator on such terms and conditions as it may deem necessary a permit to divert, abstract, obstruct, use or store the quantity of water for which the application was finally approved.

(2) Every permit issued under subsection (1) of this section shall be issued for a period of twenty-five years:

Provided that the Water Apportionment Board may, in any particular case in its discretion, issue a permit for a lesser period, and may, where permanent works of considerable magnitude are involved, issue a permit for a longer period.

96. Upon the expiration of the time allowed in an authorization, or of any extension of such time, for the completion of works under this Act, the rights therein granted to the operator shall cease and determine, and any works at the date of such determination constructed, erected, fixed or acquired may be taken over and operated, or disposed of, as ordered by the Minister, if not completed within the time allowed.

97. (1) Every operator shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Water Apportionment Board, so that the same shall, at all times, be of sufficient strength and capacity for the fulfilment of the purposes for which they were constructed, and so that no damage shall occur to any road, property or work in the vicinity thereof.

Issue of water permit.
24 of 1957, s. 15.

Forfeiture of rights if works not completed within time allowed.

Works to be kept in repair.
59 of 1960, s. 21.

(2) If any operator fails or neglects to comply with subsection (1) of this section, the Water Apportionment Board shall, within a reasonable time after such failure or neglect has been discovered, serve such operator with notice thereof, and if such operator declines or fails to remedy such failure or neglect he shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

(3) Any fine imposed under subsection (2) of this section shall be without prejudice to any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of such failure or neglect.

PART XIII—VARIATION AND CANCELLATION OF PERMITS, ETC.

98. (1) (a) Whenever it is shown to the satisfaction of the Water Apportionment Board that, owing to drought, natural changes, increased demand or other cause, the diversion, abstraction, storage or use of the water authorized to be diverted, abstracted, stored or used by an operator, or the method or point of diversion or abstraction of water, causes inequity or a shortage of water for domestic purposes or any other purpose which in the opinion of the Water Apportionment Board should have priority, it may revise or vary any authorization, licence, sanction or permit, and alter the discharge or quantity of water which any operator is authorized to divert, abstract, store or use, or alter the method or point of diversion or abstraction of water.

(b) Before any such revision, variation or alteration is made under this subsection, written notice shall be given by the Water Apportionment Board to every operator who may be adversely affected thereby, and every such operator may, within thirty days thereafter, appeal to the Water Appeal Board against such intended revision, variation or alteration:

Provided that the provisions of this paragraph shall not apply to any revision, variation or alteration made or intended to be made owing to drought or other emergency specified by the Water Apportionment Board.

(2) (a) Any community, and any association of operators other than an appointed water undertaker, may submit to the Water Apportionment Board for its approval a scheme for the better storage, distribution and utilization of water resources in any particular area, and, where the Water Apportionment Board approves such scheme, the Minister may—

Revision or variation of permits.
24 of 1957, s. 16.
59 of 1960, s. 18.

- (i) for the purposes of giving effect to the scheme, cancel, amend, revise or vary any authorization, licence, sanction or permit issued to any operator in that area; and
- (ii) impose, by order published in the Gazette, a water rate on all persons owning or occupying land in that area.
- (b) Notwithstanding the provisions of section 11 of this Act, the Water Apportionment Board shall not approve any scheme submitted to it under this subsection unless—
- (i) the scheme is approved by the persons owning or occupying at least two-thirds of the particular area concerned in the scheme; and
- (ii) provision is to be made for an adequate alternative supply of water to be supplied to operators likely to be adversely affected and unable to benefit from the scheme
- (c) No authorization, licence, sanction or permit shall be cancelled, amended, revised or varied under this subsection unless the Water Apportionment Board has served upon the operator who may be adversely affected thereby, at least thirty days before such revision or variation, a written notice of the intention so to do.
- (d) An operator upon whom a written notice has been served in accordance with paragraph (c) of this subsection may, within thirty days after receipt by him of such notice, appeal to the Water Resources Authority against the intended cancellation, amendment, revision or alteration notified by such notice, and the decision of the Water Resources Authority upon any such appeal shall be final.
- (3) (a) Where the Water Apportionment Board or the Minister cancels, amends, revises, alters or varies any authorization, licence, sanction or permit under this section, whether permanently or temporarily, the Board or the Minister, as the case may be, may decide what compensation, if any, shall be paid by any operator benefiting thereby to any operator adversely affected, and if any operator is not satisfied with any such decision the matter shall be determined by arbitration.
- (b) Any compensation payable by an operator by reason of this subsection shall be recoverable as a civil debt.

99. Any licence, sanction or permit may be cancelled or the conditions thereof varied by the Water Apportionment Board if the licensee, sanction or permit holder—

Cancellation of permits, etc.

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

and any such licence, sanction or permit to be so cancelled or varied shall be surrendered to the Water Apportionment Board for cancellation or variation, as the case may be:

Provided that—

- (i) the Water Apportionment Board may after due inquiry allow the partial use of water without modification of the licence, sanction or permit, if the Board is satisfied that such partial use is reasonable;
- (ii) no licence or permit for a public or urban project shall be cancelled or varied except by the Minister with the consent of the Water Resources Authority, but the Water Apportionment Board may, if any water the subject of a licence or permit for such a project is not required by the permit holder, grant a permit for the use of such water by some other person for such period as may be specified in such permit, not being greater than the period during which the water will not be so required for the original project.

100. Every licence, sanction or permit shall be subject to subsequent variation by the Water Apportionment Board after a hydrographic survey of the body of water has been made, and after reasonable notice has been given to all parties affected.

Variation of permits, etc., after hydrographic survey.

101. An operator who desires to change the point of diversion or abstraction of the water used or to be used by him shall apply to the Water Apportionment Board for permission so to do, and the Water Apportionment Board may grant such application if it is of the opinion that it is in the public interest so to do and that the rights of others will not be affected thereby.

Change of point of diversion.

102. (1) The quantity of water granted or specified under a licence, sanction or permit shall be used only for the specific purpose and during or within the time stipulated in the licence, sanction or permit relating thereto, and, if the licensee or sanction or permit holder desires to use such water for any

Change of use of water.

other purpose, he shall make application to the Water Apportionment Board and supply such particulars as the Water Apportionment Board may require.

(2) If the Water Apportionment Board considers that an application under subsection (1) of this section is in the public interest and that the rights of others are not adversely affected thereby, it may grant the application, and the licensee, sanction or permit holder shall then surrender his licence, sanction or permit to the Water Apportionment Board, which shall issue a new permit with such modifications as it considers necessary.

103. Any permit, authorization or other document issued under this Act which has been issued imperfectly or without compliance with all or any of the terms governing the issue thereof, or which contains some inaccuracy, which can be corrected without affecting the right of other parties, or which is incomplete or indefinite in its terms and conditions, shall be returned to the Water Apportionment Board upon an order of the chairman to the person to whom it is issued, and such permit, authorization or other document may be reissued with such amendments as may be considered by the chairman to be necessary.

104. (1) Whenever the holder of land to whom a licence, sanction or permit has been granted desires to have the water concerned apportioned between two or more parts of the land in respect whereof the licence, sanction or permit was originally obtained, he shall apply to the Water Apportionment Board for an apportionment, and the Water Apportionment Board, on being satisfied that the rights of others will not be adversely affected thereby, may, after notice to all persons believed by it to be concerned, amend the licence, sanction or permit originally granted, or may issue two or more new permits to conform with the apportionment authorized.

(2) Such new permits shall, after providing for the authorized uses of the water and the periods of use provided for in the original licence, sanction or permit, not authorize in the aggregate the diversion, abstraction, storage or use of more water than the discharge or quantity authorized to be diverted, abstracted, stored or used by the original licence, sanction or permit.

Correction of errors in permit, etc.

Apportionment of water.

105. Any two or more licensees or sanction or permit holders may mingle the waters authorized by their licences, sanctions or permits and may construct works to carry or use such mingled water:

Mingling waters.

Provided that the plans of any such works shall be subject to the approval of the Water Apportionment Board in all respects as new works, and, except as to the mingling of such waters and the construction and maintenance of such works, the licence, sanction or permit of such licensee, sanction or permit holder shall in no way be enlarged or varied.

106. When any operator ceases to utilize the water in accordance with the terms of his licence, sanction or permit he shall, by notice to the Water Apportionment Board, abandon the whole, or any part capable of separation, of the licence, sanction or permit acquired, and, upon such abandonment, the Water Apportionment Board may direct such operator to remove all or any works erected in connexion with such licence, sanction or permit within such time as it shall specify and, in the event of the refusal or failure of such operator to remove such works, such operator shall be guilty of an offence, and the Water Apportionment Board may remove all or any portion of such works, and may recover the cost of such removal from such operator:

Operator may abandon. 59 of 1960, s. 20.

Provided that, where any land or undertaking to which a licence, sanction or permit is appurtenant is mortgaged or charged, no abandonment of such licence, sanction or permit shall be effective without the consent in writing of the mortgagee or chargee.

107. When any works for carrying, storing or using water are not of sufficient capacity to carry, store or use the quantity or discharge to which a licence, sanction or permit has been acquired by an operator in connexion with such works, his licence, sanction or permit may be limited to the quantity or discharge which such works are capable of carrying, storing or using, and, in case of dispute as to such quantity or discharge, the Water Apportionment Board may order an inspection of the works, and the licence, sanction or permit may be varied by the Water Apportionment Board so as to authorize only the quantity or discharge of water which the works are capable of carrying, storing or using in a reasonable and beneficial manner.

Permits, etc limited by capacity of works.

PART XIV—EASEMENTS

Operator may acquire easement.

108. Any operator who has received an authorization under this Act to construct works for the purpose of a permit, where the works authorized, or a portion of them, would, when constructed, be situated upon lands not held by the operator, shall acquire an easement on, over or through the land on which the works would be situated, and, unless the works have previously been constructed under any lawful authority not amounting to an easement, or under the authority of a sanction, shall not exercise the authorization unless and until he has acquired such easement.

Encumbrances.

109. The acquisition of an easement under section 108 of this Act shall not affect the burden or benefit of any encumbrance on the land existing at the date of such acquisition or the liability or right of any person in respect thereof.

Easement includes right of access.
L.N. 741/1963.

110. An easement shall include the right of access, along a route to be approved by the Water Apportionment Board after consultation with the owner and the Catchment Board concerned, to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the operator and for any purpose necessary for the effective enjoyment of the easement:

Provided that the operator shall give reasonable notice to the occupier of the land over which the easement is held of his intention to enter such land for any of the purposes mentioned in this section.

Operator must avoid flooding lands and maintain canal satisfactorily.

111. Any operator who has acquired an easement which includes the construction of a canal 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 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, and compensation for any damage so caused may be recovered from the operator in any competent court.

Damage caused by works of operator.

112. (1) If damage is caused to the land over which the easement is held, as the result of the works of an operator, the holder of the land over which the easement is held may require such operator to construct such additional works as are necessary, in the opinion of the Water Apportionment

Board, to prevent such damage or any recurrence thereof, and the Water Apportionment Board may, by order, require the operator to construct such additional works at his sole expense.

(2) If the operator fails to comply with an order of the Water Apportionment Board given under this section, the Water Apportionment Board may cancel his licence, sanction or permit, and thereupon such licence, sanction or permit shall be returned to the Board.

113. (1) An operator who has acquired an easement for the construction of works on another landholder's land which—

(a) prevents the landholder passing freely over or on his land as theretofore; or

(b) 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 Apportionment Board and under such conditions as it may prescribe—

(i) such bridges and other structures and devices as will make communication safe and convenient; or

(ii) such works, structures or devices as such Board considers necessary to enable the landholder effectually to enjoy the use of any work, structure or device interfered with.

(2) Any operator who fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence.

114. An operator claiming an easement under this Act shall serve a notice in writing 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 lands to be reclaimed, if the easement is for reclamation of a swamp or lands;

Operator to construct works to enable landholder to enjoy his existing works if interfered with.
59 of 1960, s. 24.

Operator desiring easement to serve notice on landholder.

- (d) a statement of the area of the land (if any) which is or will be occupied by the works, or flooded as a result of the works, or required for the purposes of inspection and maintenance of the works, or required for the excavation or collection of material for the works, or for the deposit of soil or material derived from the works, or for a road or roads to obtain access to the works, or 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 operator wishes to enjoy the easement,

and a copy of such notice shall be sent by the operator to the Water Apportionment Board.

115. If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto in a deed or other instrument suitable for registration as hereinafter required, and, 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 Apportionment Board.

116. If the landholder does not, within two months after the service of a notice under section 114 of this Act, agree to the claim for an easement or to any other matter necessary for an easement, the operator may apply to the Water Apportionment Board, in the prescribed manner, for an easement, and shall serve notice of such application upon the landholder.

117. (1) The Water Apportionment Board 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 Board seems just.

(2) The Water Apportionment Board shall notify the operator and the landholder of its decision, and if such operator or landholder is aggrieved thereby he may, within thirty days of such notification, appeal to the Water Resources Authority, and if aggrieved by the decision of the Water Resources Authority may, within thirty days of notification of such decision, appeal to the Water Appeal Board.

If landholder agrees, particulars to be embodied in deed.

If landholder does not agree, application for easement may be made.

Claim for easement may be dismissed or granted.

(3) When the claim for an easement has been granted, the operator shall embody the particulars and other matters pertaining to an easement granted under subsection (1) of this section in a deed or other instrument suitable for registration, and shall tender such 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 Apportionment Board to execute and deliver such deed or instrument to the operator, the Water Apportionment Board 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 operator to the Water Apportionment Board.

(6) Where an appeal has been lodged under subsection (2) of this section, no action shall be taken under subsections (3), (4) and (5) of this section until the appeal has been decided.

118. (1) An easement acquired under this Act shall lapse if the works authorized are not completed and the water is not utilized within one year from the date of acquiring such easement or within such further period as the Water Apportionment Board may determine, or 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 Apportionment Board may, from time to time, in any particular case, determine.

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

119. (1) If any work constructed on the land of a person other than the operator is out of repair or requiring cleaning, the operator 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, and, if he 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 operator in any competent court.

Easement to lapse if works not completed within specified period.

Operator to keep works in state of repair.

(2) Such repairs or cleaning shall not be unreasonably demanded, and, in the event of a dispute between the parties, the Water Apportionment Board shall decide what are reasonable repairs or cleaning.

(3) An operator who allows or suffers any such works to fall into disrepair or, in the opinion of the Water Apportionment Board, to be in such a state as to require cleaning shall be liable for all damage which may arise in consequence thereof.

Landholder may demand and obtain use of works of operator.

120. (1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Water Apportionment Board 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, abstract, store or use under this Act:

Provided that, before such permit or authorization is issued by the Water Apportionment Board, the landholder shall prove, to the satisfaction of the Water Apportionment Board, that the works of the operator can be satisfactorily used for the purpose of the landholder and without material detriment to the operator, and such proportionate cost of such works shall be paid by the landholder to the operator who constructed or is constructing the works as may be agreed on between the parties, or, failing agreement, as may be determined by arbitration.

(2) Such operator may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of such 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 arbitration.

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

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

(4) When it is proved to the satisfaction of the Water Apportionment Board that altered conditions have rendered a revision of such rate of payment just and equitable, the Water Apportionment Board shall inform the parties concerned, and, failing agreement between such parties on such revision of rate of payment, the matter shall be referred to arbitration.

121. When works have been executed by an operator on another person's land, any land occupied 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 such person for his own purposes, and such person may remove such excavated material, but no damage shall be done to the works of the operator, neither shall the works be obstructed or interfered with by such removal.

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

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

Easements to be registered.

123. (1) An easement acquired under this Act shall determine if and when the permit or authorization for the exercise of which such easement has been acquired is cancelled as provided for in this Act, and on the date of such cancellation.

Determination of easement.

(2) On the determination of any permit or authorization, any works constructed by the operator on the lands of another person shall, where such operator is the sole permit holder, if not removed by such operator within two years from the date of such determination, become the property of such other person, unless ordered to be removed by the Water Apportionment Board at the request of such other person.

(3) On the determination or alteration of an easement, the Water Apportionment Board shall notify the landholder over whose land the easement was granted and the Registrar of Titles, and the landholder concerned may take such action as is necessary to cause his title to be freed from such easement at the expense of the person in whose name the easement is registered.

PART XV—WATER UNDERTAKINGS

Appointment
of water
undertakers.
24 of 1957, s. 21,
59 of 1960, s. 27,
L.N. 256/1963.

124. (1) For the purpose of the distribution of water supplies in any area, the Minister, after consultation with the Water Resources Authority, may appoint water undertakers who shall be responsible for the provision of an adequate supply of water for the area within their limits of supply, and who shall comply with the provisions of this Act.

(2) The Minister may, on the advice of the Water Resources Authority, require any water undertaker, not being a local authority, to deposit with the Minister a guarantee or other security, acceptable to the Minister, for the purpose of securing payment by such water undertaker of any expenses recoverable by the Minister from such water undertaker under section 138 of this Act.

(3) The area of the limits of supply of a water undertaker shall be determined by the Minister, after consultation with the Water Resources Authority, and water shall not be supplied by the water undertaker to any person outside such limits of supply without the prior consent of the Minister.

(4) No person shall construct any works for the supply of water to any premises within the area of supply of a water undertaker without first obtaining permission in writing from the water undertaker to construct such works:

Provided that such permission shall be granted by the water undertaker in all cases where the water undertaker is not willing or able to give proper and sufficient water supply at the price embodied in the regulations of the water undertaker.

(5) (a) No local authority shall supply more than two households, and no local authority shall supply more than one thousand gallons of water a day, unless it is a water undertaker, and no person who is not a local authority shall supply more than twenty households, and no person who is not a local authority shall supply more than five thousand gallons of water a day for domestic purposes or more than twenty thousand gallons of water a day for any purpose, or purposes, unless he is a water undertaker.

(b) Any local authority or other person who supplies water in contravention of paragraph (a) of this subsection shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding six months, and in the case of a second or subsequent offence

to a fine not exceeding ten thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding twelve months.

(c) This subsection shall not apply in respect of the supply of water by any local authority or other person to its or his employees, or in respect of the supply of water on the premises of any hospital, factory, school, hotel, brewery, research station or institution to the occupants thereof, in cases where the source of supply is under the control of such local authority, person, hospital, factory, school, hotel, brewery, research station or institution, or where the water is supplied in bulk to such local authority, person, hospital, factory, school, hotel, brewery, research station or institution by a water undertaker.

(6) Any person, being a person who is not required under subsection (5) of this section to be a water undertaker, who supplies water to more than two consumers or who supplies more than one thousand gallons of water a day may apply to be appointed a water undertaker.

(7) Any consumer taking a supply of water from a person who could himself apply under subsection (6) of this section to be appointed a water undertaker may submit to the Minister a request that such person be appointed a water undertaker, stating therein his reasons for such request.

(8) Every application for the appointment of a water undertaker shall be made in writing and sent to the Chief Hydraulic Engineer.

125. (1) The Minister, after consultation with the Water Resources Authority, may, on the application of the water undertakers concerned—

- (a) permit the joint furnishing by two or more water undertakers of a supply of water;
- (b) permit the transfer of the undertaking, or part thereof, of one water undertaker to another water undertaker.

(2) Where it appears to the Minister, after consultation with the Water Resources Authority, to be expedient for the purpose of securing a more efficient supply of water, he may order such joint furnishing or such transfer.

(3) Any order made under this section may contain such incidental, consequential and supplementary provisions as the Minister deems necessary or expedient for the purpose of carrying out such order.

Combination of
undertakings
and transfer of
undertakings.

Limits of supply may be varied.

126. The Minister, after consultation with the Water Resources Authority, may—

(a) on the application of any water undertaker, by order, vary his limits of supply, but not so as to include any area which is within the limits of supply of any other water undertaker unless such other water undertaker is unable to meet the demands for water in his area;

(b) on the application of two or more water undertakers, by order, vary by agreement any common boundary between their limits of supply.

Compulsory variation of limits of supply.

127. (1) Where it appears to the Minister, after consultation with the Water Resources Authority, that it is expedient to vary the limits of supply of any water undertaker, and he is satisfied that such a variation cannot be secured under section 126 of this Act, he may make an order providing compulsorily for such variation.

(2) Any order made under this section may contain such incidental, consequential and supplementary provisions as the Minister may deem necessary or expedient.

Minister may authorize water undertaker to supply premises outside limits of supply.

128. If the Minister* after consultation with the Water Resources Authority, is satisfied that the owner or occupier of premises in an area outside the limits of supply of any water undertaker desires to obtain a supply of water from such water undertaker and that the giving of such supply is not likely to interfere with the supply of water for any purpose within such limits of supply, he may, on the application of such water undertaker and with the consent of any water undertaker within whose limits of supply the area is situated, by order, authorize the applicants, hereinafter referred to as the supplying water undertaker, to supply water in such area or such part thereof as may be determined by the Minister on such conditions as may be specified:

Provided that an authorization under this section shall not be unreasonably withheld, and any question whether or not it is unreasonably withheld shall be decided by the Minister, whose decision shall be final.

Water undertaker may notify ability to supply.

129. Where a supplying water undertaker is, by virtue of an order made under section 128 of this Act, supplying water to premises outside his limits of supply, any water undertaker within whose limits of supply such premises are

*Power delegated to the Chief Hydraulic Engineer by L.N.136/1960, subject to the condition that he shall not refuse authorization without prior reference to the Minister.

situated may, in the absence of any agreement to the contrary, at any time give not less than three months' notice to such supplying water undertaker that he is able and intends to give a supply of water to such premises:

Provided that a notice given under this section shall not be valid unless it includes all the premises to which water is being supplied by virtue of such order.

130. When, after the expiration of a notice given under section 129 of this Act, the water undertaker giving the notice commences to supply water to the premises covered by such notice, the supplying water undertaker 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 a supply to such premises:

Cessation of rights of supplying water undertaker.

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

131. The water undertaker giving notice shall pay to the supplying water undertaker such portion of any expenses reasonably incurred by him for the purpose of giving a supply to the premises referred to in such notice, and such sum in respect of any pipes, plant or apparatus vested in the water undertaker giving the notice under section 129 of this Act, as may be agreed, or, in default of agreement, determined by the Minister or by arbitration.

Reimbursement of expenses.

132. While a supplying water undertaker is, by virtue of an order made under section 128 of this Act, authorized to supply water outside his limits of supply, any regulations relating to his undertaking shall have effect as if the area specified in such order were within those limits.

Effect of regulations on supplying water undertaker.

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

Supply of water in bulk by agreement.

Provided that, subject to the provisions of the foregoing Parts of this Act, an agreement made under this section shall require the approval of the Minister, and, where a supply is to be given by a water undertaker, he shall withhold his approval if it appears to him that the giving of such supply would be likely to interfere with the supply of water for any purpose within the limits of supply of the water undertaker giving the water.

Compulsory supply of water in bulk.

134. Where it appears to the Minister that it is expedient that any water undertaker should give to another water undertaker, and that the other water undertaker should take, a supply of water in bulk, either within or outside the limits of supply of the water undertaker by whom the supply is to be given, and the Minister, after consultation with the Water Resources Authority, is satisfied that the giving and taking of such a supply cannot be secured by agreement, he may, by order, require the respective water undertakers to give and to take such a supply for such period and on such terms as he may specify.

Default powers of Minister.
L.N. 741/1963.

135. (1) If any complaint is made to the Minister that any water undertaker—

- (a) has failed to discharge any duty imposed upon him under this Act; or
- (b) has failed to give an adequate supply of water, as respects either quantity or quality, to any area which such water undertaker is supplying, or has failed to give any supply which he is lawfully required to give; or
- (c) has failed to take such steps as are reasonably practicable, in order to remedy any such failure as is mentioned in paragraphs (a) and (b) of this subsection; or
- (d) has failed to do anything which he is required to do under this Act,

or the Minister is of the opinion that an investigation should be made as to whether any water undertaker has failed in any of such matters, he may, except where the water undertaker is a Municipal Council, cause such matter to be inquired into in such manner as he shall determine.

(2) If, after an inquiry has been held under subsection (1) of this section and after taking natural conditions into consideration, the Minister is satisfied that there has been any

such failure on the part of the water undertaker in question, he may, by order, declare him to be in default and direct him, for the purpose of remedying such default, to take such steps as the Minister may, in such order, specify.

136. (1) If the water undertaker declared to be in default, by an order made under subsection (2) of section 135 of this Act, fails to comply with any requirement thereof within the time specified for compliance with such requirement, he shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding nine months, and in the case of a second or subsequent offence to a fine not exceeding ten thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding twelve months; and the Minister may make an order transferring to himself, or to any local or other authority, such functions of the water undertaker in default as he may think fit, and such order shall be effectual to transfer such functions accordingly.

Minister may transfer water undertaking.
24 of 1957, s. 22.
59 of 1960, s. 23.

(2) Where any offence under this section is committed by any company or other body corporate or by any society, association or body of persons, every person charged with or concerned or acting in the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable in accordance with subsection (1) of this section, unless it is proved by such person that, through no act or omission on his part, he was not aware that such offence was being or was intended or was about to be committed, or that he took all reasonable steps to prevent its commission.

137. Where any functions transferred to the Minister under section 136 of this Act include the function of applying to the Minister for any new authority or an extension of any existing authority, the Minister may grant such authority as if application had been made therefor, and shall give all such notices and do all such things as would have been required to be given or done in connexion with such application, and the grant of such authority shall have effect with such necessary adaptations and modifications as the Minister may determine.

Minister may grant new authority.

138. Where the Minister has transferred any function to himself under section 136 of this Act, any expenses incurred by him in discharging such function shall, in the first instance, be paid by him out of public funds, but the amount

Expenses incurred by Minister in discharging functions.

of such expenses as certified by the Minister shall be paid to him by the water undertaker in default, and shall be recoverable by the Minister from the water undertaker in default as a debt.

Expenses incurred by authority in discharging functions.

139. Where any function is transferred under section 136 of this Act to a local or other authority, the expenses incurred by such authority in discharging such function shall be a debt due from the water undertaker to such authority, and shall be defrayed as part of the expenses of the undertaking of the water undertaker in default.

Transfer of property and liabilities of water undertaker.

140. An order made under section 136 of this Act may provide for the transfer to the Minister, or local or other authority, of such property and liabilities of the water undertaker in default, as, in the opinion of the Minister, may be necessary or expedient, and when any such order is revoked the Minister may, either by the revoking order or by a subsequent order, make such provision as appears to him to be desirable with respect to any property or liabilities held by him or by the water undertaker for the purposes of the function transferred.

Agreements as to drainage, etc., of lands.

141. (1) The Minister, either directly or through a water undertaker, may, subject to the provisions of the foregoing Parts of this Act, 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 Minister, after consultation with the Water Resources Authority, considers necessary for the purpose of draining land, for carrying out soil conservation measures and for the control of vegetation or for more effectively collecting, conveying or preserving the purity and quantity of water which the water undertaker is for the time being authorized to take.

(2) Any agreement made under subsection (1) of this section may be registered against any land of the person with whom such agreement is made, and shall be binding upon and enforceable against such land or such person or his successor in title.

Power of water undertaker to prohibit or restrict use of water.
24 of 1957, s. 23.

142. (1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution exists or is threatened, such water undertaker may, for such period as he thinks necessary, prohibit or restrict, as respects the whole or any part of his limits of supply, the use of water supplied by him for any purpose which such water undertaker may, from time to time, deem necessary.

(2) Before any such prohibition or restriction comes into force, public notice in that behalf shall be given by such water undertaker in one or more newspapers, or by such other means, within the area affected by such prohibition or restriction, and of the date when it will come into force.

(3) Any person who, while such prohibition or restriction is in force, contravenes its provisions shall be guilty of an offence.

143. (1) A water undertaker who is not a local authority shall, with the approval of the Minister, make regulations providing for tariffs and the management of his supply, and, if the Minister so directs, such regulations shall be published in the Gazette or in such newspaper as the Minister may specify.

Power of water undertaker to make regulations.
24 of 1957, s. 24,
L.N. 256/1963.

(2) Regulations made under this section may include provision for—

- (a) prescribing the size, nature, materials, strength and workmanship and the mode of arrangement, connexion, disconnexion, alteration and repair of the water fittings to be used;
- (b) forbidding the use of any water fittings which are of such a nature or are so arranged or connected as to cause or permit waste, undue consumption, misuse, erroneous measurement or contamination of water or reverberation in pipes; and
- (c) the alteration, repair or replacement of any installation or fitting which contravenes the regulations.

(3) Every local authority which is a water undertaker may with the approval of the Minister, and shall if so required by the Minister, make by-laws for any purpose or matter for which regulations may be made under subsections (1) and (2) of this section.

(3A) The procedure for the making, approval and publication of by-laws under subsection (3) of this section shall be that prescribed by the Local Government Regulations, 1963, and, for the purposes of their enforcement and the disposal of fines imposed for their contravention, such by-laws shall be deemed to be by-laws made by the same local authority under those Regulations.

L.N. 256/1963.

(4) If any person contravenes any of the provisions of any regulations or by-laws made under this section, the water undertaker may, without prejudice to his right to take any

proceedings in respect of such contravention, cause such person's supply of water to be cut off until the provisions of the regulations or by-laws, including the provisions as to payment of charges due, have been complied with.

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

(6) Any by-laws made by a local authority which was a water undertaker on the commencement of the Local Government Regulations, 1963, and which were in force on such commencement shall, to the extent that such by-laws may, by virtue of subsection (3) of this section, be made under that subsection by that local authority, remain in force and be deemed to have been made under subsection (3) of this section.

(7) Any reference in this or any other written law to regulations made by a water undertaker under this section shall, except where the context otherwise requires, be construed as including a reference to any by-laws made under this section.

144. (1) A community or association of operators operating a scheme approved by the Water Apportionment Board under subsection (2) of section 98 of this Act may, with the approval of the Minister, or, if the Minister so directs, shall, make regulations providing for any of the matters in respect of which a water undertaker shall under subsection (1) or may under subsection (2) of section 143 of this Act make regulations, and any such regulations shall, if the Minister so requires, be published in the Gazette or in such newspaper as the Minister may specify.

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

(3) If any person commits a breach of any of the provisions of any regulations made under this section, the community or association of operators may, without prejudice to any other remedy in respect thereof, cause such person's supply of water to be cut off until the provisions of the regulations, including the provisions as to payment of charges due, have been complied with.

Power of association of operators to make regulations. 24 of 1957, s. 25.

Cap. 2.

145. (1) If it appears to a water undertaker to be necessary for the purpose of protecting against pollution any water, whether on the surface or underground, which belongs to him or which he is for the time being authorized to take, he may, with the approval of the Minister, make regulations—

- (a) defining the area within which he deems it necessary to exercise control; and
- (b) prohibiting or regulating the doing within that area of any act specified in such regulations.

(2) Where an area has been defined by regulations under subsection (1) of this section, the water undertaker may, by notice, require either the owner or the occupier of any land or premises within that area to execute and keep in good repair such works as the water undertaker considers necessary for preventing pollution of such water, and if such owner or occupier fails to comply with any such requirements he shall be guilty of an offence and liable to the same penalties as if he had committed an offence against such regulations:

Provided that any owner or occupier who considers that any such requirement is unreasonable may, within thirty days after service on him of notice of such requirement, appeal to the Minister, who may determine such appeal or, if he thinks fit, may refer it to arbitration.

(3) (a) Such water undertaker shall pay compensation to the owner or occupier, as the case may be, of any premises within the area defined by regulations made under this section in respect of—

- (i) any curtailment of or injury to his legal rights by restrictions imposed by such regulations; and
- (ii) any expenses incurred by him in complying with a requirement to construct and maintain any works which would not, but for the provisions of this section, lawfully have been required, otherwise than upon payment of compensation, by the local authority, and any questions as to the amount of such compensation, if not mutually agreed upon, shall be decided by arbitration.

(b) In this subsection, "legal rights" includes a user of land in respect of which the Water Apportionment Board might have taken proceedings under this Act, or a local authority might have taken proceedings under any law relating to public health or under the by-laws of such local authority, but has refrained from so doing.

Regulations for preventing pollution of water of water undertakers. 24 of 1957, s. 26, L.N. 256/1963.

(4) Where any person has failed to comply with a requirement notified to him under subsection (2) of this section and either—

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

the water undertaker 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 modified on appeal, and may recover expenses reasonably incurred by him in so doing from the person in default, as a debt, except expenses incurred in respect of works the construction of which could not, but for the provisions of this section, lawfully have been required, otherwise than upon payment of compensation, by the local authority.

(5) Two or more water undertakers may combine for the purpose of making and enforcing regulations under subsection (1) of this section, and this section and subsection (2) of section 147 of this Act shall in any case have effect as if the references to a water undertaker were construed as references to those two or more water undertakers acting jointly.

Cap. 2.

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

(7) A water undertaker which is a local authority may, with the approval of the Minister, make by-laws for all or any of the purposes for which regulations may be made under subsection (1) of this section.

(8) Section 143 (3A) of this Act shall apply in respect of by-laws made under this section.

L.N. 256/1963.

(9) Any by-laws made by a local authority which was a water undertaker on the commencement of the Local Government Regulations, 1963, and which are in force on such commencement shall, to the extent that such by-laws may by virtue of subsection (7) of this section be made under that subsection by that local authority, remain in force and be deemed to have been made under this section.

(10) References in this section to regulations and references in any other provision of this Act and in any other written law to regulations made under this section shall, except where the context otherwise requires, be construed as including references to by-laws made under this section.

146. (1) It shall be the duty of any water undertaker by whom any regulations are made under section 143 or section 145 of this Act to enforce such regulations, and any water undertaker who fails so to do may be ordered by the Minister to take such action to enforce such regulations as shall be specified in such order.

Enforcement of regulations.

(2) Any such regulations may contain provisions for imposing on any person contravening such regulations a fine not exceeding five hundred shillings in respect of each offence and, in the case of a continuing offence, a further fine not exceeding two hundred shillings for each day during which the offence continues after the first conviction of the offender therefor.

(3) Where any water undertaker considers that the operation of any such regulation would be unreasonable in relation to any particular case, he may in such case and with the consent of the Minister relax the requirements of such regulation, or dispense with compliance therewith:

Provided that the water undertaker shall give notice of any such proposed relaxation or dispensation in such manner and to such person, if any, as the Minister may direct, and the Minister shall, before giving his consent, take into consideration any objection which may have been received by him.

(4) Where any such regulations are made by a water undertaker, any person employed by such water undertaker and authorized by him for the purpose shall, on producing, if required, his authority, have a right at all reasonable hours to enter any land or premises in the area to which such regulations apply, for the purpose of—

- (a) ascertaining whether there is or has been any contravention of any regulations;
- (b) in the case of any regulations made under section 143 of this Act, exercising any right conferred on the water undertaker by subsection (4) of that section; or
- (c) in the case of any regulation made under section 145 of this Act—
 - (i) ascertaining whether or not circumstances exist which would justify the water undertaker making a requirement under subsection (2) of that section;

- (ii) exercising any right conferred on the water undertaker by subsection (4) of that section to execute and maintain works.

and the provisions of section 164 of this Act shall apply to any such right of entry.

Minister may require water undertakers to make or revoke regulations.

147. (1) The Minister may, by order, require any water undertaker to make regulations under section 143 or section 145 of this Act in relation to such matters as he may specify, and in the case of regulations made under the said section 145 he shall specify the area for which such regulations are to be made, and if the water undertaker does not, within three months after such order, make, in relation to the matters specified, regulations satisfactory to the Minister he may himself make regulations with respect to such matters.

(2) (a) If the Minister considers that, owing to changing circumstances, any regulation made by a water undertaker under section 143 or section 145 of this Act has become unsatisfactory, he may, from time to time, order the water undertaker to revoke such regulation, and to make any such new regulation, as the Minister considers necessary, and if the water undertaker does not, within three months after such order, comply therewith the Minister may himself revoke such regulation, and make any such new regulation, as he considers necessary.

(b) Within twelve months, or such longer period as the Minister may in any particular case specify, after the commencement of this Act, every water undertaker shall submit to the Minister for approval under this Act any regulation made by him, and if the Minister considers that any such regulation is unsatisfactory he may order that such regulation be revoked, and that such new regulation, as considered desirable by him, be made, and if the water undertaker does not, within three months after such order, comply therewith the Minister may himself revoke such regulation and make such new regulation, as he considers necessary.

(3) Regulations made by the Minister under this section shall have effect as if they had been made by the water undertaker concerned and approved by the Minister.

Compulsory acquisition of land for purpose of water undertaking.

148. A water undertaker or proposed water undertaker who requires the compulsory acquisition of land for any of the purposes of a water undertaking may make application to the Minister, who may, on the advice of the Water Resources Authority, and upon being satisfied that such compulsory

acquisition is desirable, take any steps necessary to secure the acquisition of the land in accordance with the law for the time being in force relating to the compulsory acquisition of land for public purposes.

149. (1) For the purposes of acquiring land under section 148 of this Act, there shall be deemed to be included amongst the purposes of a water undertaker the purpose of protecting against pollution any water, whether on the surface or underground, which belongs to the water undertaker or which he is for the time being authorized to take.

Execution of works for protection of water.

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

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

(3) Any water undertaker proposing to construct any drain, sewer or other works for any purpose mentioned in subsection (2) of this section may, with the consent of the authority concerned, which may be given subject to such conditions as such authority thinks fit, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of supply of such water undertaker.

(4) Any consent required under subsection (3) of this section shall not be unreasonably withheld, nor shall any unreasonable condition be attached to such consent, and any question whether or not such consent is unreasonably withheld or whether any condition which such authority seeks to impose is unreasonable shall be decided by the Minister, whose decision thereon shall be final.

150. (1) Where the Minister, after consultation with the Water Resources Authority, is satisfied that special measures are necessary for the protection of a catchment area from which the water supply of a water undertaker is obtained, he may declare such area to be a protected area, and may, by order, require, regulate or prohibit the doing within such area

Minister may declare catchment area a protected area.

of any act, as he deems necessary for the protection of such area or for the protection of the water supply obtained therefrom.

(2) Before an order is made under this section, the Minister shall publish in the Gazette and in a newspaper circulating in the district a notice of his intention to make such order, and any person who is aggrieved by such order may, within thirty days of the publication of the notice, appeal to the Water Resources Authority.

(3) The Minister, after consultation with the Water Resources Authority, shall decide whether or not compensation shall be payable by the water undertaker concerned and to whom it shall be paid, as a result of an order made under this section:

Provided that any person who is aggrieved by a decision of the Minister given under this subsection may appeal to the Water Appeal Board.

Arbitration.

151. Where under this Part the Minister makes an order upon, or imposes terms and conditions upon, a water undertaker, and such water undertaker is aggrieved by such order, terms or conditions, the matter shall be referred to arbitration.

Power to exempt water undertaker from provisions of Act.

152. The Minister may, with the approval of the Water Resources Authority, by order, exempt any water undertaker from any of the provisions of this Act.

PART XVI—MISCELLANEOUS

Damage to public works to be made good.

153. Every operator shall be liable for and shall make good, in such manner as the Water Apportionment Board or any officer delegated by it may determine, all damage to any public works which may be occasioned by reason of the works of the operator breaking, or being defective in construction, or out of repair, or of insufficient capacity, and, in the event of such works not being made good after notice so to do has been served on such operator by the Water Apportionment Board, the Water Apportionment Board may cause such works to be made good and recover the cost thereof in any competent court.

Authority to interfere with works of operator.

154. Any person engaged in the construction of any road, railway or public works may, with the approval of the Water Apportionment Board and upon giving reasonable notice to the operator concerned, cross, divert or otherwise interfere with the work of such operator for such reasonable period as may be necessary:

Provided that such person shall do as little damage as possible, and shall, at his cost and as speedily as possible, restore such work to a condition in which it will fulfil its required purpose and, where justified, pay compensation to the operator for any loss sustained by interference, interruption or damage to his works.

155. (1) Where any person constructs any new work, not being works as defined in section 2 of this Act, for the purpose of searching for or extracting minerals or for any other purpose, and an aquifer is struck, he shall give notice to the Water Apportionment Board, and shall take such measures and comply with such conditions as the Water Apportionment Board may from time to time require for the conservation of water which may be encountered during any construction:

Striking of aquifer in course of mining operations to be reported.

Provided that if such person is aggrieved by any such requirement he may, within thirty days of the date of notification thereof, appeal to the Minister, whose decision shall be final.

(2) Any person who fails to comply with this section shall be guilty of an offence.

156. Any operator who releases water which has been stored or penned back by him shall be guilty of an offence unless he has first given reasonable notice to all persons whose property may be liable to injury as a result of the release of such water, and such operator shall not, by reason of anything in this Act contained, be relieved from liability for any loss, damage or injury sustained by any person as a result of the release of such water.

Water not to be released without notice.
59 of 1960, s. 23.

157. (1) Where the Water Apportionment Board is, after due inquiry, satisfied that any licensee or sanction or permit holder has wasted any water to which his licence, sanction or permit entitles him, the Water Apportionment Board shall order him, in writing, to stop such wastage within forty-eight hours of the receipt by him of such order, and any person so ordered who fails to comply with such order within the time aforesaid shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

Penalty for waste.
59 of 1960, s. 26

(2) A licensee or sanction or permit holder who wastes water within twelve months after having been convicted of an offence under subsection (1) of this section or under this subsection, whether or not the Water Apportionment Board has ordered him to stop such wastage, shall be guilty of an offence and liable to a fine not exceeding ten thousand

shillings, and in addition the Water Apportionment Board may cancel or vary the conditions of his licence, sanction or permit.

158. (1) Any person who, by any act or neglect, causes any source of water supply, the water from which is used or is likely to be used for human consumption or domestic purposes, or for manufacturing food or drink for human consumption, to become polluted, or to be likely to be polluted, shall be guilty of an offence:

Provided that nothing in this section shall be construed as prohibiting or restricting—

- (i) any lawful method of cultivation of land or the watering of stock which, in the opinion of the Minister, does not conflict with the principles of good husbandry;
- (ii) the reasonable use of oil, tar or other substances on any highway or road so long as the authority or person concerned takes all reasonable steps for preventing such oil, tar or other substance, or any liquid or matter resulting from the use thereof, from polluting any source of water supply; and any question as to what is reasonable use under the provisions of this paragraph shall be determined by the Minister; or
- (iii) the disposal of effluents or waste in any area which the Minister may, by order, from time to time specify.

(2) Any person duly authorized under this Act for the purpose may, on producing his authority, if so requested by the owner or occupier thereof, at all reasonable hours enter any land or premises for the purpose of ascertaining whether there is or has been any contravention of the provisions of this section in relation to such source of water supply, and section 164 of this Act shall apply to such right of entry.

159. Any person who fails to comply with an order given by the Minister under this Act shall be guilty of an offence.

160. (1) Any person who performs any of the following acts shall be guilty of an offence, that is to say, any person who—

- (a) wilfully obstructs, molests or hinders an inspecting officer, engineer or surveyor of the Ministry or of the Ministry for the time being responsible for

Penalty for polluting water used for human consumption.

Penalty for failing to comply with order of Minister.

Miscellaneous offences.
24 of 1957, s. 19,
L.N. 374/1964.

water, a qualified engineer, a Government surveyor or land surveyor, a water bailiff or other person duly authorized by the Water Apportionment Board, in the exercise of his duties under this Act; or

- (b) without the written authority of the Water Apportionment Board, knowingly or wilfully defaces, alters or removes, or causes to be defaced, altered or removed, any survey mark, water gauge, weir or measuring device, or other work, structure or appliance installed for the purpose of water control or investigation; or
- (c) witnesses any such act as is mentioned in paragraph (b) of this subsection and who does not attempt to prevent such act or who does not report such act to the nearest police officer or administrative officer as soon as possible, or who deliberately conceals knowledge of such act or who refuses to divulge such knowledge when called upon to do so by a police officer or administrative officer; or
- (d) wilfully hinders or interrupts, or causes or procures to be hindered or interrupted, any operator, or his manager, contractor, servant or workman, in the lawful exercise of any of the powers and authorities conferred by this Act; or
- (e) without lawful authority wilfully lets off or discharges water from the works of any operator so that such operator loses the use of such water; or
- (f) without lawful authority lays, erects or constructs, or causes to be laid, erected or constructed, any work to connect with the work of any operator, and which is capable of drawing water from such work; or
- (g) unlawfully interferes with the works or water supply of any operator,

and such person shall be liable to a fine not exceeding two thousand shillings or, in default of payment, to imprisonment for a term not exceeding six months.

(2) Any person who, wilfully without authority given under this Act—

- (a) obstructs, interferes with, diverts or abstracts water from any watercourse or any body of water, or negligently allows any such obstruction, interference, diversion or abstraction; or

- (b) throws or conveys, or causes or permits 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 body of water in such manner as to cause, or be likely to cause, pollution thereof,

shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment, to imprisonment for a term not exceeding nine months, and in the case of a second or subsequent offence to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve months, and, in addition to any other penalty, any works executed may be destroyed and any plant or machinery used in connexion therewith may be confiscated, and the costs of destruction of such works may be recovered by the chairman from such person in any competent court.

(3) Any person who, being entitled to construct, erect or maintain works or to divert, abstract or obstruct water under this Act—

- (a) constructs, erects or maintains works without authority or in any manner contrary to any authority obtained under this Act; or
- (b) diverts or abstracts water in excess of the quantity authorized to be diverted or abstracted; or
- (c) fails to erect, construct or maintain a measuring device, if so required under this Act; or
- (d) fails to obey any order of the Water Apportionment Board or other authority, lawfully given under this Act,

shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment, to imprisonment for a term not exceeding nine months, and in the case of a second or subsequent offence to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve months.

(4) (a) Any person who has committed, or has been accused of committing, an offence under this Act or under any rules or regulations made thereunder, and who refuses, on demand of any water bailiff, to give his name and residence and other particulars which such water bailiff may reasonably require, or gives a name and residence or other

particulars which the water bailiff has good reason to believe to be false, may be arrested by such water bailiff without a warrant, and handed over to the nearest police officer.

(b) When his true name and residence or other particulars have been ascertained, such person shall be released on his executing a bond, if so required, with or without sureties, to appear before a magistrate.

(c) Should the true name and residence or other particulars of such person not be ascertained within twenty-four hours from the time of his arrest or should he fail to execute such 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 such person can conveniently be brought, such person may be detained in custody until such a magistrate is available.

(5) The conviction of any person under this section shall not relieve him from any legal liability to any other person.

PART XVII—GENERAL

161. Notwithstanding anything in this Act, the powers conferred, and the duties and obligations imposed, by this Act shall in respect of Trust land be exercised subject to any written law relating to that land.

Application of
Act to
Trust land.
L.N. 741/1963.

162. (*Repealed by L.N. 741/1963.*)

163. (1) There shall be established a Water Appeal Board, which shall consist of—

Appeals to Water
Appeal Board.
24 of 1957, s. 20,
L.N. 741/1963.

- (a) a chairman to be appointed by the Minister on the advice of the Chief Justice; and
- (b) two other persons, who shall be appointed by the Minister.

(2) (a) Subject to paragraph (b) of this subsection, an appeal shall lie to the Water Appeal Board—

- (i) against any decision or finding of the Water Apportionment Board cancelling, revising or varying any authorization, or any sanction or permit which was issued for a period of validity of at least two years;
- (ii) against any other decision, direction or other matter in respect of which an appeal to the Water Appeal Board is expressly permitted by this Act.

(b) No appeal shall be entertained by the Water Appeal Board unless it is made—

- (i) within the period specified in any other provision of this Act for the making of such appeal, or, where no such period is specified, then
- (ii) within thirty days of the date upon which written notice was served upon the appellant in accordance with section 169 of this Act notifying him of the decision or finding against which he wishes to appeal, or
- (iii) where notice is not required to be served in pursuance of this Act, within thirty days of the date upon which the appellant was notified of the decision, finding, direction or other matter against which he wishes to appeal:

Provided that the Water Appeal Board may in any case, for good cause, admit an appeal after the period specified in this paragraph has expired.

(3) On the hearing of the appeal, the Water Appeal Board may confirm, revoke or vary the order or decision against which the appeal has been made.

(4) For the purpose of every appeal under this section, the Water Appeal Board shall have all the powers vested in commissioners under sections 10, 11 and 13 of the Commissions of Inquiry Act.

(5) The Water Appeal Board may make such rules in connexion with the hearing of appeals under this section as to it may seem fit.

(6) All appeals heard by the Water Appeal Board shall be decided by a majority of votes.

(7) Every person aggrieved by a decision of the Water Appeal Board may appeal to the High Court.

164. (1) Where any person is authorized under or in accordance with section 166 of this Act to enter upon land for the purposes specified in such section, he shall not enter upon the land without first giving reasonable notice, whether written, verbal or otherwise, to the owner, occupier or other responsible person managing or in charge of that land:

Notice of entry upon land. 24 of 1957, s. 27.

Cap. 102.

Provided that he may enter upon such land without giving notice if—

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

(2) Any person so entering upon land shall cause as little damage as possible in exercise of the powers conferred by this Act, and any compensation payable under section 166 of this Act, if not agreed by the persons affected, shall be determined by arbitration.

(3) Any person who prevents, hinders or obstructs any authorized person from entering upon any land in accordance with this Act, or who prevents, hinders or obstructs any such person from lawfully carrying out his powers or duties under this Act, shall be guilty of an offence.

165. (1) Any person proposing to apply for a permit, or any operator, wishing to enter upon the land of another person, if his proposals are opposed by such other person, may upon submitting in the manner prescribed a general description of his proposals and a schedule of lands which may be affected by the construction and operation of such works, together with the names and addresses of the holders of such lands, and upon payment of the prescribed fee, obtain from the Water Apportionment Board authority to enter upon such land and do any necessary preliminary investigation in connexion with the location of such proposed works.

Authority to enter upon land for survey and preliminary investigation.

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

(3) Such person or operator or any person authorized by him may, with such assistance as is necessary, enter into and upon any such land to take levels, make surveys and do other necessary work in connexion with such location.

(4) The Water Apportionment Board shall not issue any such authority until it has served a notice on each landholder concerned, that application to enter his lands has been made by such person or operator.

(5) The grant of any such authority shall not authorize or be deemed to authorize the doing of any damage upon any lands entered upon, and if any damage is done compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration.

Right of entry
of Minister.
L.N. 741/1963.

166. (1) The Water Apportionment Board, or any person deputed by it, may, in the exercise of the right of the Minister to the control of bodies of water, enter, if necessary without notice, upon any land and inspect such bodies of water and take such measures as may be thought fit for the purposes of the conservation and regulation of such water, for its preservation from pollution, for the protection of the bed over which it flows and for removing any obstruction from, or for clearing and deepening, the bed, and may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed, and it shall not be necessary for the Water Apportionment Board or any person deputed by it to obtain any injunction or other order of court to entitle it or him to make such entry or to take such measures.

(2) Compensation shall be paid to the holder of any such lands for any actual injury caused by measures taken under the powers conferred by this section, other than measures for the avoidance of waste or removal of unauthorized works or stopping unauthorized diversion, abstraction or obstruction of water or the prevention of pollution, and, failing agreement, the amount of compensation shall be determined by arbitration.

Information to
be afforded to
inspecting
officer.

167. (1) Every operator, which expression shall include his managers, servants and workmen, shall afford to any inspecting officer such information as is within his knowledge in all matters relating to any inquiry held by such inspecting officer under this Act, and shall submit to such inspecting officer all plans, specifications, drawings and documents relating to the construction, maintenance, repair or state of repair of the works, or any portion thereof, of such operator.

(2) The production of instructions in writing, signed by the chairman, shall be sufficient evidence of the authority of such inspecting officer.

Operator to
produce
documents on
order of Water
Apportionment
Board.

168. Every operator, upon the order of the Water Apportionment Board or any person authorized by the Water Apportionment Board for that purpose, shall produce for inspection any licence, sanction, permit, authorization, map, plan, specification, drawing or other document relating to the works or to the licence, sanction or permit of such operator or to the flow of water in such works or in the body of water affected by such works.

169. Any notice required to be served in pursuance of this Act shall be served—

Service of
notices.

- (a) by delivery of the same personally to the person required to be served; or, if such person is absent or cannot be found,
- (b) by leaving the same at the usual or last known place of abode, in Kenya, of such person; or
- (c) by post, addressed to the usual or last known address, in Kenya, of such person; or
- (d) in the case of a notice required to be served on a local authority, corporate body or company, by delivering the same to its clerk or secretary or by leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office:

Provided that—

- (i) 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 such landholder, with some occupier of the land, or, if there is not an occupier, then by causing it to be put in a conspicuous position on the property in Kenya last known to have been occupied by him;
- (ii) any notice required to be given to a landholder may be addressed to "the owner" of the land or premises described in the address in respect of which notice is given, without further name or description.

170. All documents purporting to be orders made by the Minister, the Water Resources Authority, the Water Apportionment Board, the chairman or the officer deputed by the Water Apportionment Board or chairman, as the case may be, shall be prima facie evidence of the due making thereof without further proof, unless the contrary is shown.

Proof of orders.

171. All orders, notices, consents, approvals, demands or other documents authorized or required by this Act to be given, made or issued by the Minister or by any board, authority or water undertaker, and all notices, applications or other documents authorized or required by this Act to be given or made to the Minister or to any board, authority or water undertaker, shall be in writing.

Orders, etc., to
be in writing.

Authentication
of documents.

172. (1) Any notice, consent, approval, demand or other document which any authority, board or water undertaker is authorized or required by or under this Act to give, make or issue may be signed—

- (a) on behalf of a board or local or other authority—
- (i) by the clerk of such board, authority or local authority; or
 - (ii) by any officer of such board, authority or local authority, authorized by it in writing to sign documents of the particular kind or the particular document;
- (b) on behalf of a water undertaker not being a local authority—
- (i) by the clerk or secretary of the water undertaker; or
 - (ii) by any other officer of the water undertaker authorized by him in writing to sign documents of the particular kind or the particular document.

(2) Any document purporting to bear the signature of any person expressed to hold an office by virtue of which he is under this section empowered to sign such a document, or expressed to be duly authorized by the authority, board or water undertaker concerned to sign such a document or the particular document, shall, for the purposes of this Act, be deemed, until the contrary is proved, to be duly given, made or issued by authority of such authority, board or water undertaker.

Permits, etc., to
be evidence.

173. The production of a licence, sanction, permit or authorization, or any copy thereof purporting to be certified by the chairman of the Water Apportionment Board, shall, without further proof, be prima facie evidence in all courts of the matters and things specified therein.

Qualified
engineer.

174. (1) Where under this Act it is required that any act shall be done or requirements be provided by a qualified engineer, the provisions relating to such engineer shall be as prescribed.

(2) The onus of proof that any project, plan, document or application required under this Act to be supplied, prepared or provided by a qualified engineer has been so supplied, prepared or provided shall be on the party presenting or using it.

175. If any parties cannot agree as to the amount of compensation or costs to be paid under this Act, the amount of such compensation or costs shall be determined by arbitration.

Compensation to
be decided by
arbitration.

176. Except where express provision is made by this Act, it shall be lawful for the Minister, after consultation with the Water Resources Authority, to determine the composition or constitution and to regulate the procedure of any authority, board, committee or body established under this Act, and from time to time to alter such composition, constitution and procedure.

Composition of
authorities, etc.

177. No action shall lie, or be maintained, against the Minister, the Water Resources Authority, the Water Apportionment Board or a Catchment Board for anything done in good faith in the performance or intended performance of any authority conferred or duty imposed under this Act or under any rules, regulations or order made thereunder.

Protection of
Minister,
Authority and
Boards.

178. (1) Every person who is guilty of an offence under this Act, or under any rules or regulations made thereunder, shall be liable to the penalty expressly imposed by this Act or by the rules, and, where no penalty is expressly provided, shall be liable to a fine not exceeding five thousand shillings or, in default of payment, to imprisonment for a term not exceeding three months.

Penalties.
59 of 1960, s. 29.

(2) Any operator who wilfully contravenes any of the provisions of this Act or of any rules, regulations or order made thereunder, or any of the terms or conditions of his licence, sanction, permit or authorization, shall, in addition to all other penalties, be liable to have such licence, sanction, permit or authorization cancelled.

179. (1) Except where otherwise in this Act provided, all penalties imposed by this Act, or by any rules, regulations or order made thereunder, may be recovered, in any court of competent jurisdiction, by any person authorized in that behalf by the Minister.

Penalties may
be recovered
by authorized
persons.

(2) Such penalties may be recovered from the person actually committing the offence or from the person on whose behalf he is acting.

180. (1) Every penalty imposed upon any person by this Act, or by any rules or regulations made thereunder, shall be without prejudice to the right to recover from such person—

Recovery of
penalty not to
prejudice right
to take other
proceedings.

(a) any sum for any damage sustained through his act or default; and

(b) the cost and expenses incurred in remedying such damage.

(2) The payment of any such penalty shall not affect the right of any other person to bring any action or to take any proceedings against such person.

Institution of proceedings.

181. The Minister, the Water Resources Authority or the Water Apportionment Board may institute and maintain proceedings in any court against any person accused of an offence under this Act or under any rules or regulations, and may, in his or its own name, take any civil proceedings against any person.

Rules.
39 of 1956, Sch.,
24 of 1957, s. 28,
59 of 1960, s. 30,
L.N. 741/1963.

182. (1) The Minister may, on the advice of the Water Resources Authority, make rules providing for all or any purposes, whether general or to meet particular cases, that he may consider necessary for the administration of this Act, or for carrying out the objects or purposes of this Act, or for giving full effect to the provisions of this Act, and, without prejudice to the foregoing powers, providing for all or any of the matters following—

- (a) qualified engineers;
- (b) fees for services in connexion with permits;
- (c) associations of operators;
- (d) controlling and measuring devices;
- (e) community projects and permits;
- (f) temporary works;
- (g) plans and specifications to be submitted by applicants under this Act;
- (h) forms to be used under this Act;
- (i) inspection of works;
- (j) drainage and reclamation of swamps;
- (k) water power permits;
- (l) abandoned works;
- (m) water bailiffs;
- (n) Catchment Boards;
- (o) protection of fish and fish food;
- (p) water undertakers;
- (q) pollution;
- (r) dam contractors and the construction, extension or improvement of dams.

(s) the appointment, termination of appointment and terms of office of members, and regulating the proceedings of the Water Resources Authority, the Water Apportionment Board, Regional Water Committees and the Catchment Boards.

(t) Local Water Authorities.

(2) Such rules may provide for the imposition of a penalty for any contravention of any such rule, not exceeding five thousand shillings or, in default of payment, imprisonment for a term not exceeding three months.

183. (1) Notwithstanding any provision in this Act or in any other written law, the Water Resources Authority, the Water Apportionment Board, and all Regional Water Boards, as established or constituted immediately before the 1st June, 1963, shall continue in being and the provisions of the Water Act or any subsidiary legislation thereunder relating to such Authority and such Boards, shall continue in force until the Minister, by notice or notices in the Gazette, revokes this subsection either in full or in part as may be necessary.

Temporary provision.
21 of 1964, s. 2.

(2) The provisions of this Act, other than subsection (1) of this section, relating to the Water Resources Authority, the Water Apportionment Board, Regional Water Committees and Catchment Boards, shall come into operation either in full or in part as may be necessary on such date as the Minister may by notice or notices in the Gazette appoint, and by such notice or notices the Minister shall also revoke subsection (1) of this section, either in full or in part as may be necessary.